PHILOSOPHICAL-LEGAL CONCEPTUAL FOUNDATIONS REGARDING THE STATUS OF LAW AND ITS EVOLUTION
THE EVOLUTION OF THE RULE OF LAW IN ANTIQUITY

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Abstract

The rule of law has been and always will be written about the rule of law. Considered a seemingly nebulous reality by some, everyone talks about it, even if most of the time without explaining it. The phrase is invoked, in its name making decisions, making choices and arguing actions.

And so it becomes a postulate, considered by many as a last bastion of defense against abuses of power.

Throughout his life, man, an essentially social person, endowed with intelligence, felt the need to live in various forms of association, in which he shared his habits, moral and religious norms or, finally, his interests.

Human activity, as a great Italian jurist and philosopher states, can be considered to be governed by a complex system of norms, and indeed, in any historical phase we find such a system.

It has been perfected in societies, constantly producing social relations, its entire social path being crowned by the construction of the rule of law, a construction that has as a defining feature the protection of individual rights. An edifice in which the law provides the general and obligatory rules, according to which the state power is exercised, and the state ensures the obligation of the legal norms and their transposition in life.

Keywords: abuses of power, man, essentially social person, complex of rules, rule of law, individual rights.

1. Introduction

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2. Content

The concept of the rule of law becomes, through its evolution to a universal dimension, a reference element for assessing the degree of development and civilization of a country.

The permanent and indisputable topicality of the rule of law can only be explained by the permanence of the need to look for concrete means to make the concept an uncontested daily record[3].

The concept of "rule of law" evokes a legal construction of great scientific interest, with a history that keeps alive the preoccupation for its research for several centuries; today, however, the risk of this wonderful building slipping on a pejorative slope increases alarmingly, mainly by its easy utterance.

The scientific achievements of the doctrinaires, although brilliant, make it impossible to exhaust the subject, ensuring its permanence and, demonstrating with each contribution, if necessary, the possibility of perfectibility.

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[1] George of the Old Man, *Lessons in legal philosophy*, Europa Nova Publishing House, Bucharest, p. 45.
[2] Ion Deleanu, *Institutions and constitutional procedures*, Servo-Sat Publishing House, Arad, 2003, p. 30.
[3] Steluța Ionescu, *Justice and jurisprudence in the rule of law*, Universul Juridic Publishing House, Bucharest, 2009, p. 5.

The rule of law is, we dare say, like Brâncuși's column, infinite in its construction and lasting over generations through the simplicity of creative genius.

All theories and opinions on the concept of the rule of law are the result of reflection on relatively long, contradictory historical developments, with successes, failures and always researchable horizons of the two interdependent phenomena: the state and the law[4].

Any study of the rule of law is closely linked to the social organization of the period referred to, historical moments, social relations and the level of civilization creating, for each period, its own image.

In order for the state to emerge, it was necessary for the authority of either an absolute monarch or a limited group of people to appear in the middle of a human community, located in a given territory, or to a system of organs to which the capacity of to take, by unilateral expressions of will and outside any subordination, mandatory measures for all members of the group, imposed, if necessary, with the help of the coercive force specially organized for this purpose.

We further review the way in which Greek society was organized, from the perspective of its evolution and the traces and patterns that it has established and imposed to this day.

In ancient Greece, more precisely in the Greek city, are the origins of democracy[5], the evolution of society has as its source material development, on the one hand, but also the transformation of human intelligence catalyzed, obviously by the religious factor.

The appreciation of the evolution of Greek society cannot be analyzed without a focus on the works of the great philosophers: Lycurgus, Solon, Socrates, Physis, Nomos, Protagoras, Gorgias, Plato, Aristotle. However, whatever the cause of the changes in ancient society, it is certain in our opinion that they followed a one-way street, that of the transition from the omnipotence of the state (city) to individual freedom.

The real revolutions that have taken place for the transition to greater individual freedom have gradually undermined the city-state in the name of individual freedom. From the city-state one reaches the Empire of Alexander the Great, in which the transition is made from the "man of the city" to the "man of the world", which is no longer conceived as being closely linked to the city. In this way, the transition from the model of the closed society to that of the open society, which brought with it a greater freedom of movement in space.

It was Lycurgus who dealt a decisive blow to royalty by the reform he promoted in the time of Charilaus, "when the monarchy gave way to the aristocracy,"[6] as Aristotle mentions. Lycurgus, a legislator during a revolt when Charilaus had to take refuge in a temple, had the opportunity to suppress royalty, but he did not, considering royalty to be inviolable. Royalty could not be suppressed, but instead, according to Lycurgus, it could be limited by its subordination to the Senate in all matters of government. Thus, we notice that by establishing the Senate as a counterweight to the royalty and power of the people, the concept of balance of power appears for the first time. What Lycurg accomplished has the value of a revolution given that his reform encompasses the whole secret of social life and not just that of political life.[7]

The concrete ways of limiting the powers of the kings of Sparta, of reducing their powers only to those of a religious nature, consisted in granting their right to distribute justice in civil matters to the Ephors and in criminal matters to the Senate, also in granting the right to decide the external relations of the state and to command the military operations of the Ephors, who, however, could not exercise this power without the approval of the Senate. It can be said that the kings of Sparta had more of a decorative role, the power being in the hands of the Ephors in all areas not related to religion, thus achieving the exchange of authority between the Ephors and the King.

From this presentation it can be deduced that Lycurgus' reforms were intended more to strengthen the city and not individual freedom as it is perceived today, as the antithesis of the state.

The origins of the Greek democratic system must be traced back to the forms of collective government of the polis, which were consolidated during the 6th century BC. when the first "True Constitution of Athens" appeared - the one given by Solon in 594 BC. - and which remained in force for 86 years, so for almost the entire century, had a definite democratic character".[8]

Solon "is a great legislator in the eyes of some, who attribute to him the destruction of the omnipotence of the oligarchy, saying that he put an end to the slavery of the people and constituted national democracy, creating a series of fairly balanced institutions: oligarchic through the Areopagus Senate, aristocratic

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[4] Sofia Popescu, *The Rule of Law in Contemporary Debates*, Romanian Academy Publishing House, Bucharest, 1998, pp. 14-35.

[5] Raluca Grigoriu, *Notă introductivă la – lucrarea lui Aristotel – Politica*, Paideia Publishing House, Bucharest, 2001, p. 1.

[6] Aristotel, *Politica*, V. 10.3, Didot Publishing House, 1996, p. 589.

[7] Nicolae Popa, Ion Dogaru, Gheorghe Dănișor, Dan Claudiu Dănișor, *Philosophy of Law. The Great Currents*, All Beck Publishing House, Bucharest, 2002, p. 7.

[8] O. Drimba, *History of Culture and Civilization*, vol. I, Scientific and Encyclopedic Publishing House, Bucharest, 1984, p. 568.

organization of courts"[9]. Solon's reform was one of the deepest due to measures that strengthened the power of the people and with it democracy, measures to establish the right to vote for all citizens in the People's Assembly and the active participation of citizens in the Heliath Tribunal. Solon promoted moderate political reforms that supported and strengthened democracy, so the laws he wrote, as he put it, were "... the best he could have received"[10] the Athenian people.

In the 5th century BC. Greece, it has been said, "has seen the emergence of two new phenomena: democracy and sophistication"[11] which are supposed to be reciprocal because „the democratic orientation regime recognizes the recognition of the power of the word in the political debate and the art of rhetoric aimed at gaining conviction."[12] That is why it is considered that the Sophists were the initiators of the Greek Enlightenment, being of overwhelming importance for the evolution of Greek philosophy.

The relativity of perceptions establishes the parameters of individual freedom, guided in the end by advantages and interests. This is a time when hedonistic or utilitarian ideas are taking place. The law is a human creation and can be changed. " Such a statement comes to shake the belief in the divine origin of state authority, which means that the form of government is in turn transient."[13] In this sense, "the concept that the law is only a human institution destined to meet specific needs and has nothing permanent or sacred has gained ground. In order to provoke this opposition, it is usually said that the act of legislating is the result of an agreement or pact between members of a community who have put together, composed or agreed on certain articles".[14]

As was the philosophy of Socrates, "much of Plato's philosophy is a reaction to the claims of the sophists."[15]. Plato's extremely modern contributions to the classification of political regimes were possible due to the special attention paid to educating those who will lead the destinies of the city and their orientation towards knowing the truth as a premise for achieving the Good.

We can thus observe that the forms of government were characterized by it according to their availability in relation to the Good.

In his dialogue Republic, Plato will move on to forms of government only after he has clarified the place of the individual in his relation to what is real and will distance him from what is only apparent. In this regard, *"the famous myth of the cave"*[16] is meant to show that man must be taught to look at the truth which is also one with the good, concepts which Plato sees at the basis of the organization of the state.

Adherent to an organicist perspective, he analyzes power by considering the functions of the state only in comparison with those found in the functioning of man (as an organism). In his view, the state is like a human being, whose faculties must be harmonized and hierarchized. Therefore, in the center of human action, as in that of state action, there is "reason"; the balanced man is the one who subordinates to his reason his "heart" and his "lusts"[17].

The government of reason results naturally from the contribution of all human faculties. Likewise in political society, every element must lead to the harmony of the whole. The function of thinking and directing belongs to the philosophers who are considered, in his thinking, the "head" of the state, the warriors constitute the "heart", and the farmers and traders constitute the "belly". Plato did not go beyond this organicism and gave myths a predominant place.[18]

The change of one political regime from another is due to the excesses manifested by those who take power, the latter being the determining factor in establishing the form of government, which in Plato's conception are: timocracy or timarchy - honorary constitution, oligarchy or oligarchic man , democracy or democratic man and tyranny or tyrannical soul.

Timocracy has as its ordering principle the zeal of domination, the desire to win and glory, the timocratic man is devoid of virtue, but most importantly for Plato and reason. After the timocracy, follows the political regime of the oligarchy "where the magistrates belong to the income, in which the rich rule and the poor do not participate in power*"*[19] and where the tranquility of the city is maintained by force. The oligarchic man is uneducated and is subject to the idea of learning, he considers the size of wealth as the basis of the existence of society.

The transition from oligarchy to democracy is caused by the greed of magistrates, who develop

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[9] Aristotel, *op. cit.*, p. 68.

[10] Plutarch, *Parallel Lives*, Scientific Publishing House, Bucharest, 1960, p. 213.

[11] J.C. Billier, Aglaé Marzioli, *Histoire de la philosophie du Droit*, Armand Collin, Paris, 2001, p. 49.

[12] *Ibidem.*

[13] Nicolae Popa, Ion Dogaru, Gheorghe Dănișor, Dan Claudiu Dănișor, *op. cit.*, p. 18.

[14] W.K. Guthrie, *The Sophists*, Humanitas Publishing House, Bucharest, 1999, p. 114.

[15] Nicolae Popa, Ion Dogaru, Gheorghe Dănișor, Dan Claudiu Dănișor, *op. cit.*, p. 27.

[16] *Idem*, p. 34.

[17] Plato, *Republica*, in *Opere* vol.V, Științifică și Enciclopedică Publishing House, Bucharest, 1986, pp. 309 and following, quoted by I. Alexandru, M. Cărăușan, S. Bucur, *Administrative law*, Lumina Lex Publishing House, Bucharest, 2005, p. 20.

[18] *Ibidem.*

[19] Platon, *op. cit.*, p. 355.

profiteering skills and are eager to hold political office. Plato's democracy is nothing but a pleasant order without a master, in which equality is distributed to all citizens. The democratic man arranges his own way of life, he thinks he is free, but his freedom offers the possibility of triggering tyranny. Any excess causes a change in the opposite direction *„Fleeing the people from the smoke of the bondage of free men, he fell into the fire of the slavery of the slaves, he exchanged that too great and ill-fated freedom for the heaviest and bitterest slavery brought by the slaves"*.[20] Democracies are for the most part run by a leader chosen by a people, who support and empower them; the tyrannical man always emerges from such a leader. Plato considers that the whole system of laws is oriented towards a virtual part, namely the warrior part, because it is useful for domination[21].

The ideal form of state, described by Plato in the Republic, we notice that it is based on virtues whose only foundation is education, a state that does not need laws. However, in his Laws, Plato concludes *„If in the ideal state there is no need for a law, for the law is inscribed in the soul of each, there will be a need for a rule in the second state, where there are no more perfect philosophers at the helm, and a brake will be needed. impersonal, equal for all to stop and prevent the abuse, intemperance, violence and injustice to which, by their nature, those called to lead a social whole are, unfortunately, so often inclined"*.[22] This second form of the state, identified by Plato, in which the rule of law is supreme, which is based on justice and in turn establishes justice, can lead to a social concord. Social justice, promoted by Plato, was based on the fact that the state is everything and the individual is nothing, a conception resulting from speculative ideas according to which *„the part exists for the sake of the whole, not the whole for the sake of the part ... you are created for the sake of the whole and not the whole for your sake"*.

If for Plato, the politician is embodied by the philosopher, the only one capable of leading the city, in Aristotle the philosopher is destined for contemplation and does not have to worry about the worries of the city. In his studies of various forms of government, Aristotle often wondered who should hold sovereignty in the state. The conclusion he reaches, remarkable for its timeliness, is that *„the sovereignty of the law must therefore be preferred"*[23] in a state.

3. Conclusions

The basis of state organization is the Constitution, which springs from the social nature of man. Laws must be drafted in accordance with constitutional principles *„The constitution of the state is the organization of the judiciary, the division of powers, the attribution of sovereignty in a word, the decision of the special purpose of each political society. Laws on the contrary ... are the norm of the magistrate in the exercise of power and in the repression of crimes that defeat these laws"*.[24]

In his view of both Nicomachean Ethics and Politics, the law can only be enforced if it is based on friendly relations between citizens, because friendship is the only one that can ensure equality, and this, in turn, is the only one that can ensure equality. sanctifies justice.

According to Aristotle, both legality and equality must be the backbone of the city, because they aim to achieve virtuous people and thus virtue becomes *„the first concern of a state that deserves this quality and that is not a state only in name"*.[25]

We notice that in the work of the philosopher, the emphasis is on the man who is in the middle of the city and who, due to his self-sufficiency, led to the appearance of the state. However, given his conception that the whole is prior to the part, we have to conclude that the state was prior to the individual and not the other way around. Even if the state comes in the natural order of things being only a result of an evolution, in Aristotle, this cannot be stated because its state is more one based on interpersonal relations, than on time.

Moving on from the issue of the origin of the state, Aristotle in Politics identifies the Constitution as the one that determines the systemic organization of powers in the state and is confused with the Government. Starting from this statement, we believe that the author divides the Constitution into three pure species which correspond to as many forms of government: royalty, aristocracy and republic. From these, however, three deviations can be noted: tyranny for royalty, oligarchy for aristocracy and demagoguery for the republic.

Royalty is the form of government that is based on the absolute superiority of the ruling individual, and if he leads despotically he turns it into tyranny.

The aristocracy is the form of government in which aristocrats are elected equally on merit and wealth, and if the balance is tilted in favor of the latter then the oligarchy is born.

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[20] *Idem*, p. 381.
[21] See Aristotle, *Politics..., op. cit.*, p. 47.
[22] *Idem*, p. 266.
[23] Aristotel, *Politica,* vol. IV-XIV, Antet Publishing House, 1996, p. 110.
[24] *Idem*, p. 177.
[25] *Idem*, p. 29.

The Republic is based on democracy that is not where the minority rules the majority or where sovereignty belongs to the rich, it is where the law is sovereign, and the most respected and free citizens have business leadership.

Thus we find in Aristotle the modern conception of democracy according to which "What is especially necessary for the city are equal and similar beings, qualities which are more easily found than anywhere in the middle class, and the state is necessarily better governed when it is composed of these elements that form after us, its natural basis".[26]

Also in Politics, the philosopher differentiates three missions of power, which must be found in any constitution of a city. "All constitutions have three parts ... one that decides on common affairs, the other that establishes the judiciary (how many they should be, on which areas their sovereignty extends and how they should be determined to be elected holders), and the third part is the one that divides justice (justice).[27]"

These three functions (judgment, command and justice) which were found in the institutional structure of the city of Athens, must be conducted by three distinct bodies, namely: The decision (deliberation) belongs to the Citizens' Assembly, composed of representatives of the people, the policy of the Citadel, that is, to adopt legislation; The command is entrusted to the civil magistrates (to be the holder of a civil magistracy means to be invested with political or administrative authority that contributes to the leadership of the Citadel); The administration of justice is carried out by the judiciary composed of judicial magistrates - the judges themselves. In this vision are found the germs of the theory of separation of powers in the state[28].

This distinction of functions, exercised by the organs of the Greek City, is the first effort to decipher the elements of power. It is also noted that Aristotle establishes a hierarchy of components of power when he considers that deliberation is the essential function, because it goes far beyond the simple „making laws".

Thus, the Assembly deliberates and decides on peace and war, pronounces capital punishment, punishment with exile or confiscation of property, and may also hold magistrates accountable. We notice that the "deliberation" mixes the legislative attributions with those of police, finance, criminal justice and administration.

We believe that this is the source of the command function (of the executive) that allowed (and allows) the civil magistrates to lead the city, a function that cannot be strictly separated from the prerogatives of the Assembly. Moreover, Aristotle agrees that, at the same time, the same person may belong to the deliberative Assembly and exercise a civil magistracy, and even have "a seat in the court". As for military operations, they are entrusted to the Command, but the decision on war or peace belongs to the Assembly.

For Aristotle, the most important thing was to describe the different modes of action of the state organs and not to defend a certain separation of powers. Aristotle went further, considering that "since any political community is made up of leaders and leaders, it must be examined whether these leaders and leaders must be different or remain the same for life"[29]. During the Roman Empire, some of his conceptions were revived.[30]

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[26] Aristotel, *op. cit.*, p. 197.
[27] *Ibidem.*
[28] We appreciate that Aristotle is the first philosopher who outlined, in a form specific to the historical period lived, the theory of separation of powers in the state.
[29] Aristotel, *op. cit.*, 2001, p. 189.
[30] I. Alexandru, M. Cărăuşan, S. Bucur, *Administrative law*, Lumina Lex Publishing House, Bucharest, 2007, *op. cit.,* p. 21.

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