

PHILOSOPHICAL-LEGAL CONCEPTUAL FOUNDATIONS REGARDING THE RULE OF LAW AND ITS EVOLUTION. THE CORRELATION BETWEEN POLITICAL POWER, LAW AND THE RULE OF LAW

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Abstract

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

And so it becomes postulated, 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 customs, moral and religious norms or, finally, his interests.

Human activity, as a great Italian jurist and philosopher stat¹ it can be considered as being regulated by a complex system of rules; and, indeed, in every historical phase we find such a system.

Keywords: *rule of law, intelligent person, moral norms, religious norms, complex of norms.*

1. Introduction

It was perfected in societies, constantly producing social relations², his entire social journey being crowned by the construction of the rule of law, a construction whose defining feature is the protection of individual rights. An edifice in which the law provides the general and binding rules, according to which state power is exercised, and the state ensures the obligation of legal norms and their transposition in life.

The concept of the *rule of law* reaches, 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 actuality 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 uncontradicted everyday record³.

The concept of „*rule of law*” evokes a juridical construction of great scientific interest, with a history that has kept alive the concern for its research for several centuries; today, however, the risk of this wonderful construction slipping down the pejorative slope increases alarmingly, mainly through its easy pronunciation.

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

2. Content

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

All the theories and opinions regarding the concept of the rule of law are the result of reflection on relatively long, contradictory historical evolutions, with successes, failures and horizons always to be researched of the two interdependent phenomena: *the state and the law*⁴.

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¹ G. del Vecchio, *Lecții de filosofie juridică*, Europa Nova Publishing House, Bucharest, p. 45.

² I. Deleanu, *Instituții și proceduri constituționale*, Servo-Sat Publishing House, Arad, 2003, p. 30.

³ S. Ionescu, *Justiție și jurisprudență în statul de drept*, Universul Juridic Publishing House, Bucharest, 2009, p. 5.

⁴ S. Popescu, *Statul de drept în dezbaterile contemporane*, Academia Română Publishing House, Bucharest, 1998, p. 14-35.

The **state-law** correlation is distorted or optimized depending on the political regime understood as „*the way of engaging political relations, as an expression of the adequacy of the state to the purposes of power and the purpose of its exercise*”.⁵ As it was appreciated, „*the wide range in which political regimes are established and evolve, from those with a democratic character to totalitarian ones, is closely related to the degree of reflection of the will and interests of the citizens at the establishment of these regimes*”.⁶

The analysis from the historical but also synchronic perspective, as it is presented in contemporaneity, underlines various aspects of the connection political power - right of which the legal doctrine mentions:⁷

- **the role of law as an instrument to preserve the dominance over the vast majority of the population in the community**, born at the crossroads between the archaic world and the world of culture, as a sign of progress and civilization, when the old models based on morals and customs no longer satisfy the interests of the evolving society;

- **law provides confidence and protection to dominant groups**, for the contribution made as an instrument of order but also for the great majority of individuals in the community who feel somewhat protected by his principles; thus one could sense the immense value of law for the organization of social structures and the role it will continue to play in the evolution of societies;

- **power did not consist, not even at its origin, only in brute force but on the contrary, it expressed both the social condition of man and the force of the rules imposed for the exercise of power and its preservation;**

- **law is at the service of political objectives, but as society evolves, it no longer exclusively accepts the uncensored model of order**, based on an arbitrarily imposed will, but the **motivational model**, *i.e.*, the relationships are no longer arbitrarily established, but more and more depend on the legal values that enter the community's consciousness. Politics and law merge through the values to which they are subsumed and which aim to realize them;

- **social life is marked by irremediable contradictions between two opposite processes**: one of manipulation, expression of the dominance of the groups in power, the other, conversely, of cultural dynamics, starting from within the groups and allowing the overturning of the situation of the dominant categories. But if the power is dominated by the legal element, *i.e.*, by its consent, the recognition of those entitled to exercise power as a result of the popular majority, then the contradictions and the dispute become acute only to the extent that the power is exercised in such a way that it causes obvious dysfunctions in the relationship with the right;

- in the situation where **the legal argument has value status, and the power is legally consecrated, the relations of law are not of opposition, but of integration;**

- **the power does not have the obligation to submit to the legal argument, but it can appropriate this argument**. Law, however, in the face of power only has the solution of submission, not of confrontation, but, in the end, law wins, to the extent that it is based on the argument and the legal maturity of the society in question, these not being censored by power but by culture;

Historically, the functionality and optimization of the power-politics-law relationship is gradually built up, always confronting and overcoming contradictions inherent in social life, not exempt from deformed expressions, such as those existing in the states that went through the totalitarian experience.

Analyzing the **relationship between political power, law and the rule of law**, Professor Ion Deleanu notes the diverse, surprising and contradictory evaluations of the rule of law, reviewing numerous „*doctrinal perceptions*” including:

- the rule of law corresponds to an anthropological necessity (H. Ryffel);
- it is a myth, a postulate and an axiom, a veritable dogma (J. Chevallier);
- a pleonasm, legal nonsense (H. Kelsen);
- a useless concept that arbitrarily mutilates two other concepts (A. Hauriou)⁸ *et al.*

Such evaluations are the expression of approaches from different perspectives of the premises and mechanisms of the state phenomenon in correlation with the legal phenomenon that led to the awareness of multiple meanings of the concept „*rule of law*”.

⁵ M. Duverger, *Janus. Les deux faces de l'Occident*, Fayard, Paris, 1969, p. 14.

⁶ C. Vărlan (coord.) *et al.*, *Politologie*, Didactică și Pedagogică Publishing House, Bucharest, 1992, p. 43.

⁷ I. Craiovan, *Filosofia Dreptului sau Dreptul ca Filosofie*, Universul Juridic Publishing House, Bucharest, 2010, p. 293-300.

⁸ I. Deleanu, *Drept constituțional și instituții politice, Tratat*, Europa Nova Publishing House, Bucharest, 1996, p. 100-101.

Here are some of them:

- the rule of law means the subordination of the state to the law (J. Picquel);
- is an organizational system in which all social and political relations are subordinated to the law (J.P. Henry);
- the state in which power is subordinate to the state, all manifestations of the state being legitimized and limited by law (M.J. Edor);
- the rule of law means fundamental guarantees of public liberties, the protection of the order of laws (J.L. Quermonne);
- the rule of law implies the existence of constitutional rules that are imposed on everyone (G. Duhamel);
- the state is able to reconcile freedom and authority (M. Miaille);
- the rule of law is the hierarchical and thematized legal order (J. Dabin)⁹.

The concept of the state. The definitions given to the state, in the Romanian doctrine, preserved the classical elements of the concept. Thus, professor **Constantin G. Dissescu** wrote that the state is a unit made up of the meeting of several people on a determined territory in the form of the governors and the governed¹⁰. **Anibal Teodorescu** noted that „*the state is the superior form of human society endowed with the exclusive power of command over the collective of individuals located on a determined territory, which belongs to it properly*”¹¹, and **Professor George Alexianu** showed in his turn that the state is a group of individuals, united by a national bond on a determined territory and governed by a power superior to individual wills.¹²

3. Conclusions

In the current doctrine, the state is defined as an institution „supported by a group of people located on a delimited space, capable of determining its own competence and organized in order to exercise activities that can be grouped into the following functions: legislative, executive and jurisdictional”¹³, and more recently, it is appreciated that the state is, in a restrictive and concrete sense, the set of political governing bodies and that it designates the directing apparatus of the political society¹⁴, or represent the organized form of people's power, more precisely the mechanism or state apparatus”¹⁵.

In our opinion, the notion of state signifies the set of bodies and authorities whose prerogatives are exercised over a delimited territory on which a determined population is located, individualized by language¹⁶, customs, historical traditions, culture, in order to achieve its specific functions domestically and internationally.

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⁹ I. Deleanu, *op. cit.*, p. 114-115.

¹⁰ C.G. Dissescu, *Drept constituțional*, Atelierele grafice Socec, Bucharest, 1915, p. 429.

¹¹ A. Teodorescu, *Tratat de drept administrativ*, vol. I, Bucharest, 1929, p. 22.

¹² G. Alexianu, *Curs de drept constituțional*, vol. I, Casa Școalelor, Bucharest 1930, p. 72.

¹³ T. Drăganu, *Drept constituțional și instituții politice*, vol. I, Târgu Mureș, 1993, p. 94.

¹⁴ I. Deleanu, *Drept constituțional și instituții politice*, vol. 2, Iași, 1992, p. 8.

¹⁵ I. Muraru, *Drept constituțional și instituții politice*, Actami Publishing House, Bucharest 1995, p. 89.

¹⁶ „Limba natală este unul din elementele care dau identitate unei națiuni”. See V. Vedinaș, *Identitate națională și iubire de țară*, Universul Juridic Publishing House, Bucharest, 2015, p. 52.

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