

CONSTANTIN HAMANGIU: NOTES ON JURISTS' MORALITY AND LEGISLATIVE UNIFICATION

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Abstract

Our short study presents two aspects of Constantin Hamangiu's personality and thinking. The former aspect relates to his view on the jurists' morality, namely to the unwritten demand for their abstinence and sacrifices, so that a jurist may be a model for his fellows. The latter aspect refers to the necessity of legislative unification of the Romanian society after having achieved their unitary national state in 1918. This process was a necessary one, as each former province united with Romania used to have its own laws and legal traditions. Therefore, the absence of legislative unification could have lead, on the one hand, to the emergence of an inter-provincial law and, on the other, might have been an element that could undermine the very concept of state unity.

Keywords: *Constantin Hamangiu, morality of jurists, legislative unification.*

1. INTRODUCTION

In this short presentation, we aim at highlighting the personality, thinking and activity of Constantin Hamangiu. Although the topics we have chosen from his activity and conception may seem disparate, they share not only a common paternity but also a message of seriousness and professionalism. The former aspect we chose to present is Constantin Hamangiu's view on the morality of a jurist, an aspect which is still very interesting due to the actuality of the problem. The latter refers to the necessity of legislative unification of the Romanian society after the completion of the Romanian national state in 1918. We circumscribe the latter aspect to the manifestations dedicated to the Centenary of the Great Union.

2. CONSTANTIN HAMANGIU: BIOGRAPHICAL DATA

Constantin Hamangiu was one of the greatest jurists of Romania, with a remarkable activity due to his efforts to systematize the law by realizing the General Code of Romania (30 volumes), a work that encompassed the entire legislation of Romania from the late 19th century and the early 20th century.

He was born in Bârlad in 1867 [1] and attended the Faculty of Law within the University of Bucharest. Hamangiu founded the magazine „Pandectele române” (“Romanian Pandecte”) and he was an honorary member of the Romanian Academy (1930) to which he left his fortune with the request for a fund to be created in order to award “the best novel inspired by the Romanian way of life, the best drama, the best poems and the best Romanian literary critic” [2]. From this fund, great representatives of the Romanian literature were awarded: Liviu Rebreanu, Lucian Blaga, G. Călinescu. Constantin Hamangiu was also concerned with the issue of the intellectual property rights [3].

Furthermore, he was an adviser to the High Court of Cassation, and in 1931 he became the Minister of Justice in the government led by Nicolae Iorga. Constantin Hamangiu died in 1932.

3. CONSTANTIN HAMANGIU ON THE MORALITY OF JURISTS

Constantin Hamangiu represented a true behavioural and attitude model of his time. We consider significant in this respect his concerns about the concretization of a “code” on the moral conduct of jurists. It is worth noting that, during his office as the Minister of Justice, Hamangiu issued a circular that forbade judges to play cards. Obviously, the issue was controversial even in that era “when some ironed the concern of the minister.” Moreover, at the beginning of the 20th century the public opinion could have considered “unhealthy” even a magistrate’s gesture to ride a bicycle, to practice skating or tennis [4]. Even more so today, with an ever increasing democratization and a genuine emancipation of the society, the concern about the morality of such activities can generate passionate debates!

Eugen Petit, one of his contemporaries, agreed with the minister by asserting that it was not natural for “a magistrate to play cards or (practice) other gambling”, as around the table of such a game there would often sit people with the most different ideas on the notion of morality. “Everyone who sits at such a game has in their mind the idea of taking the money of the other.” Whatever the outcome, be it a gain or a loss, it emerged from “the same source of injustice, chastity, and even deception.” In this situation, there could

have easily appeared the dilemma “How will the trialed ones judge a judge who is said to be a master in poker or maus?” [5].

Even though in the early 20th century some people considered playing cards for money or serving “strong appetizers in places that clients left drunk” as fun, Constantin Hamangiu perceived things differently and considered that, through their private life, magistrates had to provide an example, due to their permanently observing moral principles.

In relation to his conception on the morality of the magistrates, a circular was signed at that time, by which the judges could have been recused in certain delicate situations, which concerned their own conscience, outside the “legal motives of recusal” [6]. In this respect, Hamangiu appealed to Clemenceau’s concerns and views on the responsibilities of a citizen and the attributes that may allow one to claim that they are entitled to “judge another person.” The answer was that “the privilege of some people to judge other people” resided in the “social necessity and at the expense of the greatest personal sacrifices” on the part of those involved in the act of justice [7].

In the same field of interest, namely the responsibility and honourability of magistrates, Constantin Hamangiu also addressed another aspect of the moral behaviour of magistrates, i.e. that of loans and debts. It was not about the daily, small debts that were in line with one’s income, as these were circumscribed to the civilian universe and the private life with its economic valences, common to every person. It was about the large debts that could make some magistrates indebted to creditors, and therefore vulnerable.

The debtor of large sums, exceeding their income and in “obvious disproportion with the borrower’s means”, would clearly transform the magistrate into a person “at the disposal of the creditor’s interest” [8]. The validity of such concerns, even in nowadays society, is obvious, as recent posts in the media often report questionable cases about those involved in the act of justice [9].

We consider relevant for defining the personality of Constantin Hamangiu his gesture of donating all his fortune to the Romanian Academy while still alive. His belief was that such a gesture would be beneficial for the greatest scholars of the nation who, as a consequence, would “encourage all the productions of the Romanian brain and soul”

[10]. During a conference on the radio, one of his acquaintances mentioned, one year after the death of the renowned jurist: “Everything he thought, everything he did, everything he planned was entirely for the future.” Significant for what Constantin Hamangiu meant in his epoch is also the rhetorical question of the same contemporary: “Is there any day when the name of Hamangiu is not mentioned at the university, at the bar or in the lawyers’ offices?” [11].

4. CONSTANTIN HAMANGIU ON THE NECESSITY OF LEGISLATIVE UNIFICATION

Constantin Hamangiu got involved in the issue of legislative unification of Great Romania, as this represented an important topic of our society after the unification of all the Romanian provinces that had been under foreign domination before 1918. The administrative unification was actually fulfilled in 1925, by the Law of Administrative Unification [12]. The process of unifying all legislation was a difficult one and it was achieved in stages. Constantin Hamangiu, as well as other prominent jurists of the age, such as Andrei Rădulescu, Anibal Teodorescu etc.) [13] actively advocated for this aspect.

In this respect, Hamangiu emphasized: “The unification of the law means, at a final and intimate analysis, the expression of the soul unification of a people and, more than that, the synthesis of the historical becoming of a given age within the evolution of a people [...]. The lack of unification leads, in a lethal way, to the lack of harmony, to conflicts between various existing laws in different provinces, to the sporadic and unjustifiable creation of an interprovincial right [our highlight - Gh. C.]”

Furthermore, the lack of legislative unification fatally leads to the lack of the very State’s unity [our highlight - Gh. C.] and, especially, to the “mistrust of some governors over the authority of the State” [14].

The considerations of the Romanian jurist were correct and they represented a warning about the extremely serious consequences that could result from the lack of legislative unity: this could lead to the emergence of an interprovincial law, a situation that almost existed in the real life, and, more than that, it could generate, even if only on the hypothetical level of scenarios, the very lack of the state’s unity.

Moreover, Constantin Hamangiu related the process of legislative unification to both the visible elements and the more profound, invisible ones that give a nation its consistency: "We are the ones to have fulfilled a nation's dream and, therefore, we have the duty to create a mentality that integrates this great historical achievement.

Each of us has the duty to sacrifice the best part of his soul in the realization of this ideal.

With our united forces, with the hope for the better, we have the duty to unite around the same ideal, represented by the Throne, and to make our own contribution, no matter how modest, to this sacred heritage." [15]

His patriotic feelings were interwoven with his actions and permanent appeal to action. Through this kind of energy, the man, the professional and the jurist became a role model for his contemporaries. As one of his collaborators stated, within the aforementioned conference on the radio, one year after Hamangiu's death, the legislative unification was "the achievement dearest to his heart"

At a closer look at the Statement of Reason made by Constantin Hamangiu in 1931, when he made a draft law on Romania's legislative unification, one may easily notice the depth of his analysis. Constantin Hamangiu structured his arguments in three parts, each of them being judiciously analyzed: a) The necessity of legislative unification; b) Legislative unification in other countries, c) The general concept of the project.

The first part, entitled The necessity of legislative unification, included: 1. History of the topic, 2. Interprovincial law conflicts, 3. Public order and legislative unification in other countries, 4. Unity of laws, condition of state unity. 5. France, in the early days after the Union, 6. The need for legislative unification.

The second part, Legislative unification in other countries, presented aspects such as: 1. Legislative unification in France, 2. French Law on Enlargement, June 1, 1924, 3. Legislative unification in Italy, 4. Legislative unification in Poland and Czechoslovakia, 5. Legislative unification in Romania, 6. Unification projects, 7. The constitutionality of the project, 8. Public spirit education.

The third part, The general concept of the project, included: 1. The project economy, 2. The local laws still in force [17].

The draft law on the legislative unification, entitled Draft Law for the Enforcement throughout the Country of the Civil, Commercial and Criminal Law, consisted of 19 articles, organized under three titles : I. General provisions, II. Provisions of the local laws maintained in force, III. Transitional Provisions. This project would have entered into force on September 15, 1932 and it would have marked the grosso-modo realization of the legislative unification of the country, (in spite of some still existing provisions of the old laws, applied before 1918, such as art 8 para. 2) [18]. The adoption of such a bill would have undoubtedly represented a great achievement for the legislation of the epoch, but the project did not materialize and C. Hamangiu did not live long enough to see project come true [19].

5. CONCLUSIONS

The aspects presented in our study, namely the morality of the jurists and the necessity of legislative unification in the Romanian society after 1918, provide valuable keys in understanding the personality of Constantin Hamangiu. Both issues relate to the urge of seriousness in one's behaviour, as well as in legislation and documentation, respectively.

The public conduct of jurists has been a permanent theme of reflection and in the early 20th century, Constantin Hamangiu proved firm and treacherous in this respect, militating for abstinence and personal sacrifices, qualities that, in his opinion, could have given the jurists a moral status that would impose them a model for the society. The legislative act needed solid grounds, as to the opportunity one should always add substance and fundamentals. Through his legislative initiative, Constantin Hamangiu demonstrated profoundness and thoroughness, aspects that may serve as examples for our contemporaneity, as well.

Modernity, honesty and pursuit of the absolute and the ideal are not assets of the contemporary world and they are to be sought in the past as well. Continuity must exist and, in order to make it possible, it is necessary to know the acquisitions of the past.

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