SYNERGY EFFECT OF PUBLIC AUTHORITIES IN THE EXERCISE OF SOVEREIGNTY IN A RULE OF LAW

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Abstract:
The rule of law, democratic and social, is the type of state in which the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism are supreme values, in the spirit of democratic traditions of peoples. The idea of the rule of law is even older than its own name, for it is not at all difficult to find the various individual elements of the modern rule of law in the various stages of development of history. Public authorities in a state governed by the rule of law are dependent, directly or indirectly, on the political court, they are structures invested with the right to exercise power. Public authorities generally perform all the functions of the state and perform the political function of the rule of law. In the rule of law, public authorities vested with the exercise of power are subject to the laws adopted by a parliament legitimized by the supreme will of the people.
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General notions regarding the rule of law

The rule of law is an ideal form of state organization in which the rule of law is ensured, even over the legislature, and in which all subjects of law, including political factors, are subordinate to the law. what expresses the sovereign will of the nation is a social retort to the abuse of power.

The rule of law is defined by the French jurist Jacques Chevallier as "the type of political regime in which the power of the state is framed and limited by law". [1]

The corresponding expression, "rule of law" is "Rechtsstaat" in German, "Etat de droit" in French, "Stato di diritto" in Italian, "Estrado de dereche" in Spanish, "State Law" in English. We must point out that if in English the correspondent of the expression rule of law is "State Law", the Anglo-Saxons do not use this expression but that of "Rule of Law" which means the rule of law and is the equivalent of the expression rule of law. [2]

Professor Boboş Gheorghe shows that the name of the theory of the rule of law wants to suggest the idea that the state is not absolutely independent in its activity, but is restricted by the authority of law. [3] It also shows that the theory of the rule of law is outlined during the period of liberalism in the nineteenth century, being closely related to the theory of separation of powers in the state. In the absence of an international authority to guarantee human rights, the state itself must do the same and it can achieve this by separating its powers into its three powers: the legislature, the executive and the judiciary, which control each other so as not to abuse can occur. [4]

The main role of the judiciary would be to protect the rights of the individual, but the position of power is not the same in different states. For example: England created a great authority of law, subjecting both state bodies and citizens to the same authority: customary law applied by the courts.

In Western European countries, the principle of separation of powers has led to the development of a theory of the subjective rights of individuals in their relationship with the state, through the "public law" system. It is designed as a set of rules that aim to protect the individual against the arbitrariness of administrative bodies. [5]

Regarding the theoretical substantiation of the rule of law, Professor Boboş points out that, as the German jurist Jellinek argues, it starts from the theory of the authority of state power according to which the state grants subjective rights to citizens, rights that sometimes go against it, and in foreign relations must comply with the rules of international law. [6]

The rule of law opposes any legality established otherwise than through a parliament elected by universal suffrage and acting in full accordance with constitutional principles. [7]

The characterization of a rule of law is also dependent on the manifestation of the responsibility of the members of the government, on the independence of the courts and on the observance of the rights and freedoms of the citizens. [8]

The symbiosis of the rule of law is particularly important in terms of the rule of law, a particularly current concept especially for societies in transition to democracy, as is the case of Romania and the states of Eastern Europe.

The rule of law is the result of the historical development of the coexistence of the two social phenomena - the state and the law, inextricably and organically linked to each other, both having to perform essential functions in the organization and governance of society. The rule of law reflects the coexistence of the two distinct but inseparable social entities that are the state and the law, of their mutual relations manifested as relations between power and normativity - the first with a tendency towards domination and obedience, the other with that of braking and ordering. [9]

Noting this interdependence, L Duguit said: "Law without force is powerless, but force without law is barbaric." [10]

Right from its inception, the rule of law is at several different levels between which interference and slippage are constant.

First of all, the rule of law refers to a certain conception of the state order: by subjecting the rulers to the law, correlated with the guarantee of a possible appeal before the independent judge, what constitutes the principle of hierarchy of norms is established. the higher the norms and the rule of law, the better developed this dependency will be. [11]

Secondly, the issue of the rule of law can be raised to the deepest level, namely the submission of the state to the rule of law.

Thirdly, the rule of law, as stated by Petru Miculescu and whose opinion we share, is characterized by a content of the law in force, characterized by a set of values and principles aimed at providing citizens with effective guarantees against the state. [12] Thus, in the rule of law are integrated: the fundamental guarantee of public liberties, the protection of the democratic-liberal order, the legal ordering, the control of the constitutionality of laws, finding their principle, purpose and determination in the concrete individual.

The rule of law is not reducible to a simple technical device for organizing the legal order and any progress in the defense and protection of human rights must be assimilated to a strengthening of the rule of law. [13] The three dimensions of the rule of law: the principle of the hierarchy of norms, the principle of subjecting the state to the rule of law and the principle of the content of the rule of law in force. That is, the set of values and

principles defended led to the insertion of the rule of law in a social and political dynamic to which the rule of law is closely linked. [14]

According to the theory of the rule of law, the rule of law is the unit of a system of legal norms, the personification of the rule of law, including the constitutional one.

The French author Claude Emeri considers that the origins of the rule of law must be sought in constitutionalism [15] and Professor Ion Deleanu shows that constitutional law is at the junction of law with politics and addressing the issue of determinations, the rule of law, shows that it belongs to normativity and ideology. [16]

In terms of ideology, the concept of the rule of law demonstrates its fecundity, being a tool to convey values that give the state legitimacy. Here the concept finds its element that in some societies or in some periods it has lost: the legitimation of power and its limitation. Thus the rule of law acquires multiple meanings, especially the increase of the reliability of the state which no longer appears only as a possible agent of oppression but also as an instrument of collective and individual security.

The term rule of law was established by use, it being used in constitutions such as: in art. l, paragraph 3 of the Romanian Constitution, in art. 28 of the Constitution of the Federal Republic of Germany, in art. 11, of the Spanish Constitution, in art. l of the Constitution of the Republic of Moldova, etc.

On closer analysis we find that the problem of the rule of law appears much more complicated due to the fact that the state as an institutionalized organization, endowed as sovereignty of the population of a given territory, never acts as such in internal and external relations, but through its various bodies. [17]

In the case of modern representative democracies, these bodies are usually the following: [18]

a. parliament

b. executive bodies

c. the courts

The executive and judicial bodies can be not only elected but also appointed (examples: appointment of the prefect by the Government according to art.123 of the Romanian Constitution, appointment of judges by the President of Romania according to art.125 of the Constitution, etc.)

This overall structure of the state is encountered even when the representative democracy is integrated with some institutions specific to direct democracy such as the referendum, the popular initiative, etc.

This being the basic structure that takes the form of representative democracy, we consider it important to remember that in order to be a state governed by the rule of law in the event of such a democracy, none of these bodies will be able to operate according to the good please, but only in accordance with the norms established by law (as provided in art. 16 of the Romanian Constitution "no one is above the law").

The rule of law protects and guarantees human rights. From the point of view of positive law, the rights and freedoms that developed into what we now call "human rights" emerged in the struggle of various social categories against feudal absolutism. [19]
The whole complex European construction, from the basic local level to the supranational union level, forming a complex "public bloc", is centered on the idea of asserting and guaranteeing human rights.

Public authorities in the exercise of sovereignty

Public authorities in a state governed by the rule of law are directly or indirectly dependent on the absolute political, legal and moral court: the people.

Genoveva Vrabie considers that in a broad sense the category of public authority is synonymous with that of state body, understood as an organizational form, consisting of deputies, dignitaries or officials through which state power is exercised. [20]

We agree with the opinion of Prof. V Popa, who takes into account the fact that not every state body is also a public authority. The registry office is a state body but it is not a public authority or public power which proves that a state body is an element, an integral part of a system that contains several elements, and all together constitute the authority. For example, the authority or executive power has a well-defined structure: the head of state and the government and these in turn are composed of a number of bodies (ministries, commissions, sections, departments, etc.) that perform various functions as a whole. of the state. [21]

Given these situations, we can define public authority as a political institution [22] constituted directly or indirectly by the people, invested by the constitution with a certain

competence to fulfill certain functions of governing the country and which enjoys a certain authority and prestige in society.

These institutions are also called political because they exercise political power; the constitution nominates them public authorities and endows them with a certain competence.

The classification of public authorities is necessary in order to establish the proper place in the constitutional order of all public authorities by virtue of the fact that they are all in a close correlation and interaction.

In the Romanian Constitution, Title III is called Public Authorities and nominates these authorities in an order corresponding to the principle of separation of powers in: the legislature (Parliament), the executive (the President and the Government) and the judiciary (Courts, Superior Council of Magistracy and the Ministry Public).

Chapter V of the Romanian Constitution is called Public Administration and is divided into two sections, namely: specialized central public administration, nominating in this regard the ministries as specialized bodies of the state that translate into life the policy of the Government and local public administration (local councils and mayors), some being appointed by the constitution public authorities (Government and President), others public administration authorities (councils, mayors).

We point out that there is a considerable difference between the notions of public administration and public authority.

Authority is in a way synonymous with power. Authorities are those structures that are invested with the right to exercise power. The public administration can be defined as a professional body destined for the permanent realization of the services and public order placed under the authority of the executive power. The government also says that public administration is a public service activity entrusted to a set of special purpose bodies. They blend harmoniously into a public administration system focused on two levels: central and local. [23] Some bodies in the public administration system have the quality of authorities because they are invested with attributions through which they participate in the exercise of state power (Government, President of the Republic, Local Councils, City Halls) enjoy a certain authority and prestige by virtue of investing directly or indirectly. by the people.

Public authorities generally perform all the functions of the state, and separately, each public authority - a well-defined function. [24]

The political function of the rule of law is directly performed primarily by the representative public authorities. Art. 2 of the Romanian Constitution establishes that national sovereignty belongs to the people who exercise it through its representative bodies, constituted by free, periodic and fair elections as well as by referendum.

We mention that the representative regime includes the Parliament, the President and the local public authorities, all being elected through direct, secret and freely expressed universal suffrage.

The realization of the political function is not limited only to the activity of the mentioned institutions. The President of the Republic being the head of state together with the Government constitutes the executive power which is also a function of the state. Therefore, the Government also participates in the fulfillment of the political function.

The activity of the jurisdictional authorities exercising their functions established by the Constitution contributes to the exercise of political power. The courts being independent of any other power, administering justice on behalf of the state are the depositories of a part of the public authorities.

The Parliament, the President and the Government directly participate in the realization of the socio-economic function of the rule of law, and the jurisdictional authorities ensure the legality of all actions undertaken through special jurisdictional activities.

The legal functions of the rule of law are performed by each authority separately, based on the principle of separation of powers in the state. Thus the Parliament, as the only legislative authority, performs the legislative function which is the most important function among the legal functions, because the executive and the judicial function are directly related to the first function.

The executive function is performed by the head of state and the Government. Although the Constitution does not call these political institutions executive powers, it is understood from the text of the constitutional regulations, from the attributions with which they are invested.

The jurisdictional function is performed by a whole set of authorities such as: the High Court of Cassation and Justice (Supreme Court of Justice), the other courts established by law (Court of Appeal, Courts and Tribunals) and the Constitutional Court as a specialized authority of jurisdiction constitutional, which is the guarantor of the supremacy of the Constitution (art. 142 para. 1).

Since the Constitution classifies public authorities into central and local authorities by naming them public administration bodies at the level at which they operate, some specific functions named by the administration are outlined.

Prof. A. Iorgovan qualifies the public administration as an activity called to execute the law or within the limits of the law, to provide public services, using for this purpose prerogatives specific to public power. [25]

From this definition we deduce that the public administration authorities, in a broad sense, have only one function, that of public domain administration.

At the head of the public administration authorities are the President of the Republic, then the Government, the Ministries and the departments and the local public administration authorities, the councils of all levels and the mayors elected in accordance with the law. Each authority at the level at which it operates exercises powers of administration of the public domain.

The government exercises the general management of the public administration, the ministries being central specialized bodies of the state, it administers a concrete field (education, health protection, protection of public order, national security, agriculture, environment, industry). Local public authorities administer the local public domain on the basis of local autonomy and administrative decentralization, which means that they are not in subordination relations with the central administration authorities.

Contemporary states (not only the post-communist ones) are characterized by a sharpening of existing social tensions within each, by increasing the material and spiritual needs and requirements of the people, generating themselves the imperative for the Government to meet the legitimate demands of citizens by free economic development and market diversification. [26]

The new problems created by the transition period force our state to adapt public institutions to the new economic-social, political-diplomatic, military, domestic and

international relations. These new circumstances dictate changes at the level of state functions, imply the modification of some prerogatives, attributions and working methods of the supreme powers in the state. These circumstances require the improvement and efficiency of the Romanian state governance system.

The new general tendency of the contemporary societies to pass through the transition period consists in entrusting to the Government, the care to take the great political decisions that are translated in laws and executive measures, the activity of the Parliament being transferred on another plane. It should be noted that the real division is not between the power to make the law and to enforce it, but between the power of the executive bodies to direct the national political power using the administrative apparatus at its disposal on the one hand, and on the other the freedom of the legislative bodies to control the governmental activity.

According to the principle of separation of powers in the state in: legislative, executive and judicial, each of them is invested with certain prerogatives, none of the powers having the possibility to usurp the attributions of the other. It is true that between the bodies that exercise the prerogatives of a certain type of power there is a functional interpenetration and even a collaboration meant to ensure the harmony of the governing process and the involvement of the excess of power.

We mention that governments are mainly bodies of impetus and action, able to develop a policy and materialize it. They are the driving force and dynamic element of any political system, which must be seen as true actors and implementers of national policy, having a primary role. In most regimes, most of the laws passed are prepared by the government.

In democratic regimes the role of governments is growing and their powers are developing in many ways. [27]

In many countries, parliaments see their legislative scope circumscribed and limited by the Constitution while the government enjoys general normative competence. Another important moment is that we must take into account the rapid growth of some sectors of activity such as those on state defense, foreign affairs, economic issues that obviously fall into the administration of the executive and implicitly its importance is growing.

Another problem is that in most countries, except for those that practice a genuine presidential regime, there is a system of legislative delegation that allows Parliaments to empower the Government to intervene regularly in matters that normally belong to them. Precisely because the evolution of constitutional life in some countries has led to the emergence of such hybrid systems, which breaking the traditional patterns of both the parliamentary and presidential regimes have tried to reach compromise solutions and created what some authors in Western literature I call them semi-presidential regimes. [28]

From the above we observe that there are some similarities between the French political system, regulated by the Constitution of the Fifth Republic and the political system of Romania.

It should be noted that some Constitutions recognize not only the legislative delegation, such as the Constitution of Romania, Portugal or the Constitution of Italy, etc., but also its own regulatory power, the Government of France (art. 37 of the Constitution), the Government of Spain (art. 97 of the Constitution).

Due to these constitutional provisions, the executive power can replace the legislative power, and through the possibility recognized to the Government to engage its responsibility before the Parliament on a draft law, provided in several political systems (art. 196 of the Portuguese Constitution, art.49 of the Constitution of France, Article 112 of the Constitution of Spain, Article 115 of the Constitution of Romania) the Government is recognized a preponderance over the Parliament because through such a procedure the government imposes a certain decision in areas that are not subject to organic laws. Building a rule of law presupposes the existence of a constitutional regime, through which democratic institutions must regulate the fundamental aspects of organization and social activity, based on the separation and balance of powers.

Any public authority has the obligation to fulfill its tasks and prerogatives with which it has been invested. [29]

In our opinion, the separation of powers in the state is dictated by the following objectives:

1. the strict definition of the competent functions and the obligations of each state body;
2. it is necessary to carry out a strict control over the activity of the state bodies;

3. in order to avoid abuse of power, it is necessary to create a system of "brakes and balances";

4. The institutionalized powers in the state must respect the law, the principles of democracy, human rights and fundamental freedoms.

The three powers of the rule of law, namely the legislature, the executive and the judiciary, must work together, but each must fulfill its prerogatives without obstructing the other powers.

Western democracies, through their experience, prove that it is necessary to separate the powers in such a way that each of them can effectively carry out its powers and at the same time collaborate with the other powers for the prosperity of society.

The state power protects and controls the society it organizes through these three powers. It ensures the protection and control by legislation in the service of the general and private interest. In resolving conflicts and disputes, the courts must be competent, fair and efficient.

Therefore, the rule of law is not above its own established laws, and each of its bodies carries out its activity in accordance with the attributions incumbent on it by law.

It is known that from the moment of his investiture by the vote of confidence given by the Parliament and his proposal by the President, the Government assumes a direct responsibility for the way it ensures the accomplishment of the country's internal and foreign policy and exercises the general management of public administration.

The social, economic and political crisis affecting Romania was generated by the irresponsibility of the government in the state, by the blocking of the economic, administrative and other reforms, meant to eliminate or alleviate some difficulties inherent in the transition to market economy.

Productive economic activity must be more than making a profit and personal benefits. It is arguably the most important activity for creating values for the benefit of society as a whole and for raising the standard of living.

In order to change the state of affairs for the better, in states like Romania, the Republic of Moldova and other former communist states, decisive actions are required, the implementation of constitutional and administrative reform, as well as the strengthening of state power. It must be responsible and professional to serve the people and be under

their control, respecting the principles of the rule of law. The responsibility of the executive branch is an essential condition of democracy, of the rule of law. Given the fact that ministers have full freedom of decision, we consider it right that they should be held accountable for the abusive or illegal acts they commit. The system of ministerial accountability has become one of the democratic principles in most states. It is the foundation of democratic systems of government in all three aspects: criminal and civil political responsibility to which we must add moral responsibility. [30]

In Romania, the collective responsibility of the members of the Government is expressly stated: “The Government is politically accountable only to the Parliament for its entire activity. Each member is politically responsible, in solidarity with the other members for the activity of the Government and for its acts." (art. 109 paragraph 1 of the Constitution)

In the rule of law, the limitation of power is done by distributing it to distinct institutions that exercise it specialized and within the limits expressly provided by the Constitution and by the control exercised by the civil society over the rulers. In the rule of law, the public authorities invested with the exercise of power are subordinated to the laws adopted by a Parliament legitimized by the sovereign will of the electoral body. Therefore, the rulers, regardless of which power they belong to, are subordinated to the law and legally bear the consequences of its non-observance. In the rule of law, the law forms the essential element from which it derives its existence, and it must be respected by all public authorities: the Parliament, the Head of State and the Government, as well as the central and local public administration in general and the courts.

Conclusions

In order to ensure a climate of social order of legality and good functioning of the state power, we consider that it is necessary to adapt or modify some laws. Thus, in order to ensure the supremacy of the Constitution and the efficiency of the Constitutional Court, to be provided the possibility to notify ex officio the authority of constitutional justice on the constitutionality of the laws before their promulgation.

In order to ensure the supremacy of the Constitution and in fulfilling the role of the Parliament as the only legislative authority of the country, a deadline should be

established within which the Chambers of the Romanian Parliament should re-examine the law declared unconstitutional by the Constitutional Court.

As the control of the constitutionality of the laws is exercised only at the notification of some subjects expressly and limitingly shown, we propose that the scope of these subjects be widened by including the Court of Accounts and the county councils.

Respect for citizens' rights and political pluralism become natural consequences of the establishment of the entire Romanian political life based on the principles of law. In order to change the state of affairs for the better, in the former communist states like Romania, decisive actions are required for the implementation of the constitutional, administrative reform as well as for the strengthening of the state power.

The system of accountability of public authorities is one of the democratic principles in most states. It is the foundation of democratic systems of government in its three aspects: political, criminal and civil responsibility, to which we must add moral responsibility.

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