

CONSIDERATIONS ON STATE POWER AND THE MODE OF ITS IMPLEMENTATION

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Abstract:

By its nature, the democracy, as a concept, signifies the power that emanates from the people and belongs to it; but at the same time, the people have entrusted this power to be achieved by the state, which, by virtue of a good and efficient activity, has divided its power.

In these circumstances, the state organized on the principle of the separation of powers in the state, ranks with the rule of law, with all the effects of functionality: state-citizen, citizen-state, responsibility and mutual constraint.

Key words: *state of law; state power legal constraint; legal liability; state authority.*

INTRODUCTION

When defining a definition of a thing or phenomenon from the field of law, the constitutive elements of the definition should not be viewed separately, but in connection and interdependence with other constitutive elements of the whole system of law. This link is the true and proper functioning of the law.

This condition is explained by the different perception of things and/or phenomena, as well as the "value of the terms" used in the presentation of the definition. This involves in-depth studies on the current perception of things and/or phenomena in a particular social community, as well as the essential changes that take place in society, within the power and in democracy.

Since the power of *lato sensu* is the ability to act or to achieve something, the political power is the exercise performed in a social community by individuals or groups of people; and this exercise is done through political means and actions, through which community

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governance takes place, aiming the achievement of the predetermined objectives and the proposed goals.

The concept of state power involves the authorities as management institutions, the authorized persons, mentioned state or government agents, as well as the superiority of a certain area or in relation to someone, the existence of subordination through certain means. In this respect, it is necessary to discuss the issue of the composition of the participants in the power, as well as the content thereof.

Therefore, we would generally consider that power involves the same structural elements specific to any legal relationship.

If we are talking about the power of the state of law then this presupposes the lack of subordination of the participants to power, but on the contrary a position of equality, an exact determination of behavior, an extension of mutual rights and duties.

Under these conditions, the state power takes on a legitimate form of activity, being called upon to observe rules and procedures of legality, imposing a reciprocity of duties.

The fundamental considerations of state power are also found in the philosophy of Thomas Hobbes, who described the power as the means in the hands of the person, aiming the collection and obtaining of the benefits of the future, and subordination of the person is not an imperative condition. At the heart of the research it was pointed out that private interests should not be placed, but the interests and existence of man, which give the possibility of identifying the natural traits and social life¹.

Such an analysis is also found in contemporary research².

Such a concept of subordination is sketched in St. Augustine's work, in which he analyzed a new way of understanding of human society by placing the citadel of God above and against the citadel of man³.

¹<https://studfilosed.ru/otvety-k-vstupitelnomu-ekzamenu-po-filosofii/133-uchenie-t-gobbsa-o-gosudarstve.html#vtem>.

² David Beetham, *The legitimation of power*, (Basingstoke: Macmillan Education, 1991), 43.

³ <https://www.historia.ro/sectiune/portret/articol/sfantul-augustin-viata-si-opera>.

If we pursue the concept of „*power for and in purpose of*”, we exclude the criterion of *stricto sensu* subordination, and we highlight a bridge between power, participants in power, and people from a particular social community.

This state of affairs generally attributes to power a social character, and to the "*power*" in the rule of law - rules of legality. The rule of legality - requires compliance with the fundamental law and other norms existing in the state entity, and this exigency concerns all state institutions and bodies, all legal entities of public or private law and all citizens.

At the same time, power in the rule of law generates certain constraints, which involve a limitation, an ability to exercise simultaneously and in the same time certain functions, contradictory attributions through their character and nature.

The state of incompatibility, in legal language, is a manifestation of legal constraint, aimed the proper functioning of the rule of law, not having the objective of prejudicing the person, of the authority or in general of the state entity, but on the contrary ensures a functional and transparent activity in accordance with the spirit of the law.

This activity, theoretically, when we talk about competition and the development of power relations, would highlight a certain conflict situation.

What is a conflict? "The complex psychosocial phenomenon, the conflict, Cristea Dumitru considers, derives from the actual or perceived incompatibility between the parties' purposes, values, norms or motivations.¹"

The state of conflict, whether it is noticeable by the social community, named the outside or the inner state, which apparently can not be perceived by the social group, involves opposite interests and goals.

The internal state of conflict, for example, can be expressed by the resistance, the opposition of the subordinate toward the power.

However, resistance can only arise in the conflict between the participants in the report. If hypothetically it is assumed that power exists in the absence of a conflict, then if the subordinate performs freely and voluntarily the tasks of power and acts to achieve the goals of power,

¹http://libruniv.usarb.md/xXx/reviste/confbib/articole/2006_3/39-43%20conf_3-2006.PDF.

then it is necessary to note the deference between the scientific notion of power and the meaning of power in the practical way .

Consequently, the conflict is a competition that is contradictory to objectives, goals, their realization leads to the emergence of a conflict situation, or in relation to judicial proceedings is the situation of litigation.

Under these circumstances, achieving the goal has the effect of involving a process of solving the problem. This involvement is manifested in the form of the passage from the conditions, which determined the problem, in obtaining the result.

The result can be achieved through thinking. Thus, the ability to think is an inherent ability of man, whereas the willingness of consent is in the hands of man and social communities..

Persons participating in the power report, both, the governed one and governors in a particular social community, are recognized as having the following features:

- Ability to think;
- The will;
- Social character.

From these traits, as well as considering the subjects involved in the power relationship, there is a degree of superiority in the action of power, with some resources, including political, material, and ideological ones.

This mechanism also applies to power in the status of law or the power of law in the rule of law.

The European Court of Human Rights considers that the principle of the rule of law, mentioned in the preamble to the Convention, is "an element of the common spiritual heritage of the member states of the Council of Europe" and refers to the Convention as a whole. This principle of the rule of law has in particular justified the Court's requirement of adequate protection against arbitrary interference by the public authorities (*Engel and others v. Netherlands* from June 08, 1976, *Klass and others v. Germany* September 06, 1978, *Malone v. UK* from August 02, 1984 etc.).

The rule of law generates institutions for the protection of the individual, sets certain standards of matter and "reaction" procedures.

One way of responding to certain harmful acts and deeds is, for example, the motion of censure - which produces both legal effects and

political effects (the withdrawal of the trust of the executive having such consequences), being legal acts. If the motion of censure is adopted, the Prime Minister immediately submits the Government's resignation to the head of state. By adopting the motion of censure, Parliament's trusted mandate ceases and the executive is dismissed. It follows that the mandate of trust has not only the significance of the executive, but also of the necessity to enjoy the support of the parliamentary majority, through which it has been formed, during its entire mission. When this support, and therefore the trust it assumes, no longer exists, the adoption of the censure motion creates the possibility that, by forming a new executive, the balance between the legislative and the executive power will be restored. Thus, the motion of censure is the legal instrument by which Parliament can withdraw the trust awarded to the executive¹.

The rule of law constituted the culmination point of the constitutionalization of the political system. This means that politics must be circumscribed to a legal norm that specifies the limits of action. Given the intrinsic link between the state and the law, the evolution of the public power is accompanied by the evolution of the legal system².

On a certain date, the Constitutional Court has stated with principle value "that political accountability is based on the concept of the rule of law and democracy and refers to the responsibility of the holders of a political mandate. The presumption of innocence, provided by Article 21 of the Constitution as a principle in a criminal proceeding, is inapplicable to political responsibility.³ "

¹ The Decision No. 4 dated April 22, 2013 of the Constitutional Court, p. 71 for the control of the constitutionality of the Decrees of the President of the Republic of Moldova no. 534-VII of 8 March 2013 on the resignation of the Government in respect of the maintenance of the Prime Minister-dismissed by a motion of censorship (for suspicions of corruption) from March 8, 2013 until the formation of the new Government, and no. 584-VII of April 10, 2013 regarding the nomination of the candidate for the post of prime minister (Session No.10a / 2013),79.

² Alexandru Tanase, Rodica Secrieru, Lilia Rusu, Maria Strulea and Natalia Vilcu-Bajurean, *Compendium of the jurisprudence of the Constitutional Court of the Republic of Moldova*, (Romania, 2017), 11.

³ The Decision No. 4 dated April 22, 2013 of the Constitutional Court, p. 77-79 for the control of the constitutionality of the Decrees of the President of the Republic of Moldova no. 534-VII of March 08, 2013 on the resignation of the Government in respect of the maintenance of the Prime Minister-dismissed by a motion of censorship (for suspicions of corruption) from March 8, 2013 until the formation of the new Government, and no. 584-VII of April 10, 2013 regarding the nomination of the

Thus, the foundation of power, including in the rule of law, is the duty to observe the laws, the subordination of all, especially the state, toward the norms of law. But these are defining elements of the rule of law and highlight the preeminence of the law.

In the conditions in which a will is imposed, without considering the preeminence of the law, it is no longer possible to speak about the power of law, but eventually an act that works to the detriment of the power of law.

In one sense, Begali V.N indicated that power is based on the charisma of the leader.¹

In time, what in another opinion underlines that the philosophy of law offers the possibility of perceiving the reality of the law, objective and subjective determination, material and ideal, material and moral, individual, interconfessional, private and collective, social and biological, human and divine, and accountability, fairness and equality, legal and illegal, limitation of human rights and interests.²

These doctrinal opinions are capable of identifying some essential characteristics of the dominant subject, the causes and circumstances that enable it to be dominant in power relations, and the way to achieve the power.

Without challenging the significance of certain attributes of power, we will maintain that, depending on the situation, for the achievement of the power are use any available resources and allowing the power or the holder of the power to dominate: the administrative abilities, the attributed powers, etc. The empowered investiture of the person can be based on the authority of the dominant person (the authority contributes to the perception of his/her facts as being correct, done in accordance with the law) and the managerial skills that allowed him/her to obtain a certain right.

candidate for the post of prime minister, Session No.10a / 2013, (Official Monitor no. 97-103 from May 03, 2013), 71.

¹ V.N.Begali, "Conceptual foundations of charismatic political leadership" in *Almanac of Modern Science and Education* № 6, (Moscow, 2013), 73.

² G. I Ikonikova and V.P. Leashenko, *The philosophy of law*, (Moscow, 2011).

CONCLUSIONS

Power in the rule of law signifies a force of law, a domination of the law, involves ab initio a subordination of the state to the law, a subordination of power toward the law, and in essence ensures the existence of the available means by the effect of the law, which allow to the law to oversee and intercede on policy options with abusive tendency.

Under these conditions, power and the rule of law enshrine a series of safeguards, which are called upon to give respect for the rights and freedoms of man as their holder, as well as the reporting of state, state authorities, state or public agents within the borders of law.

The achievement of state power also implies a guarantee of the functioning of democracy, of political pluralism, the assurance of the freedom of opinion and of expression, the exercise of the right of association, being at the same time the restriction of the state power to intervene in opinion, association, which are inalienable elements of the rights proclaimed by the Universal Declaration of Human Rights, enshrined in the Constitution of any state of law.

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