CONSIDERATIONS REGARDING POWER EXERTION WITHIN THE EUROPEAN INTEGRATION CONTEXT

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After presenting the state concept and the connection between the state and state power, the evolution and connection between the state power and society, the author analyzes the state power's characteristics.

Thus, the power's characteristics develop, meaning: power's official, organizing, power's identity and coercion.

It is insisted on the state power's sovereignty, on the way power's sovereignty must be understood and construed within Romania's integration in the European Union context.

Key words: state, power, society, coercion.

1. The "State" concept results from the Latin "status", without having a precise meaning. The term "state", in a modern meaning, respectively, for determining an abstract entity able to provide the political power support, seems to have been used by Niccolo Machiavelli in his reference work "11 princes" (1516).[1]

Even the state concept is analyzed depending on the "prince" person, thus personalizing the state, it has been assumed and generalized almost in all countries (state, estado, staat, stato).

The fundamental characteristic of the state is that of leading, dominating, commanding, exercising the power, hence, it is based on the social differentiation between the rulers and the ones holding the power, the rulers.[2]

We think that the complexity of the "state" concept can be understood according to the different approaches. Thus, the political, sociological perspective sees and analyzes the state as a sum of three elements: territory, the state is an abstract entity, through which power is organized and represents the assembly of the organisms (state authorities) the nation exercise its power.

With regard to the state essence, there have been manifested two ideas, meaning: the state would be an instrument of force, thus, it would use coercion, and the second idea, the one of voluntarism.

In accordance with the doctrinaire system of state's domination, this is presented as coercion power in order to provide and execute the juridical norms.

The voluntarism doctrine presents the state mechanism as being the result of wish covenant between the rulers and the ruled ones. Thus, it results the social pact for providing "The Common Good", work that deepened and maybe developed the idea of the social pact, being the "Social Contract" of J. J. Rousseau. Social order is founded on conventions, according to Rousseau, these being based on peoples' free wish, who accept the observance

[1] M. Prelot, G. Lesquer – *History of the political ideas,* 5– Dalloz, Paris Printing House, 1975, no. l 07, p. 203–204.

[2] L. Duquit – *Treaty of constitutional law,* ed. III, vol. I, Paris, 1928, p. 40; M. Prelot, J. Boulouis – *Political institutions and constitutional law,* 10 ed., Dalloz, 1987, Paris, no. 2, p. 2-3.

of the common wish, understood as being of the state.

As previously shown, power is a characteristic of any human collectivity. Its role within the society is argued by the lack of conformity of all its members towards rules and laws. Power is the one directing the society towards certain purposes directs and keeps the functioning status of the society.

That is why, the human collectivity, after becoming a society, needs a force, an authority for providing the normal development of the social relations. So, it is time the social power manifests itself as political power.

Hence, power manifests itself and can be distinguished only due to the used means and methods, as it is a rational phenomenon and it is exteriorized within a relational frame.

Finally, given the power's scope, this can be differently perceived by the society members. For some of them, power means these ones' assurance that it is exercised in order to provide the "Common Good", while for the others this means a coercion force.

For being able to understand the need of the existence and, especially of the power's exercising, we have to underline, from the very beginning that, power and society appear together.

Power exteriorizes only within the society, being achieved by the help of the relations within the society.

The inter-conditionality of the two phenomena is necessary to the social order. Without power, society cannot evaluate, of course, the society that is understood as being that human collectivity formed of those that have the conscience of the appurtenance to it.

In the vision of a well known representative of the French constitutional doctrine, "without political power, meaning without that impulsion force that triggers the movement the social organism is engaged in, society is an inert body, near to its decline".[3]

The connection between power and society is highlighted no matter the political power manifestation forms are, "certainly resulting that it is one of the social relations expressions representing the possibilities of action of certain individuals or social groups, possibilities granted by a certain social relations system".[4]

The institutional frame power is exercised is the state, and for being efficient, the state power must be legitimated.

The evolution of the state power is complex, as the society itself.

The theories regarding the divine origin of power, the patriarchal, patrimonial, contractual, Hegelian, of violence, juridical, sociological origin are already known. Each of the above mentioned theories argues the need of state power's existence and exercising depending on the social needs and evolutions, highlighting the importance of power in order to impose and provide social order [5].

Certainly, the divine origin of power appeared in order to justify the impossibility of understanding and reasoning the power. The power's keeper was God, the Emperor of Japan being named the "Sun's Son".

The patriarchal theory justifies the existence of state within the family, while the patrimonial theory sustains that state resulted from the property right over the land.

The contractual theory, especially sustained by J. J. Rousseau, T. Hobbes and J. Locke motivates the existence of state and its power through an "obeisance pact" of the people toward the King who warrants them a minimum of liberty.

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[3] G. Burdeau – "Constitutional law", 21-edition by Fr. Hamon, M. Troper, L.G.D.J., Paris, 1988, p. 13.
[4] I. Deleanu – "Power democracy and dynamics", "Dacia" Printing House, Cluj-Napoca, l985, p. 25.
[5] See in detail: I. Deleanu – "Constitutional Law and Political Institutions" "Europa Nova" Printing House, Bucharest, 1996, p. 16–18 and the indicated bibliography.

The theory of violence sustains that the state is a result of an "outside impulse" and of the "vital space".

The juridical theory of the "nation-state" sustains that "state is the juridical personification of a nation". This theory's sustainers (Esmein, Carre de Malberg, Jellinek, Laband) retain different factors for defining a nation. Thus, the German conception insists on the material and spiritual factors, the French conception retains the subjective elements (spiritual feelings that connect the members of the collectivity, the desire of living together).

This theory has been infirmed by the historical reality. In Italy and Germany nation preceded the state creation, and in the USA, the state appeared before the nation.

In order to understand the complex problem of state, the relations between state and the individuals, the social classes or the civil society, see the work "Political conceptions of the XX century".[6]

Thus, there are broached notions referring to state's functions and the justifications and realities of the nationalist and colonialist etantism, under the name of administrator state, party state, nation state, and savant state.

As we know, Marx criticized the state defined as "rule of competence" and that achieves the general interest beyond the contradictions of the needs system, by transforming the individual into citizen". In fact, the state is "a product of the economical dominant class that justifies its domination through the domination of laws and of the political system" – ("*Criticism of the law's philosophy"* – Hegel).

This way, the state is confounded with its historical reality, the state with the political or governmental power, ignoring "the effort made by J. J. Rousseau to politically define the nature of the democratic regime".

The sociological theory sustained by Leon Duguit, affirms that, in fact the state "is a historical deed", – the group imposing its will to the other members of the society. It is, thus, underlined, in the first plan "the material power of the state", "its irresistible coercion force".

Max Weber's conception is characterized by the fact that it associates to the idea of state force its legitimacy.

2. Characteristic features of the state power

a) The state power is official.

That means the state power is legitimate. Its legitimacy means the democratic instauration by elections (universal, equal, direct, secret and freely expressed vote) or the non-democratic form – of using force, violence through revolutions, insurrections.

The formality of the state power also assumes its continuity and permanence, by knowing the fact that ruling must be permanent, otherwise society will suffer and generate chaos.

As official power, even formed of the representatives of a group or of certain parties (elections are the ones that decide), the state power is exerted for the whole society, leads the whole society.

Being social power and "social command factor", the state power is manifested both by creating the juridical norm, and, especially by applying them. The state power cannot cover the diversity of the power relations within the society (political parties, trade unions, other organizations, pressure groups, religious organizations), but, just the equilibrium and interaction between the state power and these power factors constitute the

[6] François V. Châtelet, Évelyne Pisier – "Political conceptions of the XX century XX" – Translation by M. Beari and Cr. Preda, "Humanitas" P.H., Bucharest 1994

condition of an authentic democratic regime functioning[7].

Even being a public power, the state power is in a reciprocal influencing relation with the society. This means that, even the state power administer the activity within the society, it cannot take into consideration and intercept certain values the society tends for or directs its general interests. We have in mind the evolution of the assembly production relations – the influence of the property relations over the state power, the historical circumstances and the traditions that accompanied the societies and, implicitly, the peoples (the fight of some peoples for shaking the colonial yoke, the monarchic or republican traditions).

b) The state power has an organized character.

If we think that power's organization does not need further arguments, of course, the organizing forms differ from one power to another. The organization of the state power, in its complexity, differ not only depending on the power's character, but, the state's traditions and the problems it must solve within the society, by these ones' complexity.

Positively, the state machinery must have a well prepared, specialized social body that must also have the necessary authority for being able to conscience the whole society by the need of transforming the political decision into state one, and from here, its mandatory observance.

c) The state power is unique.

This means that within a state formation many powers cannot be exerted in the same time, the sole titular of the power being the people.

We appreciate that the constitutional regulation in art. 2, par. 2 is relevant: "The national sovereignty belongs to the Romania people that exert it through its representative organisms constituted by free, periodical and correct elections and by referendum".

The division of the sole power functions for the exertion, under good conditions, of the state power prerogatives and thus, the providing of the general interest, explain its achievement through different authorities' categories (legislative, executive, judicial).

d) The state power is coercive.

Coercion is specific for the state power by the setting up and sanctioning of the juridical norms by it. We must notice the relation persuasion – coercion used by each state power on a certain moment of the society's evolution. This relation is defining for characterizing the political regime existent within a state.

The juridical coercion has different forms: disciplinary, administrative, material, civil, penal, depending on the social risk degree of the illicit deed.

e) The state power is sovereign.

Sovereignty designates the supreme power of the state of leading, commanding constrain. Sometimes, the equality sign is put between the state power and sovereignty.

A well known French author states that the discussions about the sense and importance of the sovereignty term become useless, the concepts "sovereignty", "domination power", "political power" being synonyms.[8]

The authority that manifest over the individuals is fulfilled by the state through the public power "this having its source into sovereignty", said another French constitutionalist".[9]

The manifestations of will under the form of order for citizens also originate in the

[7] I. Rusu – "Constitutional systems of Public Administration", "Lumina Lex" P.H., Bucharest, 2008, p.9.
[8] L. Duguit – "Treaty of Constitutional Law", vol. I, Boccard, Paris, 1927, p. 544.
[9] A. de Lapradelle – "Course of Constitutional Law", Ed. A. Pedone, Paris, 1912, p. 23.

state will, invested with command power, as Professor P. Negulescu affirmed.[10]

Sovereignty designates the state power quality that, in order of its competence, does not recognize other superior authority. Conclusively, the problem of state sovereignty reduces to the one that has the right to command.[11]

The capacity of taking decisions, of imposing the will for the general interest satisfaction, belongs to the state power.

The quality of the state power, conforming to which this decides with no interference, in all internal and external affairs, with the observance of the other states' sovereignty, and of the principles and other admitted norms of general interest of the international law, define the sovereignty[12].

Analyzing the content of the definition, we can find out the free will of the state power to decide, is manifested both on internal, and external plan, in other words, not only inside the state's borders, but also beyond them. We speak here about an "internal" sovereignty and another "external" one.

The sovereignty inside the state, also denominated the state power supremacy, refers to its right to decide, with no limitation, from the part of other "powers" in the society in all economical-social, political and juridical problems.

The sovereignty outside the state, denominated the independence of the state power, regards the full, exclusive and unlimited right of the state power of deciding in all external problems, in accordance with its free appreciation and own interests, without the interference or constraint of other power, but with the observance of the sovereignty of other states and of the norms and principles of the international law.

Even if the theorizing of the sovereignty concepts starts in the Middle Ages, the thoroughly substantiation of the term is achieved by the researcher of the XVII century.

Seen both as a phenomenon, and as term, sovereignty continues to remain a category around which occur ardently controversies.

We think that we have to mention here the nihilist theories (monism, solidarism, mondialism) in accordance to which the sovereignty idea is obsolete, and consequently, it must be abandoned or replaced with something else.

The solidarism conception according to which "sovereignty, as absolute principle cannot be applied except to the global international society"[13] is well known.

The theory of competence, as a variant of the nihilist conceptions, sustains that sovereignty is only a hypothesis, that a juridical order is supreme, the said order being granted by the organizing of a superior juridical system. According to this theory, the sum of the attributions determined by the international law would constitute the competence of the state authority.[14]

Treating sovereignty according to the reformatory theories it means "adapting" its content and manifestation limits. It is very much discussed about a necessity of limiting sovereignty, about a relativization of the concept, proposing a classification in "residual" and "effective" sovereignty. The "relativization" of sovereignty is reasoned through the so-called contradiction between sovereignty and independence, under the conditions of post-industrial society development and of the tendencies of exceeding the frontiers in the international cooperation.

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[10] P. Negulescu – "Course of Romanian Constitutional Law",,"Alex. Doicescu" P.H., Bucharest, 1927, vol. I, p. 93.
[11] G. Burdeau – "Manual of constitutional law and political institutions", Ed. R. Pichon and R. Durand, Anzias, Paris 1947, p. 115.
[12] I. Deleanu – Op. cit., Treaty vol. 11, "Europa Nova" P.H., Bucureşti, 1996, p. 54.
[13] G. Sckelle – "Course of Public International Law", Paris, 1948, p. 14-19, 101-102
[14] Ch. Rousseau – "Public International Law", Dalloz, Paris, 1988, p. 89.

It is suggested that the "residual" sovereignty has as attribute its permanency, while the "effective" one be variable. In other words, there must be a distinction between the properly sovereignty and the concrete way of its exertion by accepting a limit of the sovereignty manifestation. The aberrant manifestations of limiting sovereignty were specific for the communist system in the South-East Europe. The need for sovereignty limitation is argued in accordance with the international solidarity, of the proletarian internationalism, of solving the general and common interests specific for the communist regimes, thus motivating the "objective" transfer of some sovereign states attributes in the favor of some economic and political super state organisms (for ex. CAER).

Receptive to the requirement of the international cooperation and of providing such necessary stability in the relations among states, Romania always manifested its availability for these principles triumph.

Thus, the international cooperation must provide *in actu* manifestation of each state's sovereignty. This means that, on the contrary, it is not about sovereignty limitation, but, each state freely decides on how many attributes of its sovereignty gives up.

We consider that within the herein context a few explanations and a development of the item must be done.[15]

First of all, ignoring the sovereignty of other states, of the norms and principles of the international law, has as result the arbitrary and voluntarism.

At present, more than ever, the international order presents in complex inter-conditioning relations. This means that each state must be considered as an important element of the international system. By observing the sovereignty reciprocity, the functioning of this system is provided.

Not at last, the norms and principles of the international law are provided in their full exertion due to the consensus of the majority of the states by manifesting the sovereign will of each one, not being "imposed" by a "supranational" force from outside.

We are pleased to mention here the conception of the great Romanian politician Nicolae Titulescu, according to whom "the international law appears for everybody not like a subordination law, but as coordination one and each state situation in relation with the other, not like dependence, but as an independence institution".[16]

The law for Constitution revision introduced a new title "Euro Atlantic Integration", as follows:

"Romania adherence to the constitutive treaties of the European Union, in order to transfer certain attributions to the communitary institutions, and of exerting together with the other member states of the competences provided in the said treaties, are to be done by law adopted in the common meeting of the Deputies Chamber and Senate, with a majority of 2/3 of deputies and senators number.

As result of the adhesion, the provisions in the constitutive treaties of the European Union, and the other communitary regulations with mandatory character, have priority given the contrary dispositions in the internal laws, with the observance of the adhesion document provisions.

The provisions in the 2 previous paragraphs are to be adequately applied for the adhesion to the documents for revising the constitutive treaties of the European Union.

The Parliament, the President of Romania, the Government and the Juridical Authority guarantee the fulfillment of the obligations resulted from the adhesion document.

The Government transmits the two Chambers the projects of the mandatory

[15] I. Rusu – Op. cit., p. 12.
[16] N. Titulescu – "Diplomatic Documents", "Politică" P.H, Bucharest 1967, p. 846-847.

documents before being submitted to the approval of the European Union institutions."

Regarding Romania's adhesion to NATO, the law for the Constitution's revision provided:

"Romania's Adhesion to the North Atlantic Treaty is to be done by law adopted in the common meeting of The Deputies Chamber and of the Senate with a majority of 2/3 of the deputies and senators' number.

Concluding with regard to sovereignty, we have to underline that this fundamental principle has a concrete social-historical content that manifest itself differently depending on many factors (the development level of the respective society, the complexity of the internal and international relations, the perception of the national interests by the state power at a certain moment, and from here, by the used strategy).

Nowadays, "sovereignty", presents a complexity determined by the need of the decisional deed transfer at the collective level of the international community.

Consequently, profound implications occur for the traditional role of the states and their representative organisms.

Concluding over the European evolution and not only, within the integration process by the collaboration increase, however, we have to answer the key question: European Union creation after the Communism fall in 1989 is not incompatible with the national sovereignty affirmation of these states?

There is one correct answer, meaning:

The communitary system cannot be compared to the imposed or by convenience federal marriages that characterized the Eastern Europe. The principle guiding the communitary structures is the sovereignty transfer achieved through a lawful treaty to which they voluntarily adhere. By this, the sovereignty transfer does not influence the national sovereignty, but consolidates it.

In order to sustain the above mentioned idea, we exemplify the agreement of creating the European Space, containing the member states of AELS and EC, the first stage consisting in the free circulation of goods, services, capitals and persons.

Conscious of the fact that only together with the democratic states it can develop and reinforce its role and place on the European continent, Romania has acted for its integration into the European structures. The first step was the acceptance in the European Council, and the perception in international plan of the multiple changes of the Romanian society, after 1996, is a positive one.

The suspension of Romania's monitoring on April 24, 1997 in the Plenum of the Parliamentary Meeting of EC, represents the confirmation received from the part of the 40 member states that, indeed, the pluralist democratic system function in our country too.

We do not intend to minimize the Romanian diplomatic efforts, of the political class, but we have to admit that all the power's actions have been massively supported by the people, support that exceeded all the other candidate country.

What is more important for us than the nominalization is the paragraph in NATO Communicate, according to which "the alliance recognizes the need of constructing a greater stability, security and regional cooperation in the countries in the South-East Europe and the promoting of their interests for integration within the Euro-Atlantic community".

Does NATO widening precede the process of integration in the European Union? The opinions are different.

Everybody agrees, including the theoreticians, that the first step must be constituted by the legislative harmonization. Within the adhesion and integration economy, the harmonization of the legislative frame weights much, even significant progresses have been done, the White Charter of the integration and the pre-adhesion national strategy

emphasizing this.

A series of blocking and malfunctions manifested in the legislation incoherence, even discordances among certain laws, and the absence of others that are very important for this stage Romania passes at the moment, without mentioning the out of fashion mentality of some public servants. Consequently, it occur the need of elaborating some programs regarding the institutional reforms able to allow the correct and efficient application of the new regulations and of the future policies, in accordance with the European Union's requirements.

Modern institutions, competent public servants can also determine the new relations between the power's institutions and the citizens, as a complete integration aims the society's changes in its whole.

It is by far the most difficult process, admitted even by the group of the 15 states of the European Union; not accidentally at the end of 1996 there has been launched the program "Citizens first" that aims the opening of the European institutions towards the Union's citizens.

The success of the integration depends on us, on our responsibility, but on the decisional act too, on the way the political power makes appeal to the science and culture field, to the ones carrying on their activity within academic fields.

Themes like: unique currency, European security, agricultural policy, inter-governmental conference, the role and future of the informational society can be accessed by the Romanian experts, on condition of capacities existence." (I. Rusu – "Constitutional Law and Political Institutions", Bucharest, Cerna Printing House, 1998, p. 97-98).

Not accidentally we have presented and mentioned our opinions formulated since 1998. 10 years ago the specialists in constitutional law did not discuss about the need of national sovereignty transfer to some international organizations – the European Union.

Two well known authors analyzed in 2008 the correlation elements and the ratio existing among the state sovereignty, national identity and European integration.[17]

[17] C. Călinoiu, V. Duculescu - "European Constitutional Law", "Lumina Lex" Printing House, Bucharest, 2008, p.28.