

## Brief Apology to the National State in Europe

**Senior Lecturer Mihaela CĂRĂUȘAN, PhD**  
*National School of Political Studies and Public Administration*  
*mihaela\_carausan@yahoo.com*

**Abstract.** Within the European Union order, the national states play a very important role. They are responsible for the enforcement and the control of the execution of the policies of the European Communities. Although the European Union has a central administration, she doesn't have external agencies. Applying the European instructions and regulations depends on the national governments. Because of rules such as mutual recognition, each government depends on the quality of executing the Community policy, for the purpose of achieving its own responsibilities. A spectre is haunting the national states – the spectre of globalization. That's way we will focus in this paper on the national state on its dynamism and existence in a united Europe.

**Keywords:** modern state, the rule of law, good governance, citizens/society, local autonomy

Europe dissolves when we want to see it clearly and distinctly; it comes to pieces when one wants to grasp its unity. If we try to find a founding origin or a non-transmissible originality, we discover that, at first, Europe didn't have anything specific and that today it doesn't own anything exclusively. The notion of Europe should be thought of in terms of a total, multiple complexities. Europe is characterized by unity only in and through its multiplicity. The interactions among peoples, cultures, classes, states wove a unity which is it pluralistic and contradictory. Modern Europe constituted itself in a chaos of genesis in which powers of order, disorder and organization were knotted together. Europe didn't live, until the beginning of the 20<sup>th</sup> century, but in divisions, antagonisms and conflicts which, in a certain way, created and perpetrated it.<sup>1</sup>

Thinking of Europe, we had to rethink the state and its institutions. Understanding the European phenomenon is essential to the direction of the national political and administrative decisional process. Even if Kelsen argued that “the State is not the entire juridical order: neither the pre-state juridical order of primitive societies, nor the supra-state or inter-state international juridical order, represent a State”<sup>2</sup>, in all the countries and in all the cultures, people refer to knowledge and

---

<sup>1</sup> Morin, Edgar, *Gândind Europa*, Editura Trei, 2002, p. 27.

<sup>2</sup> Kelsen, Hans, *Theorie pure du droit*, Bruylant, L.G.D.J., 1999, p. 281.

traditions regarding the state: what it is, what it does and what it should be<sup>1</sup>.

Relating to the above-mentioned issues we should refer to the State, the one who fights for power but ends up lost in it. The state is an abstraction; it is the cluster of political institutions whose specificity is the organization of domination, in the name of the common interest, on a certain territory. The State is represented by “us” – the governed, but, most of the times, it only represents “them” – the governing.

## 1. The permanence of the dynamism of the state

The dynamism of the state has been highlighted by the different doctrinaire trends of the times which gave birth to schools of state and law, since the very foundation of the city-state in Ancient Greece and up to the present day, when we speak of the rule of law. Interestingly enough, each of these schools set out to promote its own theory by denying or supporting what was before. Thus, speaking of the state, and not only (also about law), we found it necessary to start with the study of the *antiquity*, because this is the source and the origin of the whole European development. Even though the society we are living in today does no longer resemble the society of those times, and the institutions which govern us are completely different, the founding principles, the universally valid ideas which govern our existence stem from what the philosophers of those times (Lycurg, Solon, Plato, Aristotle, Cicero, St. Augustine and d’Aquino) argued.

At the end of the *Middle Ages* and beginning of modern times, modern science was founded. It was also then when the conception of the public law was laid down, on the basis of the abstract concept of a “*homo politicus*”, the perfect man who has perfect knowledge about all the needs of society, who has an ideal morality, who is the holder of law and who has to take part in the actual ruling of the state.

If the antiquity focuses on the collectivity, regarding the man as a mere means for the collectivity’s ends, for the modernity, it is man who is the end. The genuine orientation towards self-knowledge starts with *Descartes*, with his famous saying “*cogito ergo sum*” (I think, therefore I am), which points to the human reason and has the aim of placing man in the centre of the whole universe.

“All the states which have, or had, power over people were or are either republics or principalities.”<sup>2</sup> With these words, *Machiavelli* became the initiator of a new way of regarding politics and the state. It was, however, *the school of natural law* that conceived a natural, free and equal man and described this natural condition as being contrary to the historic law. Man escaped this condition through *the social contract*, creating the state.<sup>3</sup> Giving up their natural rights in favour of the State

<sup>1</sup> Edelman, Murray, *Politica și utilizarea simbolurilor*, București, Polirom, 1999, p. 11.

<sup>2</sup> Braunstein-Silvestre, Florence, Jean Francois, Pepin, *Marile Doctrină – Politică, economie, religie*, Editura Antet, p. 34.

<sup>3</sup> Djuvara, Mircea, *Teoria generală a dreptului: Drept rațional, izvoare și drept pozitiv*, Editura All,

which protects them, people, and the whole society, entrust their sovereignty to the state. People do not preserve any right or any personal will for themselves, after renouncing at the exercise of its sovereignty, which is thus entrusted to the State once and for all. The State, represented by the sovereign, has no obligation to the people; the contract concluded between them does not affect the sovereign, as there is no contract between the people and the sovereign.

It is because of that that Kant's freedom is grounded on moral deeds. Even though law is based on reason, it can't spread its sphere of influence over the purely internal acts, the latter remaining outside the juridical regulations. In fact, one may notice that the juridical development of a society is always varied, but it presupposes a unitary internal logic of the institutions, determined by the conditions of the juridical conscience themselves. When the subject "thinks" of himself, he must think of himself as a possible object for a different subject, he can't conceive of himself objectively as a possible thinking content for others.<sup>1</sup> It was the Hegelian conception that had a strong influence on the whole thinking of its time and on the subsequent thinking, until today, emphasizing the need of studying social phenomena on an evolution scale, of connecting them with the past, of finding "der Geist", the spirit of this evolution.<sup>2</sup> The acknowledgement of the importance of the historic school of law is not only due to this trend – Hegelian, Cicero himself proclaimed "historia magistra vitae", and even Montesquieu asserted that "les lois sont les rapports necessaries qui dérivent de la nature de choses".

*Structuralism*, seen as a revolution in the field of social sciences, in the sense that it provides the instrument of scientific precision on mathematical bases; is followed by *utilitarianism*, which moves from the analysis of justice to the analysis of the useful, which confers the state and law the role of ensuring the balance between the private interests and the interest of the community. Again, *positivism* represents an attempt to reorganize society on practical, rather than speculative, grounds, therefore a breaking off from the social organization in the Middle Ages and from that in the modern times.

The movement which led to the assertion of the human individuality is known as *the liberal trend*. Liberals support the restriction of the interfering power of the state with the aim of preserving the individual rights and liberties. Stemming from liberalism, the idea of the rule of law became a formal principle which designated the totality of the procedures for generating law. Thus, even though for Kelsen the rule of law is a pleonasm, any law is law of the state, and any state is a state of law, it becomes a constraining order, an order which justified the police state.

However, the juridical literature constantly emphasized that the notion of the Rule of law has its own universal dimension, as it was expressly attested in many

---

1994, p. 327.

<sup>1</sup> *ibidem*, p. 401.

<sup>2</sup> Djuvara, Mircea, *op. cit.*, p. 334.

international and European documents<sup>1</sup>. The existence of the rule of law essentially depends on the national realities, those which contributed to the definition and establishment of the rule of law as a basic concept of the existence of the modern state.

One of history's most fascinating phenomena is considered to be the tension between continuity and discontinuity, without which continuity might be misunderstood as an ordinary identity: continuity consists in transforming the inherited factors and traditions. Any change, especially in the more complex societies, is only possible through contracts and exchange of experience, methods and ideas. Such initiatives don't appear in isolation or, even if they do, they are diminished and delayed. The tension of continuity and discontinuity is the one which gave birth to a new identity. As of now, the rule of law is no longer only a necessity, but it becomes an element of the society, a reality, a model of the existence of the national state. The ascent of the national state, with its capacity to guarantee order, security, law and the right to property, was the one which made the advent of the modern world possible.

## 2. The state within the state

Once the continuity of the concept of state established, in the field doctrine, as well as in the doctrine of the concept of the national state, in the historic evolution of Europe, we found it appropriate to look at the different forms of its manifestation.

States have multiple functions, be they positive or negative: the same coercive power which enables them to protect the right of property and to guarantee public safety also enables them to coercively execute private property and to infringe citizens' rights. The monopoly of the legitimate power exercised by the state enables individuals to escape from what Hobbes called "each individual's war against all the others".

The state is the institutionalized form of political power. Starting with the 15<sup>th</sup> century, it came to be considered by the society as an instrument of asserting its sovereignty both internally and externally. The form of the state is one of the oldest concepts coming from the study of the state in general, and of the state organization and leadership, in particular.<sup>2</sup> The form of the state is analyzed according to three aspects: *the form of the structure of the state; the government form and the political regime*. Though distinct, the three aspects are closely connected.

From a conceptual point of view, *the structure of the state* represents the way in which power is organized in relation with the territory of the state. In the constitutional doctrine, it is unanimously accepted that, from the point of view of the

<sup>1</sup> The European Convention of Human Rights, the EU Treaties etc.

<sup>2</sup> See the development of the political - juridical conceptions about the form of the state in Ceterchi, Ioan, Luburici, Momcilo, *Teoria generală a statului și dreptului*, Universitatea București, Facultatea de Drept, 1983, p. 232-234.

state structure, states can be classified into: unitary states and compound states, even if in reality there are particular forms of the types mentioned above. *The government form* is a juridical, as well as a political, concept which indicates the nature of the body which has the function of head of state: president, monarch – king, emperor, Directorate, State Council, Council of the revolution, Federal Council etc. It also indicates the way in which supreme bodies are organized and function and it is generally related to the defining features of the head of state and to his relations with the legislating power. In terms of the government form, states can be classified into *republics* and *monarchies*. The traditional classification of the political regimes has known since Aristotle numerous variants which, however, haven't brought significant changes, so that the number of holders of power still remains, for many actors, a valid criterion.<sup>1</sup> Thus, the political regime is either the form of the relationship between the governed and the governing in a society, or the totality of the constitutional rules, or a number of mechanisms which distribute power among the different bodies and fix their way of relating to each other.

The artisan of the theory of the separation of powers within the state, Montesquieu, conceived of the state only in as much as it entrusted its power to distinct bodies, consisting in the legislative, the executive and the judicial. Rapidly, this theory became a sort of a dogma which was contained in the Constitutions of the time and especially in the 1789 Universal Declaration of Human Rights. Even though the great majority of the European states consented in their legal regulations to this principle, the everyday experience brought us at present to an inversion of Montesquieu's "hierarchy". The executive power has become, progressively, the centre of the decision-making, legislative process, to the detriment of the legislative power, while the judicial power has become a mere authority. In reality, and not only in Romania, but also in most European states, the legislative power was transformed, its capacity to legislate passed "in the hands" of the executive bodies (both the head of the state and the government) – a situation which is specific to the parliamentary and semi-presidential republics. Moreover, in the circumstances of the promotion of excessive decentralization, of the transfer of competences to the local authorities and of the integration of states into supra-national unions, parliaments have begun a new stage of their evolution.

The complex content of the rule of law and of the role of the law within the former includes the value dimension, as law is the product of the social facts and of the human will, a cluster of moral values and a normative order, a cluster of acts of will and acts of authority, freedom and constraint.<sup>2</sup>

---

<sup>1</sup> This criterion is used by Prelot, Marcel, Boulouis, Jean, *Institutions politiques et droit constitutionnel*, Paris, Dalloz, 1987, who distinguishes among democracies, monarchies, oligarchies and mixed regimes, or in Debbasch, Charles, Bourdon, Jacques, Pontier, Jean-Marie, Ricci, Jean-Claude, *Droit constitutionnel et institutions politiques*, Paris, Economica, 1983; according to them, there are two main types of political regimes: democracy and the other regimes.

<sup>2</sup> I.L. Bergel, *Theorie generale du droit*, Paris, 1985, p. 13.

Thus, for a democratic society to function, beyond such aspects as the existence of the market economy, of a significantly numerous middle class, of the professionalization of the political elite, a cultural component is also needed. This component, called by certain researchers the “civilizing competence”<sup>1</sup>, becomes a precondition of the integration into the contemporary world. In this sense, one can argue that no social union should claim cultural uniformization, but, rather, a thorough uniformization of the opportunities of culturalizing for each individual and for the community. The principle of “democratic centralism” was abandoned in favour of *devolving* and *decentralizing* of the political power which is to be exercised under the rule of law; the rejection of the principle of unity involved the emergence of distinct, local spheres. “The symphony of the divergent notes” of the local communities was long ignored by the leaders of the state because they considered that the distributive character of power affects the authority of the Centre. Basically, Lucian Blaga’s despair when he realized that “we have a new religion, but we cannot find anywhere a God for it”<sup>2</sup> concentrates the drama of these times.

*Local autonomy*, especially in a unitary state, cannot be conceived of but within certain limits. These limits are inherent, some of them having an objective economic determination, others being determined by political considerations. It is unconceivable in a state of law that the law, the authority of the executive or of justice should be infringed on the grounds of local autonomy. Local autonomy cannot be achieved but within the principles of the rule of law, the principle of local autonomy itself being one of them. Hence, the organic tie which has to exist between local autonomy and the law, between local interests and the national interests expressed by the law. This explains why there is *a representative of the state*<sup>3</sup>, more exactly of the central executive, with the role of overseeing the enforcement of the law by the local authorities, including those of the autonomous communities.

The concept of “unified” or “homogeneous” state authority (in which the local authorities act as representatives of the central government, equivocally subordinated to its directive and control) was rejected and replaced with a dual system, in which the state and the local management act each in its own sphere of influence. The modern society, characterized by contradictions and pluralism, involves a great variety of social behaviours. That is why making decisions at the central level is not enough, but it is necessary for adapting them to the local specificity.

---

<sup>1</sup> Piotr Sztompka, *Competența civilizatoare: condiție prealabilă a tranziției post-comuniste*, în *Sociologie Românească*, nr. 3/1993, p. 262.

<sup>2</sup> Quotation taken from Teodorescu, Gheorghe, *Putere, autoritate și comunicare politică*, București, Editura Nemira, 2000, p. 63.

<sup>3</sup> Constantinescu, M., Iorgovan, A., Muraru, I., Tănăsescu, E.S., *Constituția României revizuită – comentarii și explicații*, București, Editura All Beck, 2004, p. 261.

The decentralization characteristic to the subsidiary state enables the achievement in better conditions of social justice, develops the solidarity, ensures the appropriation of the decision by the place in which it takes effect, and the citizen, who should be informed in advance, will be directly involved in the decision making process and, implicitly, in the effective participation in solving public interest problems. Europe is a space of decentralized local communities, the emphasis being placed on decentralization to enable the development of contacts which the hyper-centralized state wouldn't have promoted and couldn't have tolerated. We can argue that decentralization is one of the ways which lead to a sort of European "normality" and that it participates in achieving this goal. Thus, the actual context is quite favourable to diminishing the role of the state, which should focus on its major functions: diplomacy, defence, monetary policy, preserving the economic macro-balance etc., those which stem directly from the national sovereignty, which only the state holds, no matter if it is a unitary or federal state.

### 3. The European paradigm

The consolidation of the national state and in particularly the administrative capacity finally leads to what is called "good governance". This term should be understood as capacity to govern, which is strictly dependent on the administrative capacity of the state, which itself is the means of achieving the governmental policies. We notice that within the system of the democratic state there is a clear circular relation between *citizen/society – administration – government/state – the E.U.* Taking this relational system into consideration, we will notice that the poor developing capacity of an actor will have an influence over the others and finally over the entire EU member states.

Obviously, today, more than ever, it is necessary to listen and explain, to re-establish the *natural communication* among social groups in order to make them accountable. The personal activity of the society members, no matter who they are, should no longer be considered an unimportant act for the society as a whole or as an act subordinated to the society, but it should regain the intrinsic value of the personal engagement.

Such as any institution constitutes the product of a series of historic events and reflects the beliefs, hopes and preoccupations of those who played an essential role in its foundation. The European Communities are no exception to this rule.

The present configuration of the European Union is the outcome of the effort of cooperation, which started more than half a century ago, in the attempt to reconstruct a continent destroyed by war and to lay the grounds of a safe and prosperous society. Since then, the cooperation has extended to many fields, the European Union offering now a forum of debate and problem solving.

We can say that the European Union is a success story of political, economic, institutional, cultural harmonization. The concept of *integration* "tore" the

coexistence of the states “horizontally”, attributing a *vertical* dimension to the relationships among them. The traditional conception that the sovereignty of the states is inviolable and indivisible becomes less consistent faced with the beliefs that the imperfections of human and political cohabitation, the insufficiencies of the nation-state system and the power abuses of some states over others, could be surpassed only if the national sovereignties “merged” into a common sovereignty and if this grouped at a superior level, making up a supra-national community. The result of this would be the existence of a supra-national European organization, in which the Community authorities, respecting the identity and the national peculiarities of the peoples grouped in the respective organization, would be those to lead the destiny of the citizens of the member states. This could be a federation, a special federation of nation-states.

The European Union is the result of such an integrating concept, requiring, however, an adaptation determined by the “inertia” of the member states in the problem of the national sovereignty. More precisely, the member states do not wish to give up their structure as a national state<sup>1</sup> so easily in favour of a state or of a federal-type Union. A compromise was necessary, through which, without pursuing the creation of a classic European federal state, the achievement of “something more” than the simple “horizontal cooperation” between the member states should be ensured. The original solution was great and, at the same time, simple: overcoming, step by step, the contradiction between the preservation of the independence of the national states and the final goal of creating a European federal state or a federal-type political union. Western Europe acknowledged the flaws of the national theory, which dominated a long while and moved, economically, politically, but also culturally, to a new paradigm, which integrates the interrogations, even the “national” ones, through their origin, sphere and significance, into a European approach. The national horizon is circumscribed within the larger, but increasingly less abstract, of our continent.

#### 4. References

- Braunstein-Silvestre, Florence, Pepin, Jean-Francois, *Marile Doctrine – Politică, economie, religie*. București: Editura Antet.
- Constantinescu, Mihai, Iorgovan, Antonie, Muraru, Ioan, Tănăsescu, Elena-Simina. (2004). *Constituția României revizuită – comentarii și explicații*. București: Editura All Beck.
- Djuvara, Mircea (1994). *Teoria generală a dreptului: Drept rațional, izvoare și drept pozitiv*. București: Editura All.
- Edelman, Murray (1999). *Politica și utilizarea simbolurilor*. București: Polirom.
- Kelsen, Hans (1999). *Theorie pure du droit*. Bruylant: L.G.D.J.
- Morin, Edgar (2002). *Gândind Europa*. București: Editura Trei.
- Sztompka, Piotr *Competența civilizatoare: condiție prealabilă a tranziției post-comuniste*, in *Sociologie românească*, nr. 3/1993.
- Teodorescu, Gheorghe (2000). *Putere, autoritate și comunicare politică*. București: Editura Nemira.

<sup>1</sup> Recovered and consolidated after World War II, and in the case of some PECOS, after 1990.