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Attributes of the Romanian State. Special View on the Rule of Law

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The attributes of a state constitute its defining features and principal values of its constitutional order, which differentiate or resemble it as a political-legal physiognomy from other states. The rule of law, pluralism, democracy, civil society are universal values of contemporary political thought and practice and can be found normatively expressed in international documents, but also in the Romanian Constitution. Starting from the specialised doctrine and jurisprudence of the Constitutional Court of Romania in the matter, this article analyses the attributes of the Romanian state enshrined by the Constitution, respectively: rule of law; welfare state; pluralistic state; democratic state. In this study, a special attention is dedicated to the rule of law, considering the dangers that threaten it in the current period. Legislative inflation, superficial legislation, increasing the role of the Executive in the field of legislation at the expense of Parliament, the intrusions of politicians into the sphere of judicial power are just some of the dysfunctions of the Romanian rule of law. In this context, this article highlights the essential role of the Constitutional Court in guaranteeing and respecting the requirements of the rule of law. Through its jurisprudence, an important contribution is made not only in the correct interpretation and application of constitutional norms, but also in their elaboration. Under the influence of the specific socio-political factors in each country, the pressures of the Union and international law, the rule of law cannot reach perfection, but it remains a fundamental constitutional necessity whose primary purpose is to ensure the rights and freedoms of citizens.

Keywords: *attributes of the state, rule of law, the jurisprudence of the Constitutional Court of Romania, dysfunctionalities of the Romanian rule of law.*

Introduction

The people form the society, which is and must be organised. The organisation of human society in the state has been realised throughout history in different forms, but the factors that make up the state have preserved their legal identity.

From the perspective of these legal constants, the notion of state has two meanings. In the political-sociological sense, the state means the sum of three distinct elements: the territory, the people and sovereignty, the latter in the sense of state power. In a second sense, the state means the organised form of

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the people's power, more concretely, the state mechanism or apparatus. In this sense, the people hold the political power. In order to be able to exercise it, the people create the state as a systematised set of organs, also called state or political authorities.

The state is the most important of the political institutions of a society. The state is a necessity and represents the superior power of society. The state is closely related to law. The state and law appeared at the same time and from the same causes. The state creates the right, and the right delimits the configuration and limits the actions of the state.

The modern constitutional theory of the state emphasises that in any contemporary democratic society, the state organisation of society is subordinated to the conditions imposed by the concept of the rule of law, which, in essence, expresses the supremacy of the law, implicitly of the Fundamental Law over everything that forms organisation, functioning and attributions of the state.

Research Methods used

For the preparation of this paper, the Romanian Constitution of 1991, revised in 2003, and the jurisprudence of the Constitutional Court of Romania were used as primary sources. The main research methods used were the logical method, the quantitative method and the informational method. Consequently, the exegetical method and the analytical-synthetic method specific to formal logic allowed us to interpret the constitutional provisions dedicated to the attributes of the Romanian rule of law and to discover the legal principles underlying them. Quantitative and informational methods were used in the part dedicated to the analysis of the dysfunctionalities of the Romanian rule of law. Last but not least, we specify that although the topic is approached predominantly from the perspective of constitutional law, the bibliographic sources used give the text an interdisciplinary character, the study also being based on documentation sources from other fields, respectively: general theory and philosophy of law, sociology and political science.

Results and Discussion

Romania - Social, Pluralistic and Democratic State

State attributes are defined as its defining dimensions and principal values of any constitutional order. The rule of law, pluralism, democracy are indisputably universal values of political thought and can be found normatively expressed not only in international documents, but also in the Romanian Constitution.

Based on its attributes, the quality of the state as a subject of constitutional law is configured and both the power and the complex relations between the state and citizens and the other subjects of constitutional law are defined[1].

According to art. 1 paragraph (3) from the Romanian Constitution, the attributes of the Romanian state are: social state; pluralistic state; democratic state; State law.

Social State

The Romanian state is a social state, which signifies its involvement in the social and economic field.

In the traditional conception, the essence of democracy is freedom and implicitly the limitation of state intervention in the life of society. However, economic and social freedom represent simple wishes, without a material support, without the elaboration of a global development and tracking strategy of the elaborated program.

That is why the constitutional concept of the welfare state does not contradict, but supports democracy through the lens of achieving the general interest that must be evaluated as the fundamental purpose of public services, namely: ensuring a decent standard of living for all residents, ensuring the health of the population, developing the system of instruction and education, of culture, environmental protection, etc.

Constitutional doctrine and political science have emphasised the fact that massive state intervention in the economy and social life is not preferable either, a fact that leads to the statisation of society, but no passive position of the state towards the issue and the achievement of the general social interest.

The essence of the problem lies not in repudiating the role of the state or in amplifying this role, but in establishing the degree of state intervention, as well as the concrete forms of intervention suitable for each stage of society's development.

In accordance with the constitutional provisions, the Romanian state must ensure: freedom of trade, the protection of fair competition, the exploitation of all productive factors; the exploitation of natural resources in accordance with the national interest; restoring and protecting the environment and maintaining the ecological balance; creating the necessary conditions for increasing the quality of life; protecting national interests in economic and financial, currency activity; stimulating scientific research.

Pluralistic State

According to the provisions of art. 8 para. (1) of the Romanian Constitution, pluralism in Romanian society is a guarantee of constitutional democracy.

Pluralism means a multitude of equivalent factors, which cannot be reduced to unity. At the same time, epistemological pluralism or pragmatism affirms that the truth is only what is useful to the individual, and the human person is the supreme category, consequently, it is admitted that power is an

[1]For developments see Andreescu & Puran (2024a) at 99-104; Enache (2011).

inevitable evil and therefore measures must be promoted to protect the person in the face of state power, respectively, the constitutional guarantee of fundamental rights and liberties and the institutionalisation of power limitation structures.

Pluralism must be understood in close connection with the concept of democracy. Through this correlation, democracy is relativised because it puts the majority opinions, as well as the contrary or minority ones, on an equal footing, in terms of value. In this sense, it is stated that pluralism is the opposite of totalitarianism, if two conditions are met:

a) opinions, concepts, attitudes should be lawful, not to contravene constitutional democracy;
b) to respect the majority rule in adopting decisions.

For example, according to the provisions of art. 40 para. (2) from the Constitution of Romania, parties or organisations, which through their goals or activity militate against political pluralism, the principle of the rule of law, or Romania's sovereignty, integrity, or independence are unconstitutional.

The principle of pluralism is opposed to the uniqueness of the exercise of power expressed in consecrating the party's leading role in society. That is why, in a composite and competitive society, institutional pluralism is logical and necessary.

In conclusion, the notion of pluralism concerns multiple aspects of social existence, respectively, political pluralism, institutional pluralism, functional pluralism of state bodies, ideological pluralism and, not least, social pluralism, as a basis for all other forms of manifestation of pluralism. Under no circumstances is this constitutional principle opposed to the unity of the Romanian state, state and territorial indivisibility, the principle of nationalism.

Pluralism is found in all these characteristics of the state, without denying them, but, on the contrary, it gives them true existence and democratic functionality.

Democratic State

Democracy represents a form of moral perfection and dimensions both the organisation and functioning of power to humanise it, as well as the way of life of citizens to moderate it.

Democracy is an integrative concept and phenomenon, accumulating moral, political, and legal values of society, in a determined historical social context and which, in essence, expresses the requirement that the exercise of power be carried out only in relation to the social interest of the holder of power, respectively, the people.

The main constitutional dimensions of democracy are: the exercise of sovereignty by the people; ensuring the people's participation in solving public affairs, through: universal suffrage, legislative initiative, referendum, as well as the existence of an authentic and representative legislative body; sharing the prerogatives of public authorities, collaboration and mutual control; administrative

decentralisation; social, institutional, political and ideological pluralism; application of the majority principle in the deliberative activity of the collegial bodies; the consecration and constitutional guarantee of fundamental rights and freedoms.

According to the provisions of art. 1 paragraph (3) from the Romanian Constitution, the Romanian state is also democratic. This principle is also expressed in other constitutional provisions, respectively: art. 2 para. (1) which states that national sovereignty belongs to the people; Art. 61 para. (1) according to which the parliament is the representative body of the Romanian people and the only legislative authority of the country; Art. 90 which orders that the people express their will on issues of national interest through a referendum; Art. 74 para. (1) and art. 150 which refers to the popular initiative regarding the proposal of a draft law and the revision of the Constitution; Art. 8 para. (1) which proclaims the principle of pluralism as a condition and a guarantee of constitutional democracy and, last but not least, fundamental rights and freedoms are enshrined and guaranteed in the second title of the Romanian Constitution.

Romania – Rule of Law

The concept of the rule of law is one of the most discussed institutions of constitutional law and is related to the transition from law of the state to the rule of law.

In specialised literature, sometimes contradictory opinions have been stated, according to which the rule of law corresponds to an anthropological necessity or that it is a myth, a postulate and an axiom, and on the other hand, the rule of law is a pleonasm, a legal nonsense[2].

Regardless of the opinions expressed over time, the concept of the rule of law represents a constitutional reality whose foundation is found in the mechanisms of exercising state power, in the relationships between power and the freedom of each individual in society and in the application of the principle of legality to all state activity, but also to the behaviour of each member of society[3].

In the notion of the rule of law, two aspects of the legal are involved, apparently contradictory and yet complementary: normativity and ideology.

In terms of normativity, the rule of law appears as a structural principle of the Constitution alongside other essential attributes of the state, materialising fundamental values on which the existence of society and the state is based.

From a normative point of view, the demands of the rule of law are manifested in a double sense: the formal and the material sense.

In a formal sense, the requirement refers to the fact that the state, its organs must comply with the laws, strictly obey the legal rules that have as their object the composition of the state organs, their attributions and functions. In a material sense, we identify the requirement that the state bodies, exercising

[2]For a presentation of them, see Chevallier translated by Dănișor (2012) at 11-69.
[3]See for developments in this regard Arnold (2023) at 7-19.

their powers, respect the legal guarantees regarding the exercise of the fundamental rights and freedoms of the citizens.

In terms of ideology, the rule of law provides a logical system of ideas, through which people represent their society, the state, in all its manifestations and through which legitimacy is conferred on the state.

The phrase "rule of law" is not a simple logical concept, but expresses a fundamental constitutional necessity. Thus, the law is indispensable to the state in order to create its rules and to ensure the finality and effectiveness of legal rules, and the state is indispensable to the right to express power, by establishing a general and mandatory behaviour.

In essence, the rule of law expresses a condition regarding power, a movement to rationalise it, but also a new conception regarding law, its role and functions.

In Romanian specialised literature, the rule of law has been defined as: "that state organised on the basis of the principle of the separation of state powers, in the application of which justice acquires a real independence and following through its legislation the promotion of the rights and freedoms inherent in human nature, ensures the respect strict enforcement of its regulations by all its organs, in their entire activity"[4].

The definition reproduces the main elements of the rule of law - the separation of powers, as a reality of state activity, the application of the principle of legality in the activity of all state bodies, the respect and guarantee of fundamental human rights.

This definition also results in the basic features of the rule of law, respectively:

a) the freedoms of the human person demand guarantee of security and justice through the primacy of the law and especially of the Constitution.
b) the moderation of the execution of power calls for the organisation and adaptation of the functions of the erratic bodies and a hierarchical normative system.

In the final document of the Copenhagen Meeting in 1990, it was specified that the rule of law does not simply mean formal legality, and in the Paris Charter of 1990, the rule of law is prefigured not only in relation to human rights, but also to democracy , as the only system of government.

From the corroboration of the principles inscribed in international documents, as well as in relation to the doctrine of constitutional law, we consider the following to be conditions or characteristics of the rule of law:

1. the accreditation of a new conception regarding the state, especially under the following aspects: the voluntary or consensual nature of the state, the delimitation of the state from civil society, the responsibility

[4]Drăganu (1993) at 128.

of the state and the authorities that make it up and the moderation of coercion as a means of state intervention in society through forms adequate and reasonable;
2. capitalising on the reasons and mechanisms of the principle of separation of powers in the state;
3. the establishment and deepening of an authentic and real democracy;
4. the institutionalisation and guarantee of human and citizen rights and freedoms;
5. establishing a coherent and hierarchical legal order and a field of law.

The regulatory systems that ensure the functionality and systematic coherence of the rule of law are:

a) the political control that is carried out by the Parliament, as one of its essential functions, through various institutional means;
b) the administrative control that is carried out in the system of public administration bodies, either at their initiative or at the initiative of citizens;
c) jurisdictional control over the legality of administrative acts, entrusted either to common law courts or to specialised courts;
d) control of the constitutionality of laws;
e) control of respect for fundamental rights and freedoms through the authority bodies and the judiciary;
f) the conciliation and control procedure, which is carried out through the institution of the "ombudsman" or the People's Advocate;
g) free access to justice and the organisation of judicial activity in several degrees of jurisdiction.

Regarding the consecration of the rule of law in the Romanian Constitution, it should be mentioned that this is achieved not only by art. 1 paragraph (3), but also through numerous other provisions that give consistency to this concept of constitutional law. For example, art. 16 para. (2) of the Romanian Constitution provides that no one is above the law, and art. 15 para. (2) proclaims the principle of non-retroactivity of the law.

Last but not least, the constitutional provisions refer to the fundamental rights, freedoms and duties of citizens, to the mechanism of separation of powers, to pluralism, to the organisation and functioning of state authorities, to free access to justice and the organisation of parliamentary, administrative and jurisdictional control.

The Romanian Constitution establishes, in its normative content, the main guarantees of the rule of law:

a) the constitutional regime, i.e. the establishment in the Constitution of the fundamental principles of organisation and activity of the three powers. Establishing the legal regime applied to the revision of the Constitution;

b) the direct or indirect popular legitimacy of state bodies and public authorities;
c) ensuring the supremacy of the Constitution through a political or jurisdictional control, as well as ensuring the supremacy of the law, compared to other normative acts;
d) the exercise of fundamental rights and freedoms can only be restricted temporarily, only in expressly determined situations, proportional to the circumstance that justifies the restriction and without suppressing the fundamental right or freedom itself;
e) independence and impartiality of justice. Thus, art. 21 para. (2) of the Romanian Constitution stipulates that no law can restrict a person's free access to justice, for the defence of rights, freedoms and legitimate interests.

The Contribution of the Jurisprudence of the Constitutional Court of Romania to the Definition of the Defining Elements of the Rule of Law

The Constitutional Court identifies the fundamental feature of the rule of law, namely the supremacy of the Constitution and the obligation to respect the law[5].

At the same time, it was stated in the jurisprudence of the constitutional court that the rule of law, ensuring the supremacy of the Constitution, also achieves "the correlation of all laws and all normative acts with it."[6]

The requirements of the rule of law concern the major goals of the state activity, namely the supremacy of the law, which implies the subordination of the state to the law. In this sense, the law provides the means by which political options or decisions can be censored and eliminate any abusive and discretionary tendencies of the state structures. At the same time, the rule of law ensures the supremacy of the Constitution, the existence of the regime of separation of public powers and enshrines guarantees, including of a jurisdictional nature, which ensure respect for the rights and freedoms of citizens, primarily by limiting the authority of the state, a fact that represents the inclusion of the activity of public authorities in the limits of the law.

The jurisprudence of the Constitutional Court thus expresses the main requirements of the rule of law in relation to the goals of state activity. Thus, through jurisprudence, a particularly eloquent synthesis of the doctrine regarding the notion and features of the rule of law is achieved.

The Constitutional Court gives a relevant explanation to the character of the rule of law, enshrined in art. 1 paragraph (3) thesis I of the Constitution, showing that: "The requirements of the rule of law concern the major goals of its activity, prefigured in what is usually called the rule of law, a phrase that implies the subordination of the state to the law, the provision of those means that allow the right to censor political options and, in this framework, to

[5]See the Constitutional Court of Romania, Decision no. 232/2001 (Of. G. no. 727/15 November 2001) and Decision no. 53/2011 (Of. G.. no. 90/3 February 2011).
[6]Decision no. 22/2004 (Of. G.. no. 233/17 March 2004).

consider the possible abusive, discretionary tendencies of the state structures. The rule of law ensures the supremacy of the Constitution, the correlation of laws and all normative acts with it, the existence of the regime of separation of public powers that must act within the limits of the law, namely within the limits of a law that expresses the general will. The rule of law enshrines a series of guarantees, including jurisdictional ones, to ensure respect for the rights and freedoms of citizens through the self-limitation of the state, respectively the inclusion of public authorities in the coordinates of the law"[7].

The principle of stability and security of legal relations is not expressly enshrined by the Romanian Constitution, but, like other constitutional principles, it is implied by the constitutional normative provisions, respectively art. 1 paragraph (3), which enshrines the character of the rule of law. In this way, our constitutional court accepts the deduction, through interpretation, of some legal principles implied by the express norms of the Fundamental Law. In this sense, the Constitutional Court ruled that: "The principle of stability and security of legal relations, although it is not expressly enshrined in the Romanian Constitution, this principle is deduced both from the provisions of art. 1 paragraph (3), according to which Romania is a state of law, democratic and social, as well as from the preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in its jurisprudence"[8].

Also, our constitutional court considered that the principle of security of civil legal relations constitutes a fundamental dimension of the rule of law.[9] The Constitutional Court constantly pronounces for the clarity and predictability of the law, these being requirements of the rule of law. Thus, "the existence of contradictory legislative solutions and the annulment of some legal provisions through other provisions contained in the same normative act led to the violation of the principle of security of legal relations, as a result of the lack of clarity and predictability of the norm, principles that constitute a fundamental dimension of the state of right, as it is expressly established by the provisions of art. 1 paragraph (3) of the Basic Law."[10]

At the same time, the Constitutional Court showed that justice and social democracy are supreme values. In this context, the militarised authorities, in this case the Romanian Gendarmerie, exercise, under the terms of the law, specific duties regarding the defence of public order and tranquillity, the fundamental rights and freedoms of citizens, public and private property, the prevention and detection of crimes and other violations of the laws in force, as well as the protection of the fundamental institutions of the state and the fight against acts of terrorism. Consequently, the constitutional court ruled: "Through

[7]Decision no. 17/21 January 2015 (Of. G. no. 79/ 30 January 2015); Also Decision no. 70/2000 (Of. G.. no. 334/19 July 2000).
[8]Decision no. 404/ 10 April 2008 (Of. G. no. 347/ 6 May 2008)); Also Decision no. 685/2014 (Of. G. no. 92/ 4 February 2015).
[9]See Decision no. 570/2012 (Of. G. no. 404/ 18 June 2012); Decision no. 615/2012 (Of. G. no. 454/ 6 July 2012).
[10]Decision no. 26/2012 (Of. G. no. 116/ 15 February 2012).

the possibility of some militarised authorities to ascertain the contraventions committed by civilians, is not affected in any way the art. 1 paragraph (3) from the Constitution, referring to the Romanian state, as a state governed by law, democratic and social"[11].

Human dignity, together with the freedoms and rights of citizens, the free development of the human personality, justice and political pluralism, represent supreme values of the rule of law [art. 1 paragraph (3)].

In the light of these constitutional regulations, it was ruled in the jurisprudence of the Constitutional Court that the state is forbidden to adopt legislative solutions that can be interpreted as being disrespectful to the religious or philosophical beliefs of the parents, which is why the organisation of the school activity must achieve a fair balance between the process of education and the teaching of religion, and on the other hand respecting the rights of parents, to ensure education in accordance with their own religious beliefs. Activities and behaviours specific to a certain attitude of faith or philosophical, religious or non-religious convictions, must not be subject to sanctions that the state provides for such behaviour, regardless of the faith motivations of the person in question. "As part of the constitutional system of values, freedom of religious conscience is assigned the imperative of tolerance, especially with human dignity, guaranteed by art. 1 paragraph (3) of the Basic Law, which dominates as the supreme value the entire system of values"[12].

It is also interesting to underline the fact that our constitutional court considers human dignity to be the supreme value of the entire constitutionally enshrined value system, a value that is found in the content of all fundamental human rights and freedoms. At the same time, it is an important aspect that requires all the state authorities to have in mind first of all the respect for human dignity in their entire activity.

It should be noted that in its jurisprudence, the Constitutional Court also identifies the content components of human dignity, as a moral value, but at the same time constitutional, specific to the rule of law: "Human dignity, from a constitutional point of view, assumes two inherent dimensions, namely the relationships between people, which refers to the right and obligation of people to be respected and, correlatively, to respect the fundamental rights and freedoms of their peers, as well as the relationship of man with the environment, including the animal world"[13].

Dysfunctionalities of the Romanian Rule of Law

Superficial Legislation

All the requirements and defining elements presented above and outlined at the theoretical and jurisprudential level should define the law of a rule of

[11]Decision no. 1330/2008 (Of. G. no. 873/ 23 Decembre 2008).
[12]Decision no. 669/2014 (Of. G. no. 59/ 23 January 2015).
[13]Decision no. 1/2012 (Of. G. no. 53/ 23 January 2012); see also Decision no. 80/2014 (Of. G. no. 246/ 7 February 2014).

law. Unfortunately, these are not always found in the real existence of the current Romanian state. The rule of law is not and cannot be a perfect reality.

The evolution of contemporary Romanian society, often accompanied by an excessive need for regulation, makes the rule of law less and less successful in fulfilling its essential purpose, namely, the protection of the individual. The rule of law should ensure the predictability of the normative constraint not only by avoiding the introduction of an untimely rule into society, but also by ensuring predictability in terms of the modification of the normative act and its execution[14].

In the specialised literature it has been shown that an untimely law or one that is amended very often is contrary to the rule of law. The practice of legislative changes is not new in our country. As an example, we mention some situations from the history of Romanian legislative practice that support our statements. For example, Law 188/1999 on the status of civil servants, since its republication in 2007, has undergone more than 14 changes in less than three years, Law no. 161/2003 regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and sanctioning of corruption was amended 5 times in 2004, twice the following year, 6 times in 2006, three times in 2007-2008 and at least 11 times only in the period 2009-2011, etc finally being repealed by GEO 57/2019 regarding the Administrative Code. In turn, the Administrative Litigation Law no. 554/2004 was amended 33 times between 2004-2018[15].

The normative excess and legislative instability encountered in the current legal system contribute to a decrease in the quality of the law. Thus, the legislation is superficial and from the perspective of the quality of the adopted normative acts.

In order to ensure the accessibility of the norm, the principles of legislative technique provide that the normative act should be written in a specific legal language, a concise, sober, clear and precise style that excludes any ambiguity. Unfortunately, in Romanian legislative practice there is a frequent violation of these principles, incomprehensible, unclear and difficult to apply laws coming into force.

In this sense, it was stated that "the unintelligible nature of a law or a set of laws affects its effectiveness, which is reflected, in particular, in the possibility of being understood by the one who must respect it and the one who must apply. Today, the citizen can understand the law only through the lawyer. He, in turn, often faces the problem of the impossibility of deciphering its meaning due to the complicated, ambiguous style in which it is written. The complexity of decision-making, the complicated procedure for drafting the law, and not all the rules and instruments established by the system of legislative technique at the disposal of the jurist - drafter of laws do not always ensure the guarantee of obtaining a good law"[16].

[14]Duminică (2014a) at 409-414.
[15]Duminică (2014b) at 27-28.
[16]Duminică (2012) at 169-187.

Excess Power in the Activity of State Bodies

The excess of power in the activity of the state bodies is equivalent to the abuse of law, because it signifies the exercise of a legal competence without a reasonable motivation or without an adequate relationship between the ordered measure, the factual situation and the legitimate goal pursued. The exceptional situations represent a particular case in which the state authorities, and especially the administrative ones, can exercise their discretionary power, there is obviously the danger of excess power.

The excess of power can be manifested in these circumstances at least through three aspects: a) the appreciation of a factual situation as being an exceptional case, although it does not have this meaning (lack of objective and reasonable motivation); b) the measures ordered by the competent state authorities, by virtue of discretionary power, exceed what is necessary to protect the seriously threatened public interest; c) if these measures excessively, unjustifiably, limit the exercise of fundamental rights and freedoms, constitutionally recognised.

The existence of crisis situations - economic, social, political or constitutional - does not justify the excess of power. In this sense, it was stated that: "the idea of the rule of law requires that they (exceptional situations n.n.) find adequate regulations in the text of the constitutions, whenever they have a rigid character. Such a constitutional regulation is necessary to limit the areas of social relations, in which the transfer of competence from the parliament to the government can take place, to emphasise its temporary nature, by establishing some terms of applicability and to specify the purposes for which it is carried out."[17]

The restriction of the exercise of some fundamental rights or freedoms, by law, represents an interference of the state in the exercise of these rights and freedoms, justified by the achievement of a legitimate goal. In order to avoid arbitrariness or excess of power on the part of the state authorities that adopt such measures, it is necessary to have guarantees provided by the state, which are adequate to the constitutional purpose pursued, that of the protection of fundamental rights and freedoms, in the concrete situations in which they could be harmed. The principle of proportionality is such a constitutional guarantee that allows the sanctioning by the constitutional court of the arbitrary interference of the Parliament or the Government in the exercise of these rights[18].

Therefore, the measures adopted by the state which restrict the exercise of some fundamental rights or freedoms in order not to be abusive must not only be legal, i.e. ordered by law, or by a normative act equivalent in legal force to the law, but also legitimate (just), i.e. necessary in a democratic society, non-discriminatory, proportional to the situation that determines them and not affecting the substance of the right. Proportionality and necessity in a democratic society are criteria for assessing, both for the legislator and the judge, the legitimacy of restricting the exercise of some fundamental rights and freedoms.[19]

[17]Drăganu (1993) at 106.
[18]Andreescu (2007) at 132-141.
[19]Andreescu & Puran (2023) at 119.

The exceptional state, respectively the state of emergency and subsequently the state of alert established by the rulers on the Romanian territory, similar to the existing situation in other countries of the world, in order to limit the spread of the pandemic created by the Covid-19 virus, generated the adoption of numerous normative acts by which a significant number of fundamental rights and freedoms are restricted and correlatively a significant constitutional jurisprudence on the constitutionality of these measures[20].

For example, The Constitutional Court by two decisions, Decision no. 152/2020 and Decision no. 157/13 May 2020 found the unconstitutionality of some provisions of GEO no. 1/1999 and GEO no. 21/2004 on the National Emergency Management System, regarding the actions and measures ordered during the state of emergency regarding the restriction of the exercise of certain rights.

By Decision no. 152/2020[21], the Constitutional Court, among others, admitted the exception of unconstitutionality formulated by the People's Advocate and found that the provisions of art. 28 of GEO no. 1/1999 on the state of siege and the state of emergency are unconstitutional. Also, it ascertained that the GEO no. 34/2020 on the modification and amendment of the GEO no. 1/1999 on the state of siege and the state of emergency is unconstitutional, in its ensemble.

In order to pronounce this decision, the Court held that the constitutional prohibitions provided in art. 115 para. 6, not to adopt emergency ordinances that may affect the regime of fundamental state institutions, the rights, freedoms and duties provided by the Constitution, electoral rights, have taken into account the restriction of the Government's competence to legislate in these essential areas instead of Parliament.

It is obvious that the normatively materialised intention of the Government to restrict the exercise of certain rights and fundamental freedoms with the violation of its legislative competence in this area and the non-compliance with the constitutional interdictions, represent an excess of power which the Constitutional Court has ascertained and removed.

Increasing the Role of the Executive in the Field of Legislation to the Detriment of the Parliament

We identify another dysfunctionality of the Romanian rule of law in the excessive insertion of the Executive in the legislative activity. Thus, according to the Romanian constitutional provisions, the adoption of laws as a result of the engagement of the political responsibility of the Government can be used in extreme cases, when the adoption of the draft law in ordinary legislative procedure or in emergency procedure is no longer possible or when the political structure of the Parliament does not allow the adoption of the draft law in the current or emergency procedure. The use of this form of legislation has as an important consequence the absence of any parliamentary discussions or deliberations on the draft law. If the Government is supported by a comfortable majority in the Parliament, through this procedure it can obtain the adoption of laws by

[20]For developments see Andreescu & Puran (2021) at 172-202.
[21]Published in the Official Gazette No 387/13 May 2020.

"bypassing the Parliament", which can have negative consequences regarding the observance of the principle of separation of powers in the state, but also regarding the role Parliament as defined by the Constitution.

Consequently, the recourse to this constitutional procedure by the Government for the adoption of a law must have an exceptional character, justified by a well-defined political situation and social imperative.

However, the political practice of the Romanian Governments in recent years is contrary to these rules and principles. The executive frequently resorted to assuming responsibility not only for a single law, but also for packages of laws.

The Government's politicism, clearly expressed through the high frequency of recourse to this constitutional procedure, seriously undermines the principle of political pluralism, which is an important value of the legal system enshrined in the provisions of art. 1 paragraph (3) of the Constitution, but also the principle of parliamentary law which shows that "the opposition expresses itself and the majority decides". The censorship of the Constitutional Court did not prove to be sufficient and effective to make the Government respect these values of the rule of law.

All the governments after the 1989 Revolution massively resorted to the practice of emergency ordinances, a fact widely criticised in the specialised literature[22].

The conditions and prohibitions introduced by the 2003 revision law regarding the constitutional regime of emergency ordinances, prove in practice to be insufficient to limit this practice of the executive, and the control of the Constitutional Court has also proven to be insufficient and even ineffective.

The consequence of such a practice is the violation of the role of the Parliament as "the sole legislative authority of the country" (art. 61 of the Constitution) and the creation of an imbalance between the executive and the legislature by emphasising the discretionary power of the Government which has often turned into excess power[23].

In the current conditions characterised by the tendency of the executive to take advantage of obvious politicism and to force the limits of the Constitution and of democratic constitutionalism in an impermissible and dangerous way, it is necessary to create mechanisms to control the activity of the executive in a position to really guarantee the supremacy of the Constitution and the principles of the rule of law.

Dysfunctions of the Justice System

Contradictions and, in general, any dysfunction in the justice system's coherence or inadequacy for the purpose are its illnesses, its shortcomings, which distance it from its purpose and truth. When the diseases of justice become chronic, but with manifestations that lead to exacerbation, we can speak of a crisis of the justice system. Our justice is in such a chronic crisis with exacerbation tendencies. The main cause is the morbid contradictions of the system. Sickening contradictions tend to further distance justice from reality and its truth.

[22]From recent doctrine, see Vedinaș (2023) at 100; Safta (2023) at 123-132.
[23]Duminică (2014c) at 59-67.

The expression of the crisis in which contemporary justice finds itself is reflected in the contradiction between law and justice. There is an essential break between the value order that should constitute the purpose and essence of justice, and on the other hand the constructed order of norms and jurisprudence.

The mentioned contradiction gave free rein to the "will to power" of the governors to impose their own order and legitimacy on justice by regulating and legislating in the senseless and illusory attempt to create an "order of norms" that would replace the being and truth of justice: justice. Reality demonstrates that this false order often proves itself incoherent, contradictory and above all inadequate to the realities for which it is intended. The simple accumulation of norms does not lead to the establishment of the social and justice in their being and purpose if the norms do not express the essence as a phenomenon, respectively: the higher order of the values of justice, equity, truth, proportionality, tolerance.

The contemporary crisis of justice means the fall from the immutability of the own transcendental value and existence in the social and political externality with the consequence of the diminution or even the loss of the being, of the right as a value. The examples are unfortunately far too many: conflicts and contradictions within the institutional system of justice; the transformation of justice into a tool for political or other actors; the involvement in the struggle for temporary power or in the power games of both the judiciary as a whole and the magistrates; the transition from the mediatisation of judicial documents, to media justice, carried out by the mass media; the arrogant and aggressive rhetoric of baseless forms through the random use and especially for the satisfaction of often immoral selfish interests of the sacred name of justice and law: "in the name of the law", "in the name of the right" become simple formulas to legitimise which is illegitimate[24].

Unfortunately, this crisis of justice is felt perhaps not so much by the judicial system as especially by those who are its beneficiaries: the man, the people, the society.

Conclusions

All these threats to the rule of law were signalled not only at the level of the specialised doctrine, but also in the 2020, 2021, 2022 Reports on the situation of the rule of law in the E.U.[25] where in the chapter dedicated to Romania some dangers related to the frequent changes in the legislation, the widespread use of accelerated procedures and emergency ordinances of the government, as well as some problems in the judiciary are noted.

Even if compared to previous years, there is notable progress in respecting the requirements of the rule of law in our country, however, the 2023 Report also states that "frequent changes in legislation and the quality of the legislative process remain an important cause for concern [...]"[26].

[24] Andreescu & Puran (2024b).
[25] See the 2020, 2021 and 2022 Rule of Law Reports at 15, 20, 24-25.
[26] The 2023 Rule of Law Report. The chapter devoted to the situation of the rule of law in Romania, at 26.

All these aspects lead us to affirm that the rule of law does not represent a state whose essence is exhausted by the constitutional regulations and by other normative acts or by the jurisprudence of the Constitutional Court at a given moment. The rule of law is not exclusively an institution of constitutional law, but must become a reality, found at the level of the conduct of every subject of law, whether he is a state organ or a simple citizen. This means and implies a complex evolutionary process in which all the structures of society participate and, at the same time, a process of improvement in ideological and moral terms with the aim of perfecting the activity of state bodies and the effective establishment of the principle of legality, the formation of a civic behaviour in the spirit of respect the law and the fundamental values of democracy.

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