Research Paper Law

Concept of Rule of Law in European Union

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ABSTRACT

The expansion and development of the European Union has led to the creation of new ideological concepts and paradigms. These include the concept of Europeanisation, a term commonly used by researchers to address the relationship between the European Union and member states, or the European Union and candidate states. The ability of the law of each state and its institutions to influence policymaking is determined by access to economic resources, economic inequality and cultural differences. Even though the state loses some of its traditional attributions, the unit of state turns into a complex system in the sense that the rule of law will derive from several sources obtaining, in this way, a more flexible character. Thus, the rule of law should behave as a living organism and remain healthy through taking measures such as self-limitation of its right and regulating its own activities by fixing its own rules of behavior.

KEYWORDS rule of law, europenisation, solidarity, unity of the state.

INTRODUCTION

In the study of European realities, it is necessary the create a delimitation between European integration and Europeanization, because of the multiple processes which are known of the European Union. On the one hand, the transformation of social structures and institutions of the Member States of the European Union was brought about by the pressure of European Union institutions on internal policies and on the decisions of the main actors. On the other hand, Europeanization is carried simultaneously with the deepening of interdependencies between the European states. These two processes – European Union constraints and mutual dependence – are closely associated.

The most representative definition of Europeanisation is given by Claudio M. Radaelli (Radaelli, 2003, p. 30), which states that Europeanisation consists of a process of development, diffusion and institutionalisation of rules, procedures, policy paradigms, styles, of norms and formal and informal beliefs, which were first defined and consolidated in the European Union's policy process, and then incorporated in the logic of discourse, political structures and public policies. With its accession to the European Union, the state in question comes into a political structure that far exceeds the dimension of any European national state, and thus increases the complexity of its public policies.Rule of law, in limiting of excessive attributions, will be based on the granting of a absolute trust of law.

EUROPEAN UNION AND EUROPEANISATION CONCEPT

The European Union regulates a number of sectors in a manner not previously known to new member states, before they began the process of accession. Here, new challenges need to be faced.

The process of Europeanisation is both complex and difficult because of the profound implications on the entire system of relationships, rules, norms, customs and traditions of each member state of the European Union. Europeanisation is not uniform in the European Union, because there are different levels of Europeanisation in different member states, which depend on their own traditions and of date of accession to the European Union. Europeanisation represents institutionalisation, (Olsen, 2002, p. 925) at the European level, of a distinct system of government with common institutions and the authority to make, implement and impose European policies (Risse, Cowles and Caporaso, 2001, p. 3). Europeanisation includes the strengthening of the organisational capacity for collective action and socialisation, the strategic use of rules and practices regarding of European citizenship, (Checkel, 2001, pp. 553-588) and proposes the concept of "gradual integration" in explaining the Europeanisation process within each state of the European Union.

Europeanisation knows new dimensions with each new rule of law which is incoming in the European Union, although the candidate states, or those recently integrated into the European Union, "are preoccupied primarily of the implementation of new regulations". (Beciu, 2007, pp. 25-61) All states of law of the European Union know Europeanisation because this process is not only a simple translation of values, norms and practices from the founding countries to the countries that acceded later. Undoubtedly, for new member states accession means profound changes in the structure of national institutions and internal political practices following the fulfilment of European Union standards. However, official adoption of these standards is different from their implementation.

Accession to the European Union implies that a candidate state, as provided in Article 49 of the Treaty on European Union (TEU), must be a European state and respect a series of principles: the principle of liberty, the principle of democracy, the principle of respect of human rights and fundamental freedoms, and the principle of the rule of law. In order to become a member state, a candidate state had to fulfil the Copenhagen criteria: to hold democratic stable institutions, to be a rule of law, to respect human rights and protect minorities, to have a functioning market economy, as well as the capacity to face the competitive pressures of the internal market, and to have the ability to assume the obligations of a member state, including a thorough adherence to the political, economic and monetary objectives of the European Union.

Therefore, the European Union is founded on the rule of law and respects and fulfills all the criteria of the rule of law. In other words, all actions undertaken by the European Union are based on treaties agreed by all member states, through mutual agreement, on a voluntary and democratic basis. These agreements are obligatory from a judicial point of view and set the objectives of the European Union.

EUROPEAN UNION CONCEPT OF RULE OF LAW

From the viewpoint of doctrine, defining the concept of the rule of law causes extensive discussions that lead to the exist-

ence of multiple approaches. From the terminological point of view, the concept of the rule of law is found identified in the different theories that established it.

Thus, a definition (Ceterchi & Craiovan, 1993, p. 116) of the rule of law is one which states that the rule of law represents a political and legal concept that defines one of the characteristics of a democratic form of government in terms of relations between the state and the law and between power and the law, by ensuring the rule of law and respecting human rights and fundamental freedoms in the exercise of power.

Another, more laborious definition (Popescu, 1998, pp. 36-37), suggests that the rule of law is that bunch of principles recognized on a global scale, which signifies ensuring the autonomy of the individual in terms of his freedom of action and the self-limitation of the sphere of action of the state in favor of the individual.

In another conception (Draganu, 1992, pp. 18-20), the rule of law should be understood as a state that, being organized on the principle of the separation of powers, in application becomes real independence, and following through its legislation, promotes the rights and freedoms inherent in human nature, and ensures strict compliance with its regulations by all authorities in all of their activities. The rule of law needs to accomplish the imposition of the law, both in relation to citizens and government organizations. The state should be rule of law ... in the sense that state must work under the law, but not that he needs to propose the sole purpose the law. In other words, the existence and manifestation of state involves a "status of the power", limited where possible, of to prevent the state power should be a prerogative at the discretion for those who exercise. The state can and must include in it sphere any activity, and should encourage good everywhere, but always in the form of the law, so that every act is based on law that is the manifestation of the general will (Del Vecchio, 1993, p. 292).

The founding of the European Union as a legal and political entity led to the creation of a new legal order, which represents a coherent form of legal protection, aiming to recourse to the European Union law or its implementation. The newly created European Union law determined the relationship between the Union and member states. By virtue of these attributes, member states could take all appropriate measures to satisfy their obligations arising from such treaties, or from measures adopted by European Union institutions. They should help the European Union meet its tasks and not take any measure that could endanger the objectives of the treaties. Member states are accountable to citizens of the Union for any damage caused by infringement of Union law.

As a consequence, the rule of law remains a process susceptible to reflux movements, taking into consideration the dynamics of the European legal order. Together with the developments and improvements, the rule of law shows its limitations and deficiencies (Chevallier, 2012, p. 147).

From point of view of fundamental human rights, their consistency varies according to the jurisprudential legal interpretation. Is well, therefore, to not give of the rule of law more attributions than it has. The decline of law is closely related to legislative inflation. This means as the number of laws increase, it becomes increasingly difficult to enforce them.

However, the rule of law represents precisely the state in which power is limited, by affirming social values which refer to the protection of individual freedoms, supremacy of the nation and a reduction of the skills of state precisely by the state.

Relating to the limitation of state power, in principle, the state be guided from disbelief compared one form of existence of its, in which it wants to qualify and limit its power precisely in order to avoid this power becoming an oppressive power. One such of state is subjected of law, law, whose finality is the individual and affirmation its liberties, so the notion of rule of law represents a centering of the law on content, not on the form. However, if law is conceived according to the positivist theory that morals are alien to them, his axis of reporting represents a logical consistency (Kelsen, 2000, p. 94). The law which underlies the rule of law cannot be separated from morality, and its content has, as the reporting axis, the fulfilment of individual liberties. Consequently, the first is focused on state authority, while the second is focused on individual freedom. The rule of law is a concept of limits with regard to the freedom of power, a conception about democracy and about the minimal role of the state. The hierarchy of norms and judicial control in terms of its respect is nothing other than a means of realization of this content, whereas the central notion of the rule of law is that of freedom, not of rule.

The foundation of the rule of law is constituted in an individualistic mode in order to conceive of the relationship of the individual with the state, affirming the primordiality of the individual in society. This requires maintaining the state in an instrumental position afectat realizării de sine a individului, în centrul construcţiei statului de drept aflându-se drepturile omului, acestea constituind limita de acţiune a puterii sale. The aim of social organization is not order, but the protection of the natural and imprescriptible rights of the individual, in respect of which order and positive law are the only means of achieving it.

The state-law dualism raises the question of the relationship between sovereignty and the limitation of the state by law, emphasizing that idea that the notion of sovereignty excludes obedience of the state to law. The error of this assertion is that this mode of reporting is considered to be a logically irreconcilable contradiction, considering that the state and the law are conceived to be external realities to each other, being absolutely distinctive. This is false view, because they are supposed reciprocal. The state is the expression of the idea of law and just having that capacity, the law gives the state legitimacy, while the law acquires efficiency only through the existence of the state. Thus, because there are no rights previous and superior to the state, there is no issue in terms of priority or primordiality. Consequently, if the state is subject to the law, this is possible only on a voluntary basis. The theory is based on an exaggeration of the doctrine of sovereignty, according to which the sovereign state knows no limits other than those established by itself. However, this conception omits the fact that in democratic logic, the sovereignty of the state is subordinate to national sovereignty.

CONCLUSIONS

In conclusion, we are always searching for a way to restrict the power and sphere of action of the European state in favour of the liberty of the individual. Consequently, in terms of the achievement of European Union law in the material sense, the rule of law must be seen beyond the pure and theoretical plane. It is the mechanism by which we can ensure the primacy of law in relation to the political situation. In addition, because the history of this concept has shown that the postulat cannot guarantee effectiveness, and reducing the risk to make it inefficient can be assured only through a necessary exercise: recourse to the foundation of what was desired to the origin. In the same sense should not be forgotten that the essential element of the modern state, that state which has legitimately power and competence to decide and to assume the form of government, is that required to establish and to ensure a situation of normality, of the peace within the state. The imposition of a new model of the Europeanized rule of law represents the product of pressures exerted on states from East, Central and Southern Europe, by European institutions, but also by a large number of international financial institutions. The introduction of the model of the European rule of law in these states will involve a long and complex process which requires a common efforts from both parts of the government but also on the part of the citizens.

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