

## THE ATTRIBUTES AND FORM OF CONTEMPORARY ROMANIAN STATE - BRIEF CONSIDERATIONS

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**Abstract:** *This article presents some general aspects of constitutional law and public interest, specific to the democratic regime of the contemporary Romanian state. The paper is highlighted through the concise spirit with which it approaches a much wider problematic concerning the attributes and form of democratic Romanian state. The state structure, the form of government and the political regime, as component parts of the state form, arouse interest in the same extent and clarify, in the second part of the article, the constitutional issues related to the organization of political power, of the formation mode and organization of state bodies and about the methods and means of relationships for achieving power. Calling into question and academic debate of the issues related to the attributes and the form of contemporary Romanian state are justified the more so, returning in actuality, we cannot signal some political, social and administrative trends which theoretical and practical, put into question the existence of the national state, sovereign and independent, unitary and indivisible, or they are related to the implementation in society life of some concepts such as deconcentration, decentralization and regionalization.*

**Keywords:** *Romanian state, constitution, attributes, form, political regime, nation, sovereignty, independence, deconcentration, decentralization, regionalization.*

### I. The Attributes of Romanian Contemporary State

*The state "is a legal person of public law", [1] to the extent to which it participates directly and is part of the relations established in its own name, as subject of rights and obligations. However, the state is not a person in its strictest sense, because it cannot give birth a new will by summing all individual wills, in the contractual type societies. "What is called moral personality of the state is only a technical and juridical procedure meant to make possible that, in some respects, this mass of people, which is organized in a particular territory, to be treated as a single unit." [2]*

Through the attributes of a state, they are meant the defintory dimensions, some essential characteristics of the state in a particular stage of its evolution. The attributes of state make reference more to the political regime, its characters refer to intrinsic features of the state. Unlike the characters of the state, its attributes do not have the character of permanence. Thus, the "unitary" attribute of the state is given by the permanence, the

“republican” attribute is a conjectural presence and the attributes of “state social” and “state of law” are realizable desiderates as process.

*The essential attributes of the contemporary Romanian state* are:

- national state;
- sovereign and independent state;
- unitary and indivisible state;
- republican state;
- state of law;
- democratic state;
- pluralist state;
- social state.

### 1. *National State*

This undisputed attribute of the Romanian state is the expression of an obvious historical reality. Romania is a national state from the Principalities Unification in 1859, the Romanian people, being majority from the moment of its formation to an overwhelming extent against other minorities which have settled in the occupied territory by Romanian and lived together. This has aroused vivid and repeated controversy regarding the ambitions of some minorities to be inexplicitly in the Constitution the term of “national”. The affirmation of the national character does not mean national exclusiveness or chauvinism. The national state is a definitory attribute and holds of the national pride of many European countries. It, also, represents an element of stability and national unity. The Romanian state, national and unitary, is the depository of traditions of culture and civilization of all minorities, protects and preserves the traditions equally to all citizens, without any discrimination. “It is preferred, however, in the context of explaining the characteristics of the state, the term of national, because from rigorous scientific point of view, the nation is the constitutional element of the state, as being defined like the yesterday’s, today’s and tomorrow’s population.” [3]

### 2. *Sovereign and Independent State*

The Romanian Constituent since 1991 consecrated to *art. 1*, para.1, that the Romanian state is “national, sovereign and independent state.” This statement should be correlated with those stipulated in *art 2*, para. 1-2 and *art. 69*, para. 1-2 from the *Constitution*:

*“The national sovereignty belongs to the Romanian people, who shall exercise it through their representative bodies and by referendum. Not a group and not a person may exercise sovereignty in its own name ”; (art. 2, para.1 and 2). “In the expression of mandate, the deputies and senators are serving the people. Any imperative mandate is null. ”(art. 69, para.1 and 2).*

We can conclude from this that:

- the sovereignty is national but the holder thereof is the people;
- sovereignty is inalienable because what is transmitted to the representatives is only exercise thereof;
- sovereignty is indivisible, cannot be divided it does not have how to be distributed to a group or a person;

- the mandate given is representative (opposed to the imperative and as such, the parliamentarians cannot be revoked by those who elected them (but it is possible the revocation of representative bodies);
- in principle, the suffrage is universal and represents a fundamental right (*art. 36*, para. 1 of the *Constitution*);
- the exercising of sovereignty by the people through their representative bodies is not incompatible with the practices of direct democracy (referendum and legislative popular initiative).

**The sovereignty** - represents "that quality of state power, under which this power has the vocation to take any decision political, juridical, economic, military, etc., in all internal and external affairs, without any mixture from the other power, while respecting the sovereignty of the other states and of the principles and the other generally accepted norms of the international law." [4]

The sovereignty of a state is characterized as a unit of two complementary components: the *supremacy of power* (within the state) and *independence* (externally in relation to other foreign powers). The supremacy without independence is a nonsense. The two components are inseparable.

**The supremacy**, called *internal sovereignty* or *sovereignty of state*, is the attribute of power to decide on all economic, social, political and juridical problems, without restriction from any social power within its borders.

**The independence** or exterior sovereignty state, represents that right of the power to decide on all matters, without any restriction or interfered from another state.

"Internally, sovereignty is not absolute because its exercise is landmarked strictly by the constitutional provisions.

In the external sphere, also, sovereignty is not absolute because the Romanian state is an element of the international system and is bound to respect the sovereignty of the other states and rules of international law." [5]

Romania, as a sovereign state, is a subject of international law and in such quality incumbent on imperatively certain rights and obligations stipulated by the international treaties. The Romanian Constituent gave expression, however, the principle of "*pacta sunt servanda*", according to which Romanian State pledges to fulfill in good faith the obligations deriving from international treaties which it is party and to develop peaceful relations with all countries based on the norms and principles of international law. In this respect, the international treaties ratified by Parliament, according to the law, are part of internal law.

### 3. **Unitary and Indivisible State**

From this point of view, the states can be *unitary* (simple), *federative* and *associations of states* with those three forms: *confederation*, *personal union* and *real union of states*.

The *unitary* character of Romanian state means that this is organized as a single unit or as a single formation of state within which it is instituted only one juridical order, based on a unique constitution. Under this aspect, the *Constitution* proclaimed by *art. 1*, para. 1, taking into consideration the state structure, that Romania is "**unitary and indivisible state**". This means that there is only one center of power and only one juridical order applicable on the whole territory. Romania is a unique assembly of fundamental institutions, having a single legislative organ, a single executive organ and only one judicial authority. Also, there is

only one constitution and a single law system. The indivisible character of the Romanian state means that it cannot be segmented partially or generally, the territorial subdivisions having an administrative character. The fact that the territory is organized / divided from point of view administrative into communes, towns and counties, it does not diminishes with anything its indivisibility. The indivisible concept refers mainly to territory and not necessarily to the state, a division of this in many state formations being unconstitutional.

There have been and continues to exist, and after the joining the *European Union*, different approaches to the understanding and the application of concepts of *deconcentration* and *decentralization*. Personally, I adhere to the idea launched by *Professor Ion Deleanu*, according to which "the concepts of *deconcentration* (fr. *déconcentration*) and *decentralization* (fr. *décentralisation*) - the present formulation of *art. 120* of the *Constitution* - are not adequate, leave room for ambiguities and even may constitute a linguistic support for what it is, in fact, *the decentralization signifying precisely the autonomy*. The concentration means the power of a single center, the deconcentration, the opposite." [6]

*The deconcentration*, with reference to the public services, consists in the transferring of some prerogatives from the central administrative authority to the local agents appointed, usually, by the central administration. The agents are the representatives in the territory which are controlled by the central authority both on the grounds of the opportunity and of the legality of the emitted acts. The deconcentration belongs to the administrative system in which "the centralization is achieved through intermediaries".

*The decentralization* means local autonomy, a local self-government achieved in territorial administrative units by their own authority organs. The decentralization can be functional or territorial. Even if this means local autonomy, it does not imply an independence.

The statute of administrative - territorial units assumes:

- they are endowed with juridical personality, but cannot become state entities;
- they don't have major policy power of decision;
- they must carry out the activity within the law;
- they cannot circumvent the central administrative tutorship.

#### **4. *Republican State***

There are distinguished two forms of government: *monarchy* and *republic*. The contemporary Romania is a republic, according to *art. 1*, para. 2 of the *Romanian Constitution*, which enshrines the government form specifying: "*Romanian state form of government is the republic*."

The Republic is the form of government in which the head of state is appointed (elected) on determined term either by the people, by directly or indirectly vote, either by Parliament.

The fundamental law does not specify what kind of republic is Romania: parliamentary and presidential. From the analysis of the head of state prerogatives can be deduced that the Constituent Assembly has opted for a mixed form close to the parliamentary regime. One can say that Romania is a semi-presidential republic. It can bring as arguments some constitutional provisions. Thus:

- Like the Parliament, the President of Romania is elected by universal, equal, direct, secret and freely expressed suffrage. (*art. 62*, para. 1 and *art. 81*, para. 1);

- The Romanian Executive is two-headed; the head of state does not politically accountable to the Parliament; The Government, collegial and solidarity body, remains politically accountable to the legislator;
- The President may proceed to the dissolution of Parliament but also The Parliament may suspend from his position the President;
- The President does not have the right of legislative initiative, but only the right to promulgation of laws passed by Parliament;
- A part of the decrees which the President issues, must be countersigned by the Prime Minister;
- The head of state has the right to appoint a candidate running for prime minister and appoint the Government, only the vote of confidence from the legislative forum;
- Both the Parliament and the President have the right to demand the prosecution of members of the Government;
- Some duties of the President shall not be exercised only conditioned by the will of Parliament (general or partial mobilization, the state of siege declaration, of emergency, rejection of an aggression);
- President may require, after consulting the legislative forum, organizing a referendum on matters of national interest.

The fundamental law of Romania develops a few notes of originality, by decreeing a presidential republic, which operates to a large extent after the essential rules of the parliamentary republic, by building, in fact, "a *presidential parliamentarism*". [7]

### 5. *State of Law*

Regarding the consecration of the state of law in the *Romanian Constitution*, there is only one article that regulates this institution. Thus, *art.1*, para.3 shows that: "*Romania is a state of law.*"

Through state of law it is meant the subordination of state to law, in other words, the establishment of "*the reign of law*" in the activity of state authorities, in the relations between with each other, and in their relations with citizens. A state of law is organized on the principle of the separation of powers in state. The state of law assumes not only the separation of powers, but the balance of these. From this equality emanates the equilibrium between the freedom and constraint. *The state of law is the guarantor of respecting the rights and fundamental freedoms of citizens.*

The breaking of the balance in favor of freedom leads to the establishment of anarchy, entropy and disaggregating chaos in society, as a too much constraint would transform the man into a slave of power by minimizing its role as an active factor and implicitly of possessor of the power which it temporary delegates to the state representatives. So long as the law exists, the state is obliged to respect it, it cannot do a contrary administrative or jurisdictional act, only within the limits set by law. The state is the litigant of its own courts. The consecration, as such, of Romania as state of law, was strengthened by the syntagm prescribed by *art. 16*, para. 2 of the *Constitution* which establishes imperatively that "*nobody is above the law*", which means that public authorities are obliged to obey the law as physical persons or juridical persons. The justice is carried out in the name of law, it is unique, impartial and equal for all.

## 6. *Democratic State*

The syntagm "*democratic state*" expresses Romanian state final connection to the universal democratic values. The most important constitutional provision is art. 2, para. 2 of the Fundamental Law: "*the national sovereignty belongs to the Romanian people, who exercise it by its representative bodies and by referendum.*"

Also, art. 8 provides that "*the pluralism in the Romanian society is a condition and a guarantee of constitutional democracy.*" [8]

The simplest definition of **democracy** is *the government of the people by the people for the people.*

It presupposes:

- a. the exercising of the power by the people either directly, or indirectly through its representative organs;
- b. the separation of powers prerogatives within the state, the collaboration and mutual control among these bodies;
- c. the administrative decentralization;
- d. the recognition of social pluralism (ideological, political, institutional)
- e. the application of majority rule in decision making by the collegiate bodies;
- f. the consecration and the constitutional guarantee of rights and fundamental freedoms of human and citizen.

The freedom, equality and legality are the three pillars of democracy. The Constituent Assembly was not only limited to proclaim Romania as a democratic state, but also established *the means - guarantees* necessary to give concreteness to this attribute, themselves, as true landmarks of the idea of democracy which permit a concrete delimitation from the attributes and prerogatives of the communist state totalitarian.

## 7. *Pluralist State*

The pluralism represents an attribute that can be analyzed in full compliance with democratic state attribute. The political pluralism is considered a supreme value and guaranteed as such. Art. 8, para.1 of the *Constitution* declares that: "*The pluralism in the Romanian society is a condition and a guarantee of the constitutional democracy.*"

*The ideological pluralism* is the opposite of *universalism* specific to the totalitarian societies and constitutes the foundation of any democratic building. The pluralism of ideas requires, compulsorily, the respecting of the majority principle in taking decisions. A condition and a guarantee of democracy is the *political pluralism*, understood as a system based on the existence of more political parties. *The institutional pluralism* is reflected in the existence of several institutions of power: *popular* (the vote and the referendum), *legislative* (the Parliament), *executive* (the Government), *jurisdictional* (the judicial power organs).

## 8. *Social State*

This concept signifies the state involvement in the social- economic field. It must be said openly that the state of liberal type has a limited role, even decorative, in providing socio-economic conditions for all its members. This is because the liberal doctrine considers that it should be left the possibility of individual to develop entirely his personality stimulating the private initiative in providing of means of subsistence.

The concept of social security comprises the one of economic security, too. It cannot be separated from the one of food security. The matters which *the Romanian social state* should bear in mind, but which it cannot achieve, mainly, because of failure to provide material and financial means, are those related to: *a decent living, the health of the population insurance, the life expectancy increase, the reducing of mortality and increasing fertility, the preservation and improvement of the environment, the sanitary system developing and maintaining, of instruction and education, the social protection of labor*. An exacerbated liberalism does not resolve such situations. The freedom and democracy tend, in these circumstances, to become metaphorical desiderates, without a corresponding support from the democratic neoliberal state. This situation generates an erosion of the system and finally it emerges the need of change, which can come by itself or can take violent forms. The immature democracy, that characterizes the present social state of Romania, the primacy of the personal and group interests to the detriment of the general interest and of state, corruption, have determined a social abandonment, difficult to repair. The lack of a national consensus of political forces, in this regard, has led to polemics without substance when preparing the draft of the Constitution, as in Parliament.

The attempts of defining the *social state* followed different interpretations, from the ones having social-democratic connotations and to those similar to the concept of interventionist state. At social level, in the post-revolutionary Romania there is a decrease of the role and importance of the social state, which is equivalent to failure to fulfill major obligations from international treaties and conventions, to which Romania is a party, regarding to the condition and life of citizens. The guaranteeing of the right at work and social assistance, the right to a decent standard of living, the right to health care, etc. there are stipulated rights, in fact, in the *Romanian Constitution* since 1991, but they are not assured.

## **II. The Form of State. The Structure of State, The Form of Government and The Political Regime**

### **The Form of State.**

In the Romanian doctrine it was released the opinion in the sense that *form of government* represents a complex category, having as constitutive elements:

- *the structure of state,*
- *the form of government,*
- *the political regime.*

This division is understood broadly. In the narrow sense, the form of state power means the structure of this power.

a) "*The structure of state* designates the organization of political power within certain spatial limits, namely, in a particular territory, the specific relations which are constituted between the constitutive elements of the assembly of state (territorial-administrative units and state formations), as well as specific relations between the whole and the component parts. The administrative - territorial organization is an element integrated therein.

b) *The form of government* designates the formation and organization mode of the state organs, the characteristics and principles underlying the report between them, especially between the legislative body and executive bodies, including the head of the state. The form of government is determined by the manner in which they are appointed the representatives of this power and how they exercise it.

c) *The political regime* represents the assembly of methods and means of making power, of the relations between the elements that make up the social-political system, pointing especially the measure of consecration and guaranteeing the citizens' rights and freedoms." [9]

From conceptual point of view, through *structure of state* is understood the mode of organizing the power in relation to the territory of state. The overall organization of power in relation to territory, indicates if the state is constituted of one or more member states. Also, the state structure designates the integrity of the system of state power, the mode of organizing the state in a reference territory. In terms of the state structure, the states can be divided into two categories: *unitary states* and *compound states*. There are charted particular forms of the categories mentioned, too. These two categories comprise and state forms: *unitary* (simple), *federative* (compound or unionist) and *associations of states* (the confederation of states, the personal union of states and the real union of states).

### **The Unitary State (Simple)**

A state can be unitary irrespective of the its territorial scope its, of the number, density and the ethnic structure of the population. The unitary state is not incompatible with the decentralization and deconcentration, namely, under the aspect of recognizing the autonomy and the competence of decision of the organs constituted in the territorial subdivisions of state (regions, departments, counties, communes), within certain limits. Two elements remain nevertheless always the same: the local autonomy and hierarchical tutelage.

*The characteristics of Romanian unitary state* are the following:

- a) "It is constituted in a single formation of state;
- b) It has a unique constitutional regime, consecrated by a single constitution and a single juridical organization;
- c) It is constituted a single row of organs at central level (legislative, administrative, judicial), which exercises their authority in relation to the entire territory and the entire population;
- d) There is no other concurrent organization with which to share the competences;
- e) Its population, usually, has a single citizenship;
- f) The administrative territorial units constituted within the state are subordinate to the central organs and under their control and supervision;
- g) The unitary state represents the unique subject of international law." [10]

*The regionalism.* The problem of regionalism is put keenly especially after Romania joined the *European Union*. The followers of regionalism invoke the incapacity of central political-administrative structures to offer viable and efficient solutions to some social forces of participation in the governance. It is pretended, also, the lack of the political will of the central authorities to responds to the need of redistribution of power in favor of local administrative units. The regionalization without a central power control can degenerate into desperate situations, in self- determination or enclavisation.

The regionalization pushed to the extreme, is the way to federalization.

Where the decentralization becomes increasingly intense, it approaches the unitary state of the federative one, process completed with the dissolution of the former. It can govern by far away, but only the administration by nearly of an administrative-territorial structure



inevitably leads to strengthening the position and autonomy of administrator to the detriment of the central authority.

### Conclusion

The position of the unitary state in relation to the citizen can only be one of equality and non-discriminatory treatment toward all citizens of the state, regardless of their affiliation to the majority or minority. The unitary state is the state of all its citizens. It is not permitted, however, that a minority to benefit from rights and privileges above the majority.

"Whereas it represents a reduced percentage compared to majority of the population which constituted the state, the minorities cannot prevail, according to the norms that govern the international relations, from a right of self-determination." [11]

All citizens of the unitary state are obliged to obey the law. "The national feeling constitutes, thus, the most powerful ferment of the cohesion and permanence of state." [12]

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