

OPINIONS ABOUT THE POWER OF THE PEOPLE AND THE POWERS OF THE STATE IN REGULATING THE CONSTITUTION OF ROMANIA

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Abstract: *In a perspective of a long-awaited and postponed revision of the Romanian Constitution, we consider that it is necessary to reanalyze the name of the state power, given to public authorities (legislative, executive and judicial), opposite the quality of the Romanian people's sole proprietor of power in the state. Under this aspect, the current constitution materializes an obvious normative indecision and inconsistency of terminology of the constituent Legislator. Also, in the legal doctrine of the field, although there are numerous and remarkable scientific works of constitutional law, he subject, as a rule, is bypassed, and the power of the people and the powers of the state are analyzed As if the first consecration would not exclude the other, And the recognition of the latter would not question the existence of the former.*

Keywords: democracy, national sovereignty, the power of people, the powers of the state.

In Romania, the so-called state powers are evoked by the Constitution and Law No. 404/2004 on judicial organisation. In particular, according to art. 1 para. (4) of the Constitution, „The state is organized according to the principle of separation and balance of legislative-powers, executive and judicial -within the constitutional democracy” (s.n.) [1].

Also art. 80 para. (2) Thesis Nr. II, establishing the role of the President of Romania, states that „...Exerts the function of mediation between state powers, as well as between state and society” (s.n.) [1]. Obviously, by default, this text evokes the state powers are explicitly provided by the previous (*legislative,, executive and judicial*).

Finally, art. 1 para. (1) of Law No. 304/2004 provides that "the judicial power

is exercised by the High Court of Cassation and Justice and the other courts established by law” (s.n.) [2]. We emphasize that, for the legislative power and executive power, there are no legal provisions to nominate them, as such, nor legal rules relating to public authorities to exert them [3].

Against these constitutional and legal provisions, we deduce that, at present, in Romania, alongside the national sovereignty, which belongs to the Romanian people, there are still three powers (legislative, executive and judicial).

However, art. 2 para. (1) of the Constitution provides that "national sovereignty belongs to the Romanian people, exercising it through its representative bodies, constituted by free,

periodic and fair elections, as well as by referendum" (S.N.) [1].

Basically, It is questioned To determine whether the provisions art. 1 para. (4) and of art. 20 para. (2) Thesis II, On the one hand, and the provisions of art. 2 para. (1) of the Constitution, on the other hand, are in harmony

To substantiate an answer to this problem, we believe that it is necessary to establish the legal meaning of the expressions of national sovereignty, the power of the people and the powers of the state.

In the absence of any significance provided by the legislator, these phrases have the current meaning of modern Romanian language, in accordance with art. 36 para. (4) in conjunction with art. 37 para. (2) of Law No. 24/2000 on the rules of legislative technique for the drafting of normative acts.

Thus, in this language, the term sovereignty has the significance of "absolute power" or "supremacy of the state power within the country and independence from the power of other states" [4]. In the same sense, the doctrine in the field was also expressed...

In the context of the national sovereignty expression, the national moniker indicates that the supreme power belongs to the Romanian nation [4]. Under this aspect, in doctrine it was appreciated that "the essence of national sovereignty is that it belongs to the nation..." [5].

However, the constitutional text provides explicitly and without doubt that "national sovereignty belongs to the Romanian people" (S.N.).

In relation to the provisions of art. 2 para. (1) of the Constitution, in doctrine, in the opinion of some authors, „By showing that the holder of supreme power in the state is the people, the Constitution does not establish anything, but is thanks only to consecrate, through an act of recognition, the existence of the people, from which

they proceed further, by delegation, Constitutional bodies which the text of the Fundamental Law establishes. This is not the significance of substantiating the sovereignty of State power on the concept of popular sovereignty "(S.N.) [5].

As far as we are concerned, we believe that the thesis expressed by the remarkable lawyers is in an obvious disagreement with the unequivocal provisions of art. 2 para. (1) of the Constitution. Indeed, since they explicitly stipulate that „national sovereignty belongs to the Romanian people”, states that, under that aspect, „the Constitution does not establish anything” and that „this does not signify the founding Sovereignty of State power on the concept of popular sovereignty”, it translates into simply ignoring the constitutional text analysed. In fact, this sentence also contains an inconsistency of evidence, as the following are referred to as two consequences of the provisions of art. 2 para. (1) of the Constitution, namely: Consecration of the existence of the Romanian people; Establishment of constitutional bodies delegated by the people. Inconsistency is also accentuated by the fact that, In the same context of the analysis of the provisions art. 2 of the Constitution, the authors state that „This way of establishing and exercising state power bears the name of representative democracy, Due to the fact that the holder of the state power, the people, Do not exercise directly,...” (s.n.) and that, art. 2 Of the Constitution specifies not only the holder of the state power, nominalizând exclusively the Romanian people,...” (s.n.).

In our opinion, most likely, The expression solution used to draft the provisions art. 2 para. (1) Of the Constitution was determined by the need to operaționalizării national sovereignty. Thus, unlike members of the nation, which may be Romanian or other national citizens,

People who make up the Romanian nation are the citizens of Romania. In fact, sometimes the term people are used even in the sense of "citizens of a State ..." [4].

The conclusion is also supported by the fact that the right to vote, essential for the power of the nation, it is recognised only to persons who have Romanian nationality without their ethnic origin or State territory on which they were at the time of the elections to be relevant. In this respect, the provisions of article 3 shall be unequivocal. 36 para. (1) of the Constitution and other normative acts. This normative situation led some authors to assert that the „The two notions are not synonyms-the nation is an organic whole, the nation a whole functional”.

Compared to those presented and, anyway, giving priority to the explicit meaning set out in the provisions art. 2 para. (1) of the Constitution, we conclude that national sovereignty, namely the supreme power of the nation, has as sole proprietor the Romanian people.

It is doubtful that since the power (sovereignty) belongs to the people (Romanian citizens), It is unique, even though, in its structure there are several components, such as that of legislating, executive and justice.

We also note that, according to the same constitutional text, the people exercise national sovereignty (power) exclusively by „*its representative bodies, ..., as well as by referendum*” (s.n.). As a result, in the current constitutional context, it is excluded that people exercise their power through State organs that do not have the capacity to be representative or, in other words, Which does not result directly from the elections. For example, strictly constitutional, the nation cannot exercise their power through the specialised central public administration or through the components of the judicial authority.

After all, the provisions art. 2 para. (1) of the Constitution are in accord with the unanimously accepted essence of democracy, the "form of organisation and management of society based on the principle of the exercise of power by the nation" or „form of government in which the supremacy (power) belongs to the nation" (p.n.) or „...The free opportunity to manifest the (power) of the people..."[5].

In context, we specify that according to the art. 1 alin. (3) in the Constitution, Romania is, among other things, „democratic state”. The Constitution also evokes democracy in numerous other texts.

Establishing democracy as a principle of democratic State the organisation and functioning of the Romanian state, and, then, the evocation of the three powers denotes the indecision by the legislator constituent, And in a theoretical and practical plan, various interpretations and solutions.

If democracy is not understood and is not a norm in the sense of „ownership and exercise of power in the state by the nation”, is emptied of content or, as Peter Ţuţea has practically expressed, is like, „...Bastard Dog: escapes than those who are strong. ”.

After all, it is a truism that any society, to be considered authentically democratic, together with the constitutional consecration of the power of the nation, must establish legal levers for the operationalization of the citizen's quality by the holder of the power and the obligation of the authorities and public institutions, and their officials to serve the citizen. Evidently, the lifting of public authorities or institutions to the rank of powers in the state (even from a formal point of view) It is likely to undermine the essence of democracy Perhaps this is the main reason why, in virtually all the consciousness of employees in State

bodies is deeply rooted the belief that they are the holders of power, and the citizens are within reach. Personally, I believe that there will be real democracy in Romania only when employees of the authorities and public institutions, from those at the top of the pyramid, to the people at her base, will be convinced that they are serving citizens and will act accordingly. Obvious, the major premise for achieving these goals it is the creation of an appropriate constitutional framework..

On the other hand, *the state* term has the meaning of „Territory and the population over which the authority of that organisation exercises (Various authorities and public institutions)” [p.n.] [4].

According to the Constitution, the following public authorities are organised and operated in Romania: Parliament (art. 61-78); President of Romania (80-101); Government (art. 102-115), Public administration (art. 116-123); The judicial authority (art. 124-134). The Constitution also provides for a number of *public institutions*, namely: Ombudsman (art. 58-60); Consiliul Legislativ (art. 79); Supreme Council of Country Defence (art. 119); Court of Auditors (art. 140); Economic and Social Council (art. 141); Constitutional Court (art. 142-147).

Because art. 1 para. (4) evokes the legislative powers, executive and court, we conclude that, in reality, are considered *the public authorities referred to in article. 61-134* of the Constitution. In fact, in public space, by reference to state powers, only these categories of public authorities are concerned.

However, the provisions of art. 61 para. (1), in consensus with the provisions art. 2 para. (1) of the Constitution, only recognise the Parliament, besides the legislating activity, and the quality of being the supreme representative of the Romanian people. So, at national level, the nation exerts their power exclusively through

Parliament, And at the level of local communities through other representative authorities (local councils, the General board of the Municipality of Bucharest and Mayors). However, even if the Romanian Parliament is the supreme representative of the Romanian people, it does not have the quality of *Power Holder* and, by way of consequence, nor the power of the state. Obviously, as a public authority, Parliament is the legislators authority.

In the context, we see that the President of Romania, although it is designated, just as Parliament, by universal suffrage, it represents the Romanian state [according to art. 80 para. (1) of the Constitution], and not the nation (the owner of sovereignty). Without insisting on this subject, we believe that this circumstance constitutes a unanswerable argument in the sense that Romania is a parliamentary republic.

However, per a contrary, the authorities and public institutions of Romania, which are not representative of the Romanian people, cannot be in a position to exercise its power, and, Much less, to be her proprietors. As a result, they cannot be considered state powers, but public authorities (Legislators, executive and judicial).

In order to conclude, according to art. 2 para. (1) and art. 61 para. (1) of the Constitution, at national level, with the exception of Parliament, other public authorities or institutions only have the role of conducting specific state activities for the administration of public affairs, and not to exert the power of the Nation. Thus, for example, according to the Constitution, „The government, according to its government programme accepted by Parliament, ensures the achievement of the country's internal and external policy and exercises the general management of public Administration,” [art. 102 para. (1)], and the High Court of Cassation and Justice, as well as the other courts

established by law, "carries out justice" [art. 126 para. (1)].

Under this aspect, the provisions of art. 1 para. (1) of the law nr. 304/2004 are obviously unconstitutional. Indeed, since the judicial authority and its constituent elements are not in the constitutional position to represent the Romanian people, Cannot be found in the situation of exercising *judicial power*. In reality, this attribute of the exercise of power should be carried out also by Parliament, in its capacity as supreme representative of the romanian people, Through the legislating activity. Under this aspect, the current constitution is lacunar, as it does not establish any leverage within the reach of Parliament to operaționaliza its attribute of exercise of judicial power as the supreme representative of the Romanian people.

By contrast, the judicial authority, through the High Court of Cassation and Justice and the other courts stipulated by law, respecting the Constitution and the laws, has only the obligation to achieve justice. That's probably why „Justice is performed in the name of the law”, according to Art. 124 para. (1) of the Constitution.

In relation to those presented, we consider that between the provisions art. 1 alin. (4) and art. 80 para. (2) Thesis II, On the one hand, and the provisions of art. 2 para. (1) from the Constitution, on the other hand, there is an obvious noncorrelation.

Indeed, the fact that, on the one hand, the power of the Romanian people is proclaimed and, on the other, the powers of the state are evoked, denotes the indecision of the Romanian constitutional legislature and materializes an obvious inconsistency of terminology.

In my opinion, this situation has been reached, because it has not been observed that, internationally, some time ago, the principle of the separation of powers in the state, even if it was just a myth, became obsolete. The main cause that eroded this

principle was precisely the fact that society has evolved to democracy, Reality enshrined in numerous constitutions by recognising the power of the People. If at its beginning, this principle was meant to undermine the sovereign's absolute and unique power, at present, it puts into question the supreme and unique power of the nation.

If we accept that, according to art. 2 para. (1) of the Constitution, Power is unique and belongs to the people, the principle of separation cannot look at the so-called powers of the state, for the simple reason that, from a logical-legal standpoint, they do not exist.

In reality, the separation could target State authorities and institutions.

However, it cannot be ignored that authorities and institutions, being of the state and in the service of the people, make up a system, and systems, including political-social ones, require cohesion (interdependence) of the elements Components.

Conclusions: In relation to the issue analysed in this study, on the occasion of the revision of the Constitution We believe that a normative option should be put into the opera trenchant and consistent, devoid of ambiguities or other sources of various interpretations. Thus, if it is decided that „power in the state belongs to the Romanian people”, The powers of the State should not be evoked in the Constitution, but only its authorities.

In particular, the provisions of art. 2 para. (1) of the Constitution should be reformulated in the sense that, „In Romania, the power belongs to the Romanian people, which exerts it through its representative bodies, formed by free, periodic and fair elections, as well as by referendum”.

In order not to contradict this rule, the provisions of art. 1 para. (4) and those of

art. 80 para. (2) Thesis II of the Constitution should be amended so that the term of power is replaced by the authorities. As a result, the two texts should have the following content: „The state is organized according to the principle of separation and balance of -

legislative, executive and judicial-in constitutional democracy”, Respectively „For this purpose, The President exercises the function of mediation between State authorities, As well as between state and society.”

References

- [1] *Constituția României*;
- [2] *Legea nr. 92/1992 pentru organizare judecătorească*;
- [3] Ioan Leș, *Sisteme judiciare comparate*, pag. 5;
- [4] *Dicționarul explicativ al limbii române (Dex)*, pag. 1049;
- [5] Ioan Muraru, E. S. Tănăsescu, *Principii generale. Suveranitatea, în Constituția României. Comentariu pe articole*, pag. 23.