THE STATE OF LAW. A FEW ACCENTS

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Abstract: *In time, a series of these were shaped regarding the connection between state and law. The representatives of its doctrines are rather inclined to admit the existence of an antagonism between state and law, considering that the law's ground lies beyond its creation by the state, which means that law itself is something that signifies more than the positive law. On the other hand, for totalitarian states, the state is a transcendent, supreme and exclusive reality, which denies the existence of the rights that are intrinsic to the inner self of the individual, which even denies individuality as an autonomous reality, reserving to the individual only a role of social atom, to whom the state magnanimously concedes rights.*

Key words: *The state of law, philosophical perspective, law and positive law.*

The question was asked and it always could be repeated: is there or not an antagonism between state and law? To be able to answer to such a question is as delicate as it could be, since an eventual answer depends on the philosophical perspective through which is analysed the notion of law and on the way its finality and foundation are understood. The diverse answers of the various schools of juridical philosophy, generally standing on two opposite positions as we will see next, have this explanation.

Philosophical theories and streams were formed, which from divergent positions explain the importance "of the state, the role it holds in defending the social interest of groups or of the society as a whole"[1].

In time, a series of these were shaped regarding the connection between state and law. One of them is the jusnaturalistic opinion.

The representatives of its doctrines are rather inclined to admit the existence of an antagonism between state and law, considering that the law's ground lies beyond its creation by the state, which means that law itself is something that signifies more than the positive law. Thus the conclusion according to which the state should be limited in its legislative action, an attitude indicating an antagonism between the two entities - the state and the law. This adversity presents itself as: "the reflected image of the antagonism between authority and liberty at the moment when each of them tends to become absolute"[2]. Into this context, it has been said that the state and the law present one to the other as a necessary evil[3].

The positivistic attempts to eliminate the antagonism between state and law, by reducing the latter only to the legislation created by the state, and thereby consolidating the state itself. But it failed, because it stated that there is no law, prior and superior to the state's organization able to limit the state's legislative action and that state was, by itself, able to self-limit and border its own normative process.

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[1] Nicolae Popa, *Teoria generală a dreptului*, Third Edition 3, Ed. C.H. Beck, Bucureşti, 2008, pag. 74; See also: Nicolae Popa, Ion Dogaru, Gheorghe Dănişor, Dan Claudiu Dănişor, *Filosofia dreptului*, Ed. All Beck, Bucureşti, 2002, for the parts which present the juridical vein of the great streams.

[2] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 100.

[3] "Natural law is the limit till which could be extended the society's stateship. It is limited, on one side, by the civil society's impulsion towards chaos and, on the other side, by the state's propension towards an inflexible order. State and society mutually see themselves as necessary evils" (Idem, *op. cit.*, loc. cit.).

Finally, a last thesis presents the state as a realization (embodiment) of the idea of law. State and law respectively belong to different spheres: the state, to the sphere of facts, while the law, to the one of concepts. Therefore, here is their antagonism[4].

The state as such exists only as long as it expresses the concept of law, as long as its political constitution does express, as a reflected image, the existing social status[5].
On the other hand, such an antagonism exists even between the concept of law and the positive law[6].

After these brief preliminary considerations, let us continue by sketching some ideas about the state of law. It is a notion both ambiguous and frequently used.

In itself, the concept of a state of law is a notion which does not require demonstration, even if it was understood as a postulate[7] and even if its significance comes to be overloaded[8].

A judgement of this kind is wrong, because this way the myth of the state of law is transformed into its opposite, so that: "through it, the state acquires a legitimacy which, before, was unconceivable; to make use of it without discernment would mean to leave this new legitimacy with no control at all"[9].

The accent placed upon the state of law coincides, in some way, with a kind of reflux suffered by the democratically logics[10]. A concept like the state of law creates, under these circumstances, a reaction of legitimacy granted causing grave consequences[11].

About the contents of the concept "state of law", some preoccupation exists about the fact that, at its appearance, as a type of state, the state of law benefits from the initial pre-supposition that it is a reality which includes and overwhelms the state understood as a police force[12].

Consequently "The state of law represents precisely the state where its own power is limited, through a triple and simultaneous phenomenon the protection granted to individual liberties; the recognized supremacy of nature; the diminishing of the state's competencies"[13].

Undoubtedly the state of law is the type of state to which the fidelity is constituted by the liberty of the individuals, the state of law itself being considered as a perspective upon limited liberties within power itself "a conception of democracy and of the minimal role of the state"[14], possibly realized through the jurisdiction control of the respect shown to hierarchy, and where the constitutional control exerted upon the laws is not rigid, but a much larger one, that would concern, apart from the discussed constitutional text, the principles which, philosophically and politically, are supporting the state in its grounds.

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[4] See: G. Burdeau, *Droit constitutionel et institutions politiques*, L.G.D.Y., Paris, 1966, p. 34 and fol: "In reality, the state is a form of Power, and the Power is not a force that is a stranger to the law", cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 101.

[5] Respectively, as long as it expresses the moral conscience of justice, as it is represented in society.

[6] "... It is true for us to state that the law limits the state, in this limiting we should not see a barrier which, edified once and for ever, would oppose to any initiative from the state. It results from the fact that governing authorities could only meet welcoming it the concept of law which is valid at the group's. Level but it does not at all forbid them to make use of their prestige or wisdom in order to elevate the governing people towards a more fruitful understanding of the necessities of political life" (G. Burdeau, *op. cit.*, p. 37).

[7] Like an axioma

[8] See, to this purpose, Jacques Chevallier, *L'Etat de droit*, în Revue du droit public, Tome cent quatre, p. 314.

[9] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 101.

[10] See: R. de Lacharrière, *Opinion dissidente*, Pouvoir, n^0 13, 2-end edition, 1986, p. 157.

[11] "What the citizen would never have allowed to people, it (the state, our note) accepts under the normative form. The normative technique is the opium of freedom" (Walter Leisner, *L'Etat de droit - une contradiction?* în *Recueil d'études en hommage à Charles Eisemnann*, Editions Cüjas, 1974, p. 69).

[12] "The political state is the one where the administrative authority might, following its own will and with a more or less complete freedom of its decisions, be able to apply any measures it thinks useful to be taken by itself, in order to strive against circumstances and to attend, at any moment, the purposes it has chosen" (Carré de Malberg, *Contribution à la théorié générale de l'Etat de droit*, Sirey, Paris, 1920, reed. *Curs*, 1962, p. 488, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 102).

[13] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 102.

[14] Idem, *op. cit.*, p. 103.

The basis of the state of law is the particularistic way of designing the individual's own relationship with the state. This means that the state of law is relying upon the statement of the individual's primordially within society. The state itself remains only the instrument through which the individual is accomplishing himself in reality. In the centre of this edifice, an organized entity, are placed the human rights, because the purpose of the social organization is not the order only, but primordially the defence of the individual's natural and imprescriptibly rights.

A control exerted upon the moralized norm is the mean through which is instituted a certain form of reciprocity between the state and the individual.

The concept of the state of law is, indeed, seen as a perspective upon the use and status of liberties. In its contents, democracy is understood as a consensus, the state being the "juridical perfection" of the Nation that is to say it is translating its will in juridical terms.

But the nation is no more one of the state's constitutive elements, it is now the purpose itself of the state's existence.

The constitutional norm is superior to the other norms because it expresses much more clearly the nation's will than these.

This signifies the proclaiming of the autonomous will of individuals and the superiority of the nation's will over the one of the state. As a conclusion, the essential nature of democracy is consisting in its consensuality. About the perspective upon the role held by the state, some precisions are imperative concerning the distinction of the state from the civil society.

This is the distinctive asset of the state of law through which is established the limit, for the state, of its power to rule over society. So, the individuals' freedom, and the one of the groups, is defended, by reserving to the state minimal possibilities of intervention upon social activities. Therefore, the asset of liberalism for the state of law, which is founded upon two principles: liberty and equality.

We believe that we could discuss about the cult vowed to law only if we would recognize to the state the feature of being a power phenomenon.

The action of a power is done in virtue of an existing title and, in the state of law, the power's limiting is due to pass through the juridical norm[15]. Yet, the state continues to be a power phenomenon.

But the state of law distinguishes itself from a totalitarian state through its preoccupation about the contents of the juridical order. While the totalitarian state is concerned only by the form of the juridical order, the state of law preoccupies itself also about the contents of the structured juridical order.

On the other hand, according to M. Prélot[16] for totalitarian states, the state is a transcendent, supreme and exclusive reality, which denies the existence of the rights that are intrinsic to the inner self of the individual, which even denies individuality as an autonomous reality, reserving to the individual only a role of social atom, to whom the state magnanimously concedes rights.

Two tendencies were present about the understanding of the connection between state and law:

- the dualism state-law admits the superiority of law, either because the state is self-limited, or because of its hetero-limiting;

- the unitary tendency for state and law.

Therefore exists the necessity of briefly presenting the dualist doctrine of state and law.

Essentially, this doctrine holds that state and law are distinct entities, the relationship between them having to by explained in regard to priority. This raises the following questions:

- is the state prior and superior to the law or is the law prior and superior to the state?

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[15] "In the state of law, the limiting of power passes through the juridical norm, it is precisely through their transformation into subjective rights that individual liberties will be preserved, it is precisely through proclaiming the national sovereignty that the democratical principle will be guaranteed, it is precisely through the essor of trading and industry that civil society will be protected from the risks of the state's intrusion. So, the state of law involves an absolute trust vowed to the law" (J. Chevallier,*L'Etat de droit, Montchrestien*.,Paris,1999 p. 369).

[16] In: *La théorie de l'Etat dans le droit fasciste*, Mélanges Carré de Malberg, 1933, reed - 1977, p. 435 and fol, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit*., p. 106.

- and if the law is created by the state the natural question is raised: could the state obey to the law?

limitation's amplitude is variable, according to the source of the law: either inside of the state or outside of it[17]. In the first case, the limit results from a process of becoming objectively real through which the law goes, and out of its separation from the sovereign will. In the second case, the limiting results from the state's incapacity of mastering the profound mechanisms through which is formed the sentiment that the juridical obligation has to be assumed.

The following question had imperatively to be asked: could the sovereign state be limited? That is to say: could the submission of the state to the law be conciliated with the state' sovereignty understood as a principle? To it are given various answers:

- sovereignty does exclude the submission of the state to the law; or
- to make the state obedient signifies to render obsolete the state' sovereignty[18].

The these opinions, the answer was that "Both perspectives are extremist ones". Sovereignty should not be exacerbated since the state is only a mean but not a purpose, but yet should not be denied, because the respective mean would become, this way totally deprived of efficiency[19]. Sovereignty, however, has its objective limits which are created by the state's own nature, finality and mission[20].

As a conclusion describing reality, state and law are not into an absolute relationship of subordination one to the other, but they only "mutually recognize each other"[21], the state of law presenting itself as an often fragile and unstable equilibrium between these two realities, which are distinct, but complementary to each other[22].

The auto-limitation theories, totally opposite to the one of the state of law, do elucidate the relationship between state and law by raising the question of priority, considering that the state is prior to the law. This self-limiting of the sovereign state through the law it creates was considered to be achievable by two ways:

a) **the German doctrine**, issued from Hegel's philosophy, is sustained by high representatives like Ihering[23], Laband[24] and Jellinek[25].

This doctrine relies upon the concept of the **German unity**. The unique source of law reside in the fact that the state is the only owner of the constraint force, that the state's power has no limits as the state is the only entity able to establish the limits of its power's exertion, wherefrom the possibility of the state to modify the juridical norms. Despite all these, the law comes to be a real constraint for the state because:

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[17] "This limiting has a variable amplitude, following the place where is sited the source of law: inside of the state or outside of it. In the first case, the limit could only result from a process of objectivizing the law. Though created by the supreme will, law acquires a consistency of its own and by it, comes to empeach the state. In the second case, the limiting is issued from the fact that the state, even when it searches to appropriate the law and by this to become its exclusive author, it still does not master the profound mechanisms through which is formed the sentiment of the juridical obligation" (J. Chevallier, *op. cit.*, p. 347-348).

[18] F. Geny, *Science et technique en droit privé positif*, 1914-1925, Leon Duguit, *Traité de droit constitutionel*, 1927-1930, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 108.

[19] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 108.

[20] "There are objective limits for the state' sovereignty, limits which derive, like sovereignty itself, from the state's nature, from its finality, from its mission. It is precisely the aggregate of these limits which from the law to which the state is submitted" (J. Dabin, *Doctrine générale de l'Etat*, Bruxelles, 1939, p. 128).

[21] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, loc. cit.: "The error of those who see an irreconciliable contradiction between sovereignty and the state's submission to law is of conceiving the state and the law as two realities absolutely external one to the other, when, in fact, they are mutually recognizing themselves; the state is the expression of the concept of law agreed at that moment, and it acquires legitimacy only in regard to this quality, while it is only through the state that law gains its full efficiency"

[22] " The state of law is only an unstable equilibrium, often fragile, between two forces which struggle for power in the society and the element of ideality which is constituted by the law" (François Rigaux, *Introduction à la science du droit*, Editions Vie Ouvrière, Bruxelles, 1974, p. 40).

[23] *L'evolution du droit*, translation in French, Paris, 1901

[24] *Droit public de l'Empire allemand*, translation in French, Paris, 1901

[25] *L'Etat moderne et son droit*, translation in French, Paris, 1911.

- the state could not suppress the juridical order itself;

- the state is obliged to act upon the ground of a juridical title;

- the social pressure exerted on behalf of the concept of law which sustains the system of pertaining to a state is, ultimately, another constraint.

Obviously, all happens within the self-limiting theory, so the barriers placed in front of the state's power are very fragile.

The concept of the state of law pre-supposes a certain contents for the structured order, and a certain level of trusting to the stability of this order. Through these, it differentiates from the self-limiting theory, which reserves to the structured order the features of being indifferent on one hand and fluctuating on the other hand;

b) **the French doctrine**. Its outstanding representative, Carré de Malberg, comes to the conclusion that there is no power, beyond the sovereign state, able to limit it juridical; the characterization of the state-law relationship ought to start from this postulated datum.

On the other hand, he considers that the state is the unique source of law, rejecting any conception that could find to the law another ground. For this thinker, the state of law results from the fact that any power which creates and makes use of a juridical rule in order to be born and to subsist is, compulsorily, a power limited through the law[26].

The same perspective considers the juridical order as being absolutely necessary to the state and having to fulfil a series of requirements: to be stable, coherent and hierarchies.

The hetero-limitation's theories are the ones which conceive the law as an extrinsically mean of limiting the state's power[27] so proclaiming the existence of a ground for the law situated outside of the state[28] wherefrom the law finds itself to be as well prior and superior to the state.

Thus, the source of law springs from outside of the state itself, so the state could only be the law's interpreter, but might never institute the law's grounds[29].

About the objective law's theory, we may state that, step by step, it is taking possession of the place held by the natural law's theories. Leon Duguit considered that the autonomization's theories are crippled because, as long as the state is able to modify, whenever it wants, the juridical order, it could not be, itself, submitted to the law. Therefore, the relationship between the law and the sovereignty of the state is functioning for the benefit of the state, because sovereignty makes of the state the absolute master of legislation.

According to Duguit, the solution resides in the sovereignty's denial: it does not exist. What really exists is only the belief vowed to sovereignty, a belief which is contrary to the creation of the state of law[30]. Duguit states that this concept is relying upon two fictions: the moral personality owned by the state and the fiction of subjective rights[31]. So, the ground of limiting the powers of the governing officials resides, according to Duguit, in the objective law, understood as an external limit for the state, since this law's origin is the social reality, and thus it is understood as a social fact. Therefore, the conclusion rises that this kind of law is spontaneously formed within the people's conscience[32]. The state does not create the rule, it only transcribes it, expressing it’s normatively[33].

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[26] În *op. cit.*, p. 209.

[27] See, to this purpose, Jacques Chevallier, *op. cit.*, p. 352.

[28] Excepting its creation through the state itself

[29] God, Nature, Society.

[30] "If the grounds of the law could not be established outside of its creation through the state, then we should proclaim, like a postulate, the existence of a law which is prior and superior to the state"(L. Duguit, *op. cit.*, p. 2).

[31] "This dangerous perspective relies, for Duguit upon two fictions: the one of the state's moral personality and the one of the subjective rights. The former makes of the state an entity which is distinct from its members, who have a will of their own, when the reality is that collective persons do not have a juridical existence that would be independent from the one of their constitutive elements. The state is only an abstract entity, placed behind the persons who are governing, so that the impersonated constraint could by made use of. The alleged subjective right of the state, held over the public power, is, by itself, void of any contents" (Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 100).

[32] See L. Duguit. *op. cit.*, p. 128.

[33] The constitutive rules draw their compulsory force not from the fact that they are issued by the state, but from the objective norm which is their support" (Jacques Chevallier, *op. cit.*, p. 355).

Unexpectedly, it is precisely these theories which lead to the state's reinforcement and provide to it a new type of legitimacy[34]. This means that the state becomes intrinsically legitimate, instead of being legitimated by an outside ground.

As a conclusion, the extremism wowed to the sovereignty's denial produces an effect which is contrary to the initial purpose.

Let us mention the normativistic theory too. According to it, we might speak of an identity between state and law. In time, the necessity naturally appears of overcoming the dualism between state and law. It ultimately made of them two distinct realities. Another trend is to identify the state with its juridical order, reaching to the conclusion that: "the essence of the state is normativity" and that: "the state of law is represented by the application norms, it is the frame which someone establishes and the other fulfils, into a conjuncture which does not mean the partition of Power, but its elimination".

As a theory, normatively is placed between two hypostases to choose between:

a) to state that the Constitution's ground is an extra-juridical element; or

b) to state that the fundamental norm is only a hypothesis, an indifferent postulate.

The first possibility brings normatively to the situation of denying itself, while by the second possibility, stating that the fundamental norm is only a hypothesis, normatively proves itself to be as well inadequate and dangerous.

We might conclude that the normative theory of state and law is false because it distorts the two concepts, it alters the notion of juridical order, it does not take into account the real nature of the state, it contradicts the logics of the democratically organization and is unable to contribute to the constitution of the state of law and to its motivation.

The matter of the structure for the state of law, starting from the question of the human rights - which is the central axis of the construction itself of the state of law[35] raises the problems of the juridical order's structure and of the jurisdiction's control. To this aim, the requirements are: the structuring of the juridical order and the jurisdiction control.

Thus, any juridical norm needs to be supported, in its existence and validity, by a superior norm. This way conceived, the juridical order is hierarchies, through the institution of vertically superposed levels, placed in a relationship of subordination, descending from the Constitution and the constitutional laws towards the other hierarchy’s laws and normative acts. This edifice is created for the purpose of limiting the usage of power.

In this context, we may easily deduce that the state of law: "requires that the state itself and the public communities should be, under the same title as the private persons, submitted to the positive law"[36]. The hierarchization itself would be, this way, completed by the jurisdiction's control.

This latter should be realized through the independent mechanism created to be able to withdraw from the juridical order the uncomforting norms. These mechanisms suppose the existence of independent and irremovable spreaders of justice[37], with the precision that, in the totalitarian states, oppression finds itself supported by the juridical norms. Into this context, we may state that, in this respect, the state of law is the state which: "might appear in front of its own

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[34] "Paradoxically, the hetero-limiting theories lead to the state' strengthening and provide to it a new legitimacy: they indeed try to present a state which is held as bounded by the law and, by this fact, sheltered from any contestation possible; the cult of the norm, through its projection extends itself to the state, which is considered to be the norm's faithful and obedient transcriber". (Idem, *op. cit*., loc. cit.).

[35] "It barely matters if the human rights should have as ground the theory of natural rights or that they might be placed at the level of the first rank among the superior norms of the positive juridical apparatus. The essential thing is that they should be effective" (Jean Louis Quermonne, *Les regimes politiques occidentaux*, Editions du Seuil, 1986, p. 11, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit*., p. 113)

[36] Idem, *op. cit.*, 1999, p. 113.

[37] "Only a judge that would be independent and irremovable could satisfy to these requirements. Without the jurisdictional sanction, the norms' hierarchy is void" (Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit*., loc. cit.).

tribunals like any other private person"[38] having undressed its former asset of being a sovereign power.

The jurisdiction control is realized as well for the administrative acts and for the laws. Two systems ensure the jurisdiction control for the administrative act: the ordinary courts and the administrative ones.

On the other hand, the jurisdiction control of the law's constitutionality underlies the subordination of the laws and of the other normative acts to the Constitution, so being ensured their conformity to it[39].

But what is the degree into which the state of law does indeed provide the fulfilment of the *desiderata* which motivate its substance and its existence? The acute necessity of norming everything, the expansion of the state's power, the transition from the norm -behaviour to the norm as a frame, the distortions created by the media, all these lead to a new questioning of the state of law's grounds, concerning its capacity to respond or not to the *desiderata* expected from it.

Next, we will try to outline a possible reconfiguration of the state of law, enabling it to respond to the new realities.

Naturally, the question rises: how the state of law should react in regard to the expansion of power?

According to W. Leisner[40], the state of law does limit the power through normativity, so becoming a sort of juridical perfectionism. It is necessary to see if the extension of normativity is or not facilitating the extension of power, since law itself is the expression of power[41]. As a conclusion, in spite of all its limiting effects, the state of law does not totally eliminate the phenomenon of expansion.

Another question raising is: if the state of law does render the law sacred does it not, through this, stigmatise freedom? The juridical norm is not just a rule of behaviour it is, simultaneously, the instrument used for its own. Legitimacy, thus, in our days, the state's power does intervene into domains that were forbidden to its action until recently. So is rendered possible the passage from the minimal state (the state of law) to the state of totality[42].

The law becoming sacred, the state, by the same hand switch, also renders sacred the power, which makes the state of law "to ape its own grounds, to become its own opposite"[43]. The remedy to this trend would be: "a re - staining of individualism which might restore, for this system, loaded with internal contradictions, it's initially owned logics"[44].

The matter of the juridical inflation[45] is raised about the galloping evolution of the social life, which legislatively, has a dynamic effect upon the law[46]. The legislator is tempted by the

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[38] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 114.

[39] In the absence of this control the instituted power is no more limited, about the state of law we might under these circumstances, state that it no longer exist.

[40] Leisner W,L'etat de droit-une contradiction, in Recueil d'etudes en hommage a Charles Eisenmann, Editions Cujas, Paris,1974,pag. 69 .

[41] "Its extension (of the power our note) on behalf of a more and more complete, more and more exhaustive state, does mask a sort of expansion of power, grasping to master the social life" (J. Chevallier,. *L'etat de droit-une*,Montchrestien, Paris,1974,pag 69 p. 375).

[42] So is denied the liberal principle of this matter, a fact which: "made us consider freedom as a source of inequality and insecurity" (Jean-Pierre Henry, *Vers la fin de l'Etat de droit?*, in Revue de droit public, 1978, p. 1209; See also Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, 1999, p. 116).

[43] Idem, *op. cit.*, 1999, loc. cit.

[44] Ibidem, *op. cit.*, loc. cit.

[45] Legislative inflation signifies a lack of equilibrium between quantity and quality (value). This disbalance is created by the uncontrolled growth of the number of normative acts, in conjunction with the lowering of their quality level (to be evaluated through their applicability, their degree of social acknowledgement and by their usefulness).

[46] "Normativism produces, ultimately, one result only: it transports onto the legislative field the adaptative dynamism of the Law: otherwise, this dynamism would have caused the state to act by the administrative way. On the whole, there will be no more on less changes, following the nature of the state where we might find ourselves: a state of law or an «arbitrary» one: the difference lies only in the state's organs that would be obliged to provide justice in these cases. The *rechtsstaat* (the state of law) does not, in its essence, have to guarantee its predictability through a normative stillness. What the citizen might gain in front of a tightly bounded administration, he might as easily loose with a legislator

phenomenon of juridical inflation, because legislation is a profitable show for politicians. The issued law becomes "some kind of electoral attitude, which tends to solve nothing, except for the image problems of its promoter"[47].

For theoretically, assuring equality in front of the law, the tradition has created a juridical fiction that was needed: this is the principle: *nemo censetur ignorare legem*[48].

This principle is now discussed in a tight concern about the galloping velocity of normative activity. The debate points out two new realities: *the proliferation of new rules of law* and *the effective impossibility of acknowledging the whole corpus of the law*. Due to the revision of the Constitution in 2003, when a term was established until the law's enforcement, this principle was slightly taken into consideration, a fact which hardens, for the subjects of law, their obligation and responsibility of being duly aware of the law's contents.

These two trends grow more and more hardened. Their concrete consequences are:

a) distortions do appear in the application of the rules of law;

b) lacks of equilibrium do appear between the contents of norms and the means used for their application; and

c) the multiplying of tolerances within the oeuvre of law's application.

Among the causes of juridical inflation, we might identify:

a) the political show above mentioned, with its whole retinue of consequences; and

b) the aging of the social corpus which asks for the multiplying of juridical rules, causing the considerable amount of application means, leading to the exaggerated development of administration. The juridical inflation ultimately creates an inflation of administrative organs.

BIBLIOGRAPHY:

1. Dogaru Ion, *Elementele dreptului familiei*, Editura Themis, Craiova, 2001;
2. Dogaru Ion, *Drept civil român. Idei producătoare de efecte juridice*, Editura All Beck, Bucureşti, 2002 (author and coordinator);
3. Dogaru Ion, *Filosofia dreptului. Marile curente*, Editura All Beck, Bucuresti, 2002;
4. Dogaru Ion, *Soberania - qual rumo? (Suveranitatea - încotro?)*, Mackenzie, Sao Paulo, Brasilia, 2002;
5. Dogaru Ion, *Drept civil. Teoria generală a obligaţiilor*, AllBeck, Bucureşti, 2002 (first author);
6. Dogaru Ion, *Drept civil. Ideea curgerii timpului şi consecintele ei juridice*, Ed. All Beck, Bucureşti, 2002 (author and coordinator);
7. Dogaru Ion, *Drept civil. Teoria generală a drepturilor reale*, Ed. All Beck, Bucureşti, 2003 (first author);
8. Dogaru Ion, *Drept civil. Succesiunile*, Ed. All Beck, Bucureşti, 2003 (author and coordinator);
9. Dogaru Ion, *Drept civil. Contractele speciale*, Tratat, Editura All Beck, Bucureşti, 2004 (author and coordinator);
10. Dogaru Ion, Stănescu Vasile, Soreaţă Maria Marieta (coordinators), *Bazele dreptului civil*, vol. V, *Succesiunile*, Editura C. H. Beck, Bucureşti, 2009;
11. Dogaru Ion, Olteanu Gabriel Edmond, Săuleanu Lucian Bernd (coordinators), *Bazele dreptului civil*, vol. IV, *Contracte speciale*, Editura C. H. Beck, Bucureşti, 2009;
12. Dogaru Ion, Drăghici Pompil (coordinators), *Bazele dreptului civil*, vol. III, *Teoria generală a obligaţiilor*, Editura C. H. Beck, Bucureşti, 2009;
13. Dogaru Ion, Popa Nicolae, Dănişor Dan Claudiu, Cercel Sevastian (coordinators), *Bazele dreptului civil*, vol. I, *Teoria generală*, Editura C. H. Beck, Bucureşti, 2008 ;
14. Dogaru Ion, *Drept civil. Teoria generală a actelor juridice civile cu titlu gratuit*, Editura All Beck, Bucuresti, 2005 (author and coordinator);

«unleashed through its norms. The more accentuated predictability would be at the basis, weaker odds we should have to find it at the top. (W. Leisner, *op. cit.*, p. 71, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 116).

[47] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, 1999, p. 117.

[48] Nobody could rely upon not being aware of the law.

15. Dogaru Ion, *Teorie şi practică în materia titlurilor comerciale de valoare,* Ed. Didactica si Pedagogica, Bucuresti 2006;
16. Dogaru Ion, *Teoria generală a obligaţiilor comerciale,* Editura Didactica si Pedagogica, Bucureşti, 2006;
17. Dogaru Ion, *Teoria generală a obligaţiilor comerciale. Jurisprudenţa*, Editura Didactica si Pedagogica, Bucureşti, 2006;
18. Dogaru Ion, *Teoria generală a dreptului,* Editura C.H. Beck Bucureşti, 2006 (coauthor);
19. Dogaru Ion, *Drept civil. Partea generală,* Editura C.H. Beck Bucureşti, 2007 (firts author);
20. Dogaru Ion, *Drept civil. Persoanele,* Editura C.H. Beck Bucureşti, 2007 (firts author);
21. Dogaru Ion, *Filosofia dreptului. Marile curente,* ed. 2-a, Editura C. H. Beck, Bucureşti, 2007 Adăugită, pentru că la analizele privind gânditorii din prima ediţie, se adaugă Nice şi Heideger;
22. Dogaru Ion, *Teoria generală a dreptului,* Ediţia a 2-a, Editura C.H. Beck Bucureşti, 2008 (coauthor);
23. Popa Nicolae, *Teoria generală a dreptului,* 8 ediţii, prima în anul 1992, ultima în anul 2005, Editura All Beck;
24. Popa Nicolae, *Partidele politice,* Editura Monitorul Oficial, 1993 (coauthor);
25. Popa Nicolae, *Sociologie juridică,* Editura Universităţii Bucureşti, 1997 (coauthor), reeditată în anul 2003;
26. Popa Nicolae, *Filosofia dreptului. Marile curente,* Editura All Bech, 2002, 600 p. (coauthor) - Lucrare laureată cu premiul "Simion Bărnuţiu" al Academiei Române şi cu premiul "Istrate Micescu" al Uniunii Juriştilor din România;
27. Popa Nicolae, *Drept civil. Ideea curgerii timpului şi consecinţele ei juridice,* Editura All Beck, 2002, (coauthor);
28. Popa Nicolae, *Pentru o teorie generală a statului şi dreptului,* Editura Arvin Press, 2003 (coauthor);
29. Popa Nicolae, *Drept civil. Contractele speciale,* Editura All Beck, 2004, (coauthor);
30. Popa Nicolae, *Jurisprudenţa Curţii Constituţionale şi Convenţia Europeană a drepturilor omului,* Editura Monitorul Oficial, 2005 (coauthor);
31. Popa Nicolae, *Teoria generală a dreptului* (Sinteze pentru seminar), Editura All Beck, 2005 (coauthor);
32. Popa Nicolae, *Jurisprudenţa Curţii Constituţionale a României şi Convenţia Europeană a Drepturilor Omului,* Ed.Monitorul Oficial, 2005 (coauthor);
33. Popa Nicolae, Le rapport juridique; Despre constituţie şi constituţionalism, vol. Liber Amicorum, I. Muraru, Ed. Hamangiu, 2006 ;
34. Popa Nicolae, *Filosofia dreptului. Marile curente,* Ediţie adăugită, Ed. C.H. Beck, Bucureşti,2007.