THE SCHOOL OF LAW IN CLUJ (I)

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Abstract

In the post-war period the law was characterized through an obscuration of the scientific creation within the juridical plane as well as through a cleavage with the Western juridical doctrine. The scientific creation was almost entirely affiliated to the doctrinarian orientations of the Soviet Union and the pursued finality was to find some solutions of implementing the principles consecrated by the Soviet Union's theory and judiciary practice, within the Romanian theory and juridical practice. The circumstances have determined an eloquent decline of the Romanian juridical doctrine as well as the depletion of the content of the published juridical works. This decline was only contracted starting with 1964, when the Romanian communist regime in power raptured ideologically from the communist regime in power in the Soviet Union. The Romanian juridical doctrine recommenced the contact with the Western juridical doctrine, especially with the French, Italian, German and Anglo-American ones which it started to use as a source of inspiration and at the same time as a model. In the period following the 1989 revolution, the conditions of Romania's transition to a market economy were created, the free circulation of goods being able to manifest itself to its fullest, thereby new domains of assertion of the Romanian juridical doctrine were opened, which took on new valences and an ascending trend of development. The elite of the Cluj jurists of the XXth Century is susceptible to classification based on only one criteria, that of the domain in which they spent their scientific research activity and regarding the development of which they brought on their own contribution.

Key Words: *law, doctrine, jurisprudence, legal institution, branch of law, legal trends, law in Cluj, law school.*

JEL Classification: [K10]

1. Points of Reference Concerning Legal Thinking in Cluj, During the Second Half of 20th Century

Legal thinking in Cluj during the second half of 20$^{th.}$ century was especially known for its fundamental way to bring to debate both the Romanian doctrine and jurisprudence, its representatives being concerned with the deepening and open-minded conceptions in approaching the legal theory to contribute to a better understanding and explanation of one of the most important dimensions of social life: the normative dimension characteristic to the legal autochthonous phenomenom.

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The doctrinaires in Cluj had constant concern in studying law, both in its general and particular features, and also could explore the identity, desirability, the place and role of law related to human condition and the world, and they wrote solid works in the field of theory of various branches of law, legal methodology and epistemology which mean a tight argumentative relationship among ideas and reflections regarding the relationships of complementarity, interdependence and interference of formal legal sources and hypostases of justice done under `the letter and spirit of the law`.

In the Romanian legal world, towards the end of the inter-war period within the academic space in Cluj the careers of the second generation of law theorists and practitioners came into being that eventually formed a legal elite including teachers, magistrates, lawyers, notaries, and legal advisers capable of imparting, more or less with comparative purposes, norms of professional behavior and standards of scientific research with a view to universal exigencies regarding the evolution of law and justice, the jurisprudence experience as well as changes occurred in legislation. The tradition of previous legal experts made the appearance in juridical literature of some valuable works of interest, the jurists in Cluj being at the basis of some theoretical contributions regarding the development of the Romanian contemporary law.

During the post-war period, teachers in legal higher education kept the tradition of schooling in Cluj, but also tried to doctrinary adapt themselves to the evolution of modern ways both in public and private law, teaching, besides the traditional subjects, a series of new disciplines and publishing studies, lectures, trateases, monographies, in all the branches of law. Some of the well-known jurists at the university in Cluj during the first decades of the post-war period, succeeded in studying law or get improved abroad, proving, by their professional training, a solid legal culture created round the idea of the Romanian law as having a Roman origin. Among those who graduated, many had the opportunity to become known as magistrates and lawyers or worked in important administrative and political structures of the state, proving, besides competence a certain *elegantia juris at Alma Mater Napocensis*.

The Romanian law during the post-war period was characterised by a blurring of original scientific creation, joining both the theory and legal consecrated principles in the Soviet Union. This decay was finally stopped only beginning with 1964, when the Communist regime having a leading power in Romania, succeeded in breaking off ideologically from the Communist regine in the Soviet Union. Thus, the Romanian legal doctrine has successively come into contact again with the Western legal doctrine, especially with the French, Italian, German, and Anglo-American ones and began to use it both as source of inspiration and model.

During the historical period the Romanian society underwent after 1945, characterized by the existence of the Soviet communism, the science of the

Romanian law suffering because of the political and ideological interferences, was severly impregnated by the Marxist-Leninist dogmatism. Under the leveling impact of political changes, on a legislative level, this period coincided with major mutations as far as law principles and the role of justice in society were concerned. The dialectical and historical materialism submitted law to some constraints specific to the organisation principles in society based on State property upon means of production goods and services. Like in any other social order, the communist epoch covering almost five decades, had both winners and losers, this also meaning social benefits especially for population, and material advantages for the Party nomenclature, and, on the other hand, numerous economic and social deficiencies which ruined especially the interests of the intellectuals, namely the anti-communist part, but also of other social groups exposed to communist abuses. However, the system of socialist law to which important jurists took part, who admitted the State implication into the minute regulation of social life, certified the very existence of a social state in the name of the interests of the working class, the constitutions adopted during communism establishing that the State law is a fundamental principle in the socialist society.

During the famous trials in the 50's of the previous century the legal regime of popular democracy made possible, supported by the so-called comrades' courts, the purging from the state institutions, of those persons who were declared "improper" by the Stalinist nomenclature and the existence of the concentrationary system that worked accusing class enemies and convicted the adversaries of the communist power. Thus, the Stalinist political regime established by means of the law that: "the judges should defend the interests of the working class, to protect the new democracy, and punish the people's enemies". Under these circumstances, at the same time with the reform project in justice, many prosecutors of the 'old regime', but also lawyers who had sympathized with it since illegality, enlisted in the Communist Party to serve the guided justice, that would also impose its ethics for those who worked in law.

In the first part of the communist epoch, dominated by abuses and breach of constitutional rights, there was a complete gap between the law theory and practice. This seriously decreased the conscience of the superiority of justice. The quality of law underwent a sudden deterioration, and the impartiality of justice being given up it led to the lack of using the universal principles of the very idea of justice. The entire juridical system was submitted to statist conceptions and rebuilt according to the changes which took place the property forms transformed into socialist property. The main tendency was that of getting rid of idealist juridical theories, with a subjective character, in favor of the theses of socialist realism. Although the decisional factors during communism tried to minimalize the private law regulations, the doctrine and jurisprudence trying to bring to an agreement the civil legislation disposal with the dogmas of the epoch by means of some artificial solutions, and hybrid institutions, the Civil Code succeeded to exist. The specific

private law relationships continued to exist as well, in a truncated form, and a partially independent one, the functioning area being somehow restricted for practitioners and of expression for theorists within the private law.

Some jurists adapted themselves to the exigencies of the new law system, but others did not accept to apply the methods of the communist law and the forms of justice degradation. The compromise with communist ideology was a way to be saved and survive for some jurists who continued to teach at universities in Cluj. Older or newer jurists tried to keep the legalist spirit in Transylvania, in the circumstances when the new system need not exceptional jurists, so that many professional jurists were eventually marginalized or removed from the system of popular democracy. Despite all this, even during the years of communism the law school in Cluj succeeded in offering a favorable background for law research and became known because of its logical structure of law, the checking of reasons and fitness of legal norms, civic justice and improvement of organizing the legislation, thus, being part of the modern juridical thought trend. Law as a tool of disproving social contradictions, and discourse on juridical concepts served collective class consciousness connected to the social philosophy of the state meant to satisfy the requirements of new domains for regulating the citizens' needs. As a rule, the elder jurists in Cluj had a few attempts to oppose the juridical Sovietism. They were pleading for the normative settlement of law order and being implied, by joining other jurists in the country, to design a new national law system which, although dominated by the principle on united powers in the state and socialist legality, offered stability and safe law order. They also succeeded in introducing their own views in the law system, not only in its content but also in the legislative technique, unitary regulation, but also in agreement with the increasing role of the state and stultification of juridical initiative.[1]

After the resettlement of the Romanian administration and judiciary in Cluj, and of the university from the refuge, the law school in Cluj, reborn at the same time with the re-opening of the faculty of law, beginning with 1945-1946, took its debt to continue to share the fundamental ideas of its inter-war representatives, and establish the role played by each of them as far as law studies are concerned in their most exquisite form. Juridical determinism was specifically expressed, their creative interpretation helped to improve the quality of legislation and get rid of the deficiencies of the Romanian post-war law system.[2]

The legal institutions and branches of law underwent a process of reformation based on the Romanian law tradition, and the search for principles meant to improve the juridical doctrine, because of better knowledge regarding each branch of law. The subjects of the curriculum concerned with law taught in higher

[1] Colceriu, C., *Precursori, mentori, discipoli în elita juridică clujeană a secolului al XX-lea* in "Revista română de drept privat", no. 2/2016.
[2] Buzdugan, C., Colceriu, C., *Reflective patterns of Cluj Law School*, Magazine of Juridical Trend, Year XVII, Nb. 4 (59), 2014.

education institutions proposed study and research programs structured into three main groups: General Theory of State and Law, Juridical and Historical Sciences, and Branch Juridical Sciences. In the spirit of the epoch, there appeared new law branches: family law, labor law, financial law, co-operative law, economic law, etc.

2. Doctrinaires of Law School in Cluj: Gheorghe Sofronie, Erast Diti Tarangul, Victor Cădere, Tudor Drăganu

Professors Gheorghe Sofronie, Erast Diti Tarangul, Victor Cădere, Tudor Drăganu, Aurelian Ionaşcu, Ion Albu, Graţian Porumb, Ioan Ceterchi, Vladimir Hanga, Ludovic Biro, Constantin Stegăroiu, as teachers of law, or, often, also as magistrates or lawyers have developed the exigencies of the science of law, based on critical thought, and the way of expressing persuasively valuable ideas in the doctrine of Romanian law.

Lawyers in private law and publishers deeply concerned with the science of law approached with scientific objectivity complex aspects of juridical reality, the comparative study of legislation of various peoples, and gave solutions to problems in jurisprudence. The jurists' way of thinking was characterized by a kind of Atticism, their works being written following the ideas of measure, equilibrium, and system.

Knowing the law doctrines of the 20$^{th.}$ Century, strongly influenced by the natural law, the German historical law school, positivism, Marxism, the sociological theory, structuralism, Kelsian normativism, juridical existentialism, theory of the state law, but also legislative inflation and cultural relativism, made the jurists in Cluj to be constantly interested in studying the essence, content and form of law, as well as the axiological, teleological, and praxiological valences of the juridical phenomenon. Their interests were stimulated by various influences of some authors, such as Maurice Haoriou, Raymond Carré de Malberg, Marcel Planiol, François Gény, Georges Ripert, Jean Carbonnier etc.

The doctrine of the state law inspired the process of conceptual renewal of public law foundations as well as the debate on the state power being framed and limited by the law. The relationship between the state law and natural law was minutely studied by Ion Deleanu, one of the first theorists here who said that "the idea of state law is not specific German… Its ancient origin is the philosophy of natural law, and later in Magna Carta Libertatum (1215), The Rights Petition (1672), Habeas Corpus Act (1679), The Bill of Rights (1688), which although concerned with the protection of British citizens, also was meant to be submitted to universality and perenity."[3] I. Deleanu resumed that the state law is "a state in which the cult of law is exercised. Thus, the state law returns to the idealization of law. The essence of state law is normativism."[4]

[3] Deleanu, I., *Drept constitutional şi instituţii politice*, vol. I, Europa Nova, Bucharest, 1996.
[4] Deleanu, I., *Instituţii şi proceduri constituţionale – în dreptul român şi în dreptul comparat,* C.H. Beck, Bucharest, 2006.

The positivist thinking trend caused meditations on the part of doctrinaires in Cluj, especially under the impact of the juridical normativism, a conception belonging to Hans Keslen, the author the pure theory of law, according to which the science of law appears as a hierarchy of normative relationships, and not as a succession of causes and effects, as it happens in natural sciences. The reception of normativism was done especially surrounded by doctrinary explanations which considered that the essence of the state lies in normativity, and the rule of law supposes an awareness of the content of legal norms. Approaching the relations among legal norms that get validity from a superior legal norm, Ioan Albu, Graţian Porumb, Ioan Ceterchi, Aurelian Ionaşcu, Gheorghe Boboş took into consideration the limits of positive law that is not self-sufficient, underlying that it should be permanently linked with the fundamental principles regarding the understanding of law like a totality of norms independent of social circumstances. The idea of justice based on noticing and estimating facts and the objective character of truth and justice was interdisciplinary evaluated according to the thinking of rational law. The lawyers in private law in Cluj, fascinated by *pactum societatis* and *pactum subiectiones*, brought together legal institutions common to various legal norms, bringing doctrinaire arguments and debates on private property, the liberty of contracting, of association and disassociation, individual responsibility, etc.

A special interest was caused by discussing the deceleration of the meanings of law as found in the sociological theory by Leon Duguit, Eugen Ehrlich and Rudolf von Jhering, who considered that law was born during the fight among various social interests, and represents the fundamental device of social life. The influence of this theory could be found even in public law in the works of Erast Diti Tarangul, Ludovic Biro, Constantin Stegăroiu, Matei Basarab.

The department of constitutional law at the Faculty of Law in Cluj was led in the 40`s, 20$^{th.}$ Century by Gheorghe Sofronie (1902-1980), who graduated letters and law in Iasi, and was PhD.at the University of Bucharest with the thesis "The Principle of Nationalities in International Public Law" (1926); his thesis being published in the Annals of the Romanian Academy. After having attended some special courses as Rockefeller scholarship at the Institute of High International Studies in Geneva, as well as at the Institute of International Law in Paris (1926-1927), he was assistant professor at the Faculty of Law in Bucharest (1927), Reader (1928), an aggregate professor (1931), full Professor (1934) at the Faculty of Law in Oradea, and then an expert in international public law at the University in Cluj (1934-1946).

The result of his scientific research was found in the following volumes: *Contributions to the Cognition of the Society of Nations (1927), Contemporary Development of International Public Law (1928), The Principle of Nationalities in Public International Law (1929), The Trianon Treaty and the Revisionist Action (1933), Peace and Its Legal Organization (1934), National State and Revisionism*

Under the Nation Society Regime (1935), The Illegitimate Unilateral Denunciation of International Treatises (1937), La Position internaţionale de la Roumanie. Etude juridique et diplomatique de ses engagements internationaux (1938), Le facteur economique et le probleme de la Paix (1939), International Public Law Treaty. Principles, Institutions, Jurisprudence, New Tendencies (1940), International Public Law – Lecture. Systematic Notions and Ideas (1946), Governor` Responsibility in International Law (1946).

Investigating the nature of international law legal relationships George Sofronie stressed upon the necessity of admitting "the principle of nationalities, the very substance of the state, as one of the fundamental elements of international law", respecting the "principle of power equilibrium" according to which "the territorial expansion of a state cannot be accepted but to the limit when it begins to be dangerous for other states", and the importance of "peoples" rights to self-determination that brings the foundation of the state to the principle of collective will."[5] For improving the international law relationships he insisted upon the necessity of investing the states with legal equality to the international legal norm, stating that "inequality shouldn't influence law equality", but also the necessity that international legal norms be codified and established in treatises and international conventions.[6]

In his lectures on international law, George Sofronie analyzed the normative acts which governed the international law relationships during the inter-war period and the activity of international institutions meant to achieve their application. In his conception, the object of international law is that of "regulating general, common matters that interest civilized nations, granting liberties and the independence of each state, establishing international legal order by assuring the amiable development of disputes among states."[7]

The theory and practice of the principle of nationalities, competent organization and activity of Nation Society were approached in the lecture he had in Cluj. The themes within inter-state relationships, very appreciated in the epoch, were dealt with in his studies and works after 1936. In them he was concerned with the jurisprudence of classic international law, international legal acts and their juridical validity, regulation of international conflicts, international arbitration, persons and goods in international law, the state and its right to war, the right to peace, international regulation of war and of neutrality, solving of international disputes.

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[5] Sofronie, G., *Curs de drept internaţional (Noţiuni şi principii sistematizate)*, Academia de Înalte Studii Comerciale şi Inndustriale, Bucharest, 1947, p. 202.

[6] Idem, *Tratat de drept internaţional public, (Principii, instituţii, jurisprudenţă, tendinţe nouă)*, Editura Regele "Ferdinand I", Cluj, 1940, p. 38.

[7] Sofronie, G., *Tratat de drept internaţional public, (Principii, instituţii, jurisprudenţă, tendinţe nouă)*, Editura Regele „Ferdinand I", Cluj, 1940, p. 47.

His lecture on *International Law*, the first ample work by George Sofronie, appreciated with special interest in the academic world, was a bibliographical landmark and a starting point for theoretical debates and doctrinaire discussions in the Romanian legal literature and foreign literature of public international law. As far as the recognition of states was concerned, as an act of accepting them within the international law community, the theorist stated that "the act by means of which the third states accept to admit among them the new juridical organized group, to give rights and attributes of sovereignty, and thus international personality."[8] Interesting also is the meaning he gives to the colonial protectorate about which he notes that "when a state wants to keep for itself an exclusive political action, in an uncivilized country, lacking any kind of effective and lasting organization of public powers, and has no possibility to effectively occupy the wanted territory, this state concludes a treaty with local leaders, sends a couple of agents, its representatives, who settle there and wait for the moment of annexation that can be closer or farther."[9] Besides the interest for legislative codification and practice, George Sofronie paid a great attention to matters of Romanian diplomatic security, stipulations regarding the rights of Romania, the right of peace, customs of terrestrial, maritime, and aerial war. The author theoretically approached the relationship between public international law and inner law, co-operation among states in solving world matters, the defense of legality in international relationships, equality of rights, and constraint as a legal device of international organisms to guarantee peace, peace treatises, pacts and agreements concluded during the inter-war period. Knowing the difficulties, sensibilities, and especially the misunderstandings while the treaty is applied regarding minorities, George Sofronie stressed in his works the necessity of establishing an equilibrium between the minorities' rights and the protection of the national state, taking into consideration that by the violation of treatises "historically and legally concluded" "revisionism is the enemy of peoples' peace."[10]

As a follower of diplomatic arguments, necessary to avoid any world conflict he pleaded for an epoch of international law based on knowing and respecting legal norms. Being part of the Romanians with international views, such as N. Titulescu, P.P. Negulescu, G. Meitani, G. Plastara, V.V. Pella, as a member of the Social Romanian Institute, and of the Institute of Administrative Sciences, G. Sofronie will always be a name of reference within the public international law. The titles of his scientific contributions were published in *Dictionaire diplomatique*, published in 1952 by the International Diplomatic Academy in Paris. Besides the elevated style

[8] *Idem*, *Curs de drept internaţional (Noţiuni şi principii sistematizate)*, Academia de Înalte Studii Comerciale şi Industriale, Bucharest, p. 203.
[9] *Ibidem*, p. 384.
[10] Sofronie, G., *Principiul naţionalităţilor în tratatele de pace din 1919-1920: frontierele României sunt intangibile pe baza principiului naţionalităţilor; netemeinicia acţiunii revizioniste maghiare*, Editura Univers, Bucharest, 1936.

and well-documented of his documents, Professor George Sofronie also proved didactic talent and a way of working while debating during seminars of public international law, preferring to comment upon texts of international law according to their actuality and legal inner or international implications.

In the school of process civil law Victor Cădere (1891-1987) functioned as a disciple of Henri Capitant, who taught in Cluj civil procedure between 1934 and 1949. During his didactic career, he published *On the Authority of the Judged Fact* (1918); *Theorie et pratique de l'assurance de responsabilité* (1923); *The National Idea (1927); Treaty of Romaian Civil Procedure According to Unifying Laws, and Provincial Laws in Force* (1928/1935); *Questions juridiques et diplomatiques roumaine* (1936). Politically convicted in 1956, V. Cădere made up his mind to leave the country, and go to Paris, where he worked as Associated Professor at the University in Paris II. Later on, he continued to publish studies such as *La familie et la protection de l'enfant en la legislation roumain* (1970), *La Formation et l'evolution du droit roumain* (1972) and the monography *L'Economie planifiee et la familie en droit socialiste roumain*, with Rene David (1972). He was member of Comparative Legislation Society in Paris and of the "Henri Capitant Society for French legal culture.

For the study of civil procedure as a whole and the science of process civil law, Victor Cădere had in view the immanent state of civil trials and the jurisprudence generated by legislative realities, systematically approaching aspects regarding court organization, competence, legal actions, evidence, controversial debates, judgement, court decisions and ways of improving them, enforcement of decisions, rules of forced execution, forced execution of real and movable estate, special execution. "The laws of procedure, Professor Victor Cădere, stated, are the main device in law; without them the existence of a society would be chaotic. The laws of procedure which are in the public consciousness assure the respect for the right without fighting; thus, citizens' lives become peaceful, and the society that naturally adopts in its morals the respect for procedural forms, proved that it reached a superior level of civilization. The laws of procedure are therefore the mirror of a civilized society, closely following the evolution of humanity in its struggle for liberty. Procedure, says Ihering, is the twin sister of liberty."[11]

An emblematic personality of law in Cluj in the middle of the 20th century was Erast Diti Tarangul, PhD. Professor at the department of administrative law, the Faculty of Law, a member of the Royal Institute of Administrative Sciences in Romania. A law graduate in 1920, Erast Diti Tarangul defended his doctoral thesis entitled "The Legal Character of European Republics" at the University of Cernăuți, in 1924. He got a scholarship at the Faculty of Law in Bordeaux in order to get specialized in the history of constitutional and administrative law. Being appreciated by Professor Roger Bonnard for his work "Annulment in the

[11] Cădere, V., *Tratat de procedură civilă după legile de unificare şi legile provinciale în vigoare*, 2nd Edition, Tipografiile Române Unite S.A. Bucharest, 1935.

Contentious – France and Romania", but also for some other of his published studies, Erast Diti Tarangul had a rapid academic ascension in Cernăuţi, and then in Cluj, where he was chosen Dean of the Faculty in 1947. Political circumstances led to his dismissal in 1948, and from higher education in 1951. More than a decade, he was a legal expert at the Regional Union of Consumption Cooperatives.

Erast Diti Tarangul published 59 studies concerned with administrative law, as Duguit's Theory on The Relationship Between Law and State (1928), Treaty of Romanian Administrative Law (1947), etc. They were published in the country and abroad in Leipzig, Paris, Zurich, Bruxelles. He wrote many studies in the periodicals of the time, such as "The Romanian Pandects", "Archive of Public Law", "The Public Law Journal", "Revue international de la théorie du droit". Having as a starting point the norms and relationships of the administrative law, and knowing the Romanian jurisprudence as far as the administrative contentious was concerned, he wrote about the organization of public administration, the system of administrative law, government acts, administrative acts, the validity conditions of administrative acts, application of administrative acts, administrative contracts, legal regime of public services, administrative liability, the principle of legality in the Romanian and French administrative law, the discretionary power of administration, etc. The administrative contracts, underlined E.D. Tarangul, are submitted to a power regime to get general interest or for the proper functioning of public services.[12] Analyzing the public function regime, he said that the legal status of the civil servant was an objective situation because "the state unilaterally determines the civil servant's status, being equal for all of them also by permanent disposals.

The consequences of the objective character of the civil servant's status are the following: the civil servants' right to demand the modification of the status is recognized; the state, in its turn, can modify the norms which regulate the status whenever it chooses, and can do it in the same unilateral way in which they were settled; by means of contracts, the rights and obligations settled for the civil servant cannot be derogated.[13] "The theory of the juridical act formulated in the public law by Léon Duguit, developed by Bonnard and Jèze, was appreciated by Diti Tarangul as being the creation on which the theory of the functions of the state are based.[14] In the doctrine, Erast Diti Tarangul contributed to the development of the science of administrative law relationships and law practice to the perfection of the whole apparatus of administrative power, taking into consideration the relationship between legality and opportunity of the administrative acts, and the theory of administrative contracts.[15] Unlike Romul Boilă's federalist position, who supported

[12] Tarangul, E.D., *Tratat de drept administrativ român*, Glasul Bucovinei Tipography, Cernăuți, 1944, p. 477.
[13] *Ibidem*, p. 243.
[14] *Ibidem*, p. 30 and the next.
[15] Tarangul, E.D., *Principiul legalităţii în dreptul administrativ roman şi francez*, in „Revista de Drept Public", 1929, p. 69.

the necessity of administrative decentralization, Erast Diti Tarangul considered that" a complete independence of decentralized authorities would bring anarchy in the state. The central authorities have the right and even the duty to have control upon activity and decentralized authorities."[16]

Born in the county of Năsăud, in a family of Transylvanian intellectuals, Professor Tudor Drăganu (1912-2010) was in the 30's of the previous century, an eminent student of the Faculty of Law. His father, the philologist Nicolae Drăganu, was one of the inter-war Rectors of the University of Upper Dacia.

His didactic-academic activity began after having graduated law in 1934, at the department led by Professor Gheorghe Sofronie. As assistant professor at the Faculty of Law in Cluj, where in 1936 he got a PhD. in law, he was guided by Professor Erast Diti Tarangul. After a series of specialization periods in the country and abroad, in 1941 he becomes Reader, and in 1946 he was full Professor in constitutional law.

As a trainer in public law, Tudor Drăganu was one of the most appreciated professors in Cluj. In this quality, he consecrated his entire activity to constitutional and administrative law for six decades, offering hit disciples the respect for the values of Parliamentary democracy, for the importance of the law, and the supremacy of the Constitution as a fundamental source of the state law. From the beginning of the seventh decade of the previous century, he advised doctoral papers, scientifically coordinated the perfection of juridical training in the theory of the constitution and theory of administrative acts.

Tudor Drăganu published more than 130 studies, volumes and treatises, wrote many articles, comments, reviews, and had initiatives and legislative proposals. He was especially interested in the comparative study of the legislation of various peoples, and the complexity of the state phenomenon. His scientific work is impressive not only because of its volume, but also because of the big numbers of themes approached, creativity, solid ideas and arguments, both in the Romanian constitutional and administrative law, and the comparative law. In constitutional law, he examined many aspects beginning with the meanings and principles of state law, considered methodological references for building it, and the control of the constitutionality of laws. As far as the constitutionality of the procedure and the limits in the revision of the Constitution are concerned, Tudor Drăganu had many opinions and suggested explanations, considering that in the system of modern constitutions, which consecrates the principle of the peoples' sovereignty, this sovereignty exercised by its the representative organs, and referendum the people's liberty to decide the future of its own destiny and its political status cannot be limited by anything and, therefore, not by declaring some disposals of the adopted constitution as being non-revisionable."[17] On the

[16] *Idem, Tratat de Drept Administrativ Român*, Glasul Bucovinei Tipography, Cernăuţi, 1944, p. 24.
[17] Drăganu, T., *Drept constituţional şi instituţii politice. Tratat elementar,* vol. I, Lumina Lex, Bucharest, 2000.p. 55.

other hand, in his view there are certain disposals and constitutional values which cannot be submitted to revision, such as the constitutional provisions regarding the national, independent, unitary, and indivisible character of the Romanian state, these are not the expression of aspirations which could be considered through a different viewpoint by the future generations, but they represent the solemn proclamation of a perennial reality, and from their historical content the Romanian people will never turn away, so that they should be considered as being non-revisionble even if such a text is not found in the Constitution as such."[18]

The theory of the administrative act as seen by Tudor Drăganu (1959), according to which the administrative act is the main legal form in the activity of public administration that is the result of a specific will, unilateral and submitted to a public power regime, as well as the control of legality of juridical instances, by means of which are born, modified and extinguished rights and obligations, kept its validity and actuality. Within the administrative law, Tudor Drăganu also established four categories of exceptions from the principle of revoking administrative individual acts, acts by means of which a contractual relationship was agreed upon, acts which caused the appearance of a subjective right, granted by a legal norm in force with the irrevocability of the basic act, acts materially achieved[19] in case of administrative acts got by means of fraud or malicious ways, the exceptions disappearing and the acts becoming revocable.

His vast juridical work, mainly concerned with public Romanian law, include various doctrinal contributions: *Lecture of Constitutional Law*. *Lecture on State Law (1948), Constitutional Law (19720*, as well as works of reference (monographies): *Acts of Administrative Law (1959), Administrative Laws and Assimilated Facts Submitted to Court Control Under Law 1/1967* (1979); *Structures et institutions constitutionelles des pays socialistes européenes*(1981); *Supremacy of Law* (1982); *The Beginning and Development of the Parliamentary Regime in Romania till 1916* (1991); *Introduction in the Theory and Practice of State Law* (1993); *Constitutional Law and Political Institutions* (1998); *Declaration of Human Rights and its impact in Public International Law* (1998); *Comparative Constitutional Law* (1999); *Treaty of Parliamentary Theory and Practice* (2003); *Free Access to Justice* (2003).

The Atlantic Chart, Philadelphia Declaration, United Nations Chart, Universal Declaration of Human Rights adopted by the General assembly of UNO Decembre 10 1948 have in Professor Tudor Drăganu's opinion[20] a fundamental importance. In his viewpoint – appreciated by the doctrine as being correct[21] –

[18] *Ibidem*, p. 56.
[19] Drăganu, T., *Actele de drept administrativ*, Editura Ştiinţifică, Bucharest, 1959, p. 202-203.
[20] Drăganu, T., *Declaraţiile de drepturi ale omului şi repercusiunile lor în dreptul internaţional public*, Lumina Lex, Bucharest, 1998, pp. 11-12.
[21] Roş, N., *Protecţia socială necontributivă înfăptuită de administraţia publică în România*, Risoprint, Cluj-Napoca, 2013, p. 25.

The Declaration of Rights were meant to be considered intermediary steps in the process of law formation, process that represents – as the author says – "a bet made with the future", their progressive tendency of being embodied as obligatory norms, thus the declarations gain a great value. In the exegesis of juridical phenomenon, he stressed upon the values, constitutive dimensions, and the role played by law in social life. In 1967, T. Drăganu initiated the law of juridical control of normative acts, legislatively happening for the first time for all the socialist states. As a theorist of constitutional order, and critic of Romanian constitutionalism, he approached the constitutional law as "ensemble of legal norms which regulate the form of the state, of the government, organization and functioning of the Parliament, its relationships with other state organs, including disposals with any other object, if consecrated by the text of the constitution."[22] In the doctrine, he expressed solid positions on state law that in representative democracy is the state organized on the principle of separation of powers, based on real independence of justice and a legislation meant to promote the citizens' fundamental rights, and general human rights and liberties. He originally approached the matter of the nature of law acts as part of the actions defined as externalization of human will provided by legal norms which may cause, modify, or extinguish certain law relationships. The evaluation of intention made him reach the conclusion of the existence of law acts, which, in his opinion, are always illicit, resuming that: "Just because the manifestation of a will does not have legal effects only if it appears under law conditions, law acts cannot be but illicit. An illicit law act cannot be accepted as a manifestation of will that would be in contradiction with the interests of the state could not have juridical value.[23] Certain authors' conceptions, who pretended that the intentional element of the law act does not necessarily imply a juridical intention, considering as sufficient the practical intention of the parties who are following a certain result or target protected by the law without foreseeing or knowing the juridical effects given by the law to their manifestation of will, were considered by T. Drăganu as inacceptable, he arguing that "an essential distinctive feature of will in the legal act is the very intention of parties to establish a legal relationship, and on the other hand, what distinguishes the law act from other acts is the fact that the intention to produce legal effects should not only exist, but also be, according to the law, a condition of the efficiency of the act."[24]

Another contribution of Tudor Drăganu to legal literature regards the classification of legal facts grouped into acts and material legal facts, and the latter into licit and illicit functioning only for those facts which are the result of human activities. Tudor Drăganu defined the state as an institution "having as support a group of people settled in a delimited space, capable of determining by

[22] Drăganu, T., *Actele de drept administrativ*, Editura Ştiinţifică, Bucharest, 1959, p. 226.
[23] *Ibidem*, p. 24.
[24] *Ibidem*, p. 25.

itself its own competence, and organized in order to exercise activities that can be legislative, executive, and jurisdictional"[25] and extended in the doctrine the concept of "juridical mechanisms to build the state law", being considered as such control of law constitutionality, control of legality in the activity of public administration, independence of justice, existence of the institution ombudsman. The state law will have to be understood as a state that, organized based on the principle of separation of powers, by means of which justice gains real independence and following by legislation the promoting of human rights and liberties, assures the strict respect for its regulations by the ensemble of its organs during their entire activity.[26]

The value of Tudor Drăganu's legal work, including very many scientific papers at conferences both in the country and abroad, was internationally acknowledged. Since 1980, he was member of the International Institute of Administrative Sciences, and invited as Associated Professor to the Faculty of Law of the Pantheon-Sorbonne University, in Paris, a quality awarded by decree by the President of the French Republic.

An expert in European constitutionalism, Professor Tudor Drăganu conducted Romanian delegations to the conferences of European Constitutional Courts in Rome, and Vienna and other capital cities of European countries. He was also part of the Romanian delegation at conferences in Canada and USA as the The Conference of European Countries for Security and Cooperation, organized in Helsinki (1975) and Vienna (1976). Between 1967-1980 he was elected vice president and then president at the Committee for legal, parliamentary and human rights matters of the Interparliamentary Union, fighting for interparliamentarism as a form of inter-statal colaboration, a climate of peaceful co-existence among world states.

Conclusions

In the Romanian legal world during the second half of the 20th Century the school of law in Cluj continued to be an important research center, of creative analysis and innovation in all branches of law. After the return of the University from refuge and re-opening of the faculty of law, beginning with the academic year 1945-1946, the idea of a legal school in Cluj was reborn, first and foremost because of the teachers who had assimilated most of the theoretic and methodological directions inaugurated by its predecessors. Thus, they taught new branches of law besides traditional ones, branches dealing with the specific of traditional disciplines and norms for the dynamic of the national law system. What the predecessors did stimulated the creative ambitions and caused the appearance of many valuable scientific works, which contributed to the development of the Romanian juridical culture in the 20th century.

[25] Drăganu, T., *Drept constituţional şi instituţii Politice*, Editura Universităţii Ecologice „D. Cantemir", Târgu-Mureş, 1993, p. 28.
[26] Drăganu, T., *Introducere în teoria şi practica statului de drept*, Cluj-Napoca, 1993, p.17.

In the exegesis of the legal phenomenon, the representatives of juridical thought stressed upon the values, dimensions, and structural role of law in social life and knew how to approach various complex aspects of legal reality. They minutely worked at the comparative study of legislation with various peoples and offered, as required by universal exigencies, their experience in jurisprudence and universal changes in the evolution of law, and solutions to matters that appeared in jurisprudence.

The contribution of each member to the development of law studies taken in according to the originality of the theoretical discourse, methodological accessibility to ideas indicated not only the critical thought, but also a kind of Atticism of juridical structures. The intellectuals we are talking about here, such as Gheorghe Sofronie, Erast Diti Tarangul, Victor Cădere, Tudor Drăganu, Aurelian Ionaşcu, Graţian Porumb, Ioan Ceterchi, Ion Albu, Vladimir Hanga, Ioan Gliga succeeded in creating a law school that has become in many respects a point of reference for the Romanian law thought. Their works were meant to notice the discrepancy between positivism and the theoretic character of law, between the proclaimed legal order and real order of things, contributing to the development of Romanian law for more than half a century. In the circumstances of law being submitted to the communist policy they had the mission of re-thinking law, private property always broken off from law, while the communist regulations supported state property in any form. Tudor Drăganu was the main adviser for many law texts and fundamental democratic laws, adopted by the communist regime. By its doctrinaire statute, the law school in Cluj represented the core of the theoretical perspective upon juridical reality, of transmitting its best ideas to the future.

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