

INDEPENDENCE OF THE JUDICIARY THROUGH A PHILOSOPHICAL PERSPECTIVE

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Abstract

This paper analyzes the importance of the principle of independence of the judiciary in a rule of law, but also the separation of powers, these two principles leading to an independent and efficient justice.

This study is based on a philosophical approach and perspective of the justice independence and separation of powers, but also how this principles are applied in Romania, considering accession at the European Union. The philosophical perspective has determined the detailed understanding of these two principles, thus observing their application during the existence of fortress-states, and now, when they are represented by national parties and institutions.

Justice is one of the most important thing of consolidated democracy, and that is why it is important to see the trajectory of the theory and how is applied today, given the constitutional mechanisms.

Keywords: *philosophy, law, rule of law, EU, separation of powers, state*

JEL Classification: [K10, K16]

1. Introduction

This paper is based on a brief analysis of the principle of the independence of the judiciary in a state governed by the rule of law, considering that the observance of the principle of separation of powers in the state automatically leads to the emergence of an independent and efficient judiciary.

The importance of this issue is paramount, given that the Romanian state is part of the category of consolidated democratic states, and respecting the independence of the judiciary by removing political pressure helps a democratic and European path. At the same time, in order to better understand the application of these two principles, it is necessary to analyze the course of the theory of separation of powers in the state and the independence of the judiciary in order to be able to answer our research question. The modern state was organized by guaranteeing the freedom of citizenship, and this guarantee

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can be done by increasing the judicial efficiency itself, but also the limits of the three powers.

At the same time, the issue is likely to better understand the concepts of separation of powers and independence of the judiciary, as independence is often understood as a privilege granted to magistrates, and the separation of powers is understood as a total separation of the three powers. collaborative relationships between them. Observing the historical course of these two principles, but also their application at the level of different states, it must be emphasized that the independence of the judiciary is in fact an obligation of magistrates to be impartial and to have the power to deal with external pressures from other powers. , and the separation of powers in the state actually means the collaboration between the three powers, so that the rule of law itself is respected. Ultimately, these two principles are meant to respect and guarantee citizens' rights and freedoms, such as the right to a fair trial and the like.

We will also notice that the theories around the separation of powers in the state have a different meaning than the previous ones, and this fact is due to different events in democratic states, but also to the emergence of different constitutional mechanisms: legislative delegation, dissolution of Parliament, control of constitutionality laws.

Throughout the two principles it has encountered different forms, as I mentioned due to the emergence of political parties or various constitutional mechanisms, but also due to the emergence of European Union. The latter was created in the post-World War II period, to initially strengthen economic cooperation and later to uphold democratic values: the rule of law, effective justice, democracy. The European Union has helped various European countries to improve their judicial practices, but also to promote democratic principles, especially when politics seeks to put pressure on the judiciary. Therefore, this paper will address the independence of the judiciary from a European perspective, in order to analyze how European bodies can create an effective environment for the judiciary.

2. The rule of law, the separation of powers in the state and the independence of justice from a philosophical perspective

2.1. The emergence of the rule of law

Both the principle of separation of powers in the state and the concept of the rule of law have their origins in the distant past, making their appearance since the construction of the first states. In a first analysis, we tend to believe that the two concepts deal with different situations, but in a detailed analysis we can conclude that the theory of separation of powers in the state is in fact a mechanism of the rule of law. Therefore, in order to be able to analyze the

separation of powers in the state, we also need to analyze the concept of the rule of law, given that this is a feature of any consolidated democracy.

Although the notion of “rule of law” has its applicability in many democratic states, being a normative concept, it is in fact a doctrinal creation, given that it has created extensive discussions around it. Since the seventeenth century we can see that in England there is talk of the rule of law in England, there was then the phrase “rule of law”, the author of this idea being Albert Venn Dicey. At that time, the interpretation of this phrase was related to the laws adopted by the state, which was obliged to adopt them according to the principles of law. The importance of justice was also discussed, as it has the power to overturn all decisions that were taken according to the rules made by state institutions that did not respect the principles of law.¹

Turning our attention to the history of the rule of law, we will see that it was also talked about in the philosophy of natural law, or even in the Magna Carta Libertatum, the Petition of Rights, Habeas corpus and the Bill of Rights, which did not talk about the rule of law itself. as we know it today, they focused on protecting citizens from possible arbitrary actions by state institutions.² It is important to note that this term is a translation of the German word *Rechtstaat*, later developed by R. von Mohl, FJ Stahl and Gneist, the latter emphasizing that no one is above the law, not even the executive itself. As mentioned earlier, the rule of law has emerged from a desire to emphasize the rule of law and to understand its importance in democratic states. For a rule of law to survive, it is essential that state institutions respect the freedoms of citizens, especially those who have a close relationship with security and justice, ie respect for the Constitution, and another aspect is the exercise of power in a certain way. organized by each institution.

2.2. *The origin of the principle of separation of powers in the state*

The principle of the separation of powers in the state has become a rule of all liberal democracies and, in particular, arose from the desire to be a guarantee of the freedoms and security of citizens in their relations with the state. Most constitutionalists say that this principle has appeared since the Age of Enlightenment, when the king of France and Navarre, Louis XIV, was in power, being a retort to all tyrannies and against absolute monarchy. Given the idea that Louis XIV was guided by, “The state is me” („*L'etat c'est moi*”), and the fact that the king had full power over the state, and the citizens were deprived of their rights and freedoms, the appearance The principle has helped them to change the behavior of citizens, so that they understand that power in the hands of one person means, in fact, the lack of civil power. (Deleanu 2006, p. 74)

¹ General information about the European Union, https://europa.eu/european-union/about-eu-in-brief_ro, accessed 15 March 2022, 18:35.

In the following we will approach different perspectives of philosophers who were concerned with the issue of separation of powers in the state, perspectives that later helped to consolidate the rule of law through the perspective of the principle of separation of powers in the state. (Muraru, Tănăsescu 2005, p. 268-269)

2.3. Aristotle's perspective

However, if we look at the state organization during the Anchovies, we will see that the organization of the states at that time was based on the three key institutions. One of the most important philosophers of ancient Greece, who founded political science, Aristotle, through his work “Politics” determined the role that the city played in that period. At that time, in ancient Greece, Athens or Sparta were small city-cities in size, but the political, religious and cultural worlds collaborated so that the cities prospered. As mentioned earlier, Aristotle is the founding father of political science, emphasizing that political science helps to create, preserve, or even reform states and political systems. Thus, throughout his life, he was passionate about everything that means the life of citizens and the importance and responsibilities of institutions in the city. His work has been structured in eight books, and in his turn, he tries to explain what the community and institutions of that period looked like. Aristotle considered that the politician, the politician at that time and the legislator are the ones who take care of the city, and for the good functioning of the state it was necessary an act to be guided, ie the constitution, the latter being characterized as the method by which those who live in the city can organize and live together.²

2.4. Plato's Perspective

Another philosopher who lived in ancient Greece, Plato, who was also Aristotle's teacher, analyzed the institutions of the cities, noting that their activities were different, divided into three categories. At that time, the institution of the Senate was the one that had legislative power, being composed of 360 senators, elected by the citizens for a term of one year. It had the power to adopt acts for citizens. Very interesting is his observation that “the law is not the work of people, its content being determined by the social environment in which a particular human community lives,” which shows that the law is actually what the actions and needs of each citizen. The executive power was also in the hands of the magistrates, and the judiciary was exercised by the courts. However, it should be noted that what was happening in ancient Greece

² Aristotle's Political Theory, <https://plato.stanford.edu/entries/aristotle-politics/>, accessed 18.05.2021, 20:52.

was not necessarily a separation of powers, but only a division of prerogatives between different institutions, especially since those who were part of the Corps of Magistrates could also have been part of General Assembly, for example.

2.5. Montesquieu's perspective

In my opinion, the one who laid the foundations of this principle was Charles Louis de Secondat, Baron de la Brede et de Montesquieu, being the one who followed the principle “le pouvoir arrete le pouvoir”. In 1748 he published the book “De l'esprit des Lois” which analyzes both the theory of government and the theory of separation of powers in the state, and as for the last theory, he considers that “political freedom is found only in moderate governments. It does not exist unless it abuses power, but it is an eternal experience that any man who has power is tempted to abuse it: he goes as far as finding barriers. Virtue itself needs limits. In order not to abuse power, power must stop power by ordering things.

He recognizes the three powers, and the core of the theory is that it is forbidden for a person in power to be in another power. (Ionescu 2008, p. 264-265) That is, he refers to the fact that those who are part of the legislature do not have the right to apply the laws, the executive does not have the right to change the laws, and the judge has only the role to interpret the laws, without him being able to create the law. So, at first glance, we can already see a difference in the separation of powers in the state applied today, given the institution of legislative delegation, for example. Moreover, Montesquieu offers a sense of freedom, namely that citizens have the right to do something that is not against the law, as long as the law is not tyrannical. It is a novelty from a philosophical perspective, given that other philosophers did not place so much emphasis on political freedom, but on individual freedom. Another novelty is that, in addition to defining powers, Montesquieu pays close attention to the ways in which power is exercised: those relating to civil law”. Compared to Aristotle, who believed that power should be divided between institutions but could be handed over to a single person, Montesquieu was of the opinion that political freedom would be excluded if power were in the hands of a single person”.

The French Revolution helped to understand that power is part of the sovereignty, offered by the citizens to the authorities, so that the citizens are represented in the best conditions. At the same time, in Montesquieu's view, if the judiciary were to interfere with the legislative power, the rights of citizens would be violated, given that the judge would also be a legislator and would adopt laws at will. Also, given that the legislature consisted of two entities, it is possible that one would intervene with its right of veto over the other, if necessary, and the legislature would be overseen by the executive branch. (Muraru, Tănăsescu 2005, p. 269-270)

As a preliminary conclusion, we can see that the theory of separation of powers in the state has changed over time, especially as society is constantly changing. We have seen that, although there has been no explicit talk of a separation of powers, since ancient Greece, political scientists have observed institutions with different powers, but they did not consider that these institutions should be represented by different people, for example. With a more in-depth understanding of the concept of state, we can observe a paradigm shift and conception, with Montesquieu believing that the separation of powers in the state led to the elimination of tyranny. (Dănișor, p. 391)

Thus, the separation of powers in the state in the conception of philosophers was either a struggle for freedom against forms of absolutism, this being Locke's vision, or the separation of powers in the state was a critique of the doctrine of natural law, Montesquieu's vision. (Ionescu 2008, p. 272-273)

3. Consecration of the principle of independence of the judiciary

History has shown the importance of the relationship between the rule of law and the balanced separation of powers that leads to the recognition of the independence of the judiciary. Moreover, few states have managed to survive without respecting the principle of separation of powers in the state, given the power that belonged to a single institution, for example. For example, in nineteenth-century France, due to the permanent regime changes and the late emergence of the Republic, there was an almost total subordination of the judiciary to the other powers. An example of this is the “*riferé législatif*” procedure, a law that lasted from 1790 to 1837, which stipulated that judges must be in constant contact with the legislator in order for the latter to interpret the law or to adopt it. a new law. 11If we look at the American state, we see a theory about the importance of the independence of justice of the prestigious jurist Alexander Hamilton, in the work “*Federalist Papers*”. In his paper he argued mainly for the independence of the judiciary from the other two branches, and a second conclusion was that the judiciary should have the power to repeal laws that are inconsistent with the US Constitution. So, we can see that in addition to the idea of the independence of the judiciary, something new has come, that of the control of the unconstitutionality of the laws. As for the independence of the judiciary, Hamilton considered it to be that weaker power, because he did not have the power to change or enforce the laws, but only the power to judge, and this may not be enough.

3.1. Revision of the Constitution

We hear more and more people discussing in the public sphere the independence of the judiciary and the fact that the interference of the legislative and executive powers undermines this principle. Judicial independence is a topic

that has always aroused the interest of both constitutionalists and other researchers, given that it is one of the overriding principles for the rule of law. Before briefly analyzing the situations that brought to the fore the subject of the independence of the judiciary, we will make a brief description of everything that means judicial authority in Romania.

As we know, the Romanian state has had a difficult course in terms of its history, given that it has had various democratic regimes, including the undemocratic one. Even if there was no talk about the independence of the judiciary in Romania during 1861-2003, we will see that the importance of many of the judicial institutions was discussed.

The Romanian Constitution was revised in 2003, but it was not the first attempt of its kind. The years 1997-1998 meant for many parliamentary parties the desire to revise the Constitution adopted in 1991, but there was no real change, given that it was not long before the adoption of the Constitution, and the main constitutional realities did not they could speak. Some constitutionalists believe that this early desire to revise the Constitution stemmed from a desire to seize citizens on their side, given that citizens were not yet educated with democratic levers, such as a referendum. However, the year 2003 did not take long to appear, and the desire of many of the parties led to the creation of a referendum, where many citizens participated, out of the desire, we believe, to learn the democratic exercises.

With the revision of the 2003 Constitution, the judiciary has become more autonomous in its relations with the other two powers, given that Article 124 stipulates that judges are independent and Article 133 shows the role of the High Council of the Supreme Court. The judiciary, to be a guarantor of the independence of the judiciary.³

3.2. *Laws of justice*

In addition to the Romanian Constitution which stipulates the judicial institutions and the role they play in society, there are also various normative acts that are specific to this power. The judiciary has undergone various reforms over time, including changes from 1990 to 2000 which were a period of adjustment to democratic principles and, in particular, to the idea that we want to join the European Union.⁴

Very important for the Romanian state but also for its consolidation, is the accession to the European Union. This approach was started in 1995, when

³ The importance of the independence of the judiciary, https://ibn.idsi.md/sites/default/files/imag_file/10-11_19.pdf, accessed May 17 2022, 00:45.

⁴ Cristian Ionescu, „Is it still appropriate to revise the Constitution?”, <https://www.juridice.ro/339492/mai-este-oportuna-revizuirea-constitutiei.html>, accessed 20.05.2021, 14:30.

Romania completed the first pre-accession stage, ie the submission of the requesting state application. Nine years later, the Romanian state managed to become an observer state, meaning that it could receive information on European legislative proposals, and in 2005 Romania's accession was approved by the European Parliament, with 497 votes in favor and 93 against.

Accession to the European Union has meant, first and foremost, many reforms so that the state complies with Article 2 of the Treaty on European Union. Thus, one of the conditions for accession was a reform of the judiciary so as to eliminate corruption and, in particular, interference by the other two powers. Thus, the reform in the field of justice meant the adoption of a package of laws that were adopted in 2004 and subsequently amended in 2005, Law 303/2004 on the status of judges and prosecutors, Law 304/2004 on judicial organization and Law 317/2004 on the Superior Council of the Magistracy.

The changes brought by this package of laws have been crucial for accession to the European Union, given the state of the justice system until then. Until 2004, the recruitment of magistrates was done only with the consent of the Ministry of Justice, and the appointment to management positions was made by the Superior Council of Magistracy, but only at the proposal of the Minister, and the judicial inspection was carried out within the Ministry of Justice. As for the Prosecutor General, he was appointed by the President of Romania on the recommendation of the Minister of Justice. Indeed, the Superior Council of Magistracy existed in Romania, but it had only a formal function, because it was headed by the Minister of Justice himself.⁵

3.3. *Power relations*

According to the Constitution, “Justice is unique, impartial and equal for all.” It is carried out by all courts: judges, tribunals and courts of appeal. Also, as far as the judges are concerned, they are independent and are subject only to the law, being appointed by the President of Romania. Given that the role of the Superior Council of Magistracy is to be the guarantor of the independence of the judiciary, it has the power to “propose the appointment of judges, promote, transfer and sanction”. As for prosecutors, they work under the authority of the Minister of Justice, who have the power to defend the rights and freedoms of citizens. We can already see the relations between the three powers, relations that result from the very definition of the principle of separation of powers in the state. Therefore, it is very important to note that the independence of the judiciary does not mean the total separation of this power from the other two, given that the separation of powers does not

⁵ Brief history of relations between Romania and the European Union, <https://tinyurl.com/y6r9j8hj>, accessed May 20 2022, 16:45.

indicate a total separation, but there must be mutual control between institutions so as not to abuse power.

The relationship between Parliament and the judiciary can be seen in the very adoption of laws in the field of justice, such as Law 303/2004, 304/2004 and 317/2004 or even the adoption of the Criminal and Civil Codes or the Codes of Civil and Criminal Procedure governing the judicial procedure. An important task of the Parliament in terms of relations with the judiciary is the appointment of members to the Superior Council of Magistracy. According to Article 133 of the Constitution, “14 members elected by the general assemblies of magistrates are validated by the Senate and also the Senate appoints 2 representatives of civil society.” However, we must mention that the judiciary has no power over the legislature, because the courts do not have the power to control the constitutionality of laws, because the Romanian state has a specialized body, namely the Constitutional Court, which is not part of any power. (Danileț, p. 7-8)

Regarding the relations between the executive and the judiciary, we can observe a rather strong relationship of subordination, especially since the President is the one who appoints the judges, indeed, at the proposal of the Superior Council of Magistracy. In addition to the President, the Minister of Justice also contributes to the creation of this report, especially since the “recommendation of the Minister of Justice, the Superior Council of Magistracy must appoint or promote all magistrates, and last but not least, the Minister of Justice is the one who issues the opinion. for the criminal investigation against a magistrate”.

We have briefly analyzed all the relations between the three powers, and we can see a fairly strong control from the executive, a control that has begun to acquire more and more negative meanings, if we look at the latest changes.

Any society that is democratic is organized according to the principle of separation of powers in the state, but this does not mean that they are separate, but that they are obliged to work together for the best possible state organization. With regard to the independence of the judiciary, this means, first and foremost, a guarantee for citizens that the legal act will be respected by all state powers. The independence of the judge means that he must remain objective in all his cases, as he is the guarantor of all civil rights and freedoms. In addition to all these aspects, the judiciary must act as a “buffer” in relation to other powers, as it is the only authority that has the power to control the legality of administrative acts and, above all, to ensure the rights of citizens. (Vieriu, Vieriu 2005, p. 619-622)

4. Independence of justice at European level

The European Union was built on democratic values, including the guarantee of rights and freedoms and the rule of law.⁶ These principles are part of the European identity, and any state that considers joining the European Union must respect these principles, consolidating its rule of law, as it was in the case of Romania. (Muraru, Tănăsescu 2005, p. 595-596) In order for democracy to focus on European societies, they need to have good, independent courts so that they can guarantee respect for citizens' rights and freedoms. (Carpă 2011, p. 100-105)

For the European Union, the rule of law is the cornerstone of a consolidated democracy, because it has an impact both on the state institutions and on the life of every citizen, because the abuse of power that the state authorities tend to have can be prevented. It is considered that the greater the respect for the rule of law, the more trust the citizens have in state institutions and, we will note, that this aspect can be seen in the case of Romania, given the latest events related to the independence of the judiciary. At the same time, the rule of law helps European states to be able to hold accountable those lawmakers who draft laws against the rule of law and to observe how fairly the laws are enforced.

We can see that during the accession process, the fight against corruption and the reform of the legal system played a key role. Thus, all institutions have had to adopt various mechanisms to combat corruption and, in particular, to respect the rule of law. We must not forget that in 2004 the so-called “package of laws” was adopted, because the European Union noticed the various deficiencies in the legal system and, especially, the attempt to dominate the legislative and executive power. Even though accession was completed in 2007, Romania still had issues to be resolved in the judicial system, and because of this, the European Commission has set up a Cooperation and Verification Mechanism to address these shortcomings.

Turning our attention to the situation of the Romanian state during the accession period, we will note that in addition to the Cooperation and Verification Mechanism, the European Union registered the “Periodic Report on Romania's progress towards EU accession”, which during that period, the Romanian state progressed, the European Commission reiterated that there are still many shortcomings in the way of an effective judicial system. Although the condition for revising the Constitution has been met, the European institutions have noted a rather strong power over the executive branch, namely legislative delegation and government accountability. The way in which the executive branch is legislated, with the help of emergency

⁶ Law 304/2004, article 31.

ordinances, has led to a less transparent legislative process, as the consultation period has disappeared, thus creating legislative instabilities. It was found that the draft laws of that period were drafted without a complex debate, which raised questions, given that the laws had to go through various debates in order to adopt the most beneficial law. In a brief analysis, we can see that the Romanian state has tried to implement the principles of the state but still had to take measures to respect the separation of powers in the state and the independence of the judiciary.⁷

The European Union is based on various institutions concerned with the rule of law in European countries, one of which is the European Commission for Democracy through Law, also known as the Venice Commission. This Commission is an advisory body to the Council of Europe, which was set up in 1990 to monitor compliance with constitutional requirements. The Venice Commission offers recommendations, providing legal advice to states that need to amend their legislation in line with European standards. In view of this task, the Venice Commission has a number of objectives in mind, including the rule of law in European countries and the examination of problems in those countries due to the inefficiency of the institutions.

Another institution that oversees the rule of law at the level of all European states is the Group of States against Corruption, a Council of Europe body set up in 1999. Its main objective is to help European states improve their fight against corruption, thus monitoring compliance with Council of Europe European standards.

In view of the above, we see a joint action by the European institutions on respect for the independence of the judiciary, through the application of the rule of law by the Member States. The European Union is founded on respect for fundamental values and democracy, and considers that Member States must have effective legal systems in order for the Union to function properly. In all the acts and objectives of the European institutions, we note common points, namely: independence and efficiency are key elements in the rule of law. We see a Union based on the guarantee of fundamental rights and freedoms, which wants to increase citizens' trust in the judiciary.⁸

Conclusions

The paper tried to highlight the origins of the classical theory of separation of powers in the state and the principle of independence of justice,

⁷ Strengthening the rule of law within the Union - Action Plan, Brussels, 17.7.2019, <https://tinyurl.com/hk767xza>, p. 1, accessed May 20 2022, 16:50.

⁸ Periodic report on Romania's progress towards EU accession, 2004, <https://tinyurl.com/yhsnp25t>, pp. 12-40, accessed May 20 2022, 17:45.

analyzing the philosophical perspective of different philosophers, but also how these two principles are applied today in democratic societies, including Romania. Following the research conducted with the help of content analysis, we were able to highlight that the great theories had a major impact in the creation of the states of the world, given that democratic states are based on the very observance of fundamental rights and freedoms.

With regard to the independence of the judiciary, the central pillar is justice, and this is a cornerstone of enhanced democracy and, in particular, the rule of law. It is important to note that the independence of the judiciary is not a privilege granted to magistrates, but an obligation for them to apply the law in an objective and impartial manner and to resist external pressures. Indeed, the independence of the judiciary has taken various forms throughout history, but this is also due to the emergence of constitutional mechanisms and the fact that we can no longer talk about the tyranny of Montesquieu, for example.

The classical theory of the separation of powers in the state was approached differently by the great philosophers. If Aristotle emphasized the idea of sharing power between institutions, but power could be in the hands of one person, for example, Montesquieu ruled out the idea of power in the hands of one person and emphasized the political freedom gained by separating powers. Moreover, Montesquieu considered that those in the legislature did not have the right to enforce the laws, the executive did not have the right to amend the laws, and the judiciary did not have the right to create the law. This theory can no longer be applied at present, due to the constitutional mechanisms that have emerged: legislative delegation, control of the constitutionality of laws, motion of censure, assumption of responsibility by the Government, etc.

All these mechanisms have emerged in a society based on political pluralism and which emphasizes coordination and cooperation between powers, a principle that must be understood not as a privilege granted to the powers but seen as a guarantee of fundamental rights and freedoms.

A closer look at the classical theory of the separation of powers will show that both Locke and Montesquieu emphasize the idea that it is not enough just a separation of state institutions, but that this theory seeks to create a functional system that helps eliminate arbitrary power. Institutions tend to have it, so that state institutions act together. For philosophers, the judiciary was somewhat the only power that was strictly separated, having no contact with political power, being considered a protective power. It is interesting to note that justice was not necessarily seen as a power of the state, but in fact as a pillar between the state and the citizens, and perhaps we should see if this idea could be applied today.

As for the theory seen from Rousseau's point of view, he emphasized the idea of the sovereignty of the people, given that the legislative power was confused with the sovereignty and exercised by the people. This aspect, nowadays, can be transposed with the idea of elected people, given the fact that citizens elect their representatives, thus meaning the delegation of functions by citizens.

The theory of separation has undergone changes throughout history, given that society is constantly changing. Thus, in the conception of the great philosophers, the separation of powers was seen as a struggle against tyranny, or as a political freedom. Finally, all these aspects show us that what is discussed in Antiquity and in other periods, can be transposed but made improvements and this aspect is due to the very power of the people and the power of constitutionalism.

Regarding the Romanian state, the application of the two principles has known different situations, given that Romania has had both democratic and non-democratic regimes that have moved away from these two principles. The application of the two principles is different, given that society has evolved, political parties, interest groups and constitutional mechanisms have emerged. An example is the recent situation in Romania, which has raised questions about the application of the principle of independence of the judiciary. In recent years, we have seen a Romania based on the power of its citizens, with civil society becoming more and more involved in political life, trying to stop the desires of the executive or legislative power to constantly intervene in the independence of the judiciary. From 2003 until now, the laws of justice have been amended countless times, setting a precedent in the history of the Romanian state. With the accession to the European Union, we have had to make changes in the legal field, but the adoption of the three laws has raised questions from the European institutions. Changes have often been made either by assuming the responsibility of the Government or by adopting emergency ordinances, which are clearly criticized by the European institutions. Whether we are talking about government accountability or the adoption of emergency ordinances, these mechanisms lead to a lack of a complex debate and the emergence of non-transparency, so it remains to be seen whether these mechanisms could lead to a lack of trust in citizens. which has already been seen.

Accession to the European Union has had a major impact on the creation and observance of the rule of law. I noticed that before joining the European Union, the Romanian state did not stipulate in the Constitution the two principles. Or, for a democratic society, we consider it extremely important that these issues be mentioned so that there is no chaos on the part of the institutions. With the revision of the Constitution in 2003, the Romanian state

tried to resolve its constitutional shortcomings, but was still forced to fight corruption. For this reason, the European Commission has set up the Cooperation and Verification Mechanism, offering annual recommendations on the rule of law and, implicitly, the objective application of the independence of the judiciary. The analysis of these reports concluded that, although there have been good reforms in the field of justice, they have not been enough to truly respect the independence of the judiciary, with constant pressure from the executive or legislature, regardless of the period of government.

Therefore, the concept of “independent justice” can take two forms, namely: a) organization of powers through the separation of powers in the state - the purpose of the legal system is to prevent abuses by the other two powers. Mention should also be made of the relationship between the three powers (for example, the laws of the judiciary adopted by Parliament) and b) guaranteeing the fundamental rights and freedoms of citizens - the fact that judges are obliged to be impartial and objective provides guarantees to citizens respect for the right to a fair trial. Therefore, the judiciary, in the end, must be seen as an institution representative of the Romanian people, being the only one able to truly respect the freedom of the citizens.

Thus, all these aspects mentioned and, comparing the philosophical perspective of the two principles and their application in Romania, we see that there are many differences in conceptualization and application, but they all start from a common aspect: the independence of the judiciary is seen as a guarantee of fundamental rights and freedoms, and the separation of powers in the state must be seen as a cooperation between powers, so as not to lead to the abuse of power itself.

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