CONCEPTUAL DEVELOPMENTS REGARDING THE LAW-MAKING ACTIVITY

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Abstract
The characteristics of today's modern society are the increasingly accelerated rhythms of change caused by scientific and technological achievements and the magnitude of these changes. These characteristics are at the basis of non-permanence, the transition penetrating in depth all the existence and organization modes, these transformations being irreversible sometimes.
The most revolutionary change is the modification of the thinking system itself, moving from the Cartesian thinking (characterized by the biunivocal cause and effect relations) to the holistic thinking (of sensing the multiple and contradictory interdependencies), this leading to the emergence of new concepts: system, process, feedback (reversed connection), and dichotomies such as continuity-discontinuity, equilibrium-imbalance, necessity-chance. In such context, it was emphasized the need to take into account facts which apparently would be isolated, but which are in fact closely interconnected, thus being possible to understand the essence, nature and directions of change in order to integrate and synthesizes, coherently, facts, events, realities and consequences that at first sight would seem isolated from each other.
The existence of a series of causes and interdependent effects makes the concept itself a constant change, the stability being rather a particular case, the true state of things being that of the dynamic equilibrium, i.e. a continuous search for new equilibrium (the concept of dynamic equilibrium). Under these circumstances, it becomes obvious that the company's leadership can no longer evolve on the old bureaucratic, cumbersome, linear lines, imposing by itself a new approach of the society as a global system that includes all kinds of activities that take place in all areas and at all levels of the economic and social organization (approached as subsystems or partial systems).
Of course, the law, representing the legal framework within which all categories of political, economic and social activities are conducted, cannot

be isolated from this state of mobility of the society, as it is an integral part of the global social system, as a subsystem. The legislation activity represents a flexible framework, having the required capacity and plasticity to maintain the constant contact with the political, economic and social realities.
The law-making activity is becoming an ongoing process, whose authors are both the bodies empowered to legislate (mainly, the parliament) and the jurisprudence and doctrine, process components found in a permanent contact with the political, economic and social realities (including citizens and citizens' organizations). This way, at least in the field of law-making, we are witnessing a transition from representative democracy to participatory democracy.

Key words: *Law-making activity, conceptual developments related to the law-making process.*

JEL Classification*: K12, K2, K 31*

1. The characteristics of the contemporary modern society are the ever-accelerated rhythms of change determined by scientific and technological achievements and the magnitude of these changes. We are pressed by events that happen swiftly, the reality sometimes becoming a kind of kaleidoscope that is constantly moving. Stressing space and time with rapidity, the direction of change fundamentally changes, gaining power and a range of action that has never occurred before.

The qualitative, decisive distinction of the period of time that we are going through, as opposed to earlier periods, consists in extending the scale of change and radically changing the rhythms, releasing new action forces of such magnitude that they even influence the notion of time, revolutionizing the tempo of life and affecting the way we feel and understand the world around us.

Describing the full force and magnitude of these changes in a plastic manner, references were made to a space age, an age of informatics, an age of electronics, a technological age, a scientific and technical revolution.

This acceleration of the rhythms of change and such an extent of change is at the basis of the non-permanence, the transition penetrating deeply all the existence and organization modes, sometimes the transformations being irreversible.

Perhaps the most revolutionary change is the modification of the thinking system itself, moving from the Cartesian thought (characterized by the biunivocal cause and effect relations) to the holistic one (the perception

of multiple and contradictory interdependencies) leading to the emergence of new concepts such as: system, process, feedback (inverse connection) and dichotomies such as continuity-discontinuity, equilibrium-imbalance, and necessity-chance. In such context, it was emphasized that the seemingly isolated facts are in fact closely connected, so it is necessary to understand the essence, nature and direction of change in order to integrate and coherently synthesize facts, events, realities and consequences that seem to be isolated from each other.

The existence of a series of interdependent causes and effects make the context itself permanent, stability being rather a particular case, the real state being that of dynamic equilibrium, i.e. a continuous search for new equilibrium (the concept of dynamic equilibrium)[1].

2. Under the aforementioned conditions, it becomes clear that the company's leadership can no longer continue to evolve on the old bureaucratic, cumbersome, linear lines, imposing a new approach to society as a system, a concept that was originally used in the technical field, then going into the economic one, to make an increasingly obvious path in the social field. The society as a whole must be conceived as a global social system that includes all types of activities carried out in all fields and at all levels of economic and social organization (subsystems).

From the systemic perspective, the society is considered to be a vast, general system consisting of private self-regulating subsystems capable of adaptation and research, having the ability to achieve, to some extent, the stability and finality, in accordance with the goals of the global social system. The social assemblies are constituted within the global social system either as its subsystems (e.g. the economic subsystem) or as highly specific partial systems (e.g. the enterprise), being subordinated to the general principles governing the global social system.

Such subsystems and partial systems have their own self-regulation and adaptation capacities, but these remain subordinate to the general principles that govern the global social system, and they are found in every compartment of life in the society: economics, culture, public and political institutions, and within the specific partial systems. In fact, they form the objective framework that determines, in a certain direction, the actions and behaviour of social groups that are integrated into these subsystems or partial systems.

The effectiveness of these sub-assemblies, as well as that of the ensemble taken in its entirety, is directly related to their possibility and ability to organize their internal processes in such a way that they would be

[1] See V. Pătulea, Principiile generale de drept al contractelor, University Publishing House, Bucharest, 2015, p. 7-8.

able to respond adequately to complex external impulses (entrances) and dynamics that are manifested in particular for each of these sub-assemblies that organize the economic and social life. The particularity, variability and complexity of the conditions in which the organization and operation of each sub-assembly or partial system takes place necessarily implies that these sub-assemblies are endowed with the ability to absorb, process and respond to very different and potentially disturbing impulses (entrances), with a high degree of peculiarity, which implicitly means that they must be systems capable of self-regulation.

Their remote regulation, within a centralized bureaucratic framework would involve knowing and mastering all the complex connections between these sub-assemblies, which could only be accomplished through extended works of modelling, experimentation, measurement, and computation, to which would be added a cumbersome, complicated and ineffective information device to find solutions to disruptive entrances in the system. However, it is clear that under these conditions until the solution is found, the disturbances would have been fully effective, crossing the system and disrupting it. Such case is totally inconceivable and accepted because it would affect the effectiveness of responses to external impulses and, ultimately, the very performance of economic and social activities[1].

The contemporary scientific research on this topic has made available to public policy makers and for those developing the public policies the adequate tools, able to control the ever-changing economic and social life of cybernetics, operational research, system theory, organization and information, ergonomics and, of course, the management science (management), which brings together, in a unitary perspective, the various methods of including the disciplines mentioned above. A leading role is played by the concepts of information and decision-making. In terms of information, their primary role is acknowledged in both decision-making and cyber-phenomenon in regulating economic and social processes. The organic relationship between management disciplines and their polarization around the concepts of information and decision-making strongly emphasizes the notion of an informational-decision system (SID) conceived as a set of parties (people) and means (sources other than humans) with information organization and decision-making, both at the level of the component subsystems and at the level of the whole systemic system, acting in the direction of achieving objectives (programs).

[1] See H. Ene, Organizarea sistemică, condiție a conducerii științifice, in "Știința conducerii societății", Bucharest, 1971, p. 61 and followings.

The first level of analysis of an informational decision-making system is the cybernetic system where inputs into the system (resources and information) and outputs from the system (products and information), for the moment not being important the information concerning its inside processes. The size of the system outputs are compared with the set objectives (the objectives pursued by the programs). Since deviations will often occur, the regulator will intervene, having the role of bringing back outcomes to the set objectives. This regulator is translated, in terms of practice, through the interventions of the governing bodies that act on some regulatory levers such as additional equipment with material and human resources, as well as by normative provisions, this type of interventions being effective only when the relations between inputs and system of the decisional informational system are very well known. This also implies a further level of analysis, which involves a thorough research into the functioning of the system, this way of analyzing and designing the informational-decision system having the merit of explaining the objectives and subordinating the whole study to their realization, in choosing information-decision solutions, using the whole range of methods and procedures offered by the different management disciplines. This way, there is a possibility to transform the economic and social leadership into a scientific process based on a rigorous methodology synthesizing in a unitary conception the most modern developments of the management sciences, eliminating or reducing considerably the recourse to methods based on inspiration, talent or routine which, often, hide subjectivity and voluntarism, with their entire array of extremely harmful arbitrary effects.

Concerning the decision-making, analysis and design processes, these will be all the more efficient as they will be able to reduce their greatest part to algorithmic operations by some logical systems, ranging from simple comparisons and selections up to complex decision-making methods based on operational research procedures or other mathematical techniques. Certainly, however, a significant part of the decision-making processes under consideration retains the discretion character of the decision-maker, but in this case, in order to minimize the subjective aspects, the system design uses methods of the decision theory and utility.

The third phase (decision level) that the decision-making and designing team of the informational-decision system has to undergo is the coordination of the implementation of the project provisions, the so-called implementation phase, which can start even before the end of the design and which consists in the recruitment, training and recycling of the necessary specialists, the acquisition of equipment for the processing and transmission of information, the construction or arrangement of the necessary buildings

or spaces, the preparation of files, the development and testing of computer programs, the experimental application of the entire system.

After completing the implementation phase, a new qualitative step is taken: normal operation of the designed system [1].

So, the general policy, the public policy making and the implementation of these policies are scientific in nature, involving systemically structured activities.

Generally speaking, these activities are based on selected programs from a list of priorities established through feasibility and impact studies.

In order to achieve these programs, the material, financial and human resources necessary for their realization will be precisely defined, and there will be included budgets, possibly multiannual, if the programs will be extended over longer periods.

The gradual realization of programs will be carefully monitored through rigorous and continuous control mechanisms, both quantitatively and qualitatively, the findings being regularly communicated to the management bodies, which will be informed about how the work is done at each stage. Any deviation from the graph will be carefully analyzed, and the responsibilities for the non-observance of the plan will be established. In this respect, the causes of deviations that may occur either upstream (insufficient planning of material, financial or human resources), or downstream (unjustified delays, work that is not executed in time or of poor quality) will be established. On this occasion, they will determine precisely who the persons responsible for this state of affairs will be subjected to repairs or will be removed from the system, being replaced by more capable persons. All these measures must be taken promptly, following closely how they are being carried out. It is very important for the promptness and effectiveness of responsibilities that in many cases are not set, which leads to perpetuation of such irresponsible behaviours. The accuracy, timeliness and effectiveness of measures to hold those incompetent, negligent or superficial will be an important part of the action to streamline the actions taken based on the carefully planned and monitored activities.

3. It is clear that the law, which is the legal framework within which all activities are carried out, in all fields and at all levels, cannot be isolated

[1] See: G. Boldur, Procese informaționale și de decizie în economie, Scientific Publishing House, Bucharest, 1969; G. Boldur, Analiza operațională a obiectivelor, in "Viața economică" no. 3/1971; G. Boldur, I. Băncilă, Metode și mijloace moderne de luare a deciziilor în întreprinderi, sinteză documentară, IDT, Bucharest, 1970; G. Boldur, Modele pentru rezolvarea problemelor decizionale complexe, in "Studii și cercetări de calcul economic și cibernetică economică" no. 6/1969; G. Boldur, Informația și decizia în procesul conducerii social-economice, in "Știința conducerii", Bucharest, 1971, p. 135 and followings.

from this state of mobility of society, as it is an integral part of the social system ensemble. Consequently, the right has to be conceived and approached as a subsystem of the global social system, with a degree of autonomy and specificity (itself, taken in itself, forming a system), which will act in accordance with the principles and systemic rules.

In this respect, we must draw attention to the fact that many years ago (2010), in the Romanian legal literature, under the aegis of the Romanian Institute for Human Rights and the Superior Council of Magistracy, it was elaborated a large work (944 pages), a unique work, too little assimilated, dedicated to the theme of "legal and jurisdictional management", highlighting the conceptual evolutions in relation to the legislative activity in the sense of flexibility and plasticisation of this activity aiming to ensure the dynamic concordance between legal regulations and changes accelerated in economic and social life[1]. The same author, recently, in another paper devoted to the flexibility of law through the category of agreements[2], makes, in the introductory part, a summary (summary) of the conceptual evolution regarding the activity of lawmaking. Finally, in the same year (2015), the author published in the magazine "Palatul de Justitie" a suite of three articles devoted to legal engineering works, which ensure the flexibility and plasticity of legal regulations[3].

Consequently, in the following, we will confine ourselves only to the recalling and summarizing of the parameters based on which the conceptual evolutions in the area of legislative activity take place.

It is obvious that, for the reasons outlined above, the legislative system can no longer be conceived as an abstract and rigid structure once and for all, but must be replaced by another more flexible structure that has the ability and plasticity necessary to be able to roll on the realities of economic and social life in continuous movement and change.

It is true that in order to avoid chaos, it is necessary for the laws to have stability and continuity, these being basic principles of unshakenness, but the very content of the notion of stability and continuity must be revised, this being necessary to be understood states of dynamic equilibrium, adjusted to motion and transformation (to transitions) in order not to become obsolete, that is, unusable. The ever closer interconditioning between all categories of activities in society necessarily implies to approach the society as a cybernetic system, which also applies to the

[1] See V. Pătulea, Tratat de management juridic şi jurisdicţional, Bucharest, 2010.
[2] See V. Pătulea, Principiile generale de drept al contractelor, University Publishing House, Bucharest, 2015.
[3] See V. Pătulea: Ingineria juridică, in "Palatul de justiție no. 10/2015; Rolul dreptului comparat în cadrul procesului legislativ, in "Palatul de justiție no. 11/2015"; Rolul dreptului comparat în cadrul procesului jurisdicțional, in „Palatul de justiție no. 12/2015".

legislative system, as it allows the deepening of the interactions and evolutions of phenomena and processes, as a whole, reflecting the state of the society in motion, meaning the complexity, dynamism and interdependence, which is a dynamic state of balance.

In other words, the law no longer represents a fixed, rigid structure, but a procedural and evolutionary one, which allows a permanent contact with the changes from the society, in increasingly fast rhythms, their processing and integration into laws and other normative acts, which must be kept up to date. And for all this, other legal categories (or with legal character), such as jurisprudence and doctrine (the scholarly law), which, together with the laws and other normative acts, form a living indispensable and indestructible legal tissue.

Only such a flexible and complex legal structure may be appropriate for ensuring the contact of law (conceived as a system) with political, economic, social, cultural realities, integration and processing of these realities into legal and paradigmatic categories.

In this perspective, new concepts have been developed, such as the living law, the free law or the reflexive law.

In essence, in order to fill the gaps or weaknesses of the positive law (which cannot cover all aspects and nuances), the judge has been subjected and involved in the activity of creating his own conduct rules not expressly provided for by laws or acts with normative character, resorting, as stipulated in art. 1 par. 2 of the Civil Code, to usages, similar provisions from other laws (comparative legislation), general principles of law, but we add to other jurisprudential solutions that have crystallized as true normative components. To that end, the judge, also in support of his doctrine (the scholarly law, including in-depth scientific research based on comparative law study, comparative jurisprudence, and works by independent groups of jurists), will act as a true legal engineer. Such legal engineering constructions are similar to what F. Gény called free complementary research, which would be a science-oriented compilation activity.

A special mention must also be made in relation with the concept of reflexive law, which is defined in two ways: as an active law containing relational programs and as a law of societal guidance. This concept was taken into account starting from very close premises, namely the autonomy of judges to evolve, by reference to scientific knowledge, and the need for intersubjective control of the occurrence of events. This approach has succeeded in penetrating in depth and even transforming legal dogma, even without the explicit contest of legal sociology.

The concept of reflexive law implied the attainment of a certain level of development of law that was necessarily coupled with the evolution of

the complex evolved societies and the functions of the modern contemporary state.

The reflexive law, like interventionist law, is an active law containing relational programs, meaning rules that set up organizational and contextual premises in which interaction of systems with relative autonomy takes place. The reflexive law is a discursive rationality (which deducts, by reason, an idea from another), thus creating areas of relative autonomy for social systems.

The concept of legal tissue includes, in a systemic ensemble, the legislation (positive law), jurisprudence (applied law) and doctrine (scholarly law).

a) The positive law consists of the decisions of the competent authorities (referred to, as a rule, by the notion of legislator) on various legal issues. It is conceived as a stable law, with a tendency towards intangibility justified by securing juridical relations, the technique of coding, being emphasized the tendency to wipe out the temporal footprint of successive laws.

The contemporary modern tendency, on the other hand, is directed towards the flexibility and plasticisation of law to make it fit to be in constant contact with the political, economic and social realities, to absorb, process and integrate in obligatory legal forms, it has been through the contribution of jurisprudence (applied law) and doctrine (scholarly law).

Judges of all categories (judges, prosecutors, jurists, notaries) are the real sensors of contact with political, economic and social realities, facing conflicting situations resulting from the contact, in particular, of laws and other normative acts and these realities. The raw (unprocessed) information obtained by them is directed to legal management centres, where they are processed, compacted, and gradually integrated into legal categories such as laws and other normative acts, and then passed through different phases of crystallization, all of which being possible to be used no matter what phase they are in. Moreover, in the Civil Code, it is clear and explicit that the law, the customs and the general principles of law (Article 1 paragraph 1 of the Civil Code) are sources of civil law, and these general principles may also derive from legal engineering works to which we have referred above.

b) The concept of jurisprudence has undergone, over time, important transformations, moving from the judge's margin of action, under the silence of law, to the source of law. And in common law countries, it is even considered to be a science of law.

c) The legal doctrine (scholarly law) is a real factory of analysis grids, the legal institutions being conceived in terms of values and principles that show the directions in which the positive law must be oriented.

The legal doctrine is in correlation with other concepts with more or less extensive affinities, such as the science of law, ideology and legislative politics.

The doctrine also has close links with jurisprudence, from which it extracts informative elements from direct sources of contact with political, economic and social realities, providing the analysis grids that are so necessary for jurisprudential constructions.

The legal doctrine cannot be separated from legal thinking conceived as a mediator between social and cultural exigencies and legal culture in the face of a civilization on the move. Only in these circumstances can one consciously speak in a coherent manner, about a true legal thinking.

In conclusion, the law-making activity is a process where not only law enforcement bodies participate. Equally important or equivalent roles are taken by jurisprudence and doctrine that are direct sources of contact with political, economic and social realities, and we can unambiguously speak that we are in an early stage of transition, at least in the process of law-making, from representative democracy to participatory democracy.

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