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Science of Law in Context of Globalization

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Abstract: The concept of globalization must not only know and known but rather understand as be a very used term which can be attributed many meanings. Through this term can understand the development of global financial markets, increased of transnational corporations and their growing dominance of national economies. Globalization can be said to represent a phenomenon that extends communication channels between states and communities, and has effect that the internal legal order of a state, part of the European Union is expanding that to a whole new concept, the world legal order. Science of law, among all disciplines, is the most affected by this process of continue unification of the world because science of law continuously should be updated, so they can cover as many of the new aspects of contemporary social life because permanently were being born new areas and new domains of law new methods and strategies of application or the techniques of regulation so that to can be reached in case many of those which were fiction in the past, at present become an *acquis*.

Keywords: law; justice; science of law; globalization; legal order

1 Introduction

Marking the borders is not the role of a untouchable space of territory, the state becomes, inevitably, part of a whole, of the globalized world and its territory having the meaning guided by logic of flows in all areas (Zygmunt, 1999, p. 85): the capitals, the goods, the informations, the cultures, the persons. All these flows represents both vectors of power, for those who know how to generate them, master them and give them meaning, as well as destabilizing factors, only if they are seen as fatality. Thus in the last years increased mobility of law because the application of law no more requires adjustment certain misunderstandings between neighbors but also the organization of movement of capital, of goods, of information, of persons between countries and between continents default. The concept of globalization of law arises from of the necessity existence of some procedures which to have as purpose safety change these flows and therefore prevention of potential risks arising from these lawsuits. (Craiovan, 2010, pp. 281-282)

Supranational entities were created which have become more and more powerful and which are autonomous from the states which finance them and along the years, have acquired supranational character. These entities without its own flag, such as IMF, World Bank, have exercised an important

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influence in the birth and formation of the national rights, in a special way in the post communist states (Losano, 2005, p. 72). The opinions of expert (Besteliu, 2000, pp. 1-5) was claimed that political organization of a new the international society, transposition of international level of organizing states as federations and the foreshadowing a possible the world state or the world government, stay as a based to the appearance and development of international organizations.

2 Globalization - the Essential Features

At global level existence of some concerns about the independence of the judiciary and the status of those abilities to realize the law, has at least two significant explanations.

In the first place is about the phenomenon of globalization that determines amongst others and convergence of the juridical systems creation some spaces and common legal instruments to continental and regional level enhance institutions cooperation which necessarily involves a specific approximation of the concepts on the judicial independence immovability of judges and their role in a democracy state.

In the second place it may be established that in the all state exists the tendency of the political factor and in main of the executive organizations to try in various ways, directly or less directly to influence the judiciary power, especially through the mechanisms of nomination and promoting of magistrates thus influencing the in a negative way the general principles of law and, moreover, prejudicing the state of law.

Globalization of judicial function to can be grouped into two features of activities of magistrates: the first would be their position to the political power and a second would be constraints imposed by activity of judgment (Allard & Garapon, 2010, p. 113).

Fundamental principles of the legal order, which integrates fairness, loyalty, access to justice, the right to defense, equality of arms, etc., are the rules that make up a new universal model of resolving of disputes in which are developed specific rules of different matters: civil, criminal, administrative, commercial, etc.

From conceptual point of view, *the legal order* should not be confused with the legal order, these being distinctive, as the sphere and content. Thus, the legal order implies more or less visible manifestation of the state as political organization of society implies permanent activation of institutional resources for the exercise of coercion, both in the private sector as well as in the public sector of activities of the person and always implies sending to the legal order, the existence what conditions being of legal order. Report between the law order and the legal order is not of a perfect two-way, but assumes a certain position of determination from part of legal order.

The general principles of law mirror the system of law at a certain moment, as they represent the foundation of the legal system, which ensures the unity, homogeneity, coherence and capacity of the whole social system. The existence of the general principles of law is undeniable. (Niemesch, 2015)

In course of history, juridical science has had and the reverse evolution than that of the world, from the universal juridical science, it has become the national science, from general science at the particular science (Constantinesco, 1997, p.18). The main reason is that law is divided between two contradictory trends, namely: the globalization, the integration of planetary more and more pronounced, sovereign state and its autonomy, which circumscribing the life of peoples and the third trend is that the law represents formula type of the world organization.

3 Globalization of Law

However, the law orders will never be able exist outside of the world where we live. Situation in which a law order is completely separate from the other is illusory, no matter how big it the political barriers, social or military, there will always be minimum interference between different law orders.

At present it can not make management of a company in an autonomous manner, separate from other states and nations. Almost any a phenomenon of any nature can not be completely isolated and controlled strictly in accordance with the national limit. International cooperation, intergovernmental or supranational organizations, the multiculturalism and multilingualism have become definitions of the contemporary political life.

Most problems that people associated with globalization, including the penetration market of values in those areas where they are not belong traditionally, can be attributed to these phenomenas. You might also talk about the globalization of information and of culture, about the spread of television, of the Internet and other forms of communication and about the increased mobility of marketing ideas. (Soros, 2002, p. 23)

Phenomenon of globalization can be defined as to be a set of structures and economic, social, technological, political, legal and cultural processes which results of the changing nature of production, consumption and commerce of the goods. There have been continuous and occurring massive change in the global economy in a way that it can be considered that globalization is a result of creating a global marketplace.

Globalization has and its disadvantages in the sense that it decreases safety in all indicators, globalization of local and regional chronic phenomena, globalization of major organized crime (trafficking of weapons, trafficking of drugs, trafficking of persons), radicalization of ethnic and of religious fanaticism, of terrorism.

In the cultural plan, the globalization fragments cultures in *subcultures*: rap music, homosexuality, subculture old age, of football fans etc., or cultures of *niche*, which not provides the integration solutions for individuals who compose them.

The negative aspects are multiple and for that globalization is uncontrolled, unlead, not governed process. Events uncontrolled by political, the economic globalization goes, for example, to economic chaos and to ecological devastation in many parts of the world. Globalization may influence and democracy (Stiglitz, 2005, p. 53) in the sense that it is possible to replace dictatorship of national elites with the dictatorship of international finance. Alarming, are for example, the phenomena of fragmentation and weakening of social cohesion, of regionalism, on the large areas of the globe. Practically, by globalization, have witnessed a deterioration of income distribution, financial and economic crises are multiplied, with large effects on social and political life, including the danger of the disintegration of the states.

At global level, existence of some preoccupations what relate to the independence of the judicial power but also the status of those ability to realize the law, have at least two significant explanations.

First, the reference is to the phenomenon of globalization, which determine, among other things, and a certain convergence of judicial systems, creating some areas and common legal instruments at the continental and regional level, leads to the intensification of institutional cooperation, a fact that

involved in the necessarily mode and a specific approach of concepts regarding an independent of justice and therefore irremovability of judges and their role in a democracy state.

Second, it may be establish as in all states exists the tendency of the political factor and in main of the executive organisms of to try, in various ways, direct or less direct, to influence the judiciary power especially through the mechanisms of the nomination and of promoting of the magistrates thus influencing in a negative way the general principles of law and, moreover, prejudicing the state of law. In this context the political power is structured in three dimensions: the dimension of national law, the dimension of international law and the dimension of global practices, this type of power being called *soft power*.

By it specific object science of law obtains, now, a very special importance which is determine of needed of research of state and of law in perspective globalization. It is increasingly evident that the state and the law is no longer depicts in the same values as ten or twenty years ago. The regional organization is considered as an intermediate level which leading to the globalization and are based on transfer, deliberately and voluntarily, of sovereignty to supranational institutions. In this context exist today in the world dozens of associations of regional states, associations that differ between them through the intensity of cooperation or the level of institutionalization. In these circumstances, the science of law transcends borders and rules of organization of a particular nation state can be useful elsewhere and those from other elsewhere may be useful to a particular state.

The newborn legal institutions can not traverse with ease various contexts, which needs to be attention inoculation in the social and legal conscience that will adopt them, somewhat contrary to what the mistakenly suggest the idea of legal transplanted, namely the fact that the institution which it moved will remain same, will maintain the same function, just that they all will happen in the new legal system, wherefrom and the existence of a extremely limited options area, which pushes to the sets out just two possible solutions: rejection or integration.

Principle of the complementarity of legal norms functions as a very effective mechanism in the evaluation of the capacity of legal systems at global level in in order to find the best possible solutions to resolve the legal problems which may occur at the globaly level (judging of the crimes which is against humanity, human trafficking, drug trafficking, piracy), Mircea Malita said (Malita, 1998, p. 128): „the globality does not ensure the internal order and application of justice. States are called upon to resolve the new challenges : trafficking of arms, money laundering, corruption, terrorism, drugs”. Recourse to transplanting jurisprudence of other states in order to argumentation based on the effectiveness of applied and applicable legal norms going to create a unique and common judicial space by creating some unified legal proceedings may be exemplify in this sense, *the european arrest warrant*.

Opening an international judicial space by assimilating of some specific legal norms permit speeding up the course of International Justice but and placement of weaker states under the domination of more powerful states.

Globalization of law it is at the present in an expanded field of maneuver in which the national strategies are in their environment having as a finality to ensure the *legal order*. The influence of international rules of law in the national law systems is not only a result of the classical channels, as a multitude of unofficial groups, belonging to certain non-governmental organizations, or even the multinational companies and especially the increasing trust that the citizens put in the international rule of law, contribute together to the development of the role that the international and the European rule of law has, by influencing the national law systems (Magureanu, 2010, p. 70).

In this sense *the legal order* is a term synonymous with the normative order. Ruling the fact that any state represents a law order, such an attribute is, however, relative, because, under certain socio-political determination, the legal order can be overturned, replaced, sometimes brutally, with another law order, without the state to terminate its existence as a political organization of particular society, that more it can be appreciated the involution stage which the would place the State in question as a result of change its order of law, understood this order as a *public order*.

The legal order is no more than normative stratum which legitimizes the legal order, a formal legitimization, because the legal rules on which operates as a unitary block, the legal order are produced in accordance with a way procedures stipulated by the norm supposed to be fundamental. As such, the legal order can be sudden and changed in violent mode on way of the factual social actions, be they called military insurrection, revolution, counter revolution, or civil war. As the new law order / public order to may be required and consolidate in exercise of its substance is necessary to establish a set of primary norms that will ensure, in terms of validity, the production of same norms of procedure which, in their turn, have ability to impose a fundamental norm based on which to establish in the substance and *in actu* the new *order of law*.

Globalization of law and of justice, leads to the birth of a global procedural law which is imposed, on the one part, it is of need to establish and maintain a social peace at global level, just of need to establish and maintaining a social peace at the global world and, on the other part, of a certain attraction between the legal cultures as well as trying to ameliorate the differences between legal systems. The main motivation of this latter aspect is that, at basis of different national systems of law are common and global principles of justice. Being under the influence of some international documents, regional or international and of the transnational/regional courts, these principles prevail over the national legal cultures representing a certain return to the origin, a *jus commune*. This pillar will be the foundation of building a judicial global system accompanied by a legal community. At such a conclusion may be reached with relative ease, observing increased field of judicial cooperation between States to the last half century: transplant of legal instruments and institutions which been and have take place, the international rogatory commissions established, the continuous training and the exchange of experience among specialists in law of different interested countries, the establishment of common bases of jurisprudence order to be able analyze and to give the best solutions in the common problems that appear, creating the international courts and, more recently, the appearance same European institutions of law as well the European Arrest Warrant and direct recognition of foreign judgments.

4 Conclusions

Creating a world law it is imposed precisely of the need to establish or maintain global peace but and of rapprochement between legal cultures and attempting to reduce the major differences between existing legal systems considering that these systems are built on common principles of law and justice. Globalization of law, will result the phenomenon of transfer of law, a phenomenon that can lead, by extension, to use any legal rule can be useful to a particular global issues. Globalization of law also opened a new horizon of sovereign states which are called to evaluate the value and the place in the group of nations in terms of influence and independence. Efficiency, effectiveness and validity of law but also its application in rational and convincing mode, are principles which prevail over independence and dignity every national law. The permanent evaluation of legal systems between them and transfer of norms that they are useful in common and global cases leading to a strong link

between the general and the particular and law globalized in this manner will be materialized only in the particular cases where it is asked to intervene and can discuss about the global reasoning of the judges who become main interpreters of the transplant norms depending on the needs.

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