

ROLE OF CIVIL SOCIETY IN STRENGTHENING STATEHOOD AND DEMOCRACY

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Abstract

In countries with stable and democratic traditions, government is stable not only because of the perfection of the organization of the legal framework, but mostly because of traditions of civil society. Civil society is one that can influence in the whole process of government. Its intervention can take different forms - from opinions voiced in media projects and legislative initiatives, close to even to support events and street protests.

Civil society in Moldova is born under a major economic and political crisis, when blocks and political parties dismantling or excessive polemics, when ruling class arrive late to adopt the necessary practical and effective way out of this situation that affects the whole society. Ordinary people, overwhelmed by falling incomes, inflation, unemployment and other socio-economic issues are increasingly concerned about their own survival, they avoid getting involved in social, cultural, political and philanthropic activity and emigrating every year more and more.

Formation of civil society is a big challenge for democracies in transition because stereotypes inherited from the totalitarian period are deeply rooted in the minds of citizens. Covering cultural space between the individual and the state, civil society is regarded as the determining factor of success or failure of democracy and good governance.

Keywords: *civil society, transition, political crisis, democracy, good governance.*

A careful study of social phenomena and lawmaking process which evolves under the influence of society, leads to the conclusion that political factors and the impact of civil society has played and continues to play an important role in the creation, development and application of legal rules. After the collapse of 'socialist camp' (in the period 1989-1992), the role of the political factor was omitted in error from the analysis and the study of law. Moreover, a number of local teachers and researchers have limited or even excluded study of the state, leaving in the shadow relationship between public power and marginalized citizens, and their role in governance.

In this context, Prof. Dan Ciobanu¹ and Prof. Dumitru Mazilu² notes that politic options on economic relations and institutions they support, and social relations, cultural or otherwise, are in search of "legal support". For example, the establishment of new criteria and reorganization of functions of the certain categories of public

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¹ Dan Ciobanu, *Introducere în studiul dreptului*, Cluj-Napoca 1992, pp. 6-7.

² Dumitru Mazilu, *Teoria generală a dreptului*, 2nd edition, Beck, Bucharest 2000, p. 177.

institutions and authorities involves not only an assertion of political programs, but detailed legal regulation of their activity. Moreover, it is important that political will expressed in the rule of law must comply with the general interests of society, not to defend the interests of the group, clan or caste, or even the interests of certain individuals - "oligarchs" who have sufficient economic, financial and political resources. Right, in its essence, pursue the common interests of society, and in this context access to power by political parties should not be occasion for confrontation, settlement of accounts, fraudulent enrichment or revanchism, but fair and equitable resolution of society problems.

Great thinkers of mankind, as Ch. L.S. Montesquieu and J.J. Rousseau, Vasile Conta and Dimitrie Gusti, drew attention to the need for "moderation", ie the need to maintain a balance of interests in society. Political elites reached the government must show maturity and the changes promoted in the right should not jeopardize the legal basis of operation of the state.

The difficulties facing democracy in Moldova are product inherited from predecessor governments (authoritarian) and the characteristic problems of the democratic process that is underway. Since Winston Churchill said that „It has been said that democracy is the worst form of government except all the others that have been tried”.³

Democracy involves the removal of constraints that the state exerts on individual behavior, a relaxation of social inhibitions, insecurity, confusion; neglected phenomena of what should be the standards of morality. As a result, weakening state authority, excessive democratization put under questioning the authority in general (as phenomenon), promoting an atmosphere overly permissive or even amoral (*laissez-faire*).⁴ More serious is that the process of democratization affect the fundamentals of social life such as family, faith, morality, society and can lead to an increase in undesirable social behavior.

Some new threats to democracy even come from those involved in the democratic process, when political leaders and political groups who win the election, take power, and then manipulate the mechanisms of democracy to obtain benefits or even to destroy contra-candidates. In case of Republic of Moldova, problem is not overthrow the democratic government but an „erosion” of the democratic government manifested by intermittent or gradual weakening of democracy by those who hold power. Thus, under the existing political pluralism: with abandonment of political stereotypes, with the „right” political parties that promotes liberal politics and liberal-democratic, with the „left” parties opting for a social democratic political doctrine, with whole class of political leaders who claim to have priority focus alleviate difficulties democratization and European integration - the process of erosion is ongoing.⁵

³ Winston Churchill, quoted in „Democrația”, <http://www.dadalos.org/rom/demokratie/demokratie.htm>, 30.01.2014.

⁴ C. Gilia, *Teoria statului de drept*, C.H.Beck, Bucharest 2007, p. 338.

⁵ More in this sense: R. Starașciuc, *Principiile de activitate ale poliției comunitare și delimitarea competențelor poliției de stat de cea locală*, paper presented in the plenary session of the conference

Meanwhile, the countries of the former communist space, along with notions of free market, democracy, multiparty system, fundamental rights and freedoms, rule of law, the *concept of civil society* is increasingly being cited by political leaders and opinion makers to designate a new kind of achievement and solidarity of the country - like an antipode to totalitarian police state.

Law theorists such as Professor S. Popescu, considers civil society as the intermediate link between the individual and the state, and a necessary element of the rule of law.⁶ From another perspective, civil society is born and develops as a gradual detachment of a tradition marked by paternalistic expectations - with nostalgic inherent elements - shaping of "islands" of exercising personal freedom with sensitivity to negative rights.⁷

According to DEI, civil society designates a social system (system of relations between people), where human rights work.⁸ In western legal literature, civil society is also called *open society*, as does Sir Karl Raimund Popper in his "Open society and its enemies". To the civil society relate some hopes in strengthening social control. Prof. John Vladuț notes that civil society, in customary practice helps to regulate behaviors of social groups in society.⁹

In countries with a stable and democratic tradition, government is not stable necessarily thanks to perfection of legal framework that organizing public power - in these countries, government is stable, largely due to the traditions of civil society. Namely civil society is one that can occur in the whole process of government. Its intervention can take different forms - from the opinions voiced on media projects and legislative initiatives, to the protest movements in the street.

Moldova's constitutional rules closely resembles those of European countries with a deep-rooted democracy, however, the democratization process more difficult due to lack of a responsible political elite and high moral values, and, civil society with a high degree of political and legal culture. Only the myth of civil society - united, non-political and favorable to radical reforms - is rising in our country, and stereotypes are still present.

Meanwhile, some formations of "civil society", founded after gaining independence, became political blocs with process of migration of the civil society activists in government and in business. As might be expected, instead of co-opted activists into government structures is taken by more progressive mind young people. Hopefully, from this migration will benefit both the political class and society as a whole.

"The Reform of the Internal Affairs Ministry and subdivisions, problems, solutions and perspectives" Chișinău, 19 April 2011, Conference Proceedings, p. 88.

⁶ S. Popescu, *Statul de drept în dezbatere contemporană*, Editura Academiei Române, Bucharest 1998, p. 167.

⁷ D. Balahur „Societatea civilă: opinii, puncte de vedere, perspective”, *Revista de Sociologie românească* nr. II/1999, pag.30.

⁸ *Dicționar Enciclopedic Ilustrat (DEI)*, Cartier, Chișinău 1999, p. 943.

⁹ I. Vlăduț, *Introducere în sociologia juridică*, Editura Ministerului de Interne, Bucharest 1994, pp. 145-146.

Even in these circumstances, as assessed prof.C. Gilia, civil society is not an absolute blessing for democracy.¹⁰ It can affect the consolidation of democracy and subsequent operation with a set of negative phenomena, including:

- formation of parliamentary majorities can become more difficult, longer and more precarious, which will compromise the legitimacy of democratic governments;
- tend to make compromise in politics by undemocratic means, with results that nobody wants and that no one can identify later;
- investment of funds by the Government to local populist programs, practically buying votes through these programs;
- associations and civil society movements tend to satisfy their own interests to the detriment general interest;
- in the same space at the same time attesting to the existence of several civil society, that organize the interests and priorities depending on the ethnicity, political views or other nonspecific criteria, phenomenon, which in Moldova is known as the *polarization of society*.

The main actors of the political class have reached to government, largely due to the support of civil society, that subsequently to be guided only by calculations and strategies developed and implemented in the short term, without support for the development of a viable and active civil society. In this context, noted A. Smolar, former „civil society” have become political blocs, first in opposition, then in same time with breakdown of old conductive structures, to power. In these circumstances civil society was only a “historical suit”, her usefulness disappear with time which made her fashionable.¹¹

With political and economic crisis in the country, when blocs and political parties it dismantling or have an excessive polemics, when ruling class arrive late to adopt necessary measures (concrete and effective management of public affairs) - civil society is becoming more affected. Ordinary people, overwhelmed by declining revenues, of inflation, unemployment and other socio-economic issues, are increasingly concerned about their own survival, and avoid getting involved in social, cultural, political and philanthropic activities.

It should be noted that civil society has not received due attention from the state in all these 23 years of independence. Because of the budget crisis, and lack of experience and culture of the political class, throughout the post-communist period needed funds not was allocated to support independent activities of non-governmental organizations and strengthen civil society.

Currently our society is subject to a new challenge - the integration into the European Union. Consequences of European integration and cost of this consequences we observe to neighboring countries in Eastern Europe, where state mechanism transferred all the brunt of integration on the shoulders of civil society, and where the institutional optimizations, with tightening conditions for employees, with reduction of budget funds, with non-funding non-profit sectors, unemployment etc. are

¹⁰ C. Gilia, *Teoria statului de drept*, C.H.Beck, Bucharest 2007, p. 341.

¹¹ A. Smolar, *De la opoziție la atomizare* in L. Diamond, Yun-han Chu, M.F.Plattner, Hung-mao Tien, a.o. „Cum se consolidează democrația”, Polirom, Iași 2004, pp. 278-291.

extremely actual problems and pull out in the streets thousands of members of civil society.

However, European integration process involves the exchange of experience in all areas of social life, including the development of civil society. It remains only to select good practices and avoid errors and unsuccessful experiences of the states which have traveled this path. The desire to protect civil society in Moldova motivates us to propose the entire scientific community to turn their attention to this area, to make studies and come up with proposals. First, is necessary to adjustment the economic and financial legislation and budget to promote an active civil society and viable educational measures (summer schools, training, education, opinion makers, etc.), Secondly, is necessary to adopt economic measures to mitigate the impact of integration and protection categories of low-income citizens, promoting social responsibility and solidarity.

A first attempt to fund the civil society was made by adopting amendments to art. 88 of the Tax Code, where introduced a new paragraph with the following content: "Individuals, except for individual entrepreneurs and peasant (farmer) can decide on the destination of an amount up to 2% of the amount calculated in the budget income tax from wages to support public benefit non-profit and religious organizations. Percentage distribution mechanism and list of public non-profit organizations and religious institutions be established by the Government".¹²

This provision,¹³ contrary to expectations, aroused dissatisfaction NGO representatives from Moldova, who publicly expressed dissatisfaction in the media.¹⁴ In large part, divergence of opinion of the national legislature and the NGO Council is reduced to the equality in rights of public non-profit organizations with religious institutions.

In most European countries operate such a mechanism of financial support to civil society without any discrimination. Our Legislative want to align national legislation to the European standards and leave room for interpretation in that the list of NGOs and religious institutions is determined annually by Government. In our opinion, this is a discriminatory formulation because the government may include in the list only NGOs which they can manipulate in the elections. Correct would be to benefit from these financial sources from redirecting income tax equally all civil society actors who are registered as required by law, without any "preferential list".

For other reasons than those mentioned, the Constitutional Court was seized to exercise control of constitutionality of this provision,¹⁵ which declared it unconstitutional.¹⁶ In motivation, the Constitutional Court say: according to Article

¹² Fiscal Code of Republic Moldova, Law no.1161/24.04.1997, Official Gazette from 25.03.2005 (special edition), art. 88 par. (7).

¹³ Introduced by: Law no. 324/23.12.13, Official Gazette no. 320-321 from 31.12.2013, entered into force in 01.01.2014.

¹⁴ *Legea 2%: Ce s-a propus și ce s-a votat în Parlament*; Unimedia.info, <http://unimedia.info/stiri/legea-2-ce-s-a-propus-si-ce-s-a-votat-in-parlament-71263.html>, 29.01.2014.

¹⁵ The 5th complaint from 03.02.2014, <http://www.constcourt.md/ccdocview.php?tip=sesizari&docid=252&l=ro>, 30.04.2014.

¹⁶ Decision of the Constitutional Court Republic of Moldova, nr. 7 from 13.02.2014, <http://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=488>, 30.04.2014.

131 par. (4) of the Constitution, any legislative proposal or amendment that attract increasing or decreasing budget revenues or loans and increase or decrease budget expenditures can be taken only after they are accepted by the Government. However, challenged rules were not included in the draft budget law, approved by the Government and submitted to Parliament. These amendments were included after the adoption of the bill in the first reading. Both Parliament and the Government could not communicate to the constitutional jurisdiction court identity of the author (s) of amendments and authorship was attributing to the commission for economy, Budget and Finance. Establishing that the Parliament adopted the contested provisions, without consent of the government, the Court rejected the arguments of Government and Parliament on post-facto acceptance by the Government. The Court has held, also that government can not waive a right / obligation constitutional including express consent / refusal on legislative proposals or amendments with the budget impact. So, the Court held that without of prior approval of the Government on the amendments that attract increasing or decreasing revenues and expenditures constitutes an omission. The Court found that this omission occurred as a result of the violation of Article 131 para.(4) of the Constitution, reason why such adopted norms are unconstitutional.¹⁷

This example demonstrates once again the immaturity of political class, and the fact that legislature has not acknowledged yet the role of civil society in the democratization of governance. In turn, civil society remains still vulnerable and manipulated by political leaders especially during elections.

In addition to all civil society in Moldova is very fragmented: on 01.01.2014, in Moldova was recorded 1 735 nonprofit organizations.¹⁸ In this situation is clearly necessary a political will accompanied by concrete measures to strengthen civil society, which is the foundation of a nation.

¹⁷ Ibidem.

¹⁸ <http://www.cis.gov.md/content/6,02.07.2014>.