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Civil Society – Indispensable Element of Contemporary Constitutional Democracy

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Abstract: Coming into practical contact with any social-political and social-economic phenomenon, the issue of civil society is present in almost all areas of society's activity, having a tangent with all spheres of social life - philosophical, social, economic, political, legal, etc.
"Civil society is one of the three pillars (economic opportunities - civil society - political freedom), on which democratic society is based and can effectively solve many problems" (Darendorf, 1996, p. 229). Of course, such a wish is also current for the new democracies.
Civil society was disputed in the past and continues to be disputed today. On the one hand, this moment demonstrates the heuristic potential of the phenomenon, and on the other hand, it is possible that the "idea of civil society" and the search for ways to achieve it have not been conceptually developed sufficiently [Grajdanscoe, p. 8].
The genesis of civil society is one of the most complicated problems. The topicality of its investigation is determined by the fact that it can become the necessary foundation for the deep study of the interaction of state power with social institutions, currently in full transformation process. On the other hand, we must specify that for our scientific approach, the issue of civil society is more important under its aspect of general framework, a determining phenomenon of the existence and activity of NGOs. Or, in other words, the impossibility of the existence of NGOs in the absence of civil society and vice versa, leads us to enter the sphere of close ties between these two phenomena, in order to elucidate their particularities and the legalities that maintain them.

Keywords: *civil society; constitutional principles; political freedom; NGOs; social liberality.*

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I. Introduction

According to researchers (Mureşan & Duţu, p. 20), "civil society" is the translation of the Latin expression "societas civilis" (English - *civil society*, German - *burgeliche gesellschaft*, French - *société civile*, Italian - *societa civile*, etc.) which, in turn, comes from the translation used for the Greek lexical group "politike koinonia", a formula used by Aristotle (Greek philosopher, 384-322 BC) in his work *Politics*, by which he meant the "political association" of people (Aristotle, 1996, p. 13) – the superior community that completes the hierarchical ordering of natural communities (of men and women, of masters and slaves) in order to ensure not just a simple domestic life, but a good life (Marin, 2002, p. 12).

In another sense, "civil society" comes from the Latin term "civitas" (meaning *state* or *republic* (Avornic, 2010, p. 349), from "civis" - citizen, which in Ancient Rome meant the civil community, whose members (the Romanians) were subjects of the Romanian civil law (*jus civile*). It must be specified in the context, that at the beginning, the words "civitas", "civis", "jus civile" had a syncretic meaning, without a differentiation of their political or non-political meanings, but later, a political meaning kept only the term of "citizen" ("civil society" and "civil law" being devoid of such a connotation).

From the very beginning, we must specify that from a historical perspective the notion of "civil society" has undergone a long evolution over time, the understanding of its essence being produced in several stages. According to the Romanian researchers M. Mureşan and P. Duţu, the definition of the concept of "civil society" has four relatively distinct stages (2006, p. 20-21):

- a *first stage* is related to the reflections of the ancient philosophers Plato and Aristotle;

- a *second stage* would be the Renaissance, marked by the reflections of such remarkable thinkers as: the English Th. Hobbes (philosopher and exponent of the English Enlightenment, 1588-1679), J. Locke (philosopher and political theorist, 1632-1702) and the French Ch. Montesquieu (1689-1755) and J.-J. Rousseau (1712-1778) etc.);

- the *third stage* begins with Hegel (German philosopher, 1770-1831), continuing with K. Marx (German theoretician 1818-1883) and others;

- the *last stage* in the development of the concept of "civil society" is the one that begins in the 20th century and continues today.

It is important that the formula "civil society" experienced a great boost starting with the 1970s, becoming at the moment, according to some,

as banal as the term "democracy", replacing the latter to indicate the aspiration towards civic freedom (Colas, 2007, p. 23). In another view, the notion of "civil society" has undergone a long evolution over time, currently becoming a key notion, identifying itself with the sphere of rights and private interests of citizens.

Realizing a totalization of the explanations given to civil society in previous historical periods, it can be concluded that the most rational and efficient form of organization of human existence was practically permanently sought. Respectively, as it was very well emphasized "civil society justifies its name not because it is made up of citizens, but because it creates normal conditions for them".

Currently, it is rightly considered that, in general, the category of "civil society" marks an important moment in the development of mankind, characterized by the tendency of the great thinkers of all times to create an ideal model of social organization in which dominates reason, freedom, welfare and justice. Civil society thus represents the meaningful theoretical and practical expression of humanity's plea for the valuing of the citizen as the author of social creation. Under this aspect, it constituted and constitutes in the civilized world the terrain of multiple and incessant theoretical debates, convergent and divergent.

It had and has ardent participants who highlighted its virtues, vitality and viability (Giner, 1996, p. 323). Others, on the contrary, treated civil society with scepticism or were its intransigent opponents, predicting its demise for the reason that it represents a constant danger of disorder (Chatelet & Pisier, 1994, p. 111].

Civil society is a democratic and legal society, in which the protection of fundamental human and citizen rights is recognized and ensured. In civil society, rational and fair political power, individual freedom and well-being are correlated with the priority of law, the universality of law and the supremacy of law, the separation and collaboration of the branches of state power. For these reasons, the rule of law is the state that is at the service of civil society, the purpose of which is to ensure the freedom and well-being of citizens. By essence, this is the result of the development of civil society and an important condition for its continuous improvement.

II. The role and functions of civil society in the contemporary period

Pursuing in the present study the aim of identifying the distinct status of NGOs within constitutional democracies, we consider that one of the objectives that would allow us to achieve this approach consists in elucidating the role of civil society in the contemporary period through the

prism of the functions it performs. In this chapter in the doctrine, a unique vision cannot be attested, researchers operate both with the notion of "function" and with that of "role".

In general, in specialized literature, civil society has been recognized for several functions. In particular, German researchers list the following seven functions (Cvetek & Daiber, 2009, p. 10-12):

- **The protection function**. Civil society has the duty to provide freedom to citizens and protect them from the arbitrary actions of the state. It is intended to ensure protection against state intervention in the private sphere, thus ensuring the availability of private and social space. This function also includes the protection of human rights, minorities, etc.

- **The control function**. It is very dependent on the protection function, because it involves the exercise of supervision and control over political power. One of the fundamental obligations provided by the control function, for example, serves to monitor the elections, to ensure their correct conduct in compliance with the fundamental rules of democracy.

- **The participation function**. This presupposes the democratic and participatory socialization of citizens. In other words, it is about the development of political culture. This means an increase in general interest in politics, namely, an increase in motivation and the ability to participate in political events. Among other things, in the given context, civil society is considered a school of democracy, as it contributes in parallel to the consolidation of democracy by recruiting democratic elites for decision-making authorities. A relevant example of participation is the involvement of representatives of the civil sector in the decision-making process.

- **The aid function (of the state).** In several areas, civil society contributes to improvements, in the strict sense of the term. On the one hand, there is effective financial support by the fact that citizens support their social obligations voluntarily and often without any remuneration. Also, at present, society faces a series of complex problems, also called "mega problems" (such as the problem of globalization or environmental pollution, etc.), which cannot be solved by the state alone. These are issues that need to be addressed at different levels.

Civil society also fulfils some social obligations that go beyond the sphere of the family and which, at the same time, are not at all or in a sufficient way taken into account and cannot be properly solved neither by the state nor by the economic sector. Mutual aid groups, which are becoming more and more numerous lately, can be cited as an example in this sense. The members of these groups are often in a difficult situation: disoriented, strongly depressed, desperate, alone, having more the

impression of having been abandoned. This type of groups generally replaces family structures or the state, which remain powerless against private problems.

- **The articulation function**. Civil society can contribute to the opening of efficient ways of production, assembly and articulation of community values and social interests, external to political parties and parliaments. Private and social subjects are then addressed by civil society and circulated at the level of political debates. Civil society thus acts as an intermediary between citizens and the state. Citizen initiatives are an example of the articulation function of civil society.

- **The democratization function**. In the given case, the contribution of civil society to the formation of public opinion and the will of the people is considered. Civil society has an important role especially in the democratization of local power. In young democracies, this function often remains dependent on the evolution of democracy at the national level. In this context, information sessions are often organized to inform public opinion on a certain topic. They thus contribute to the process of forming public opinion and will.

- **The function of regulation (or management) of social conflicts**. Due to its network of associations, initiatives and movements, civil society admits overlaps in the membership level of its members. These superimposed adhesions in several groups can help to build links between conflicting positions in the life of society, they can help to smooth out social conflicts. Moreover, the emergence of social solidarity and the consolidation of social cohesion, due to the joint achievement of objectives of common interest, is a positive effect of the very existence of civil society organizations [Nina Cvetek & Friedel Daiber, p. 12].

From the mentioned it can be concluded that, in essence, civil society fulfils a series of active functions both in relation to its members and in relation to the state and its authorities, aiming in all cases to achieve and reconcile common interests.

Thus, civil society is important in a democratic state - especially in transition - to ensure the protection of the public interest in political and economic decisions, which are often influenced by the interests promoted by some politicians or businessmen. Civil society is also meant to contribute to improving the quality of governance and, respectively, to improving the quality of life of citizens. In this sense, civil society must collaborate with state institutions to find the most suitable solutions for the population. Civil society being very complex, composed of different groups, organizations and associations, representing a very wide spectrum of points of view and

interests, brings the opinions and experiences of different categories of people to the knowledge of public institutions in order to improve the decisions adopted by them.

Thus, marking an advanced degree of maturity of the democratic organization of the social body and the citizen's involvement in public affairs, civil society signifies the availability of society, power and the citizen to work together for the common benefit of each constituent part of the society.

In this sense, it is relevant that democracy is present and flourishes when citizens and organized groups of civil society get involved and use their right to participate in social and political life, making their voices heard in public debates.

III. Civil society and the state: principles of interaction

From a historical perspective, society - understood as a system of connections and relationships between individuals - appears before the state, while the emergence and evolution of civil society is linked to the articulation and development of the latter. This is why civil society is defined (only) in relation to the state, by individuals and organizations independent of the government or by all non-governmental institutions that express the interests and will of citizens.

Therefore, civil society, as a component part of the state, controls the governors, i.e. those in power, in order to ensure full social equity. Mainly, it requires the state to obey the laws it adopts and to serve the interests of all citizens. From this point of view, civil society organizations represent a multitude of power centres, a system of non-state powers. These forms of association, carried out on a national or local level, having political, professional, cultural, religious, moral objectives, represent not only a framework for the manifestation of the rights of individuals and minorities, but also a counterweight in relation to the force of the state or the various combinations of interests of the official political institutions.

In the light of what has been exposed, it would seem that civil society supports itself and does not need the state. In reality, however, many undesirable phenomena in society (for example, crime, etc.) and not only, impose the existence of the state. Thus, civil society needs the state to function normally, its protection being absolutely necessary. So, both civil society and the state each have their own reason to be their own autonomous reality, which does not exclude, but even implies the existence of interactions. In particular, the interconnection between civil society and the state is expressed by the fact that the stronger the civil society, the less

observable the role of the state. And vice versa - a poorly developed civil society conditions the exaggerated strengthening of the state and the absorption of society by it.

Therefore, the authentic rule of law can develop to the extent that civil society is affirmed and vice versa. The relationship given by reciprocity is also one of simultaneity. At the same time, it must be recognized that the establishment of the rule of law in its traditional parameters does not automatically guarantee the adequate legal dimensions of civil society.

Before moving directly to the problem of the principles that must govern the interaction of the state with civil society (appreciated as the quintessence of the process of contemporary state building of the new democracies), we would like to specify that the specialized literature recognizes the existence of *principles specific to civil society* itself. In particular, it is about three important principles: - the citizen's active involvement in the life of society, - the citizen's recognition of some constitutional prerogatives and - his moral responsibility.

Active involvement in the life of society means the degree of access to the management of resources used to achieve the common good, the freedom to participate in civil actions and social transformations; freedom of participation and activation within different groups or social networks. *Constitutional prerogatives* mean the rights and privileges of the citizen. In the rule of law, the rights and privileges of citizens and their associations are legalized, and they are entitled to participate in the development of public policies. The subjects of public policy in the rule of law and civil society act practically as trusted administrators, who report to citizens and their associations for the activity carried out. The functioning of civil society and the rule of law is possible only in conditions of spiritual freedom of all members of society. This is why ideological freedom is one of the foundations of the constitutional regime. The third principle of civil society consists in the fact that all members of civil society are *morally responsible* for using their rights, freedoms and privileges in such a way as not to harm the rights of other members of society, since public order and stability are based specifically on the principles of legality, justice and of reciprocity.

Thus, political scientists enunciate the following principles in this context:

- *The principle of voluntarism*, assumes that the parties establish their relations on a voluntary basis;

- *The principle of information*, according to which the parties establish by mutual agreement the form, content and terms of mutual provision of

information (e.g., information regarding registration or re-registration, regarding the conduct of joint activities, etc.);

- *The principle of conciliation*, which assumes that the parties establish by mutual agreement the content, structure and implementation mechanisms of joint programs, grants received or social orders;

- *The principle of competition in determining partners* to participate in joint programs, obtaining government subsidies, social orders;

- *The principle of mutual support* (from the authorities: financial assistance through government subsidies, social orders and joint programs, creating favourable conditions for the development of public organizations (benefits, tax reductions, provision of spaces, materials and technical equipment, etc.); from the organizations society - the implementation of social orders and programs to achieve stability within society and the state, creating an atmosphere of attention to the person, his needs, developing civic spirit and responsibility, supporting the development directions of the state and preserving cultural traditions, etc.);

- *The principle of responsibility*, according to which each of the parties is responsible for the obligations assumed in accordance with the legislation in force, with the contractual provisions, in the realization of social orders and programs. The Swiss Constitution is relevant in this context, which expressly stipulates in art. 6 (titled Individual and social responsibility) that: "Each person is responsible for himself and contributes according to his own capacity to the fulfilment of the tasks of the State and society".

- *The principle of joint decision-making*, according to which decisions are made within a process of exchange of opinions, ideas, suggestions, initiatives and requirements.

Approaching the rather complex phenomenon of intrasectoral interaction within society (the public power sector, the business sector, the voluntary association sector and the family sector), the Russian researcher A.S. Avtonomov identifies the following principles of it:

- *The principle of legality* - legality being understood in its broadest sense - as the construction of intra-sectoral interaction in accordance with the legal norms enshrined in the Constitution, laws, international legal acts and in other internal normative acts. The establishment of generally binding rules, enshrined in legislation, allows avoiding subjectivity in the organization of the interaction, offers its parties a clear representation of rights and obligations, the necessary procedures, as well as responsibility, etc. Compliance with legal norms is very important for the predictability of the conduct of the parties to the interaction, the uniformity of the activity models, the assessment of the legality of the conduct. In reality, sometimes,

the imperfection of the legal basis of the interaction can be found. In this case, however, it should not be forgotten that there is a legislatively established order to amend laws and each party has the right to act in the direction of proposing amendments and additions to normative acts, repeals or elaborations of new acts. One of the technologies of interaction is important in this sense - *lobbyism.*

- *The principle of equal access to interaction* of all representatives of different sectors of social activity. Equal access essentially implies the absence of any discrimination, the way to such interaction is open to everyone, but the forms of interaction are different, because they are necessary to solve different problems and, at the same time, the participating organizations are also different.

- *The principle of transparency*. In accordance with this principle, the information about the conditions of the interaction, its forms, methods, rules and technologies are public. This principle also implies that the information about who and with whom they collaborate, what objectives they aim to achieve, etc., are not secret either.

- *The principle of volunteering.* An effective interaction is possible only if the parties are convinced of the usefulness of the interaction. Conviction, as a rule, occurs at a certain stage of development. Imposing interaction is impossible. Voluntary character implies not only the absence of objections regarding the interaction, but the active tendency of the participants towards an interaction based on the awareness of their own interests, possibilities, needs, goals and tasks, on the knowledge of the position of the other participants, on the availability of accepting some compromises in order to achieve the results that would satisfy all participants.

- *The principle of multiple technologies*. Given the fact that the interaction is carried out through different forms (the joint holding of various events, expert councils, state grants, lobbying, etc.), it is obvious that each of these involves the application of different technologies (through interaction technologies intrasectoral means the totality of correlated and ordered methods in a certain consecutiveness for making contacts between institutions, formed in the process of human activity in its various spheres.

IV. Conclusions

A constitutional consecration of the principles of interaction between the state, society and the person exist in many constitutions of the world, being a result of the historical-legal development of the collaboration between states and civil society institutions. As a rule, such principles cannot be attested in a single normative act, that is why researchers identify three

categories of principles in this sense: constitutional, legislative and normative, which are of course in a very close relationship.

It is important in this context to emphasize that only a constitutional consecration of the principles of the interaction of the bodies of state power with the institutions of civil society can guarantee a real collaboration between the state and society, as well as positively influence the state authorities and the institutionalization of new public institutions.

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