



## ORIGINAL PAPER

# The Expert or the People? On the justification of the autonomous authorities

Dan Claudiu Dănișor\*

### Abstract:

The introduction into the structure of the present states of certain autonomous authorities and their exponential multiplication over the last decades requires a careful analysis of the principles underpinning their justification. Modern States are based on political freedom, that is, the liberation of man from the objective laws, created by divinity or the implacable historical evolution of society. Modern man is his own master. The expression of this freedom by vote is the basis of all the institutional mechanisms of modern constitutionalism. Instead, autonomous authorities are set up to free the regulation of certain social mechanisms from political influence. They are not based on modern political freedom. Formed by experts who know the "objective" laws of social development and apply them "scientifically," these authorities are "objectives". They are removed from the influence of ideological subjectivism, fed by the dependence of politicians on the elections, so by a passionate and sometimes irrational people. Thus is created a dichotomy: the people or the expert? The following study attempts to answer this fundamental question and the principle on which the choice of contemporary legal systems is based for the multiplication of autonomous authorities: the neutrality of the expert.

**Keywords:** *autonomous authorities; determinism; expert; neutrality; objective laws of society; modern constitutionalism; political liberty; libertarian philosophies; markets*

---

\* PhD Professor, University of Craiova, The Doctoral School of the Faculty of Law, The Academy of Legal Sciences of Romania, Centre for Fundamental Legal Research; Email: dcdanisor@yahoo.fr

**Is it necessary to create autonomous authorities?**

Modernity has given man the dominion of history and society. Man is, with the modern age, free of divinity and objective or quasi-objective determinations. He is the one who decides on his own fate, the one who chooses. The social expression of this new capacity is political freedom. Modernity centers everything on this kind of freedom. The decision-making processes are, in modern societies, the institutional consequences of this freedom, and the legal norms are based on the free political choices of the people. All the mechanisms of modern constitutionalism aim to limit the tendency of social processes to get autonomy towards individuals. The separation between the State and the constitutive power, the separation of powers, the vertical separation of powers, the prevalence of human rights, etc. have the purpose of limiting Power, that is, of that force that no longer depends on men, no longer takes them into account and which consequently imposes laws that do not depend on the will of the subjects, their free choices. The mechanisms of democratic legitimacy, as well as the mechanisms of the rule of law, have the ultimate aim of ensuring people control over their own development, history and society, which they create for them, not for the good situated above them. In this logic of things, there are no "natural", "objective" social laws ... All social laws are human and based on the political freedom of people, that is, in the final analysis, their liberation from polis. The laws of the city are based on social policy, resulting from the free choice of people, not from any social science that would describe the objectives laws of the city. The underlying assumption of this conception is that man is able to be free and decide for himself. However...

Society is too complex to be understood by people without proper education, who do not have the intellectual criteria necessary to decide what is good for society and what is not. Whether we like it or not, the mechanisms of modern democracy are rather chanting about liberty rather than liberation tools. People cannot and often do not even want to decide their own fate. They do not make rational choices, and the mechanisms based on their choices can only lead to incompetence and therefore crisis. Politicians, dependent on people's political choices based on emotions, are not looking to build a better society, but to be re-elected. They do not allow themselves to be rational and base their decisions on scientifically substantiated laws. Democracy is a self-destruction mechanism with delayed programming. The underlying assumption of this concept is that the average person is not able to be free and does not want this freedom. The logical consequence is that some of the most delicate, fundamental social mechanisms must be removed from the influence of the political choices of the people and must be based on the objective laws of society, which only the holders of scientific competences can know.

The problem is that this shift from politics to scientific expertise is coming back in time. The modern man, who had taken his fate in his own hands, building his own laws only on the basis of his free choices, that is, on the basis of his political freedom, an assertion of freedom towards the *objectives* of *polis*, is again subjected to laws that he cannot control and which do not depend on his choices, laws that are imposed on him, this time on behalf of *science*. Politics is suspicious. Because it is irrational, it is based on subjective choices and not on objective laws. So, one has to *depoliticize*. That is, to lose our political freedom. Politicians, the result of expressing this freedom, must give way to *experts*, which base their decisions on objectively acquired and objectified skills, not on the irrational choices of people subject to contingency, and which only see their own interests.

## The Expert or the People? – On the Justification of Autonomous Authorities

The tendency to give credit to the expert rather than the politician betrays our desire not to choose. We are afraid of our political freedom. So we have to entrust sensitive social decisions to some better than us, who know the laws of society. Depoliticization means that the modern man has surrendered. He wants to be driven. And who is better suited for this than the expert. We do not give up political power, we neutralize it. It is only clear that the expert is *neutral*. He does not *choose* a law, but he imposes an objective one, he *choose* it. Social *policy* is replaced by social *science*. Man does not build society anymore, he lives it. Modern men's freedom has died. The polis is objective. Hegel would be delighted: history has reversed the self-development of the Idea. Let us not imagine any Leviathan. It is only about political, autonomous, expert-populated authorities that regulate social processes (ie regulate, supervise, balance and sometimes sanction) outside the modern democratic legitimacy chain. These authorities are generically called "independent" or "autonomous" public authorities. We do not have to worry. They do not kidnap our freedom, because they are "neutral". Autonomous authorities are somewhat self-imposed in the new contemporary institutional environment due to the "crisis" in which the democratic political legitimacy of power has inevitably entered. They are the result of a profound mutation in mentalities, from the valorisation of the encyclopaedic or philosophical knowledge, generic, typical of the politician, to the increasing emphasis on specialized, scientific, expert skills. This has led to a shift of trust of the population from the politician to the expert. A new type of legitimacy is required, based on *scientific reason* and, with it, a new figure becomes the centre of the democratic organization: the *specialist*. This movement cannot remain without effect on how the separation and balance of State functions and, consequently, neutral power is understood.

*The public* is the one that demands that certain balances be set apart from political influences. Politicians cannot resist, because they depend on this *public*. So they themselves are depriving themselves of certain competencies to give them to the experts of politically neutral authorities. The neutrality of the \*authorities called upon to ensure these balances is due, on the one hand, to the "scientific" competences of those who form them and, on the other hand, to their autonomous functioning. This type of authority combines the neutrality "based on a competence liberated from all selfish interests" with the neutrality of being situated "outside the political sphere". They are therefore disinterested and apolitical.

Apparently paradoxal, this type of legitimacy of a new, neutral power from the political forces and powers is the effect of imposing the libertarian philosophies. Insisting on the freedom of the markets to the state power, libertarians imposed the necessity of objectification of their laws. They are deterministic, because their reasoning inevitably leads to the idea that these laws are universally valid, therefore objective. They position themselves apolitically, but they are not really on the side of the individual's liberation. Modernity has made man the master of his own history and society. The apparent exacerbation of liberty by libertarianism is in fact a mastery of the objective laws of the economy on society and on the individual. The denial of political involvement in the economy is, from a certain point of view, a regress, as it is equivalent to denying human control over society and history. As a matter of fact, even modern liberalism firstly had an accentuated reluctance towards democracy, especially because of the mistrust in the competency of the people to decide his own fate.

The politician conceived by the nineteenth-century liberalism was himself an *expert*, even though his expertise was different from that of the official of the current autonomous authorities. The imposition of objective laws on the development of

society requires a desubjectivation of regulation. This is now revealed in the natural laws of society, not in the conjunctural will of politicians. Politics must obey social laws, and the politician must listen to the expert who knows them, if not give up his place. Experts become a kind of new philosophers who should lead, as Plato once claimed, the ideal city. The reason is simple: "The nature of things is more imperious than the will of men. Do we not regard him as unwise of the prince who, drunk by his power, imagined that it stretched so far as to command the waves of the sea, and who ordered that the waters of Hellespont be struck because they had obeyed the winds and not the his decrees ? This is, however, the madness of those who try to arrange society according to their whims"((Say, 2002 : 340). In this optics, only a specialized knowledge of social laws can legitimize a regulation, because only this can ensure the objectivity of the decision. From this point of view, it is true that "if the scholars would have leaned upon the discovery of the laws of the political and social evolution of the nations before seeking the laws of physics and chemistry, States would now be all governed by scientists instead of being the most often governed by ignorant, impulsive, stupid or angry fools" (Fourastié, Laleuf, 1957: 211-212).

The autonomous regulating authorities (a term sometimes translated as "regulation" in Romanian as these authorities "regulate" the various "markets", are not limited to regulating them) are based on such a logic of legitimation, foreign to modernity and hostile to the chain of legitimation of the powers resulting from the right to vote, thus the political freedom of all individuals. They are based, if not on political annihilation, on politics neutralization. The syllogism that leads to their imposition is simple: "the two premises are: 1 / there are universal and immutable economic laws that are impossible to defeat for a long period without disastrous consequences for the Society, and 2 / the political people do not know them (incompetence) and, even when they know them, their personal interest (re-election) pushes them not to follow them (which leads to serious inefficiencies for communities in the medium and long term). Consequently, and as a logical conclusion of the combination of the two prerequisites, all the political interventions in the field of competition must be neutralized for the good of society" (Deschamps, 2012: 70), a competition that becomes the fundamental law of all social phenomena, not just of the economy (against this claim of universalization of competition, see Amin, 2014). Institutionally speaking, this translates into the suppression of the interventions of the government and parliamentarians, or at least of the political forces that face the parliamentary arena, to the benefit of independent authorities (Amin, 2014).

This type of authority has its presence in all contemporary constitutional systems under various names: in the United Kingdom Non-governmental Public Bodies or Quasi Autonomous Non-Governmental Organisations (Quangos), Independent Regulatory Agencies in the United States, Autorités administratives indépendantes in France (Rosanvallon, 2008 : 121), etc.

In Romania the Constitution regulates them under the generic name of „autonomous administrative authorities” (Gîrleşteanu, 2012: 272-277). Whatever the name, the function of these authorities (Gîrleşteanu, 2011) is "the development of a sector of social life through the effort to ensure certain *balances*" (Chevallier, 1986, I.3254, [8]), besides the political (irrational?!) choices of individuals and of structures that make their expression, especially political parties, based on objective laws of social development.

So it seems we are in the presence of a dichotomy: the people or the experts? The third way does not seem to be perceived unless we force ourselves to see such an alternative in the various combinations of the two solutions.

## **The Expert or the People? – On the Justification of Autonomous Authorities**

If we opt for the people, the legitimation of power is ensured by the political freedom of individuals, and the limits of power are assured by all the processes of modern constitutionalism. But the irrationality of individual choices, in the absence of a real desire to participate and the ability to do so, leads to a lack of chronic quality of the representatives and to a *policy* which has practically nothing to do with *policies*, which creates rejection reactions of the *politics* in itself and a profound crisis of democracy. If we opt for experts, we base the legitimacy of social decisions on 'objective' and 'scientific' laws, but at the cost of giving up political freedom. Are these laws, of economics, finance, social development, truly objectives or are they created (not discovered) by experts, who thus self-rank as leaders of society? If the authorities based on such a legitimation are required, and the reality is that they do, we need new procedures to limit the powers of the experts, for those stemming from modern constitutionalism are not effectively enforceable. If we do not want to counter political freedom and political representation of the scientific expertise of the autonomous authorities, we must find mechanisms to limit the power of the latter, which are not based on modern political ideas. Or, at least until now, these mechanisms seem to be lacking. The proliferation of autonomous (even independent) authorities is not without risk (for an analysis of these risks in the current Romanian system, see Tudor Drăganu, 2000: 68-78 and Drăganu, 2001: 28-43).

### **What kind of neutrality is the basis of the authority of the autonomous authorities?**

Carl Schmitt, analyzing the forms of neutrality (Schmitt, 1972: 159-164), found among them the one of the expert, "founded on a power freed of all selfish interest" Based on experts, the power of autonomous authorities should be neutral in such a sense. In order to preserve this neutrality, arrangements must be made to ensure that the experts are released from the interests at stake, that is, from the political ones, but also from the actors acting in the various "markets".

Consideration is given to explain the neutrality of the autonomous authorities to three issues which, although linked, remain distinct: 1 / if the liberation from selfish interests neutralizes the power of the experts; 2 / how can be obtained, in a State based on political freedom, a neutrality of experts towards political powers; 3 / how to neutralize the power of the experts of the autonomous authorities towards the active actors in the markets they regulate.

#### ***Freeing selfish interests neutralizes the power of experts?***

The power of the autonomous authorities must be neutral. It is the different nature of the experts that make up the one that guarantees neutrality. This conception is in fact only a derivation of the idea of neutral power that a part of modern philosophies gave to "special beings" over the political representations resulting from the vote of the members of the electoral body: the aristocrats constituted in a "superior" Chamber (Dănișor, 2018a) or the Head of State not dependent on the people, or neutralized, if it is, however, directly or indirectly dependent on it (Dănișor, 2018b). The difference lies in the fact that this particular nature still places the aristocrats or the head of state *in the political sphere*, even if their power was not *politically active*, while the experts of the autonomous authorities *brings them out of the political sphere*, placing them within the scope of scientific objectivity. Experts do not choose, they do archaeology, discovering how to regulate the social mechanisms in the "nature of things." Their power resembles that of judges, for they are also "inanimate beings," "who pronounce the words of the law," without being able to

"modify neither their strength nor the rigor" (Montesquieu, L XXI, Ch. VI.). However, it is different because the laws that judges apply are created by political power, while experts claim to transpose natural laws into society. What kind of neutrality is this? Political? In fact, the power of the experts is not *politically* neutral, but *is not*, simply, *politics*, meaning it does not rely in any way on the political freedom, the individual's autonomy over the objective, divine, natural, social laws, etc. The power of the autonomous authorities is *anti-political*, not a-political. It is *not* the nature of the judge's neutral power. It remains in the sphere of politics, it is not *anti-political*. That is why Kelsen could rightly say that by "authorizing the judge, within certain limits, to choose between contradictory interests and to resolve a conflict in favour of one or the other, the legislator confers a power of creation of the right and thus a power that gives the judicial function the same "political" character as it gives to legislative power, even if it exercises it to a wider extent. Between the political nature of legislation and that of justice there is only a quantitative, not a qualitative difference" (Kelsen, 2006: 75-76). Unlike a judge, the autonomous authorities develop a power of another nature, which is situated *not above* political confrontations but in the same plan, but *versus* political confrontations, based on objective laws, which political intervention can only *de-form*. If I am allowed a paraphrase, the expert "is subjected to something that is born among men and for him another divinity does not exist (...). In this earthly church, the human spirit worships the inter-human spirit" (Gombrowicz, 1988: 291).

The "neutral" expert actually "discovers" those laws that his scientific or economic ideology commands, even if they claim to be "objectives." To ask the expert to leave his identity based on an ideology of science, it is no different than to ask the politician to leave his religious, ethnic, etc. identity to the door of politics. Social Sciences *are* ideological. They cannot be neutral. Any expert is a politician who ignores or wants to be ignored. The so-called objective laws are actually reconfigured by the expert according to his scientific predispositions. Scientific ego is not less dangerous than politics. So the quasi-political choices of the experts (who are the exponents of some groups of particular scientific conception) between the various "objective" ways of addressing social realities must in turn be subject to neutralization procedures. It becomes so crucial how experts are elected to be released not only by the selfish interests of politicians or market actors but towards their own selfish, material and scientific interests. Current solutions differ not only from one legal system to another but from one autonomous authority to another within the same system. I think this already says a lot about systemic hesitations in the field. In Europe, solutions are so diverse that their systematization can be daunting. Spain tried to unify the rules for all autonomous authorities, but only in the economic and financial field, in a single law adopted in 2011 (Law no. 2/2011 of 4 March 2011 on a sustainable economy (BOE, nr. 55, March 5, 2011, p. 25033) (Delzangles, 2012: 714-715). Otherwise, European legal systems seem to follow the idea that each authority should be regulated separately (see, for example, Martucci, 2012: 726-727; Walther, 2012: 693-706; Perroud, 2012 : 735-746; Goranson, Volkai, 2003: 7-94; Maggetti, 2014 : 281-303; Hoyneck, 2012: 791-801; Conseil d'État, 2001).

In Romania this conception was even routed by some doctrinaires, stating that "it is advisable that each autonomous authority has its own organic law, although the constitutional text admits another possibility" (Vedinaș, 2008: 1123).

There is a logic of autonomy that can be met by this authority's intended regulation, for each time Parliament has to debate the necessity and status of such authority, which can be interpreted as guaranteeing that it is not established and defined

## The Expert or the People? – On the Justification of Autonomous Authorities

conjunctural. However, this process is not without risk in the absence of a principle consistency provided by the constitutional detailing of certain principles that concern autonomous authorities. Most of the Constitutions, including that of Romania, are quite succinct in this area. Thus, the Romanian constitutional system is pleased to state, when the central specialized public administration regulates, only that "other specialized bodies can be organized under the subordination of the Government or of the ministries *or as autonomous administrative authorities*" [Art. 116 (2), and that autonomous administrative authorities "may be established by organic law" (art. 117 (3)]. No word about what the autonomy of these authorities means or the neutrality on which they are based.

European regulations in the field of autonomous (independent) authorities define the neutrality of experts on two levels: towards the political power and the actors whose relations the authority has the power to regulate. They are not concerned with the neutrality of experts over the various scientific doctrines that claim to objectively explain the social reality they have as an object. It is this neutrality that should give them the status of experts to those who make up the autonomous authorities and base their neutrality on the upstream of political autonomy and social actors. The first problem is how we define an expert, the second is how we define the status, and only the third is how we choose it to be part of an autonomous authority. But the current legal systems are not very concerned about the first issue. The criteria for defining experts are rather incantations than guarantees. I will only exemplify the solutions in the Romanian laws, saying that the problem is general, being present in all European systems. Thus, experts who may be members of the Competition Council "must have real independence", enjoy a "high professional reputation and civic probity", give "proof of high professional competence in the field of competition" and "have a minimum of 10 years' experience in economic or legal activities".

The President of the Council "must have fulfilled a managerial function with wide responsibilities, in which he has demonstrated his professional and managerial competence" (Art. 15 of the Competition Law no. 21/1996, republished, Off. J. no. 153/2016). The President and Vice-President of the National Integrity Agency are appointed following a competition to which candidates who have "higher juridical or economic studies certified under the law" can participate (Art. 13 (2) e from Law no. 144/2007, republished, Off. J. no. 535/2009). This is the only proof of expertise required. It is true that it is a contest, but the expertise cannot really be proved by a written test and an interview. In order to be a member of the National Securities Commission, the qualities that were required were: experience and technical qualification in the supervision of the financial sector (Art. 3 (2<sup>1</sup>) from Statute of the National Securities Commission, Off. J. no. 226/2002), a good reputation and professional training in the economic or legal field and a minimum of 5 years' experience in the financial sector ((Art. 4(3) from Statute of the National Securities Commission, Off. J. no. 226/2002).

In order to be a member of the Financial Supervisory Authority, an autonomous administrative authority resulting from the taking-over and reorganization of all the powers and prerogatives of the National Securities Commission, the Insurance Supervisory Commission and the Private Pensions Supervisory Commission, requires "a good reputation and professional training and appropriate professional experience in areas where ASF has competencies". The examples could continue, but this study is not the subject of a thorough analysis. What is important for the moment is that the expertise

---

\* (Art. 9a of the Emergency Ordinance no. 93/2012, Off. J. no. 874/2012).

requirements are vague, non-objective, less, sometimes, the minimum conditions of study and seniority, which are not necessarily a test of expert quality. In some cases these conditions are completely absent. For example, in the case of the National Audiovisual Council, whose members do not have to fulfil any particular condition that would provide them with any expertise in the field (Law no. 504/2002, Chapter II - National Audiovisual Council (Art. 10 - Art. 20), Off .J no. 534/2002).

What kind of experts are they? One cannot help thinking that in fact the chanting of the expertise is meant to actually ensure the removal of the political power (which in one way or the other chooses it) from democratic control, based on the political freedom of the citizens, rather than an equidistant regression.

### **Neutrality of experts towards political powers in the state based on political freedom**

Under the conditions described above, the neutrality of the autonomous authorities' experts over political power has the significance of removing certain political powers from the scope of guarantees given to citizens by the mechanisms of separation of powers. The substrate of this statement is the following: in a state based on the mechanisms resulting from the separation of powers (constitutive and constituted, legislative, executive and judicial, central and local) based on modern political freedom, it is not possible to introduce neutral authorities which are not founded on this freedom, but which exercise the powers that normally belong to those powers.

In order for these innovations not to become a trap for freedom, it is either for these authorities either to give them the mediation powers or the modern powers-limiting mechanisms to be added to others, adapted to the anti-political nature of the autonomous authorities. Autonomous authorities regroup, settle conflicts, sometimes investigate and sanction (Taibi Achour, 2013: 463-480). The fundamental problem is that these attributions *are political* and that the doctrine that justifies autonomous authorities claims they are not. This claim is also a political one, and politicians cover the desire to extend the powers of the state without providing the guarantees of modern constitutionalism under the guise of political neutrality of experts.

Perhaps these statements appear to be dangerous when constitutional justice could consider that "the designation of an independent administrative authority (...) constitutes a fundamental guarantee for the exercise of public freedom" (French Constitutional Council, Decision no. 84-173 DC, 26 July 1984, Rec. 63; RDP 1986.395, note Favoreu, quoted by Olivier Gohin, 2002: 230). However, such authority, when it has powers traditionally in the sphere of one of the same three powers, may restrict the exercise of the law without respecting the limits imposed to them by modern constitutionalism. Autonomous authorities are thus in an ambiguous middle position between guaranteeing fundamental rights and restraining them without the limits imposed on classical powers. Some authors try to get out of this dilemma by considering that the autonomy (independence) of this type of authority must be configured in relation to the fundamental right (s) it is called upon to protect (Martucci, 2012: 726-727).

Autonomy is thus configured in relation to the type of authority's intervention in the sphere of law, which necessarily limits its exercise. Depending on this mission, of mediator between the assertion of the fundamental right and its restraint, the organic autonomy of authority must be configured. This option would mean that safeguards to restrict the power of autonomous authorities are chosen, among those applicable to classical powers, in relation to the type of restriction of the exercise of fundamental rights



## The Expert or the People? – On the Justification of Autonomous Authorities

that the autonomous authority is able to impose. But, should not other limiting mechanisms be envisaged?

If we opt for such an analysis, then the neutrality of the experts of the autonomous authorities "exists only for teachers and naives" (Holleaux, 1987, quoted by Olivier Gohin, 2002: 234). These authorities are not politically neutral. They are a danger both to the political direction of society and to freedom. Here is what the French State Council endorsed in its 2001 Report on independent administrative authorities: „The multiplication of independent administrative authorities is not really without risk to the Government. It deprives him of the means of legal intervention he had, although at the same time, in the face of a dangerous and strongly mediated situation, his political responsibility remains complete. The experience of the last few years has shown it to a great extent: in times of crisis, what can be called "*administrative screen*" is not working. Public opinion does not allow political powers to hide behind the expertise or independence of regulatory authorities" (Conseil d'État, 2001: 371).

*A contrario*, in normal situations the public wants to be convinced of the political neutrality of the experts, even if it is not real. Under the mask of the expert, the politician is hiding, even if this "policy" is the "scientific" one.

### Fundamental ambiguity of expert neutrality towards 'markets'

The establishment of autonomous authorities is the reflex of trust and, at the same time, mistrust in "markets" or, in other words, in the power of society (modern capitalist) to self-regulate. The capacity of the society to produce *spontaneously* the rules that structure it, is an old claim. The requirement of autonomy over political power and the right created by it from top to bottom as well. It translates into the autonomy requirement of *civil society* to political society (I have dealt more extensively with the forms of this autonomy, which will be outlined below in my study *The Autonomy of Civil Society - a Guarantee of Freedom*, which is being published in another magazine). The first form of autonomy claimed by this type of society was one to the army and the clergy. With the separation of the state from the church and the transformation of the army into a body subordinated to the political power, the opposition between military and religious society and civil society fades, leaving the place of another, the one between the modern political society based on the disengagement of the citizen against the classes of the old regime; or, broader than primary identification groups, and identity claims, which make it necessary to build an autonomous sphere towards politics, a *civil* sphere, where people find their *private* identity, which they can no longer manifest in the public space, *politically*. Civil society is rebuilt by opposition to political society. It is a depoliticized society.

The quintessence of this autonomous society to politics is the economy. The political separation is in the sphere of economy, which is why capitalism seems to be consubstantial with modernity. And, as the state becomes the ultimate form of politics, relying on the *mandatory* membership and dominating the public space by representing the general interest, its limitation must be by establishing a sphere of social life which *remains the expression of particular interest* and is based on *voluntary* association. This new identity of civil society is built up in opposition to the state. The "civil" society is built on the basis of the free association and the free satisfaction of the private interest.

With the imposition of fascism, the associative space was "made public". Associations have become a way of fitting and controlling themselves. They were no longer just counter-powers, but also manifestations of power on another level. Civil

society is redefined from now on by opposition to "political" corporations resulting from association or necessary to free exchange.

In the next stage, the post-modern one, several tendencies of claim of autonomy are exacerbated *sui generis*. The first is the claim of the autonomy of society to any form of manifestation of politics. It transforms populism into a particular political stream, *antipolitism*. The second exacerbated trend of post-modernism is the claim of individual autonomy. It transforms autonomy into the sovereignty of the individual.

From these seemingly contradictory developments, a multiform "civil" society emerges, which is rather used as a communicative justification of autonomy claims placed on so many different levels that it is difficult to describe it in a unitary concept. The central idea, however, is that regardless of the form of the manifestation of power, the guarantee of freedom implies a certain form of autonomy of society, that separation of the sphere of power and social autonomy, however multiform the two realities, is still necessary. Everything can be, in this conception, regarded as a "market" (It was even possible to argue that "there is a free market of love affairs" (Pierre Lemieux, 1983)) so as a social sphere that can produce the rules that are needed, from bottom to top, spontaneously, without the intervention of political power.

This claim could not have any effect on the creation of legal rules by the political powers. Their disbelief in people's ability to self-govern and to give themselves the necessary rules for cohabitation and progress was initially translated into the establishment of the representative government and the banning of popular interventions in the exercise of powers after they are constituted on the basis of the expression of political freedom. The people sends representatives in the competent bodies to create the law and that is it! He never creates the legal rules himself. When the representation no longer satisfies the people, satisfaction with the requirement of autonomy of civil society towards political power must be given, by creating autonomous authorities towards it, regulating "markets". But the law must not spontaneously result from the will of individuals, but from the objective laws of these social structures, which only the experts know. The liberation of the markets has nothing to do with the liberation of individuals and their direct participation in creating the rules that constraint them. On the contrary, the participation, which was present in the system of election of the political representatives, fades with the strengthening of the regulators' autonomy over the political powers resulting from the vote and set up on the basis of the separation of powers theory. This fundamental dichotomy means that the neutrality of the experts of the autonomous authorities towards the actors in the "markets" is an institutional transposition of a dual requirement: on the one hand, the requirement that the markets are *not* regulated by political power, on the other hand, the requirement that they do *not* self-regulate. Regulating markets through the autonomous authorities is neither political nor spontaneous.

It is ambiguous. The whole issue of the autonomy of authorities that regulates society outside of politics is dependent upon this double negation, which, like any double negation, may seem like an affirmation.

## The Expert or the People? – On the Justification of Autonomous Authorities

### References:

- Amin, S. (2014). *Modernité, religion et démocratie. Critique de l'eurocentrisme. Critique des Culturalismes*, Sénégal: Nouvelles Editions Numériques Africaines (NENA).
- Chevallier, J. (1986). Réflexions sur l'institution des autorités administratives indépendantes. *La Semaine juridique*, Juris-classeur périodique, no. 30-32, 6 August 1986, I.3254, [8].
- Competition Law no. 21/1996, republished, Off. J. no. 153/2016.
- Conseil d'État (2001). Rapport public 2001, Jurisprudence et avis de 2000, Les autorités administratives indépendantes, La Documentation française, Paris, 2001.
- Conseil d'État (2001). Rapport public 2001, Jurisprudence et avis de 2000, *Les autorités administratives indépendantes*, Paris: La Documentation française, p. 371.
- Dănișor, D. C. (2018a), Camera superioară a Parlamentului - o putere neutră ?, *Dreptul*, no. 4
- Dănișor, D. C. (2018b), Șeful statului ca putere neutră, *Dreptul*, no. 6
- Delzangles, H. (2012). L'indépendance des autorités de régulation économique et financière en Espagne: l'intérêt de la clarification du droit public. *Revue française d'administration publique*, 2012/3 (n° 143), 707-721. DOI 10.3917/rfap.143.0707.
- Deschamps, M. (2012). L'expert ou le peuple? Deux attitudes polaires face à la politique de concurrence. *Revue internationale de droit économique* 2012/1 (t. XXVI), 57-94. DOI 10.3917/ride.255.0057.
- Drăganu, T. (2000). Tendințe de limitare a rolului în stat a Guvernului prin multiplicarea exagerată a autorităților centrale autonome ale administrației publice (I). *Revista de Drept Comercial*, nO. 12/2000, 68-78
- Drăganu, T., (2001). Tendințe de limitare a rolului în stat a Guvernului prin multiplicarea exagerată a autorităților centrale autonome ale administrației publice (II). *Revista de Drept Comercial* nr. 1/2001, pp. 28-43.
- Emergency Ordinance no. 93/2012, Off. J no. 874/2012.
- Fourastié, J., Laleuf, A. (1957). *Révolution à l'Ouest*, Paris : PUF.
- French Constitutional Council (1984). Decision no. 84-173 DC, 26 July 1984, Rec. 63; RDP 1986.395
- Gârleşteanu, G. (2011). *Autorități administrative autonome*, Bucharest: Universul Juridic, București.
- Gârleşteanu, G. (2012). *Drept constituțional și instituții politice*, Bucharest: Universul Juridic.
- Gombrowicz, W (1998) *Jurnal. Teatru*, Bucharest: Univers Publishing House, 1988, p. 291.
- Goranson, L., Volkai, J. (2003). Le droit et la politique de la concurrence en Europe du Sud-Est, *Revue sur le droit et la politique de la concurrence*, 2003/2 (Vol. 5), 7-94.
- Holleaux, A. (1987). LPA, 9 février 1987, quoted by Gohin, 2002.
- Hoyneck, S. (2012). Indépendant de qui ? Les trois âges de l'indépendance des régulateurs des télécommunications en Europe. *Revue française d'administration publique*, 2012/3 (n° 143), 791-801
- Kelsen, H. (2006), *Qui doit être le gardien de la Constitution?*, Paris: Michel Houdiard Éditeur, 2006, traduction de Sandrine Baume, pp. 75-76.
- L. Favoreu, quoted by Gohin, O. (2002). *Institutions administratives*, 4<sup>e</sup> Edition, Paris: LGDJ, p. 230.
- Law no. 144/2007, republished, Off. J no. 535/2009.
- Law no. 2/2011 of 4 March 2011 on a sustainable economy (BOE, nr. 55, March 5, 2011, p. 25033)
- Law no. 504/2002, Chapter II - National Audiovisual Council (Art. 10 - Art. 20), Off. J no. 534/2002.
- Lemieux, P. (1983): *Du libéralisme à l'anarcho-capitalisme*, iBooks, I, 4, Paris: Presses

- Universitaires de France.
- Maggetti, M. (2014). Le changement institutionnel et l'évolution de l'État régulateur : L'exemple suisse. *Revue Internationale des Sciences Administratives*, 2014/2 (Vol. 80), p. 281-303. DOI 10.3917/risa.802.0281
- Martucci, F. (2012). L'indépendance des autorités de régulation en Italie. *Revue française d'administration publique*, 2012/3 (n° 143), 723-734. DOI 10.3917 / rfap.143.0723
- Montesquieu, L'Esprit des Lois, iBooks, L XXI, Ch. VI.
- Perroud, T. (2012) .L'indépendance des autorités de régulation au Royaume-Uni. *Revue française d'administration publique*, 2012/3 (n° 143), 735-746. DOI 10.3917 / rfap.143.0735.
- Rosanvallon, P. (2008). La Légitimité démocratique. Impartialité, réflexivité, proximité, Paris: Seuil.
- Say, J. – B. (2002). Discours d'ouverture au Collège de France. In Œuvres complètes de Jean-Baptiste Say, vol. 4, G. Jacoud et al. Steiner, Economica, 2002, 340.
- Schmitt, C. (1972). Exposé sommaire des différentes significations et fonctions du concept de neutralité de l'État en matière de politique intérieure [1<sup>re</sup> éd. 1931]. In *La Notion de politique*, Paris : Calmann-Lévy, pp. 159-164.
- Statute of the National Securities Commission, Off .J no. 226/2002.
- Taibi Achour, M. (2013). La justification du pouvoir de sanction des AAI de régulation est-elle toujours pertinente ?, *Revue internationale de droit pénal*, 2013/3 (Vol. 84), 463-480. DOI 10.3917/ridp.843.0463.
- Vedinaș, (V.) (2008). Art. 117 of the Constitution of Romania, in Ioan Muraru, Elena Simina Tanasescu (coordinators), the Romanian Constitution. Comment on articles, Bucharest: C. H. Beck, 2008, 1123.
- Walther, J. (2012). L'Indépendance des autorités de régulation en Allemagne. *Revue française d'administration publique*, 2012/3 (n° 143), 693-706.

---

#### Article Info

*Received:* April 13 2018

*Accepted:* April 20 2018

---