

COMPARATIVE LAW

Considerations on the Models of State Organization in the European Union¹

*Paul-Iulian Nedelcu*²

Abstract

The unitary state is organized on the basis of the principle of unity and centralization. This form is the most widespread in the European Union (France, Portugal, Poland, Hungary, Czech Republic, Lithuania, Romania, etc.).

The rule of law has the following main characteristics:

- *it consists of a single set of bodies through which political power is exercised at central and local level;*
- *the governing activity is broadcast from the center in a hierarchical way;*
- *there is only one legal order, based on a single constitution;*
- *the population has only one citizenship.*

Although the state is unitary, its territory can be divided into administrative-territorial units or into local communities. The subdivisions of the unitary state have an eminently administrative character and do not constitute states within the state.

In the modern unitary state, based on the principles of the rule of law, centralization plays a role similar to that of absolute monarchies, but obviously with different means and objectives. We consider, in this sense, the fact that the centralized state apparatus (the single or main center of decision) represents, in reality, the whole nation and serves its general interests. In modern states, the centralization of power and its distribution by a single center of decision is no longer for the benefit of a single person, but of the whole people.

Keywords: *unitary state, centralization of power, unique decision center, complex unitary state, the incorporated union, regional states.*

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² Lecturer Doctor, Spiru Haret University, Faculty of Legal and Administrative Sciences, Attorney.

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A variant of the unitary state is the complex unitary state. The association of the term unitary state with that of complex can give rise to a certain ambiguity. However, this ambiguous expression qualifies a really complex reality³. *The complex unitary state is one of the imperfect forms of the category of "unitary state"*.

The complex unitary state is the unitary state which, without losing its structural unity, presents, at the same time, great local administrative, legislative and even jurisdictional diversities, due to which historical enclaves with particularities of political and social development are preserved. - economic and legal.

The origin of the formation of the complex unitary state has a historical character. Governments must take into account the variety of aspirations and interests of the population, more or less homogeneous. At the same time, they are obliged to defend by all means the unitary character of the state.

Basically, it is difficult to introduce concrete realities, existing in one state or another, in the theoretical models presented. They are considered complex unitary states: "the incorporated union" and the regional states".

³ Charles Cadoux, Constitutional Law and Political Institutions, vol.I, Cujas, Paris, 1973, p.108.

The incorporated union is a state characterized by the unity of the central power, within which there is, in addition to a common legal fund, a diversity of laws corresponding to a diversity of populations and territories "incorporated" to the state. In this situation, there is only one Parliament, but it votes separate laws, which are not equally applicable to all regions inhabited by distinct populations, moreover some regions have been given the possibility to set up regional parliaments (eg Scotland, 1999) or some semi-autonomous assemblies (Northern Ireland, 1998).

Thus, the United Kingdom of Great Britain and Northern Ireland is a unitary state (an incorporated union) in which the legislative regime is not uniform for all regions (England, Wales, Scotland, Northern Ireland). We can therefore say that the formation of the incorporated unions is largely based on historical factors: England conquered Wales in 1536, Scotland in 1707, Northern Ireland between 1800-1921.

The regional states were generated by the phenomenon of regionalism that expresses geographical, political, administrative, linguistic, spiritual situation with historical roots in the development of a unitary state, due to which it opts for interweaving the sovereign attributes of centralized rule regional authorities.

The problem of regionalism is acute in many European Union countries with centralized political and administrative systems (Spain, Italy and even France). However, the form in which this problem arose was almost always determined by a political crisis.

Adherents of the regional state invoked the inability of central political-administrative structures to provide viable and efficient solutions to the demand for social forces to participate in government, the lack of political will of central authorities to respond to the need for redistribution of power in favor of local administrative units.

His opponents argued that such an organization threatened the very unity of the state and that it was a factor in its dismemberment.

In this context, some authors consider that the Italian experience is, by its magnitude, as well as by the originality of its content, a model of reflection for finding a *modus vivendi* between defending the unity of the state and invoking regionalism.

We considered it necessary to analyze the phenomenon of regional affirmation that manifested itself in Europe and that led us, at institutional level, to a double dialogue, vertical and horizontal. The first refers to the dispersion of power corresponding to the relations that regions develop or try to develop with the European institutions, the European Union or the Council of Europe, and the second stems from the importance that regions attach to the direct relations they establish between them. The year 1975 marks the moment of institutionalization,

from this perspective, both of the relations with the European institutions, and, especially, of the direct relations between the border regions.

The compound state

Unlike the unitary state, the composite state consists of several state entities reunited in a state superimposed on them and linked together by more or less close legal relations. Seen from the outside, the composite state appears as a state itself made up of several state collectivities. It is therefore an association of "states" that form a kind of super-state.

In the political history of some states, however, there have been rudimentary forms of compound states - states grouped under the general name of Unions of States and Confederations of States.

Union of States

The term has a precise legal meaning, although in political language this term is sometimes abused to qualify as a union, the link between several states that have in common one or more objectives, but which are different from each other in terms of state view.

There is a real union of states when two or more states come together to form a new distinct political entity and to carry out certain activities together, especially in the field of defense, finance and international relations.

Within the Union, each Member State retains its internal and international legal personality, but agrees to entrust a joint body with the responsibility for taking decisions in the areas established by the legal act (Treaty) consecrating the Union.

From a historical point of view, two main types of state unions can be recorded: personal union and real union.

The states constituted in a personal union have in common the institution of the head of state, most of the times, the monarch, each of them keeping his Parliament and the Government, between which no relations are established resulting from the act of union. This form of organization has never been widespread, nowadays a reminiscence of it is considered the personal union between Great Britain (member of the EU) and some Commonwealth states. In our history, it can be said that the Romanian states were reunited under Mihai Viteazul in such a form of compound state.

In the real union, the association between the component states is stronger: the union is led by the same person, the component states constitute common bodies that exercise, in the name of the real union, the state sovereignty in the field of diplomacy, defense and finance.

For the rest of the state prerogatives, each component state acts distinctly from each other. This form of union of states also remained of limited application, being identified at the level of the union between Sweden and Norway (1815-1905), Denmark and Iceland (1918-1944) or Austria and Hungary (1867-1918).

The Confederation of States

It is the most widespread form of union in history. It has been known since antiquity (Athenian League, Macedonian League) although at present it has fallen into disuse.

The Confederation of States is a theoretically permanent association of states that pursue identical objectives, especially in the field of international relations and defense, and are linked by mutual commitments. At the same time, the confederation has one or more joint bodies of the Member States, which exercise powers on its behalf.

The constitutive act of the confederation is a treaty, the amendments brought to it entail the revision of the treaty by all the signatory states. Each Confederate state retains its internal sovereignty over the constitutional framework. But sovereignty on international plan is exercised on behalf of the confederation by a joint body - the Assembly, the Diet - which takes decisions unanimously.

The representatives of the states unite in intergovernmental structures to take important decisions unanimously by consensus, but they are not bodies representing the people of the Member States. These decisions are not directly applicable in the territories of the Member States of the Confederation, they must first be ratified by them in order to be enforceable. Practice shows that these state formations did not last long: they disintegrated for various reasons, each component state of the confederation resuming its powers of sovereignty⁴. Large confederations such as the German Confederation, which was born at the Congress of Vienna in 1815 by associating 40 states, no longer exist. Also, the Swiss Confederation is in fact, since 1848, a federal state. We note that at other times, the confederation transforms or evolves into a federal state, as has happened to the United States, Germany, and Switzerland.

The federal state

The archetype of the compound state is the federal state. The federal state is an association of states that freely decide, by virtue of their sovereignty, to create

⁴ C. Ionescu, *op. cit.*, p. 129.

joint bodies, to which they confer part of their competences, especially in the military, diplomatic or financial fields⁵.

The federal state consists of several state formations that enjoy a status of autonomy in constitutional, legislative and judicial matters and is subordinated to it. In international relations, only the federal state has the status of a subject of law. The link of association between states is established by the constitution. The federal state therefore presents itself as an association of states that are subject, on the one hand, to a single central power (federal power) and which, on the other hand, retains a wide constitutional, administrative and jurisdictional autonomy. The federal state retains a plurality of constitutional frameworks subordinate to the same higher constitutional framework (of the federal state).

In the specialized doctrine it is appreciated that there are two ways of forming federations: by integrating several states and establishing a new entity (United States, Switzerland, Germany) or by separating some regions of the unitary state and forming a federation (Belgium).

The reasons for the integration of independent and sovereign states into a federal state are very diverse: common defense against an external threat; the concern to ensure (through integration) a stable internal social order; the desire to use economic resources more efficiently; geographical features (this is the case of the European integration process).

As for the reasons for forming a federation by separating some provinces from the unitary state, they consist mainly in trying to solve the conflicting national problems.

The federal state can be considered to be a synthesis between the unitary state - with its centripetal or centralizing tendency and the confederal state - with its centrifugal tendency, to move its entities away from the center.

The federal state is distinguished from the confederal one by the degree of integration of the federated entities, the Constitution being the one that is the basis of its existence and not a Treaty. It consists of a set of states, the federated states, which transfer part of their original sovereignty to the entity formed by their group, the federal state. This transfer of sovereignty can be considered a transfer of powers in favor of the federal state.

At European level, the question has often been raised: Is the European Union a new form of confederation or perhaps even a federation?

Euro-skeptics and supporters of Europe of nations, as well as the evolution of European construction for more than 50 years, indicate the path taken by the European Union towards federalism.

⁵ See General Theory of Federalism in Charles Debbasch and Others, *Droit constitutionnel et institutions politiques*, Economica, Paris, 1983, p. 29-31.

However, an analysis of the European Union system after the Treaty of Lisbon will reveal that it is already endowed with federal-type institutions:

- The European Parliament has been elected by universal suffrage since 1979;
- The European Commission, which has the power of legislative initiative in Parliament and the Council of Ministers and the application of provisions at Member State level, is considered to be the Union's executive;
- European Court of Justice, which ensures the pre-eminence of European law over national law and sanctions in case of non-compliance;
- The European Central Bank with competences in establishing the European monetary policy.

However, the European Union also has confederal bodies, the European Council of Heads of State and Government and the Council of Ministers, which represent the Member States, but which take decisions that are prepared in advance by the European Commission.

The transfer of competences and sovereignty to the European Union from the Member States has not stopped, but it is getting closer and closer to areas such as economics, money (the establishment of the single currency - the Euro), trade (the Single Market), fiscal and even social, educational (European Credit Transfer System - ECTS) and cultural (creating a European identity), which helps it to continue its path towards federalism.

The European Union today presents itself as a political, institutional and economic entity endowed with two levels: European and national. Progressively the European level will take over the national level.

The European Union (EU) has evolved from a Europe of 6 to a Europe of 28, today it is composed of 28 countries and has a population of about 500 million inhabitants:

- 1958: Europe of the 6 founding countries: Germany, Belgium, France, Italy, Luxembourg and the Netherlands;
- 1973: Europe of the 9: accession of Denmark, Ireland and the United Kingdom;
- 1981: Europe of the 10: accession of Greece;
- 1986: Europe of the 12: accession of Spain and Portugal;
- 1995: Europe of the 15: accession of Austria, Sweden and Finland;
- 2004: Europe of 25: Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and the Czech Republic join;
- 2007: Europe of the 27: accession of Bulgaria and Romania;
- 2013: Europe of the 28, accession of Croatia.

Reform of U.E. institutions is ongoing, but needs to continue until solutions are found to harmonize the institutional structure and mechanisms with the new

U.E. formula. extended to 27 states. There have been and still are a lot of issues that need to be addressed in the context of enlargement and first of all it has been necessary to considerably expand the EU budget in order to meet the additional obligations arising from the accession of Central and Eastern European countries.

Thus, as noted in the doctrine, over the years, many citizens in member countries have felt a sense of frustration at not being able to understand and in no way influence the decision-making process within the EU.

The „democratic deficit“ seems to result mainly but not exclusively from the non-public nature of the decision-making procedure, from the Council. European federalists generally accept an increase in co-decision power for the European Parliament, an objective supported by Germany. The French and British are in favor of stronger involvement of national parliaments, but some experts say this would complicate procedures and could be seen as a setback to the current degree of integration.

Reform of U.E. institutions it is a sine qua non condition for its expansion into 28 states and in relation to the „open door“ policy that seems to be maintained, even if not for the immediate future.

That is why the debates on the political and legal solution that will be adopted for the full integration of the EU member states continue. Will federalization be a solution?

It is already well known that the future of the evolution of a system, whatever it may be, cannot be known with certainty. It is a truth that has been scientifically proven. It is this uncertainty about the future of the U.E. determined the imagination of some scenarios, including the one that would solve the current contradiction in the U.E. namely the existence of a true „economic federation“ and only a „quasi-political confederation“.

In Europe, federalism is known mainly as a concrete solution for the division of power between the institutions of a central power and those of the Member States (in the case of federal states) or as a possible model of transnational integration (in the case of the European Union) and even for regionalism. within some states (Spain, Italy, France).

Federalism exists, therefore, as a political and social model, but also as a philosophy and methodology oriented towards a future determined by the inevitable globalization.

However, in order to opt for such a model, it is necessary to know its genesis, evolution and prospects for its adoption in conditions totally different from what the concrete federal models that exist throughout history mean until now.

The first to develop such a global concept of federalism was Pierre Joseph Proudhon, whose theory of a federal society inspired the personalist movement

of the early 1930s and later, those who called themselves "Global or Integral Federalists." , a school founded by Alexandré Marc.

In this paragraph, we consider it useful to summarize the philosophical-legal foundation of the integrative approach to federalism, which also takes into account the general application vocation of federal principles in many areas of social life and even in the methodology of knowledge.

Before developing the topic, let's try to decipher what we should concretely understand by federalism as a way of organizing a society as defined above.

When the first federal constitution was drafted in Philadelphia, a compromise had to be found between two groups with seemingly incompatible philosophies: those who wanted to replace the thirteen independent sovereignties with an American government and parliament and those who refused to replace any transfer of sovereignty to Philadelphia. common institutions and opted for a confederation in which the common institutions had no power over the sovereign Member States.

The solution was found by Benjamin Franklin, who proposed the bicameral federal system as a historic compromise: the House – representing the people of the United States and the Senate – representing the interests of the Member States.

Federalism therefore appears from the beginning as a combination of unity and diversity and seems to be the result of a process of integration that tends to transcend autarchy, without generating centralism and uniformity; it can be a process of decentralization without achieving the specific autarchy we find today in the international society of so-called sovereign nation-states where, in fact, some are "more equal than others".

In general, federalism is associated with the historical experience of federal states. However, the constitutional framework provided by the dualist division of power between the political federation and its member states can tolerate political regimes, social and economic systems, but also different philosophies such as the United States or the former U.R.S.S., Switzerland or the former Yugoslavia, Brazil or Germany. The creation of the United States of Europe, for example, we believe will not necessarily imply the choice towards a certain form of society even if the reallocation of authority, through the sharing of competences and their transfer at European level, contributes to important changes.

All states or any other type of federal organization have in common some principles which, although in practice are sometimes applied unequally or insufficiently, are found in federalism and characterize it.

- the political autonomy and self-government (self-government) of the federated states or subgroups are ensured by legal guarantees and adequate financial means
- disputes between the autonomous federated states or member sub-groups are not resolved either by illegal competition or by arbitrary decisions of

- an all-powerful center, but by mutually accepted rules or conventions between the partners involved. This has been called the principle of cooperating federalism;
- In a federal system, power is divided so that each level (federal institutions as well as those of the federated states or sub - group groups) has adequate means to solve its own problems. The purpose of this so-called principle of subsidiarity is not only to achieve greater efficiency, but also for a higher degree of transparency and mutual control;
 - federalism seeks to strengthen the democratic principle of participation, not only for individuals, but also for member states or subgroups in order to participate in joint decisions. Participation becomes effective by applying the other principles mentioned above. Individual members of small autonomous subgroups know problems and people better and therefore have greater opportunities to participate in decisions than those who belong to highly centralized mass organizations. Conflict resolution through dialogue and agreement is more participatory than a decision imposed by authority, by force.

In summary, what we can remember is that personalists converge on a certain doctrinal position, namely the rejection of both individualism and collectivism. Personalism opposes individualistic ideologies based on the idea that the sum of all selfish attitudes will lead to freedom and general well-being. At the same time, personalism is the opposite of the unilateral collectivist priority given to a society which controls everything, in which manipulated individuals are seen only as executors who do not have to build their own future, but only to contribute to the collective future.

The fulfillment of the person demands above all his autonomy and freedom, but this can only be achieved if the basic communities, the groups of people (which allow personal relationships) are also autonomous. Note, however, that personalism does not want to encourage the nostalgia of patriarchal isolationism and in fact the principle of autonomy means removing the aggressive centralism of large organizations, either by a real decentralization of decision-making power or better by creating new communities with human dimensions: neighborhood organizations in large urban areas, the regrouping of workers in autonomous teams in factories, the revaluation of union cells, etc.

Each of these entities will be able to enjoy autonomy insofar as it has its own status and financial resources necessary to exercise all its rights. But decentralization and the creation of new autonomous communities is limited by the need for autonomy of neighboring groups, just as the freedom of each person is limited to that of others. If one wants to prevent the atomization of an autarchic society, autonomy cannot mean absolute freedom and sovereignty. As

Western doctrines put it „ autonomous but not independent, local communities are located in a unitary state. It is therefore normal, in theory, that they are subject to state control ”⁶.

The application of the principle of autonomy objectively generates conflicts. Cooperation between independent decision-making centers and the restructuring of society as a whole, both based on freely assumed, constitutional, convenient, generally accepted rules, laws and contracts, must lead to a civilization of free and responsible people.

This vertical restructuring poses problems in sharing the political, economic, social and cultural power of all EU member states, according to real needs and requirements. Thus, in order to respect the autonomy of the constituent communities, the federal power has only an auxiliary role. When problems exceed the skill level of the levels „ *subordinated*”, the autonomy of the federal communities is limited so that the management of issues of common interest is done at the level of the federal power.

Decentralization is undoubtedly a formidable thing useful for democracy ⁷.

The intervention of the individual in society is ensured by the principle of participation. Participation is conditioned by the observance of the other principles of constitutional democracy, but in small communities a person can be fully achieved, knowingly and can achieve his goals in the community. In addition, these communities must be able to participate in solving the problems they share with others, either through horizontal cooperation or through relationships with the next higher level.

Conflicts and wars, hunger and underdevelopment, ethnic cleansing, ignorance and violence, radical nationalism, xenophobia and intolerance, torture and other human rights violations, environmental destruction, etc., are only superficial manifestations of a deeper crisis affecting the world. our present.

The nature of the crisis of today's world can be illustrated by the unbalanced relations through the rupture between man and nature, between man and the technical world created by him and in social relations.

Our society is increasingly dominated by large organizations, such as cities (megalopolis) of millions of people, corporations with tens of thousands of employees, political parties, trade unions, public and private bureaucracies. Small groups such as families, small businesses or corporations have declined

⁶ Stephane Guerard, *Etat des lieux des controles exercices par l'Etat sur l'administration decentralisee en France*, *Revue d'etudes politiques constitutionnelles*, nr.7 (2011), p.325.

⁷ Anne-Elisabeth Courrie, *State Controls on Local Authorities. Some remarks on the comparison between France and Hungary*, *Revue d'etudes politiques constitutionnelles*, nr.2 (2011), p. 407.

since the industrial revolution. Most people spend an increasing part of their lives in anonymous and non-transparent social structures. In this context, the state, through its authorities, had to make its presence felt „The activity in the administration presupposes a great love of people”⁸.

The result of this „massification” is the increase in the tendency toward individualism. Social commitment to the community becomes a rare virtue while the rule is the selfish pursuit of individual goals. Beyond our friends and acquaintances, people appear to us only as globally labeled groups: we are talking about women, Catholics, Muslims, Orthodox, blacks, Chinese, Americans, workers, drivers, etc., as if they were all robots going in one. direction and behaving in the same unique way. In fact, these labels describe only one large group size neglecting all the others. By using one of these terms we ignore the great complexity of the real world.

We would like to point out that personal thinking should not be considered as the final project of a perfect society that could be arranged within the U.E. The basic approach begins with the recognition of what in France is called "la pluri appartenance de l'homme". Each person belongs to various groups and communities. Any limitation to one of these different dimensions, nationality, social class, profession, etc., leads to the violation of freedom and the destruction of the rich variety in human life. The integral federalism of the U.E. it should recognize this variety through the general recognition of self-government for all member countries. But if this condition is met, will it lead to greater freedom and solidarity? It would mean going too far if we described in detail all the ideas of the federalists, personalists, and Proudhonists. However, some significant examples need to be given:

- a) in the political field, the partial transfer of sovereignty of the nation-state: internally, to allow a redefinition of local authorities, taking into account the release of urban centers that have become unsuitable for housing; externally, by building a federal Europe and transforming the United Nations into a world federation;
- b) In the economic and social field, the federalists have suggested a number of institutions designed to ensure the autonomy and fulfillment of the person. The most important is the guaranteed minimum wage to replace the current system. The surplus of financial resources can be found in the civic service: each person should spend one or two years doing the work now left to a sub-proletariat of third world emigrants⁹;

⁸ Verginia Vedinaș, *Misiunea administrației este sacralizarea interesului public*, în *Sluțirea democrației*, București, 2006, p. 38.

⁹ Vezi Alexandre Marc, *Minimum social garantat (MSG) pour l'Europe, L'Europe en formation*, nr. 268, Nice, 1987, p. 3-19.

- c) In the cultural field, nothing is more important to integral federalists than respect for the diversity of languages and cultures that make up the richness of Europe's heritage. No „raison d'Etat“ justifies the oppression of ethnic minorities, whose fulfillment in autonomy does not in any way oppose the unity of the federation. The case of Switzerland shows this. If Berne applied the ideology of the single and indivisible republic „Republique une et indivisible“, Italian would no longer be spoken in Lugano, and French would only be tolerated as a „folkloric“ dialect in Geneva and Lausanne, with occasional radio programs broadcast as a sign of generosity . European culture has always had both unity and diversity.

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It is also good to know that federalists have often contradicted each other on what to do. Some of them believe that administrations, parliaments and governments need to be persuaded to act as a pressure group – a strategy generally called lobbying. Others want to create a mass movement. A third group focuses on writing and speaking, ie education.

Last but not least, the question arises as to whether this concept of federalism will not complicate some of the simple paths to a united Europe and a united world.

The answer may be that transnational unification cannot be an end in itself. It is desirable if it protects diversity and contributes to solving transnational problems. Only then will people perceive the true transnational identity.

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