

**THE TYPOLOGY OF PERIOD OF TRANSITION AND ITS
SPECIFICITY REFLECTION IN CONSTITUTIONAL FIELD
(A COMPARATIVE APPROACH)**

1. General view
2. Understanding the period of transition
3. Specificity of the period of transition in the ex-Soviet states
4. Establishing the new constitutional system basis

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Abstract

It is observed the process of legitimation of the period of transaction and new constitutional social order, formation and functioning of new state institutions - President as chief of state, democratic Parliament and executive power (Government) in the context of division of powers.

A comparative analysis is done regarding the functioning of the state device at the transition staged in different countries and is drawn the conclusion to the effect that at the transition stage is necessary to make use of other state experience, undergone this way; at the same time the experience may be changed taking into account the local conditions, historical traditions, level of readiness of society to change.

1. General view

The last decade of the XXth century can be characterized by the appearance of some essential changes within the development of the universal history. As a result of the collapse at the end of the 80's of the "real socialism", at the beginning of the 90's, in the countries of the Central and Eastern Europe, as well as in the newly independent states, appeared on the ruins of the former Soviet Union, it started a process of radical changes of the state's organization and social order, of the political and economical system, of the internal and external politics, process which substantially influenced the political situation, both on the European continent as well as all over the world.

Within this context, a global importance is achieved by the issue of the prospect of the international society's development. This process bares a particular scientific interest, given the fact that, itself as well as its first

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results can be analyzed in a certain period of time, so as the tendencies of the development of the states to a new stage should be established and to ascertain in which extent they managed to pass from totalitarianism towards a new, democratic society.

Besides that, twenty-seven states which headed towards the path of reformation only in a few years, proved a diversity of ways in choosing the forms and institutional patterns, obtaining the first “successes” in reforming, which creates ideal conditions for the examination and the verification of the alternative hypothesis, submitted within the formation of the rational theories (Stolpa C., *Metoder vid prezidentoal. En utvardering*, 1997).

2. *Understanding the period of transition*

The historical moment that the twenty-seven states went through, is usually called the period of the post-socialist development or the transition period. Within the western doctrine, it was even constituted a direction of scientific research called “*transitology*” and the researchers “*specialistes du poste*”- specialists in the field of “*post-communism*”, who previously were preoccupied with “*sovietology*” (Maravell J. M., *The transition to democracy in Spain*, 1992).

These notions indicate, on one hand, the departure point, highlighting that situation which remained in the past or which the society tends to abandon. On the other hand, they settle the still unstable character of the social relations, the bivalence of the social processes within the transition period, fact which raises a scientific interest and requires a special investigation.

Certainly, many points of view have been expressed regarding the notion of the transition period. Thus, some authors defined it as “*being a special phase in the development of the society, accompanied by the enlightenment of a new system of economical and political relations, in the same time upon the society a certain category of factors making pressure -social premises “inherited” from the previous political system*” (Maravell J. M., *The transition to democracy in Spain*, 1992).

Getting out of the common typology, the states have been grouped according to the criterion of the purposes and tasks of the society’s contents within a certain stage and according to the specific issues of some states.

From this point of view, three groups of states can be studied, which either have overcome, or are still in the transition period. Comparatively, the passage from totalitarianism to a democratic state is analyzed in Germany, Spain, Portugal, the passage from a “*real socialism*” in the Czech Republic, Slovakia, Hungary, Poland, Bulgaria and Romania; the passage

under the influence of the centrifugal forces of the Soviet Union former republics towards sovereignty and democratic independence.

What is common to all the above mentioned states is the fact that, previous to the transition period, the transformation or the abolition of the totalitarian political system had preceded.

The specificity of the transition period in Germany, Spain, Portugal was different, compared to other European states, where the passage from totalitarianism or from the authoritative state, generally, boiled down to the transformation of the political system within the frame of the democratic processes and practically didn't alter substantially the economical system, although this field also underwent major changes.

Worth noticing is the fact that, actually, all the parties and political movements (but for the extremist ones) strengthened their forces, having as a common purpose the building of a genuine democratic society.

The struggle of the political parties deployed within some democratic rules, becoming most of them, "*defenders of the development of the democratic society and not fighters for democracy*" (Pridman D., *Party government in the new Iberian democracies*, 1994).

The democratic traditions well kept within the social conscience played also an essential role, not taking into account the more or less prolonged period of the existence of the totalitarian regime.

Neither the level of the political culture, which settled down throughout the decades, the open character of the society, nor the common tendencies towards Europe's democratization. Can be ignored all this could not but to be reflected on the relatively short duration of the transition period in these states.

The transition period in some of the Eastern Europe's states, except the fact that it hasn't finished yet, also, is characterized by some specific features. First of all, the change of the economic and politic systems, didn't take place evolutionally, but revolutionarily.

It is worth mentioning the fact that, a specific thing for all these states is the tendency of rejection of the former system, rendered unbearable, which considered the property as being one of the states. In fact, even from the first steps of the changes made during the transition period, the totalitarian political regime of a certain party collapsed.

The effects of the reorganization of the political power in the states of the Central and Eastern Europe allow us to notice the fact that, the peoples kept their fidelity towards the hierarchy of the values inherited from the democratic past, previous to the setting up of the communism, values specific to the European civilization.

3. Specificity of the period of transition in the ex-Soviet states

The transition process in the former socialist states developed in a different intensity degree, as compared to the politic situation, the position of the politic forces in the state structures and the drawn up economic programs.

But, not taking into account these aspects, characteristic for the politic system of some of the states of the east-European region is the search and the establishment of a consensus between the main politic forces in the view of aiming at the common target - the successful outrunning of the difficulties of the transition period and the constitution of a civilized democratic society.

By analyzing the transition period in the newly emerged sovereign states in the ex-Soviet space, we can mention some common features of this one with the pattern of the transformations in the post-socialist-countries. However, this process was substantially influenced by inner factors, offering a character specific to the transition period in this space.

A distinctive feature of the transition period in the states from the ex-Soviet Union is made up by the weak influence of the constitutionalism ideas, the liberalism towards democracy, ideas which form the essence of the state politics in the constitutional accidental systems.

The main issue lies in the fact that, the patterns of the less far-off past inevitably influence the present.

The legacy left by the Soviet period proved to be far worse than most of the people could imagine, and this legacy is reflected more in the people's minds than in the economic structure.

During the transition period, in the states enlisted above, period which exceeds ten years, the political reforms usually limit themselves to the issue of the elections based on the principle of the political pluralism. These transformations were usually made by well-settled political forces, by forces in the actions of which predominated and continues to predominate the general interests of the society and not the individual or group interests.

The reorganization of the economic system in the post-Soviet space has also some specificity. The politic requests determined in the reorganization of the economy consisted of the clear formulation of the direction in the economical politics of this period, which must be accepted and widely sustained by the population.

As concerning the discussed matters, we can conclude that, in the states emerged on the territory of the former Soviet Union the prospect of the ending of the transition period is not so clear. It is to be observed in

these states, a tear between the social-economic development and the politic institutionalization of the changes which occur as well as a lack of the political stability, which doesn't allow us to discuss the passing to the next phase of the transformations - "*the major consolidated democracy*." (Pridman D., *Party government in the new Iberian democracies*, 1994).

4. Establishing the new constitutional system basis

The process of institutionalization of the political power during the transition period is closely linked to the process of official recognition, according to which the power acquires recognition, fact which renders authority and support in the society. The higher the level of the official recognition of the state's politics, the greater the possibility of the leadership in society is.

By official recognition, we understand the fastening of the juridical frame of the characteristic processes of a certain period of the development of the society, by adopting the political juridical documents, which put the political power in the constitutional juridical frame, assuring the official recognition of the new constitutional regime.

During the transition period, the official recognition has a great stabilizing importance, because it devotes the general principles of the action of the state power mechanism, it settles a precise system of moral and juridical orientations, the priority of the general-human values and the respect of the generally recognized norms of the international law.

Some authors analyzed the term "*official recognition*" also as the possibility of a certain political group to win the people's recognition, to be empowered to exert the legal power in such a way as to respect the constitutional and fundamental values of the society (Lazici M., *Drustveni raspad ili preobraj*, 1994).

A special attention is required by the analyzing of the process of adopting the first normative acts, the fundamental laws, which place in a juridical body the changes which occurred during the transition period.

Some specific features are also characteristic to the process of establishing a new constitutional regime in the states we are discussing about. Out of the world-wide constitutional practice, in the preparation of the texts of the new Constitution, in the states of the post-Soviet space, the presidential regime has priority in its American and French interpretation, according to which the state chiefs acquired some wider prerogatives (in fact the unlimited right to dissolve the Parliament, the possibility to rule by decrees, the impeachment procedure practically impossible and others).

In states such as the Czech Republic, Slovakia, Hungary, Bulgaria and the Baltic States, the pattern of presidential authority was chosen within

the parliamentary republic. Poland and Romania accepted the pattern of the semi-presidential republic with the leading role of the Parliament.

In the states of the post-Soviet space, a particular form of the presidential authority was set up, which is characterized by the following features:

- the manifestation of the tendency towards a “*democratic leadership*”, with clearly pronounced elements of authoritative policy;
- this authority can have a complex character;
- the concentration in his hands of the referee function regarding other branches of the political power;
- the benefiting of control attributions.

The tendency towards a “*democratic leadership*” is manifested by the fact that, the presidents, in most of the post-socialist-states, came to rule expressing and promoting democratic ideas (Brazauskas in Lithuania, B. Eltin in Russia, M. Snegur in the Republic of Moldavia a.s.o.). These presidents destroyed the totalitarianism and many of them, still sticking on the president position, carry on the fight against its remnants.

The presidential authority in that shape in which it is set up in some post-communist states bares a complex character, as it contains certain elements of the competence of some other organs of the political power. This is to be observed not only by analyzing the texts of the Constitutions, but also by examining the functioning *de facto* of the ultimate organs of the power.

As a premise for the creation of situations like these, it was of great help the Constitutions prepared and adopted in the favor of certain personalities, such as: The Constitution of the Russian Federation in 1993, The Constitution of Belarus in 1996, The Constitution of Uzbekistan in 1991, The Constitution of Turkmenistan in 1992.

As an essential feature of the presidential authorities in the new post-socialist states, we highlight its tendency to impose itself to other powers, concentrating the functions of the referee in the relations between them. Thus, the Constitution of Armenia lays down in its contents that: “*The president of the Republic of Armenia assures the observance of the Constitution, the good functioning of the legislative, executive and judicial powers*” (art. 49). The president of the Republic of Kazakstan “*assures the harmonious functioning of all the branches of the state’s power and the responsibility of the state organs in front of the people*” (art.40).

The constitutional regulations shown as an example, confess us the fact that, in some states there are clearly enough established functions of referee of the presidents concerning other bodies of the power and the

necessity of the use by the presidents of the procedures of conciliation in the purpose of coordination the functioning of the state's structures.

The role and importance of the president in the system of the bodies of the state's political power, in a great extent depend on the sphere of attributions settled in Constitutions. The analysis of the president's constitutional prerogatives allows us to conclude that they generally suit the already known patterns –parliamentary, presidential or mixed republics.

As compared to those mentioned above, some authors estimated that there is a fourth power in the system of the state's powers separation, and namely, the presidential power.

But the most important fact for the states in the transition period is the setting up of a stable constitutional structure.

This issue is widely looked upon and examined by the field specialists.

Thus, the competence of the Parliament in the states which went through or which are still going through the transition period, generally speaking matches the generally- recognized classification-attributions in the domain of the state's building, in the social-economic sphere, in the field of international relations, state's defense and security.

Some constitutions grant the state chief with the right of establishing the priority of examining the law projects, forcing the Parliament to examine them on the deadline established by the president, the way it happens in Belarus, Kazakstan and Georgia.

A particular importance for the study of the constitutional frame of the states which went through the transition period consists in the organization, functioning and competence of the Government, as well as the institution of its political responsibility.

As a matter of fact, in all the states that went through or which are still on the road of the transition period, the constitutional regime of the Government is set by Constitutions or organic laws.

The place of the Government in the structure of the power bodies is established by rapport to its relations with the president, the Parliament, the central bodies specialized in the public administration. The way of setting up the Government in the states which went through the transition period differ from country to country, however, obligatory, it takes place with the taking part of the president and of the Parliament.

The Governments of the states to which we refer to, are ruled in their activity by the principle of the separation of powers, the principle of the legality and of the professionalism. Within the limits of its competence, the Government sets up the execution of the laws, carries out the coordination

and the systematic control on the activity of the hierarchically inferior public administration bodies.

Conclusions

The passage from a totalitarian regime to democracy bares a particular interest, as it is in itself a complex process, in which the transformation of the entire society takes place, fact which creates the premises of formation of a new constitutional regime, which is based on a whole new principle and values. The transition period needs official recognition, the substantiation through laws of the supposed modifications, the recognition of the necessary changes by the society, taking into consideration in the same time, the position of the society and the awareness of the latter for the transformations necessity.

As compared to other states with democratic traditions and the principles of the state's well grounded

Laws, in the states which went through the transition period, the emphases is placed on the delimitation of the competence between the President and other bodies of the power, on the fixing of the place and role of the President in the system of public authorities.

The development of the democracy and transformation of the society in a great extent depends on the constitutional practice and the application of the constitutional norms.

By analyzing the constitutional systems which are formed in the post-socialist states we can conclude that, the outrunning of the transition period, in a great extent, depends on the influence of the past and on the degree of development of the civil society.

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