

THE CONCEPT OF NATION, SEEN BY GEORGE SOFRONIE AND THE ACTUALITY OF THE DEBATE IN THE CONTEMPORARY CONTEXT*

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Abstract: *The present article introduces the reader to the concept of nation provided by the great Romanian jurist George Sofronie. Sofronie can be seen as the "father" of the Romanian international public law school, because he is the one, who has written in Romania an handbook in these field. Sofronie debates on the problem of nations and of protected minorities. These are issues that are also very discussed in the field of the European integration process.*

Keywords: Nation, European Union, principle of nationalities, minorities

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INTRODUCTION

The Romanian society is confronted with a critical lack of guidelines and role models. A varied range of reasons accounts for the fact that elites are nowadays barely recognizable. Overall, Romania seems to be deprived of an innate sense of value and tradition. Unfortunately, traces of the dismal communist era still linger, threatening to bereave the young generation of potential inspiration sources by acting with indolence and discarding valuable people.

Artists of Romanian origin are better known abroad, the laboratories in the United States of America acknowledge the results of Romanian scientists. Even the youngest of our talents seek to shape their future away from their home country. These sheer facts stem from a dark period in the national history, namely the one after 1945, when the Romanian elite were literally annihilated. History as such and the research in archives come to prove that the communist regime in Romania had

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indeed been the most brutal, whilst gradually succeeding in physically destroying the intellectuals. However, the communist regime in Hungary, Czechoslovakia or Poland simply removed the elite from leading positions or from cultural and art institutes yet did not physically finish off its representatives. Hence, the result is obvious.

A sole example is to be mentioned in support of this brief introduction. Alexandru Vălimărescu used to be a professor at the Faculty of Law (University Bucharest). He was born in 1899 in Craiova. At the age of 27, he delivered the defense of his PhD-thesis in Paris and in 1928 he was appointed docent in law. Between 1931 and 1949 Vălimărescu was furtheron promoted in the university hierarchy, while he was additionally working as a prodigious lawyer in the Ilfov Bar in Bucharest. In spite of this, after the “Popular Democracy” had been established, he was purged from the University, since he refused to compromise with the new political regime. Hired as an unqualified worker, he still privately managed to translate from French. Written by him, the lecture on Law Encyclopedia is a real gem, not only what the discourse management is concerned but also for the connections in his field of expertise. Judging by the previously presented information, one cannot help but wonder what kind of a system would want to destroy a valuable person in his prime. Certainly only a diabolical one! This introductory example was meant to raise awareness about the fact that progress cannot be attained as long as the past remains unknown. Moreover, it is imperative for Romanian jurists to become acquainted with the works of the reputed law theoreticians in their own country!

George Sofronie is such a jurist, almost a stranger to many, although he was a remarkable specialist in the field of Public International Law, working at the Law Academy in Oradea as well as at the Faculty of Law belonging to the University in Cluj.

1. GEORGE SOFRONIE – A SHORT BIOGRAPHY

Unfortunately, there is only little biographical information about George Sofronie. While researching in the National Archives in Cluj-Napoca¹⁴, I did not come across much personal data in ratio with Sofronie: a grid dated 1940 informs about the fact that he was married, had a daughter and had declared himself of orthodox religion.

¹⁴ There is a well-documented fonds at the National Archives Cluj Napoca, where one can identify the files of the Law Academy in Oradea as well as those belonging to the Faculty of Law (University Cluj). Unfortunately, during the 5 days I spent in the research room, I could only manage to go through around 1000 pages. That is why I have decided on a further research session at the above named institution. George Sofronie appears in various administrative documents: minutes, a letter exchange with the Rector or the Minister in Bucharest.

A brief biography can, however, be reconstructed based on the research of archive documents and of introductory studies written for some of Sofronie's books, which were later on republished. Another source of information is an article by Aurelian Ionașcu, entitled *George Sofronie. The man and the work*, that appeared in 1980. Thus, George Sofronie was contemporary with Vălimărescu. He was born on April 23rd 1901 in Lespezi, Neamț county. Sofronie went to highschool in Iași, together with a number of other significant personalities belonging to the Romanian culture and science. He moved to Bucharest in 1919, where he pursued his studies at the Faculty of Law, graduating in 1922. Paralleling this degree, Sofronie also studied Letters, displaying a genuine interest in history. 1923 is the year of his graduation, hence also achieving a degree in History. This double qualification proved useful throughout his career and scientific research, since it is mandatory for a specialist in International Law to be familiar with historical aspects. Moreover, Sofronie likewise managed to embed his linguistic skills in his field of activity by publishing articles in German and French.

In 1926, he delivered his PhD-thesis, *The principle of nationalities in Public International Law*, at the Faculty of Law in Bucharest, publishing it shortly thereafter in the *Annals of the Romanian Academy*. This acknowledgement was due to Acad. Andrei Rădulescu, who encouraged Sofronie's scientific endeavours.

These endeavours were mainly centered on the system of international relations and Sofronie could closely analyse the phenomenon, what with the creation of new and decisive concepts for the contemporary society. A suggestive example in this respect is the international organization. He was therefore the first to write a monography about the League of Nations, showing yet again a keen interest in the realm of international relations.

After having delivered the defense of his PhD-thesis, Sofronie went to Switzerland and France, supported by a Rockefeller scholarship. He attended the Graduate Institute of International Studies in Geneva and the Institute of International Law in Paris.

The beginning of his teaching career is to be sought in 1923, at the Gojdu Highschool in Oradea, where Sofronie taught history and law until 1928.

The latter year was to mark his debut on university level. He was allotted a position in the Department of Public International Law at the Law Academy in Oradea. This activity seems to have been paralleled by political involvement. According to some inconclusive pieces of information, he was mayor and prefect. Certain is only that between 1930 and 1931 he was a deputy, and was even elected Secretary of

the Chamber of Deputies. Throughout this time span, Sofronie dedicated himself to the Committee of Foreign Affairs and strived to materialize all the yearnings he had so far only dealt with in theory.

In 1934, he was appointed professor at the Academy of Law in Oradea, being the tenure teacher of the lecture in International Law. An oddity in this respect is to be mentioned. Upon researching in the Archives, it turned out that Oradea did not differentiate between Public International Law and Private International Law. The teachers attempted to present both facets at the same time. Nevertheless, while Sofronie worked there, the difference was made and he only taught Public International Law. A further oddity is that this subject had merely a lecture and no seminar, the latter being considered optional even for those subjects, which did indeed have such a teaching unit.

During the same year, due to the historical situation, the Law Academy in Oradea merged with the Faculty of Law in Cluj. Moving to Cluj brought about a new stage in Sofronie's career: he became a tenure teacher in Public International Law at the Faculty of Law in Cluj. He held numerous lectures there about his field of expertise and topical historical moments, which triggered the interest of the intellectuality in Cluj. Sofronie was the first Romanian theoretician to edit a treatise in Public International Law.

The archive research also revealed an invitation addressed by the Rector of the University Cluj. The presentation of the project supposed to be debated upon by Sofronie was conveyed in an appraising tone.

George Sofronie's teaching activity in Cluj lasted 12 years. Between 1945 and 1946, he was the Dean of the Faculty of Law. The minutes of the Teachers' Board, to which I have already had access, come to prove that he was always involved, constantly pleading in favor of buying foreign books and organizing student debate clubs for the newest issues in the field of International Law. The professor also coordinated diploma papers. Unfortunately, unlike the custom at the Faculty of Letters, the official academic records at the Faculty of Law do not reveal any topics, simply mentioning the word "Law" in the column allotted to the actual titles. That is the reason why I cannot provide any examples in this respect, in order to evince the aristocratic flavor of that time¹⁵.

Beginning with 1946, Sofronie was the tenure teacher of the International Law Department at the Academy of High Commercial and Industrial Studies in Bucharest, where he worked until 1948. At the same time, he was a permanent advisor at the Legislative Committee. Later on, because the department

¹⁵ According to the custodian of the research room, it is highly likely that the files I have not yet studied should contain reference to the titles of the diploma papers. Another explanation which could account for the missing titles, but for which I cannot provide any evidence at the moment, is that at some point, the exam was only a written one; hence the reason why just "law" was mentioned and the titles were not alluded to.

was disbanded, the former professor became the deputy director of the University Library Bucharest. Only rarely was he still called upon to hold lectures at the Law Department of the Institute of Economic Sciences and Planning in Bucharest. He passed away in 1961.

All in all, the work of George Sofronie is widely unknown; not only to laymen but also to those who specialize in International Law, since there is neither republishing nor any re-evoking of his texts. He distinguished himself in the Romanian Law through the fact that he wrote the first juridical monography about the League of Nations as well as the first treatise of Public International Law. By means of his articles, Sofronie dealt with riveting subjects, such as the analysis of international organizations, of Romanian and European diplomacy or of the global political geography. The scientific value and weight of his work was confirmed by the Romanian Academy, which awarded him prizes for four of his papers. These are: *Contributions to the Knowledge of the League of Nations, 1927*¹⁶; *The Protection of Minorities under the Regime of the League of Nations*¹⁷; *The Principle of Nationalities and the Peace Treaties of 1919, 1920, 1937*¹⁸; *Treatise of Public International Law (Principles, Institutions, Jurisprudence, New Tendencies), 1st volume, 1940*¹⁹. These masterpieces belonging to the School of International Law in Romania will be analyzed by the team around Conferencier Dr. Vasile Docea throughout an extensive research project.

George Sofronie's activity was noted in the public and academic milieu not only through his treatises and monographies, but also in terms of a significant number of articles published in Romania and abroad, thus managing to raise awareness about important issues in the field of international relations for laymen and specialists alike. His comments and analyses on foreign policy and diplomacy, which were published in papers such as *Adevărul* and *Universul* reached out to a wide audience. It was namely the time when the field of international relations was starting to blossom, the accent being placed on signing international treaties or on cooperation across the borders, seeking to create organizations at this level.

Consequently, Sofronie's works are a cunning display of both erudition and passion towards the object of study, transparent to any reader or scholar dealing with them.

¹⁶ Dimitrie Gusti was the correspondent on behalf of the Romanian Academy

¹⁷ Ion Nistor was the correspondent on behalf of the Romanian Academy

¹⁸ Oscar Niculescu was the correspondent on behalf of the Romanian Academy

¹⁹ Vespasian V. Pella was the correspondent on behalf of the Romanian Academy

2. THE NATION – A GENERAL PERSPECTIVE

The term *nation* is of Romance origin, a combination between *natio* and *nasci* (Bluntschli, 1875), which would entail the birth of a people from a sociological point of view. However, in some other parts of the continent, this concept is traditionally used to designate the people from a juridical perspective. In reference to French and Anglo-Saxon Law, one could mention the area of citizenship, which makes use of terms such as *nationalité* or *nationality*. That is why it is necessary to pay special attention to the manner in which “nation” is contextualized. What the French Law is for instance concerned, one should relate to the fact that nation must be interpreted historically and juridical as a nation-state.

It is, nevertheless, fairly clear to perceive who belongs to a people, in the juridical meaning of the term, since citizenship is regulated by means of procedural law. There are certain documents confirming someone’s status as a citizen.

From a pre-juridical (Heller, 1934, p.159), i.e. sociological point of view, a people is made up of a number of individuals, who have something in common: origin (Nawiasky, 1952, p.14), language, history or culture (Herzog, 1971, p.41). Others are of the opinion that crises (Zippelius, 1994, p.75), which have been overcome by a group of individuals, can be considered in this respect. Be that as it may, a “we”-feeling is present in most social units, from the family up to a baseball team. For this reason, the sociological dimension of the term “people” is not relevant to Citizenship Law.

The concept of people stands at the basis of the concept of nation. The transition from one term to the other occurred at a subjective level. Ernst Renan was the first to classically define the nation. This happened in 1882, while he was delivering a speech in Sorbonne, where he noted that: „L’existence d’une nation est (pardonnez-moi cette métaphore) un plébiscite de tous le jours” (Renan in Forest, 1991, p.31). The nation can thus be defined as a community (Nawiasky, 1952) based on belonging. It can also be interpreted as a nation created by its own will (Isensee in Stober, 1997, p.137).

Upon closer analysis of the terminology, one can identify two facets of nation. It comes into being (Kriele, 1994) on the one hand through the wish of the people, who becomes aware of its own identity. In other words, instead of simply cohabiting in a community, those who are part of a nation experience preservation and organization instincts.

Furthermore, there is a certain semantic connection between the terms “state” and “nation”, owing to the fact that the era when the nation was formed is contemporary with the one when the national state was created. However, the main difference between people in its pre-juridical meaning, and nation resides in the latter’s actually expressing the wish to achieve a political existence (Schmitt, 1993, p.79). Carl Schmitt²⁰ argues that one can theoretically envisage a nation created not on the basis of the people’s objective criteria, but exclusively out of the sheer wish of several entities (people or not) to cohabit. Therefore, Carl Schmitt considers one could also come across a nation made up of several peoples.

There is also an important difference between the people from a pre-juridical perspective, and nation. The latter has the ability to act politically: this feature determined Abbé Sieyès to formulate the theory according to which the nation is actually the one holding the constitutional power, i.e. the so-called “pouvoir constituant” (Sieyès in Dann, 1988, p.47).

The above presented facets do not, however, exclude each other. Heller remarks that one cannot talk about an affinity of the nation towards the state merely from the perspective of political will (Heller, 1934).

Most theoreticians of Constitutional Law are of the opinion that the first facet, namely the one concerning the preservation and organization instinct, can only be achieved by means of political will: “What feels like a unit, that wishes to preserve and strengthen itself, is only attainable through a powerful organization. The latter can only be found in another state”(Jellinek, 1960, p.120). Jellinek, on the other hand, solely mentions the typical form of a nation. It is consequently accounted for that the ratio between nation and state does not always rely on causality. History even proves that the state actually triggered and spurred the development of the nation (Schmitt, 1993, p.80).

Still, it was necessary to discuss the pre-juridical concept of people and nation precisely due to the fact that possible connections between the concept of citizenship and the already illustrated aspects could be identified. These connections are obvious when one tries to define, for instance, the principal of the national state, the concept of the peoples’ self-determination and the protection of minorities.

²⁰ Carl Schmitt was a German jurist and philosopher, an expert in political philosophy as well as a great scholar of the General Theory of Law, Constitutional Law and the Philosophy of Law. However, his collaboration with the national-socialistic regime would cause him isolation at the end of World War II.

At the end of the 19th century, Johan Caspar Bluntschli²¹ put forward the following working hypothesis, which he later on proved in his research: “(...) every nation is entitled to create its own state. Since the humanity is divided into a manifold of nations, it is only natural to know just as many states. Each nation a state and each state a national being” (Mertens, 2004, p.41). Bluntschli actually formulates the principle of the national state, principle which has dominated the theories about the state ever since the French Revolution. That doesn't mean that the person, seen as a non-juridical element, is always interchangeable with the concept of people, as a state component. A state made up of several people, is just as conceivable as a people spread out on the territory of several states. This logic-juridical conclusion stands at the basis of the concept of the peoples' self-determination (Quaritsch in Isensee *et al.*, 1995) as well as the need to protect the minorities (Murswiek in Isensee *et al.*, 1995).

The principle of the national state regained its importance when the socialist system in Eastern Europe was overthrown. Once the vertical pressure of the totalitarian regime had ceased to exist, all those states came to an end, since they hadn't actually been national states, but artificial constructs. Yugoslavia and Czechoslovakia are potent examples in this respect. On the other hand, national states such as Romania, Poland or Hungary, which were founded on horizontal cohabitation, survived the new political situation.

To sum up, in the case of Citizenship Law, the notions of people or nation may or may not influence the legislation in this field.

3. THE PRINCIPLE OF NATIONALITIES, SEEN BY GEORGE SOFRONIE AND THE DEBATE IN THE EUROPEAN CONTEXT

George Sofronie deals with this principle on various occasions, being utterly convinced that the appropriate approach is of pluridisciplinary nature. A passionate historian, Sofronie analyses this new concept not only from a juridical, but also from a historical point of view. Since he places emphasis on the latter, he sometimes lacks accuracy in his discourse management. Moreover, he broadly concentrates on the year 1918, which is highly looked upon by his generation, since it marks the creation of the modern Romanian national state. This national state is separated from the neighboring countries by borders, inside which nationals of the same ethnicity inhabit its territory. Just like any

²¹ Johann Caspar Bluntschli was a jurist and politician born in Switzerland. He obtained a doctor degree in law at the University in Bonn. He was a professor at the University in Heidelberg, becoming a remarkable and well-known specialist in Constitutional Law and in Public International Law.

other principle (Sofronie, 1929, p.13), this one seems at least in theory, to be an ideal pathway towards solving the main problems of a society. However, not only nationals of the same ethnicity live within the borders of a national state, but also the so-called minorities, like in the case of Romania. These are often defined as national minorities by the fundamental laws. Hence, the principle of nationalities is functional if and only if the principle of the protection of minorities parallels it. A national state cannot otherwise survive for a longer period of time. One can regard these two principles as opposing poles, yet they offer safety and balance to a successful state system.

Sofronie defines the principle of nationality as being the norm, according to which “those individuals who acknowledge powerful enough similarities between themselves have to be granted the opportunity to create an independent political community within a unique territory” (Sofronie, 1944, p.5). Even though it is not stated obviously, the previous definition also implies abiding by another principle, namely the one regarding the self-determination every people should be able to exercise when deciding upon their fate.

The Romanian jurist is aware of the fact that the principle of nationalities cannot possibly work unless the minorities living on the territory dubbed “national state” are protected. He consequently argues that the construction of states in Europe at the beginning of the 20th century had not entirely respected the principle of nationalities, so that such a starting point could later trigger internal turmoil. The above mentioned national states were created by signing and ratifying peace treaties. Their authors were subjected to great pressure. For this reason, they did not wholly abide to the principle of nationalities, their priority being the rapid creation of a manifold of national states, meant to ensure a long-lasting peace. Not having acted as such would have led to dreadful consequences at the dawn of the new century. There was a subsequent balance between “nationality” and “minority”. In other words, without applying both principles, the national states would have converted themselves in fictional constructs.

Even nowadays, the specialized literature fails to cast some light on the issues of minorities and their rights within a national state. Some find that minorities are not supposed to have any special rights within a state, others, however, disagree, arguing in favor of their protection. Sofronie, on the other hand, seems rather reluctant towards the minorities being granted certain rights. This deduction might sound rather harsh, yet one must consider that even though Sofronie theoretically acknowledges the importance of protecting the minorities, when he discusses the concrete case study of Romania after 1918, his arguments no longer seem so permissive. The purpose of this observation is not to condemn

his position, but rather to point out that certain historical contexts can decisively influence a generation of intellectuals. Still, one must admit that Sofronie campaigned in favor of solving the problem of minorities by appealing to European standards, any other option merely aggravating current conflicts. George Sofronie was a visionary from this point of view, especially because he considered that pseudo-conflicts can only be dealt with appropriately on a supranational level.

Whether the principle of nationalities still stands is a question asked nowadays at European level. The European construct that came into being in the 1950s has evolved in ways its forefathers could never have imagined. The economic community tends to become a social and even political one. That is why the architecture of the elements which make up the European Union must likewise be subjected to changes. The Treaty of Maastricht (1992) brought about a new concept, namely that of EU-citizenship, which does not open a Pandora's box, but rather an architect's toolbox, meant to redesign a house. This plan hasn't yet been completed and it requires time as well as patience. However, one can imagine that, at some point in history, the European Union may become a "national element", whereas the groups of nationals within it might have the status of "minorities". The EU-citizenship is not the only aspect that hints at such a paradigmatic change in the integration process. The symbols (flag, hymn a.s.o) fulfill a similar function, bringing us closer and creating a common identity, in order to assure wealth, prosperity and a peaceful environment.

The concept of "peace" has been left out so far and is mentioned at the end of this article, because it is, in fact, a leitmotif in Sofronie's works. He pleads for applying the principle of nationalities precisely to demonstrate that balance and peace among European States can be achieved through it. The European construct was created for the precise reason of avoiding a new conflagration, with the purpose of offering the Europeans safety and peace.

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