SOCIAL EQUITY SYSTEM

ANTON-PETRISOR PARLAGI*

Abstract
*The aim of this paper is to present a application of social equity system, as normative principle, in democratic development of society. Political phenomenology of law reveals that normativism does not simply reflect the judgment of every citizen, considered **ut singuli**, but it rather reflects the effect produced by the interaction between ideonomic value and the politonomic goal of social regulation. Normative systems are set up through a social process and express the freedom of individuals ideonomically; they also socionomically reveal the individuals' freedom of choice as regards the norms specific for a certain social structure; finally, normative systems express the common action of altering normativity from a politonomical point of view.*

Key words: *phenomenology of law, ideonomy, socionomy, politonomy.*

1. Prolegomena

According to the phenomenology of law, one can notice that the ideonomic dimension of social equity system can be nowadays identified in legal liberalism theories; in this respect we make reference to F. Fukuyama, for whom liberal democracy is the final point in the ideological evolution of human race and the final form of governing conceived by the people. On the other hand, M. Duverger defines social equity system through its ideonomic significance when he states that democracy is included in liberalism because political institutions are organized and function in conformity with a set of *principles*: free elections, the autonomy of judges, parties system, political freedoms. All the elements which we have mentioned have an ideonomic character since they express a single principle, i.e. the principle of freedom; the legal formalization of the principle of freedom made it possible for free elections, the autonomy of judges, parties system, and political rights to exist. In this context, one has to mention G. Burdeau, who – focusing on the ideonomical character of democracy – stated that democracy is a utopia which manifests itself as a "political and institutional curiosity".

According to the phenomenology of law, social equity system reflects the rationality of the norms system, which makes the existence of law possible. From a politonomic point of view, social equity system imposes a system of political norms (individual freedom, social equality and participation) which makes the existence of a normative supra-structure – known as social justice – possible. Social equity system – seen as a phenomenon through which the individuals equally participate in the elaboration of a normative system – is legitimized thanks to the correctness of political governing criteria; e.g., the legal doctrine of social democracy attempts to justify isocracy ideonomically through the following three axiological political principles: freedom, solidarity and social justice. In order to complete the definition of social equity system we underline the fact that *isocracry* is a political principle of law which, together with *isonomy,* and *isegoria,* creates a complete image of the political phenomenology of law.

2. Social equity system and personality

The normative significance of the transcended "shepherd" dominated ecclesiastical law in the Western world for centuries even though (or precisely because) normative power was transcendental. The conviction that normative power was divine subsequently evolved into the political doctrine of the power state which was capable of imposing *laws* for making freedom and equality between

* Associate Professor, PhD, Department of Political and Administrative Sciences, "Nicolae Titulescu" University of Bucharest (antonparlagi@yahoo.com).

people possible. Apart from the Western conviction that divine law is imposed upon people through the force of rationality, Eastern conviction was different and upheld that law must be imposed through the force of the people; an illustrative example is represented by Confucianism, according to which political power can impose social harmony as a supreme norm that is necessary since it helps each individual manifest one's own personality.

Asian people used force to defend law for they considered it important for social harmony and not because it reflected human rationality; this explains why any individual who did not know the law – and not the one who had a different culture, religion or race – was considered a barbarian. It is important to notice that –according to the phenomenology of law– Eastern doctrine mainly justified the use of force due to the necessity to impose law, i.e. in an ideonomic way, as a system of ethical norms: this also explains the politonomic conclusion according to which power can be exercised only by the virtuous human being, the individual who can ensure social harmony. In Christian doctrine, normativity, which ensured the docile participation of the individual in political life, was paradoxically justified through the non-human character of law; since it was divine in nature, the law could not be passed, altered or repealed for the human sake.

John Dewey, an outstanding representative of pragmatism, defined the ideonomic nature of normative systems *avant la lettre* when stating that – through communication – individuals express their ideas and check them for verifying their effects, which means that they actually act "in a democratic way". From a socionomic perspective, the principles of pragmatism can partially describe isocracy as a way of collectively acting in order to adopt normative decisions; what actually interests us is the political effect of decisions, manifested as a common will to modify the normative system entirely. According to the legal doctrine, it is difficult to justify the individuals' equality of rights ideonomically as long as socionomically individuals were not, are not and will never be equal as to their rights. Consequently, the fundamental issue for legitimizing any political power is represented by the impossibility (or possibility) to legally institutionalize political rights and freedoms. That is why when referring to the political phenomenology of law one has to make a distinction between the concepts of political equality understood ideonomically and equalitarian politics understood politonomically. In this respect, it is important to point out that in the legal system of certain states there existed ideonomic norms, specific for certain ethnical or religious communities, which legally guaranteed different forms of autonomy, including the right to self-government (except for territorial autonomy): *exempli gratia,* the Kabala of the Jewish Polish-Lithuanian community, religious *millet* communities within the Ottoman Empire, the *national curies* of the late period of the Habsburg Empire, and – in modern states – the rights of national minorities.

It seems that the ideonomic significance of polical equity is sufficient for proclaiming the universality of a normative system. This form of social equity system, which is exclusively based on the rationalist component of Western Enlightenment, became concrete in the theory of the *identity* of natural rights; these rights would exist in all individuals in an equal way and without discrimination. As one can notice, political systems used this supposition regarding the normative system in order to justify any form of power; the institution of the "universal vote" illustrates the fact that the right to choose expresses the will of a political power and not the will of an individual. This legal institution no longer has anything in common with the ideonomy of the freedom of option but rather with the freedom to participate in elections (naturally on condition "political equality" is observed) with a view to legitimizing a certain political power. The hypothesis according to which the political power of an individual is equal with the power of the others thanks to the fact that the law recognizes the equality of electors in the electoral process cannot be upheld if analysed from an ideonomical point of view; in this respect, Amartya Sen states that thanks to the formal character of the law the result of elections "might be" generally recognized even if it does not tell us anything about the freedom of choice. In the chapter on *isogory* we pointed out that the freedom of choice is in its turn confined in the electoral process.

The theory according to which social equity system is ensured through the political act of elections – as an equal power of decision for individuals – cannot be justified at normative level. Firstly, from an ideonomical point of view elections have no legal significance: they tell us nothing about the principles or values which the individual wants to transmit in the normative system. Secondly, from a socionomic perspective, elections only reflect the participation of individuals who, in their majority, can choose antidemocratic normative systems; see the case of Hitler. Finally, from a politonomic perspective, elections legitimize a normative system whereby an "elected" minority has the right to govern a majority, which obviously is a non-democratic phenomenon.

If people were born equal, as Tocqueville considered, it means that their right to elaborate, alter or impose the law must is equally granted. Differently from the Anglo-Saxon legal doctrine, which attempted to legitimize the transfer of a natural right into a positive right, according to the principle that people have been equal ever since they were born other legal theories upheld that normative systems must set up equality for all individuals no matter under what conditions. According to the phenomenology of law one can notice that both theories mistake the politonomic level for the socionomic level when it comes to political equality; in the first case, the principle of equality promoted by the legal system is annihilated by the inequality generated by the social and economic system; in the second case, the principle of equality is annihilated by the political and legal systems which exclude most of the individuals from the ruling of society.

It is, thus, necessary to define social equity system as regulatory power, which is equal for all individuals and which has a triple normative significance: ideonomic, socionomic and politonomic. *Firstly,* from an ideonomic perspective, social equity system has a programatic significance, i.e. it reflects a certain normative concept (political, legal, moral, social, religious etc.) as to the individual rights and freedoms. One should bear in mind that it is *only* at this normative level where political equality is justified through the legal recognition of individual rights and freedoms. Yet, at ideonomic level one cannot reduce the notion of equality to the idea of uniformity because this would create normative "chaos", as Constantin Noica coined it since all individuals, driven by the will to be identical, actually become the slaves of uniformity; thus, equality is meaningless unless it allows as much freedom as possible (Noica C., 2007) *Secondly,* from a socionomic perspective, social equity system implies social structures (organizations, foundations and other civic associations), which try to impose their own normative criteria at political level. As we have already stated, one of the principles that are specific for the political phenomenology of law expresses the permanent tendency of sociocracy to convert into politocracy.

However, one has to notice that the individuals' belongingness to different normative structures does not express equality in a socionomic sense at all; the analysis made by Mancur Olson reveals that not all the members of society are ready to take part in social activity with a view to accomplishing common objectives. From a socionomic point of view, normativity does not reflect equality but rather the intentions of individuals who are driven by their needs or interests, which can be probably formalized by a legal institution; in fact, political participation of individuals is unequal, but since the normative system legally recognizes their equality, all the individuals pretend the same benefits. Liberal civic individualism, which extends individual freedom to the utmost, does not recognize the legitimacy of a normative system that could impose a limit upon human rights; this is actually the reason for which liberalism cannot explain the individual's participation in collective actions although it recognizes them. Marxist theories are different since they proceed from collective normativity to the individual; in this case, the subordination of the individual is established by the needs of the class (recently by the needs imposed by religion, ethnicity, sex, etc.), ignoring the fact that the individual is free to choose. According to Marxism, the political and legal system expresses normative principles and values which are specific for a social class and according to which the individual benefits only from those rights and freedoms that are useful for the system. *Thirdly,* from a politonomic perspective, *isocracy* -in greek sense-, manifests itself as a normative system which legitimizes political power; is, from this point of view, a form of manifestation of the Greek paradox

according to which power is too tough for a simple mortal, which does not imply the exclusion of a regulatory democratic system (the *demos*). Naturally, from an political perspective, a normative system does not automatically imply a democratic dimension; from a politonomic perspective, Robert Dahl considers that democracy is possible only if normative systems would recognize power as equal for each communities within the political system. Political phenomenology reveals that equality between communities is not possible simply because they are different normative systems from a socionomic point of view; some give priority to social norms, others regulate equality of chances or of governing participation conditions etc. The fundamental principle of social equity system implies that the equal exercise of normative power by all individuals legitimizes political power; normative legitimacy refers both to the content of power attributions and the purpose for exercising power. Social equity system can be understood as the equal and direct participation of individuals in the structuring or destructuring of normative systems; according to *isocracy*, political power – which by definition is unsubordinated – is subject to the *law*.

The socionomic character of isocracy can be determined by analysing from a Hegelian perspective the dialectical relation between the "quantity" and "quality" of equality in the creation of normative systems. There are opinions according to which a larger participation (quantitatively) in the expression of normative principles is enough for setting up social equity system; there are also voices according to which participation is relevant only if isocracy is accomplished in conformity with value criteria (qualitatively). A phenomenological perspective reveals that isocracy is the normative system which can surpass the conflict between norms which concern value and socionomic norms (those which refer to the degree of participation). At first sight, participation seems more important for social equity system since it expresses the political will of the majority. Let us suppose that the degree of participation reflects isocracy since it legitimizes power; however, the degree of participation does not determine the degree of utility (or social value) of the normative system. On the one hand, *the law* can be politonomically justified by the degree of participation; on the other hand, it cannot be justified if it contradicts legal principles even if it expresses the will of the majority. Moreover, as Mancur Olson noticed, participation reflects a personal interest, a fact which questions the existence of common goals in the elaboration of normative systems.

The theory – according to which the more democratic a normative system is, the larger social participation it ensures – cannot be ideonomically upheld simply because values cannot be equalized; the theory of value cannot be replaced by the theory of participation in order to justify a normative system except for the risk of transforming it into a totalitarian system. If the right to participation was assimilated with the right to regulation, all legal institutions should be modified. Firstly, ideonomically, the notion of person (seen as an entity) would be replaced with the notion of "collective actor" on the political scene, which would allow normative systems to replace individual rights with collective rights. Secondly, from a socionomic perspective, isocracy would be possible if the normative system replaced participation principles with norms of redistributing national assets. Finally, from a politonomic point of view, the normative system would become a political strategy meant to ensure equality between the parties engaged in the electoral competition, between power and opposition or between state and citizens. Within such a normative system – according to Fritz W. Scharpf – it would be enough for any "collective actor" to be able to mobilize the resources that are necessary for engaging in a political fight against another competitor. If we identified normative power with political power, we would face an ideonomic contradiction because the notions of majority and opposition would be meaningless; however, as long as both express the will of the citizens, there is no opposition. *Isocracy*, as a form of equal participation in the construction of normative systems, has, first of all, an ideonomic dimension thanks to the capacity of the individual to impose his principles; it also has a socionomic dimension, thanks to the force of regulatory systems specific for each social structure (organizations) and a politonomic dimension, thanks to the decision-making power of political institutions in the legislative area.

When it comes to the analysis of normative systems, the issue regarding the conflict between equality and freedom remains unsolved. As A. John Simmons noticed, liberalism cannot offer a satisfactory explanation for our political links because as long as the individual does not have interpersonal relations with the legal entity of the state, the latter is not bound to observe the norms imposed by those persons. In reality, the individual is nevertheless obliged to have legal relations with the state government where he resides as a citizen; however, since citizenship tends to become a transnational institution, it is important to observe national normativism. Carole Pateman has noticed that the issue of personal obligations cannot be solved unless political theory and practice detaches itself from the liberal notions and categories. *Firstly*, the theory of equal participation in the construction of political and legal systems ideonomically implies conceptual instruments for exercising power; we should not leave aside the fact that access to power is controlled ideologically exactly because political power is a means of social control. Ideonomically, the control of the individual is accomplished as ideocracy, through ideological persuasion; in this respect, Plato used to say that religion ensures the individual's obedience through its noble lies; Aristotle used to speak about the persuasion of the crowds; Machiavelli compared rulers with lions that dominate through force and with foxes that rule through cunning; V. Pareto borrowed the idea of power that is imposed through force and cunning; Lenin used to say that domination has two social functions, i.e. acting as a tyrant and as a priest. In modern societies political domination is ideonomically justified through the necessity to guarantee individual rights and freedoms; in consequence, participation in elections is merely a technical method of legitimizing power no matter the content and value of rights and liberties. *Secondly,* socionomically, the classical theory of democracy used to consider that political equality is necessary for the equal distribution of welfare; political phenomenology of law reveals that political equality does not generate an equal distribution of welfare. The phenomenon was thoroughly analysed by J.A. Schumpeter, who defined democracy as an "institutional set up" whereby some individuals are granted the right to adopt decisions subsequent to the organization of elections.

The socionomic character of social equity system is probably best defined by the *constructivist* theory, which explains the formation of political, social, etc. structures as a permanent combination (aggregation) of interests and/or contradictory objects of dispute. From a constructivist point of view, the political solution for settling the conflict between state normativism and individual freedom can be accomplished through a *network* which allows interaction between different social groups and their public actions. From an ideonomic point of view, the isocratic value of political decisions is assured through legal institutions; from a socionomic point of view, political value depends on the quality of social institutions; according to politonomy, the value of social equity system derives from the capacity to negotiate politically either through the recognition by power of a common system of negotiation norms or through concluding a legal agreement between those who participate in the political decision-making process. According to social equity system, constructivism is, thus, socionomically useful because it requires state institutions a series of political obligations: either to settle social conflicts for ensuring equal opportunities or to regulate equity through professional statutes. *Thirdly,* from a politonomical perspective, social equity system depends on the force of regulatory institutions, which is recognized by those who govern and those who are governed; in this respect, we have previously stated that free elections are not enough for legitimizing political power. According to the phenomenology of law, we could include social equity system within the system of "horizontal democracies", as defined by Giovani Sartori and understood as a form of citizen participation in the elaboration of normative decisions. (Sartori G., 1999, pp.305-320)

3. Social equity system and consensus

Political consensus must be included within the category of isocratic pillars thanks to its ideonomic value: dialogue may reconciliate ideological gaps which exist between those who wish to change the system for their own interest and the state that wishes to maintain the normative system in

the name of everyone's interest. A large number of authors consider that the *isocratic* value of political dialogue is a *sine-qua-non* condition for democracy; thus, some authors have come to define political institutions through dialogue. J. Gicquel states that within Western constitutional regimes there are numerous forms of political dialogue; e.g., political representation is a form which regulates dialogue between the elected ones and electors; political pluralism creates political dialogue through the parties which constitute an interface between power and citizens; legislative assemblies are institutions which cannot function outside political dialogue**.** The force of political dialogue does not derive from the citizens' legal equality; on the other hand, dialogue legitimizes a normative system since it ideonomically reflects the wish of the parties. According to phenomenology of law, political dialogue must be legally formalized and institutionalized first of all at constitutional level and also through the laws that regulate the way exercise of power. If we take Jurgen Habermas' remarks on normative suppositions about democracy as a starting point, it is necessary to analyse the way in which political dialogue facilitates normative construction. To Jurgen Habermas equal and democratic access to dialogue implies the existence of a *non-coercitive* accord – known as "ideal discourse situation"- whose influence on moral consciousness is serious. One has to mention the fact that the equality of the parties involved in a dialogue does not imply political equality except for the situation when there is a legitimate power that guarantees this institution legally. In fact, Jurgen Habermas underlined the idea that a crisis of the state's rationality illustrates a legitimacy crisis when the norms imposed by the political system come into contradiction with the norms of "civic individualism" (Habermas J., 1976). The more "individualist" political behaviour of citizens within civil society is, the less empathic and solidarity they are (in our opinion, solidarity is an ideonomic value which is extremely important for political participation). As regards isocracy, participation in political dialogue tends to be more and more "individualist" because every individual tries to avoid participation without giving up the rights he/she obtained through the others' participation. Political phenomenology abounds in examples regarding the way in which individuals become attached to institutions only after the latter guarantee their individual rights; however, once obligations are imposed, individuals refuse to recognize the institutions that grant their rights. Phenomenology of law reveals that political dialogue is more consistent when power needs legitimacy; on the other hand, when power is stronger, the right to dialogue is confined through discretionary legal acts. Hermet Guy's hypothesis regarding the present forms of social equity system is illustrative for it presumes that political participation is either a legal form of approving previously adopted decisions or a way of accomplishing electoral goals; at the same time, Lizette Jalbert considers that dissociation of citizenship – as an effect of the crisis of democratic participation – is similar to "controlled participation". (Guy H., 1988; Jalbert L., 1987)

Normative systems acquire an increasingly *non-legal* character due to the fact that a series of clauses regarding political participation are established through consensus. In this respect, it is worth mentioning the increase of norms for negotiation procedures and the improvement of social dialogue techniques and contractual science, which determine, modify and create more and more complex normative non-legal systems. First of all, one has to notice that non-legal normativism is similar to the politonomic process of legal constructivism: the more complex and numerous norms of political and social conventions are, the more independently they start functioning and the freer they are from those who created them. Secondly, political consensus can be set up only if the legal system and the non-legal regulatory systems are interdependent. Although positive law is institutionalized through law, one should not neglect the fact that positive law can also be institutionalized through conventions that were concluded prior to political decisions simply because positive law establishes the content (orientation) thereof. From an phenomenological point of view, we are interested in the political effect of these non-legal regulatory systems since they function in parallel with (or even differently from) the legal system.

A political phenomenon which is relevant to social equity system is represented by the fact that *collective negotiation systems*, which initially regulated only the parties' interests, have rather

become systems of accomplishing objectives that transcend these interests. In other words, a non-legal regulatory system which settles a social issue more quickly, more economically and more democratically is, from a political point of view, more efficient than a legal system. Collective negotiations – as a form of participation in the elaboration of laws – are more and more used for justifying political equality and isocracy. A normative act which was negotiated prior to its adoption has a double effect: socionomically, it creates consensus between social partners and politonomically, it expresses the will to commonly accomplish general interest. According to the political phenomenology of law, negotiation functions as an isocratic principle due to the parties' equal positions in the elaboration of laws. Through the delegation of legislative power, social partners (trade unions, employers' associations, professional associations, etc.) draw up drafts of normative acts which the lawmaker is entitled to validate or invalidate according to the so-called method of the *blocking vote*. It is also possible for the legislative power to elaborate the draft of the normative act and negotiate it with social partners to subsequently adopt the negotiated solution. Political consensus is also specific for the process of law application, whenever collective negotiations are set up as instruments for enforcing the law; this happens whenever the lawmaker provides that the application of the law requires conventional norms. Analysing this phenomenon in labour law, Alain Supiot considers that the transfer of power – towards negotiators so that they could apply the law – is similar to investing social partners with legislative power, a fact which makes law become a subsidiary norm. (Supiot A. 2005, cap.4.) The application of law by social partners manifests itself as an "executive power" since these organizations elaborate norms for applying the law only conventionally. Phenomenology of law reveals that there are numerous situations in which the legislative assumes the power to regulate laws and also adopts norms for the application of law, thus, "subduing" the executive power of the government.

Social equity system brings into evidence the hidden non-democratic aspects of regulatory non-legal systems. A first observation refers to the conditions under which a collective convention can be concluded and which were institutionalized in a non-legal way; it is known that the signing of conventions was initially granted to all participants in the social dialogue; afterwards, this possibility was gradually confined and, thus, the institution of the *conventional capacity* was created (obviously this institution is different from legal capacity). The institution of the conventional capacity is the corollary for the evolution of the collective convention system; if these collective negotiations ensure isocracy, political power must protect them, set up norms (institutions) whereby the equality of those who participate in negotiations could be guaranteed. The normative system was created through social conventions and it socionomically illustrates non-parliamentary democracy, a kind of social consensus created by the legal system. In this respect, ideonomically, social conventions are firstly justified through an accord of will, which is not legally formalized, and secondly through freedom of negotiation. From a politonomic perspective, the creation of social conventions depends on the existence of political conventions and institutions that allow (do not allow) social negotiations; that is why, in order to have consensus between social and political institutions, there has to be a regulatory system, known as the law. The legality of social conventions is not the same with the legality of the goal that these conventions try to achieve; naturally, according to the regime of contractual freedom no one is legally bound to negotiate and conclude a contract and the object of the contract cannot infringe the law. Since social conventions are not legally concluded, the Roman principle *quod nullum est nullum producit efectum* functions as a political principle. What matters from the perspective of political phenomenology of law is the fact that social equity system is more and more accomplished as a consensual non-legal normative system and less and less as a confining legal system.

Social equity system is extended in democratic societies through *public action contracts*, which, beyond their legal significance, are politically meant to protect individual rights and freedoms. By means of these contracts there were created both a rather political than legal regulations and "laws" on partnerships, which place social equity system at the congruence of classical

institutions – see the cooperation in the public domain of private law with civil law institutions. The isocratic character of public action contracts does not derive from private law norms nor from public law norms, but rather from consensual norms. Firstly, contracts of this kind have an ideonomic dimension because principles and non-legal means of public action are set up through negotiation procedure norms. Secondly, contracts of this kind have a socionomic component through the non-legal dispositions on material, financial, human, etc. resources that are necessary for the partnership to be fulfilled. Finally, the politonomical component of public action contracts takes into consideration the political will in order to maintain the status-quo; these contracts are concluded in different domains: environmental protection (the Netherlands), social protection and urbanism programmes (Italy, Spain); such contracts are also concluded for setting up of ad-hoc work groups (Germany) or (in compliance with *common-law*) for adopting public-private financial conventions of infrastructure (Great Britain). According to the political phenomenology of law, public action contracts confine the area of law enforcement. The complexity and political efficiency of public action contracts confine the normative intervention area of the state; on the one hand, the political force of these contracts confines the citizen's degree of participation in the adoption of normative decisions; on the other hand, the social force of these contracts reduces legal responsibility of those who govern. In this respect, one has to mention generated a wrong interpretation of social equity system, liability is shared by partners. The possibility of accomplishing social equity system as a form of governing through a contract made some authors support the idea of a new "political regulation" of society. J. Commaille brings a set of socionomic arguments to demonstrate that one can govern without political institutions if governmental agencies, ad-hoc commissions, debating forums belonging to commissions, etc. are created. Actually, these institutions can function very well outside legal regulations; the problem is that they have a clear objective, a confined sphere of applicability and a limited social effect. Consequently, a normative system which functions outside a legal system has a non-equality character. No matter how democratic such a system of public actions is, it excludes a part of the individuals from political participation, and finally from ruling society; even if citizens are entitled to vote during elections, a convention or a contract which produces effects only between the signatory parties is political, non-equal.

Social equity system illustrates the fact that political identity evolves and, in consequence, political identity is reflected by a normative system to the extent to which political power allows this identity to evolve. If democracy was defined only as *isonomy*, as equality of all citizens before the law, regulation of political rights would no longer be necessary; if democracy was confined to *isopolitia*, as political equality between citizens, regulation of individual rights and freedoms would no longer be necessary; finally, if democracy was confined to *isogonia*, legal systems would be useless because normativity would simply impose itself within human communities. J. Linz and A. Stepan approached this aspect in their study dedicated to the transition towards democracy, underlining the fact that in present societies there are no "multiple and complementary" identities of individuals. Political identity is an important issue to isocracy because any modification in the normative space generates a confinement or an extension of the content of individual rights and freedoms. Firstly, we must notice that once the political structure of the legislative power is modified, its ideonomy also alters, so that the way isocracy is regulated will be different. It is easy to notice that the ideonomy of political institutions, after a post-electoral coalition is created, is different from the ideonomics thereof before elections: politonomically, this phenomenon illustrates that parliamentary activity of parties no longer expresses the electors' political will. If all who are elected formed a single parliamentary group or if all who are elected declared themselves politically independent, they would enjoy the ideonomic dimension of the normative process simply because each MP will represent himself. Secondly, we must notice that legislative activity illustrates the ideonomy of political parties though political parties have never received such a mandate from electors; MPs should represent citizens' will exclusively and not their party's will. In this respect, Samuel Huntington is right to state that political parties supplement or replace traditional political institutions

which had a fundamental role in organizing the citizens' political participation. (Huntington S.P. 2004, p.45; ibid. 1999, p.79). Parliament must embody the ideonomy of nation so that one cannot accept that a part of the legislative, be it political or non-political, expresses a different ideonomy; as Alain Supiot has noticed, no intermediary body can impose the law to the others. Since each MP expresses the will of the nation, the concepts of *power* and *opposition* are meaningless; ideonomically, no representative of the people can oppose another representative of the people just because his/her party belongs to the opposition. Thirdly, if we accept the hypothesis firstly formulated by M. Hauriou, according to which the legislative is a *buffer-institution* between power and the electoral body, we can conclude that isocracy is ensured only if legislative activity is subject to constitutional norms, no matter if it reflects the citizens' will or not. In order to define isocracy, it is not enough to have a normative system based upon the principle of equality in the act of governing; it is also important to have an equal module of participation for electing the members of the government. If we confine democracy to its socionomic dimension, as this is reflected in the legislative process, we can indentify just one of the conditions which are necessary for isocracy to exist. Similarly, representatives must continue to regulate the individuals' political equality through norms that illustrate *how, when, who* and *by what means* this equality is accomplished.

Phenomenology of law reveals that social equity system expresses the relation between the ideonomia of political institutions and the socionomia of social structures in the process of creating normative systems. In order to prove that isocracy has an ideonomic dimension it is necessary to firstly notice the rational conditions of the choices which individuals make, of the factors which determine the choice of a certain normative institution to the detriment of another one. *Firstly,* ever since politocracy organizes the so-called "free elections", the individual's capacity to express his/her opinion is limited to the organized ballot; *e.g.,* if a list election is organized, the elector cannot express his option for a certain candidate. Freedom of choice is also limited when normative systems are altered either because society undergoes a process of transition from totalitarism to democracy or vice versa; normally, electoral laws are passed according to a set of non-legal criteria (ethnical, religious, community etc.), which are meant to bring advantages to a leader or a certain political party. As S. Huntington pointed out, young democracies do not manage to structure their institutions in order to minimize their attempts to make use of such legal solutions for obtaining votes.

Social democratization through political institutions generates an undesired effect in the sphere of *isocracy* because it allows access to power for non-democratic, extremist parties, which confine both the individual's freedom and the sovereignty of the state: in this respect, the case of Yugoslavia is suggestive. Secondly, social equity system manifests itself thanks to the fact that normative systems eliminate the confinements exercised by the state over the individuals and extend the sphere of individual rights and freedoms. In this respect, one can identify another paradox of democratization: if politonomically an *upgrade* of political freedoms is accomplished, ideonomically one can identify a degradation of political freedom. Political democratization ideonomically questions the value of normative systems because it allows various kinds of freedom: asocial, amoral, acultural etc. *Thirdly,* the process of democratization displays an unstable character of political structures and legal institutions, which is determined by the fact that politocracy makes use of the right to force rather than the force of law. In this respect, E. Mansfield and J. Snyder consider that during the period of transition towards democracy states become more aggressive and more inclined towards provoking a war. *Fourthly,* one does not have to mistake social equity system, as a form of power, for democracy; phenomenology of law provides many examples of normative policies that intentionally subdued democratic institutions in order to prove the inefficiency thereof and to justify autocracy or dictatorship.

4. Social equity system and delegation of power

The mechanism of political representation does not only imply equal participation in elections, but also equal participation in political dialogue. In all political regimes, which function

according to the principle of representation, normative systems regulate the obligation of elected representatives to meet, discuss and consider the electors' opinions. Socionomically, political equality depends on the parties involved in the political dialogue, as well as on the consensus that can be reached by social structures and power representatives. If the normative system does not grant equality to the parties involved in the dialogue or does not ensure communication or does not allow divergent opinions to exist, isocracy acquires a conformist character: that is why isocracy can be set up in totalitarian systems if it lacks its ideonomic dimension. Politonomically, one can notice that all representative institutions function thanks to the dialogue between power and opposition, the opinion exchange between the powers of the state, thus, as Clemanceau said, ensuring the glory of a country in which people enjoy freedom of speech. Ideonomically, confusions between the legal institution of representation and political representation led to a wrong interpretation of social equity system. Those who embrace Rousseau's theories consider that representative institutions can express people's will through the elected ones on condition that the latter exercise their term of office in an imperative way; one of the promoters of the imperative term of office, L. Duguit, considered that there is no difference between the members of the legislative body and ordinary mandataries. It is obvious that the error incurred by this theory consists in the fact that it transposes a contract of mandate from the civil sphere to the political sphere. On the other hand, the setting up of *representative* institutions itself appears under different forms in the context of a political system.

Representative bodies can be set up subsequent to elections on the basis of proportional representation, as it happens with most European states through the *first-past-the-post* system, which is specific for normative Anglo-Saxon systems. Firstly, one has to approach the problem of proportionality, i.e. the criterion according to which the number of representatives is established; no matter how high, the number of representatives contradicts the principle of social equity system according to which all individuals must equally take part in the act of governing. The same problem exists in the case of representatives who were elected with a majority of votes but did not obtain all the votes. Paradoxically, social equity system as an equal way of exercising political power is limited by representative institutions: due to the fact that society is vertically structured, pre-electoral isocracy is after elections replaced with representative institutions so that the will of most electors is replaced with the will of the elected minority.

Ideonomically, one can notice that social equity system illustrates the choice of representatives whose unique political quality is the fact that they become "more equal" than those who have chosen them; socionomically, isocracy illustrates only direct, equal and free participation of citizens in appointing representatives; politonomically, isocracy only reflects the democratic character of political competition in the process of setting up representative bodies. In this respect, Robert Dahl stated that democracy must be a selective *poliarchea* and a *merit poliarchea* (Dahl R.,l953.); to support his opinion with arguments he made reference to political power distribution within different communities. As far as we are concerned, a political system based on representation cannot be mistaken for isocracy, which must represent the political system; in other words, representative institutions are not isocratic by themselves, but in the way they reflect, organize and respect the citizens' will.

The need to have legitimate and relatively stable power institutions determined the legal distribution of responsibilities towards the majority, towards a politically active minority. R. Michels was one of the first who analysed the phenomenology of delegating political power and he referred to the way in which big organizations appoint a leading minority in order to be efficient. One negative effect on social equity system would be the fact that delegation grants political leadership to a minority that detaches itself step by step from majority and transforms itself in oligarchy. Ideonomically, one can notice that oligarchical phenomenon is in contradiction with isocracy, which presumes that political participation in social ruling is extended. That is why, once the majority expressed the will to delegate power to a political institution, social equity system must be ensured by that very institution. In this respect, J. Schumpeter elaborated an alternative theory of democracy

according to which the majority can appoint a number of persons who are obliged to observe the electors' will; in their turn, electors are obliged to appoint a national executive power, called the government. Thus, Schumpeter considers that democracy is reduced to an institutional system in which some persons acquire the power and make political decisions statutory after winning the votes of the majority.

According to the political phenomenology of law, the success of polical equity depends – if power is delegated – on a series of problems. First of all, these problems are ideonomical because the appointment of a representative expresses the will of those who appointed him / her, and not the will of the elected one. Citizens' representatives are not invested with the power to express their own ideonomy but rather with the power to fulfil the electors' will. The fact that those who are elected subsequently assume the right to impose their own ideonomy as "representatives" of the citizens is illegitimate; let us not forget that Gaetano Mosca criticised the pluralist political system (Mosca G., 1939) exactly because the elected "representatives", no matter the parties they come from, would make use of imposture, lies or bribery in order to accede to power. Ideonomically, the consequence of this state of facts is the mistrust of electors as regards the correct attitude of the elected ones and the sanctioning of the latter during elections. Garry Crotty and William Jacobson thoroughly describe the electors' mistrust and the fact that the sensible assessment of politicians' performance leads to the sanctioning thereof during elections by simply refusing to vote for them.(Crotty G., & Jacobson W., 1980). One has to notice that elected representatives also have political instruments and techniques whereby they ensure, at least apparently, political legitimacy; one of these instruments is exactly the institution of representation. In the process of representation, each elected person has to choose between expressing his/her own will and expressing the electors' opinion; thus, the institution of representation does not interdict freedom of opinion but it limits the content thereof. Politonomically, one can justify the ideonomy of an elected representative who acts in the interest of the state, even if this representative aggrieves his electors' ideonomy.

The problem of the contradictory ideonomy existing between a representative's free will and his/her obligation to politically obey his party was differently settled in the American doctrine; the problem was solved by politically influencing civil service according to the citizens' rights to know their representatives' ideology; German legislation regulates the "neutral" character of the civil service, whereas the French system is more liberal and admits "compromise". Politonomically, the legal institution of *representation* justifies the exercise of political power by persons who were especially appointed for this purpose. Ideonomically and socionomically, the universal vocation of representation has a series of consequences simply because the idea of representation logically opposes the extension of political rights for, as long as an individual is sovereign, he cannot be replaced. Socionomically, individuality – understood as unique will – comes in contradiction with the principle of representation, which ignores this form of individuality. According to Dominique Schnapper and Christian Bachelier the "republic", i.e. the political regime based on the principle of citizenship, must not be mistaken for "democracy" in the sense of applying republican principles on everybody. (Schnapper D. & Bachelier Ch., 2001, p. 108)

The principle of citizens' representation was put into practice before the universality of the vote was constitutionally guaranteed simply because ideonomically politocracy must justify its power through the so-called democracy of the suffrage, democracy which ensures "equality" of the vote. Even if the vote can be ideonomically considered equal, in the sense that each individual is entitled to a single vote, still from a politonomical point of view, the vote is unequal when certain individuals are not entitled to vote. We do not refer to disenfranchised citizens (who are not entitled to vote due to certain objective reasons: they are minors, they are mentally insane, the judiciary withdrew them this right); we refer to *censitary suffrage systems* that exclude a part of the citizens from exercising electoral rights based on the following criteria: race, residence, ethnical origin, religion, sex, etc. Political phenomenology of law reveals that there are more powerful censitary suffrage systems than those that were legally set up and in this respect one can give the example of absenteeism;

individuals who do not vote were not excluded by the normative system, but by the political system. Recent research has revealed the fact that social categories which are politically not ready to exercise their electoral do not vote, even if they have reached a certain ideonomical level: see the case of young people or those who are politically indecisive, or those who contest a political regime etc. Due to these phenomena,

Daniel Gaxie considers that elections are merely a mechanism which hides relations between political forces, a way of dissimulating social relations even if elections allow freedom of expression. (Gaxie D.,1978, pp.248-250). Marxist doctrines argue that this dichotomy between the citizens' legal freedom and their political inequality can be explained economically; thus, citizenship is formal and it masks the system of domination. Elections are a premise of social equity system because they regulate the way in which political systems are organized and function. Ideonomically, elections ensure the domination of the majority ideonomy in representative institutions; socionomically, elections impose community norms in representative institutions; politonomically, elections politically legitimate normative institutions. From the perspective of the phenomenology of law we are interested in the legitimate relation between these representative institutions and the legitimacy of the government; in other words, a legitimately appointed institution can perform illegitimate actions and vice versa. On the one hand, citizens can directly sanction their representatives through vote; on the other hand, representative institutions can be sanctioned through motions of censor adopted by parliament for reshuffling government. Thus, social equity system depends on the intervention or lack of intervention of a representative institution on an executive authority. For social equity system, what matters is the very relation between a representative institution's legitimacy and the way in which political right of individuals are represented. If in the former case legitimacy is ensured through elections, in the latter legitimacy derives from the way in which power is exercised. Thus, an institution which enjoys democratic legitimacy thanks to the fact that is elected but which breaks the constitutional limits of power is obviously non-democratic.

For representative institutions not to become discretionary, formal or informal institutionalization must be limited through social control mechanisms, including through elections, a fact which makes us conclude that social equity system is socionomically determined. Elections constitute a socionomic system which regulates isocracy, as a political relation between citizens and those who govern, due to the fact that citizens validate or not the activity of those who are elected and grant them or not a mandate to act. In presidential democracies, which have populist or plebiscite tendencies and a limited term that cannot be renewed, socionomic legitimacy is affected because the president's political responsibility towards the electorate is reduced; in the absence of a socionomic control system – as the one represented by elections – a president may commit power abuse. Apart from a president, a prime-minister who is not legitimized during elections is less probable to abuse power because he is controlled by other political institutions: he can lose legitimacy through the vote of mistrust expressed by the opposition or he can lose political support of his/her party. In presidential democracies, the situation is different; in this system early elections do not exist so that crises provoked by a discretionary power cannot be settled, as it happens in parliamentary systems. Democratization of societies does not only imply the problem of modifying representative institutions, it also implies the problem of modifying normative systems so that isocracy can function. Consequently, criteria established by R. Dahl for evaluating the level of democratizatization in a society may be left out. Even if elections are free, power institutions have a representative character and power distribution is accomplished at all levels, the mechanism of passing, adopting and enforcing normative decisions limit social equity system.

5. Social equity system and majority

In ancient democracy, the majority of the people had a procedural value because ancient democracies offered a political solution when passing a new law. The system of government which is legitimized by the will of the majority was anticipated by the political philosophy of the

Enlightenment, which came up with the idea that the sovereign people had the power to set up its own laws. Since the law was considered the expression of the majority will, the vote was favoured and it was used in order to replace the ancient democracy method of cast lots. The quantitative approach of the majority principle, which was imposed in the deliberating procedure of medieval institutions, prevailed after the French Revolution to the detriment of any qualitative criteria because it illustrated equality of the individuals'. Let us remember A. De Toqueville's ideonomy, according to whom the act of governing can be simplified with the numbers that make the law. In the ideonomy of isocracy, the problem of the majority must be correlated with the political character of normative decisions. We would like to mention that a quote by Thucydides from the Preamble to the European Constitutional Treaty was eliminated; according to this quote democracy implies the power of the biggest number; it is obvious that it was not the legal meaning of the majority which was not acceptable for the European institution, but its political meaning because Thucydides definition was contrary to the principle of equality between the states and not to the legal principle of equality between individuals. Thus, if remain in the sphere of ideonomy, the principle of *majority* has no political meaning because it refers to a concept, a prevailing theory, a body of opinions which contradict the views of the minority. According to socionomy, the principle of *majority* defines a force relation between different social structures (groups) that participate in adopting normative decisions in conformity to a set of rules: *relative* majority, *absolute* majority*, qualified* majority etc. According to *isocracy*, which defines political equality in the act of governing, one has to mention the fact that *majority* must not be mistaken for *unanimity* either ideonomically or socionomically. Political phenomenology of law recorded cases in which a majority, although legally entitled to adopt a law, could not do this without the citizens' political accord; in a semi-direct democracy, the people divide power with their representatives and, thus, a law adopted by parliament, even if unanimously, does not come into force until it is voted by the majority of the electors who become "deputies for a day", as Charles de Gaulle used to say. (Haskew Michel, 2011).

As regards the referendum, even if a bill was adopted with a majority of votes in parliament, this must be accepted or rejected by the people's vote. Even if it is almost impossible to justify the principle of unanimity from an ideonomic perspective, it is possible to explain it politonomically. Unananimity is not ideonomically possible because individuals are mentally and affectively different, they have different cultural levels and it is impossible for all of them to have the same normative opinion at the same time. Socionomically, the legal notion of unanimity lacks a real support because society is made up of a series of layers, different groups, categories or social classes who have various needs and values. Moreover, the concept of unanimity discourages different opinions which are essential for economic, social and political progress; Tocqueville used to say that we should fear despotism generated by the anonymous ruling of opinion and the majority conformism. Finally, in the sphere of politonomy, unanimity can be paradoxically explained through the infringement of isocracy because a *total* majority is not possible outside force or the threat of force. According to some authors, not even the majority is necessary; according to J. Schumpeter, democracy can function very well only through "electoral competitition" without depending on a majority; in this respect, he gives the example of Victorian Great Britain, when females and most of the males were not enfranchised.

The concept of democracy is often defined ideonomically as a measure of exercising power in conformity with the majority's will; this makes us draw the politically incorrect conclusion that power might be exercised in a non democratic way if it expresses the will of that majority. In this respect, Raymond Aron stated that any political regime is to a more or less extent an *oligarchic* regime even if decisions are democratically adopted by a majority. (Aron R., 1965) . As long as people are not governed by saints, those who participate in the governing system will benefit from power. If a normative system offers institutional and legal guarantees, oligarchic tendencies are limited, more than in any regime. Actually, Raymond Aron considered that it is only in a

constitutional system where political elites are open, allowing, at least theoretically, all citizens to accede to power through elections.

The principle of *majority* is of interest to social equity system in a triple way: ideonomically, because elections illustrate the majority's normative option; socionomically, because elected representatives exercise legislative attributions; politonomically, because the majority can impose a norm upon a minority. From a legal perspective one has to distinguish between the principle of majority and constitutionalism; socionomically, constitutionalism implies a relatively large consensus as regards the supremacy of the constitution and especially the acceptance of "self-limitation" power procedures, as well as the possibility to modify the system with the help of an exceptional majority. For democratic societies, in which *nomocracy* (the ruling of the law) is observed, constitutionalism implies a clear hierarchy of the laws, an independent system of legal interpretation and a solid legal culture of the civil society. Another observation refers to the fact that the rule of the majority has strong ideonomic significance for law; e.g., if certain norms are adopted through the vote of the majority, it is necessary that these norms are correct and efficient for democracy to function. It is obvious that the passing of an electoral law by a parliamentary majority, whereby a party is granted 2/3 of the seats in parliament, even if that party did not obtain the majority of votes expressed by the citizens contradicts the principles of socionomy but it is correct from a politonomical point of view. Ideonomically, one can also notice the fact that even if the law is the expression of a majority's will at parliamentary level, this law does not express the will of most of the citizens. In this case, the vote of the parliamentary majority is meant to impose a constitutional norm that contradicts the principles of constitutionalism, which requires another democratic majority, i.e. the citizens' majority. We must also take into consideration the fact that social equity system ideonomically imposed itself in the legal system through the rule of the majority, which is *politically limited* and according to which the rights of a majority of the population cannot infringe the rights of a minority; thus, when defining isocracy, one has to take into consideration both the ideonomic component (normative policy) and the politonomic component (political normativism).

6. Conclusions

Social equity system which ensures equal participation of citizens in the ruling of society is legally regulated through norms, institutions and legal systems. Thus, social equity system implies both the institution of representation and its correlative – confining the citizens' possibility to participate in political ruling in the context of extending and diversifying the political body of the *demos.* To Ch. Lindblom, as well as to Robert Dahl a set of political conditions would be enough to make democracy possible: freedom of expression, freedom of political association, the right to vote, the right to be elected, as well as the right of leaders to take part in free and correct elections.(Dahl R.,1953). Ideonomically, one can notice that the requirements of isocracy are formulated as political freedoms and not as legal rights; in fact, an individual who enjoys freedom of speech but who is not entitled to exercise it is excluded from power. According to the phenomenology of law equal participation in the exercise of power is legal fiction since each individual is considered to be equal with the others; however, it is only through this legal fiction that the individual can effectively participate, e.g. as a citizen, in elections; it is only through this fiction that a child is granted political rights but is not given the right to exercise them. Moreover, as Giovanni Sartori noticed, equality, understood economically, might mean equal fortune for all or the lack of any fortune for anyone in case all assets belong to the state. (Sartori G.,1999, pp.309-310). Thus, it is obvious that defining equality requires specific legal instruments and must comply with the will of politocracy. Marxism was wrong in mistaking one of the conditions for exercising power for power itself and when it reduced political force to working force or when it assimilated political rights with economic rights. The technocrat doctrine denies the idea of equal participation of citizens in the exercise of power; according to Helmut Schelsky, "no ordinary citizen has the knowledge and technical means whereby to participate in the over-formalized decision-making process" (Schelsky H.,1961, p.29). A. Frisch

also stated that direct democracy is no longer possible today and, thus, the vacuum must be filled with technocrats. If power becomes a form of technical and scientific governing, normative systems should invest science with legislative powers, legitimize management as executive power and invest coordinating institutions with jurisdictional powers. Political phenomenology of law paradoxically reveals that political systems cannot be classified in conformity with political principles; however, they can be differentiated through legal norms and institutions. Firstly, one has to notice the fact that according to legal institutionalization, each political system has a set of different legal principles and values. Secondly, each political system differently regulates participation in the ruling of society; some political systems allow access to power only to aristocratic, traditional or bureaucratic elites; others also allow middle categories to participate in the exercise of power, whereas large democratic societies allow all citizens to take part in the exercise of power. Thirdly, as S.P. Huntington noticed, political regimes are different from each other according to the relation between political institutionalization and participation: political systems with a low level of political institutionalization and a high level of participation are those in which sociocracy –while using its own methods– directly acts in the sphere of policy. Huntington mistakes the socionomic level of participation for the politonomic level of institutionalization, in which participation is possible only due to a formalized legal system.

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