

THE CITIZEN RIGHTS AND LIBERTIES WITHIN THE CONSTITUTIONAL EVOLUTION OF ROMANIA

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ABSTARCT: THIS ARTICLE AIMS ARE TO PROVIDE AN OVERVIEW OF THE EVOLUTION OF THE CONSTITUTIONAL FRAMEWORK OF ROMANIA CONCERNING THE CITIZEN RIGHTS AND LIBERTIES, BEGINNING WITH THE CONSTITUTION OF 1866 AND TO TRY TO UNDERSCORE THE MODE OF CRYSTALLIZATION OF THESE RIGHTS AND FREEDOMS UNDER THE INFLUENCE OF THE HISTORICAL ERA IN WHICH THEY DEVELOPED.

KEY WORDS: THE CITIZEN RIGHTS AND LIBERTIES, THE CONSTITUTIONAL EVOLUTION, PROTECTION OF HUMAN RIGHTS

In the Romanian constitutional system, the juridical institution of the basic rights and obligations of the citizens was consecrated for the first time in a modern conception in the Constitution in 1866[1].

The 1866 Constitution, the first modern constitution inspired from the Belgian constitution, considered at its time the most liberal one in Europe, contained the citizen rights and liberties in a political-juridical conception proper to the philosophical and political thinking of the Western Europe in the first half of the 19th century. This conception was influenced, at its turn, by the spirit of the Human and Citizen's Rights Declaration adopted by the France National Assembly[2]. Being elaborated in extern circumstances, but also in intern, complicated ones delicate for the Romanian nation[3], the Constitution contains 133 articles that regulate the most important social relations. Dealing in detail, in the 2nd Title “About the Romanians' Rights”, the Constitution stipulated and guaranteed the most important basic rights of the citizens: inviolability of the person and of the residence, the mail secret, the freedom of the consciousness, of the press, of the education, of the association and of the reunions. The Constitution abolished the privileges, the interdiction of the death punishment and the fortune confiscation. The property was declared as “sacred and inviolable”[4], existing only three causes of expropriation for public utility (communications, salubrity and the works for protecting the country)[5]. Although it declared that, inside the state, there was no class differentiation and that everybody was equal in front of the laws, because of the fact that the electoral rights were granted reported to the fortune, the equality in rights of all the citizens was in a certain manner contradicted.

The historical events occurred after the Big Union in 1918[6] generated a visible tendency of certain political parties and groups, and also of certain political, judicial, cultural personalities of that time to participate to the elaboration of certain legislative projects regarding the new state organization of the reunified Romania[7]. Giving expression to the new realities determined by the settlement of the Big Union in 1918, it was adopted in our country the Constitution of March, 29th 1923, a document that represented a juridical document much more elaborated than the 1966 Constitution and that was directly oriented towards the requirements of the society development in a law state. The 1923 Constitution consecrate the principles of freedom and equality of all Romanians, no matter their ethnicity, their religion, their birth or their social class, the universal, equal, direct and secret vote (of the majority citizens, men), the individual freedom, the consciousness freedom, the expression freedom[8], the press freedom, the work freedom, the residence inviolability, the privileges interdiction, the property right, adding to the expropriation causes for the public utility stipulated by the 1866 Constitution another 2 ones determined by the cultural interest and by the direct, general interest of the state and of the public administrations etc.

The Romanian political system, between the years 1930-1938, was featured by a complicated and contradictory evolution with direct repercussions on the profile and the functionality of the institutional traditional state and party mechanisms. In frame of this sinuous evolution, there was a process of gradual dissolution of the parliamentary system, of sensible erosion of the political parties, at the same time with the transformation of the monarchic institution, having as a result the change of the democratic system under the conditions of the 1923 Constitution when installing an authoritative system[9].

In the concrete conditions of the year 1938, the king Carol II installed on February, 10th 1938, the personal dictatorship. This dictatorship is judicially consecrated and accomplished by the new Constitution promulgated on February, 27th and published on February, 28th 1938. The Constitution contained 100 articles, the 2nd Title being called “About the Romanians’ Obligations and Rights”. By consecrating the royal dictatorship, the stipulations of the Constitution were expressing the limiting of the democratic rights and liberties. Therefore, for the first time, there are stipulated the citizens’ obligations and then there is a reference to the rights. In 1940, the king is forced to abdicate and the Constitution is suspended. Even in the conditions of suspending the 1938 constitution, the citizens’ rights have been generally respected so that, except the time period between September 1940-January 1941[10], we cannot talk about massive and serious violations of the civic rights and liberties.

In the autumn of 1944, by Royal Decree no. 1626 on September, 2nd it was disposed the revalidation, with certain changes, of the 1923 Constitution and there were elaborated a series of constitutional documents that could settle the state organization. These documents represented the juridical basis of the temporary state organization of Romania until adopting a new constitution.

The end of the Second World War confirmed Romania’s affiliation to the Soviet influence sphere, with all the consequence coming from it, so that at the beginning of the `50s, Romania was a typically communist country, the system promoting – according to the model imposed by Moscow – a policy of enrolling the population and repressing any type of opposition[11]. The state organization between 1945 and 1989 was regulated by the 1948, 1952 and 1965 Constitutions and the feature of the civic rights and liberties proclaimed in the mentioned Constitutions reflected the nature of the socialist political system, in its different time periods. Despite the fact that both the stipulations of the

Romanian People's Republic Constitution in 1952 and the ones of the Socialist Romanian Republic Constitution in 1965 contained provisions regarding the basic civic rights, although Romania has become a signatory part of the Universal Declaration of Human Rights since the communist system (1955), the communist dictatorship has never respected totally the human rights and the rights of its own citizens. We must say that, between 1948 and 1964, the repressing feature of the governing cannot be contested, the 1965 Constitution consecrated a certain liberalization tendency of the juridical institution of the civic rights as much as it could be allowed by the nature of the socialist system, especially emphasizing the social-economical rights (except the right to strike and to decent living standards). But it is true that, due to their insufficient guarantee, the population did not benefit satisfyingly from the constitutional frame of their proclamation[12].

The events in December 1989 have caused deep political, social and economical transformations in the Romanian society[13], removing the communist dictatorship and in this context the elaboration and the validation in 1991 of the new Romanian Constitution[14], changed and completed by the Law revising the Constitution no. 429/2003[15], have answered to the need to accomplish the basic juridical frame of the evolution to democracy, freedom and human dignity, to edifying a law state based on political pluralism, free elections and providing the clear respect of the human rights and liberties.

Therefore, the change of the political system after December, 22nd 1989 has brought a new conception of the Romanian legislator on the state role regarding the proclamation and the real guarantee of the civic rights and liberties, after 1989 permanently promoting and supporting Romania's connection to the international standards in the field of the human rights. Thus, Romania accessed the international conventions regarding the protection of the human rights[16], where it was not part of it and it took back its reserves to other agreements in this matter[17], the Romanian Constitution containing at present the entire range of basic human rights and liberties consecrated in the reference international documents in this field[18]. More than that, article 20 of the Constitution shows that the stipulations regarding the civic rights and liberties will be interpreted and applied according to the Universal Declaration of the Human Rights, to the pacts and to the other treaties Romania participates to. And if there are non-concordances between the pacts and the treaties referring to the basic human rights Romania participates to, and the intern laws, the international regulations are the ones that have priority, excepting the case where the Constitution or the intern laws contain more favourable stipulations[19].

At the same time, the basic law comes and institutes a series of institutions able to constitute an effective guarantee of the effective, concrete exertion of the rights and liberties proclaimed in the 2nd Title, such as the Constitutional Court or the People's Attorney.

We must say that the valid constitutional stipulations according to the international stipulations in this field[20] also stipulate in article 53 the exertion of the civic rights and liberties in certain situations related to the protection of the national security, of order, of health or of public morality, of the civic rights and liberties, of the development of the criminal instruction; of preventing the consequence of a natural calamity, of a disaster or of an extremely serious sinister. The restraint may be disposed only if it is needed in a democratic society and the measure must be proportional to the situation that determined it, must be applied in a non-discriminating manner and without reaching the existence of the right or of the liberty.

Since the events of December 1989 until nowadays, Romania crossed a sinuous road during which it registered both notable events and many failures trying to edify a real democratic society. Therefore, even if in post-Decembrist Romania we cannot speak about a large range disrespect of the basic rights and liberties consecrated both in the constitutions stipulations and in the international and regional documents our country participates to, we cannot ignore the fact that, on December, 31st 2008, our country was the third, after the Russian Federation and Turkey, as a defendant in different causes placed in the examination of a judicial formation of the European Court of the Human Rights in Strasbourg[21].

Although, indeed, the institution of the human rights in Romania has evolved in time[22], being presented actually as an extremely complex institution related both to the juridical, intern order and to the international one.

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- [2]. **C. Ionescu**, *Contemporary Constitutional Law Treaty*, the second edition, C. H. Beck Press, Bucharest, 2008, p. 670-671; **I. R. Tomescu**, *Citizens' rights and liberties vs. antiterrorist legislation*, Annals of the „Constantin Brâncuși” University of Târgu Jiu, Letter and Social Science Series, Issue 3/2013, p. 48.
- [3]. The 1866 Constitution is the result of the intense political problems unleashed after deposing Al. I. Cuza on February, 11th/23rd 1866. At the same time, in that time period, Romania had not gained its entire independence yet and it was surrounded everywhere by absolutist empires (the Ottoman Empire, the Austro-Hungarian Empire, Prussia and Czarist Russia), and France, that had supported it the most in its national aspirations had become under Napoleon II an absolute monarchy. (**T. Drăganu**, *Constitutional Law and Political Institutions*, vol, I, Lumina Lex Press, Bucharest, 1998, p. 369).
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- [6]. The Union on December, 1st 1918 represents the main event of the history of Romania and, at the same time, the accomplishment of a desideratum of the inhabitants of the borders of the old Dacia, the union of Transylvania and Romania (after 1862, when it was accomplished the Small Union – Moldova and Walachia by Al. I. Cuza). The day of December, 1st has become after the events of December 1989 The National Day of Romania.
- [7]. **A. Banciu**, op. cit., p. 87.
- [8]. **M. R. O. Curelar**, *English –Romanian Dictionary*, Academica Brâncuși Press, Târgu-Jiu, 2011, p. 114.
- [9]. **A. Banciu**, op. cit., p. 220.
- [10]. During September 1940 – January 1941, Romania was proclaimed as a national-legionary state. The legionary dictatorship promoted a deeply antidemocratic policy of terror, liquidating actually the democratic rights and liberties. (<http://www.scritube.com/istorie/regimul-politic-din-romania-se202219412.php>).
- [11]. Among the most important consequences of this fact, we mention: installing a communist government in Bucharest (March, 6th 1945), abolishing the monarchy, installing the “people’s democracy” system (December, 30th 1947), publishing the first communist Constitution (April 1948), nationalizing the country industry in June 1948, starting to collect the agriculture in March 1949 etc. (<http://www.ars-longa.com>).
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- [13]. **E. G. Simionescu**, *The recidivism and legal relapse*, Universul Juridic Press, Bucharest, 2012, p. 7.

- [14]. The new Constitution was voted in the Constitutive Assembly and submitted to the national referendum on December, 8th 1991, being approved with a percentage of 77,3 % of the participants. When validating the new Constitution (December, 8th 1991) the 1965 Constitution was expressly abrogated.
- [15]. Published in the Romanian Official Gazette, part I, no. 758 on October, 29th 2003.
- [16]. In the field of the national minorities rights, Romania consecrated both by the constitutional stipulations, and by a series of other normative documents, an extremely favourable juridical system, having at present one of the most advanced European legislations in this matter.
- [17]. When finishing the Vienna Reunion of the representatives of the states that had participated to the Conference for Security and Cooperation in Europe, the Romanian delegation was the only one that formulated a series of reserves, dissociating from certain principles in the human rights field that had been already adopted by all the other participant states (including by the former socialist countries). On January, 6th 1991, the Romanian Ministry of External Affairs declared, to the satisfaction of the other states, that our country retracted “its interpretative declarations and reserves” formulated on January, 15th 1989, referring to the document adopted at Vienna, confirming the acceptance of this integral document. (**V. Duculescu**, *Juridical Protection of Human Rights*, Lumina Lex Press, Bucharest, 1998, p. 52).
- [18]. **I. Muraru**, *Constitutional Protection of the Freedom of Opinion*, Lumina Lex Press, Bucharest, 1999, p. 15.
- [19]. **C. Ionescu**, op. cit., p. 671.
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