

REQUIRED STEPS FOR DEMOCRACY. ROMANIA'S CASE¹

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Abstract: The events that took place in Romania overthrew its communist regime and marked the transition toward a democratic society. In Romania, the communist period (1944-1989) was strongly influenced by the Soviet Union which has promoted principles such as the supremacy of the state, equality among citizens, and private property in favor of collective. Hence, the adoption of some new legislative measures became mandatory in order to ensure the transition between these two periods. In this vein, this paper aims to clarify some aspects of Romania's return to democracy and implicitly the degree to which these theoretical principles of democracy were achieved and reflected within the society. First, it compares and contrasts the two periods of communism and transition in Romania in order to emphasize the main changes that are supposed to occur. It then analyzes to what extent and in which ways Romania has implemented the principles of democracy within the society. From methodological point of view, this paper explores mainly methods of data collection used in qualitative research, such as: texts analysis, primary sources or official documents, given that the paper positions itself as a comparative research of the above mentioned sources.

Keywords: communism, democracy, transition, constitution, law

Argument

At the basis of a state is a fundamental law, known as the Constitution and this paper focuses on the characteristics and differences between the main Romanian Communist-era Constitution and the Democratic one, after 1989. The Constitution is the main source of

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constitutional law, and changing a political regime imposes also the change of the Constitution in order to adapt it to the new political, economic realities and to social development.

The term constitution designates the fundamental law in a State, in that it contains the basic rules of functioning of the state, along with a series of rights and freedoms for its citizens. The existence of a constitution is the surest way for marking a political and social reality, from the need to boost and protect the state power, ensuring the rule of law. Analyzing the case of Romania, the State had a Constitution much later than the countries of Western Europe, this being influenced by the late propagation of modernity's concepts, but also because of the other civilizations' domination over Romanian territory (remember in this case the Ottoman Empire). The first Constitution of Romania was established in 1886, in the context of achieving unification of Moldava with Țara Românească. When the political regime is allowed to explain the content of the Constitution in terms of law and equal justice, based on the single party interests, we can no longer to declare that it is the guarantor of basic human rights, but it becomes the instrument of political leadership and of its interests².

From a methodological point of view, this paper represents a qualitative research based on analysis of documents, such as texts or official documents, which has been developed in the perspective of a comparative study. An element of added value to this paper from the angle of a qualitative research is putting the two emblematic constitutions in the mirror-one representing the communist regime and the other the current democracy. In order to achieve the scientific desideratum, arguments about the genuine implementation of the legislation during the Romania's transition period are being presented.

Romania between communism and democracy

The end of the Second World War is followed by major changes regarding the political regime, recalling in this case the passage under totalitarian systems of most European countries such as Italy, Spain, Germany, Portugal and Bulgaria. In this context, States of Central and South-East Europe moved under the Soviet regime, similar with Romania's situation, forced to submit to a totalitarian regime dictated by the USSR.

² Hadley Arkes, *Beyond the Constitution*, Princeton University Press, 1990, p. 24.

Totalitarian ideology will push up to absurd the concepts in order to increase the power and domination of a small group³. The communist regime in Romania was a totalitarian system from its establishment until its collapse. It was based on the constant violation of human rights, on the supremacy of the ideology hostile to an open society, on the monopoly exercised by a group of people, on repression, intimidation and corruption⁴.

The representative Constitution of the Romanian Communist regime which is analyzed in the context of this research is that one from 1965, being made up of 121 articles grouped into 9 titles. One of the main characteristics of the communism refers to the property concept, according to which "Socialist ownership over the means of production is either owned by the State ownership -property belonging to all the people, whether cooperative property – the goods belonging to each cooperative organizations"⁵.

Under the stated purpose, but false, in order to develop the state and ensure the freedom and dignity of man, the 1965 communist constitution indicated in Article 13 the following statements: Romanian socialist State: organizes, plans and directs the national economy; Defends the Socialist property; Guarantees the full exercise of citizens' rights, ensuring socialist legality and defends the rule of law; Develops education at all degrees, ensures conditions for the development of science, arts and culture, protects health care; Ensures the defense of the country and organizes its armed forces; Manages relations with the other States⁶. Presenting these elements only reinforces the argument according to which the State holds supremacy in organizing the life of its citizens. The whole system presented the organizational, strategic and tactical doctrinal basis of the communist ideology⁷.

A totalitarian system promotes political leadership through the existence of a single party. In the Socialist Republic of Romania, the leading political force of the whole society is the

³ Jean-Pierre le Goff, *Democrația post-totalitară*, Universul Juridic București, Editura Universitaria Craiova, 2012, p. 57.

⁴ Dalina Dumitrescu, *Paving Romania's way towards the european research area*, in Ilona Pálné Kovács, Dagmar Kutsar, *Internationalisation of social sciences in central and eastern Europe. The catching up – a myth or a strategy?*, Routledge, 2010, p. 154.

⁵ The Constitution of the Socialist Republic of Romania from 1965, *Article 6*.

⁶ *Idem*, *Article 13*.

⁷ Stéphane Courtois, *Comunism și totalitarism*, Editura Polirom, București, 2011, p. 131.

Romanian Communist Party⁸. All the system's components installed in power have maintained or introduced fundamental bases of the totalitarian Communist conception: monopoly of single party, thinking, and means of production and distribution of goods.

What does freedom mean from the perspective of Romanian communism? According to Articles 28 and 29, freedom of speech, press, assembly, meetings and demonstrations is guaranteed and cannot be used for opposing the Socialist system and the interests of those who work. Any association with fascist or antidemocratic nature is prohibited. Participation in such associations and fascist propaganda or antidemocratic character is punished by law⁹. Just noting these details we may say that freedom is assured, but more than that, the support for democracy is encouraged. But what is missing is a definition linked to the freedom of expression, which is not only controlled, but even more it restricted by law. What was the consequence of this fact? Regarding the state, the creation of the State Security Department, known among the people as Security, which was an information service, subordinated to the Romanian Communist Party. The system was one of repression and surveillance, and it worked with undercover staff, infiltrated into all social and administrative levels. Today many of the activities of this system that deeply violated human rights are beginning to be made public, a large part of the supporting documents can be consulted at the National Council for the Security Archives Studying. On the other hand, in terms of the population, it has become creative in developing artworks (publications, music or theater performances) with ironic tinge to the system.

In accordance with article 5 of the Constitution, Romania's national economy is a socialist economy based on socialist ownership over the means of production. In the Socialist Republic of Romania, the exploitation of man by man is always disbanded and it is created the socialist principle of distribution after the quantity and quality of work. Work is an honor duty of every citizen of the country¹⁰.

The removal of Soviet domination over the states in Europe was completed in 1989, this being accomplished mostly through peaceful means as well as in the German Democratic Republic, Bulgaria or Hungary, in the context of rebound reforms promoted by Mihail

⁸ The Constitution of the Socialist Republic from Romania from 1965, *Article 3*.

⁹ *Idem, Article 28 and Article 29*.

¹⁰ *Idem, Article 5*.

Gorbaciov. Contextual situation within Europe has spurred and motivated Romania's population to revolt against the Communist regime conducted by Nicolae Ceaușescu. Known as the Revolutions of 1989, the historical moment has resulted in the removal of Ceaușescu's regime through its execution, the power being taken over by a provisional bureau headed by the political leader Ion Iliescu, called the National Salvation Front Council¹¹. The new political structure aimed at restoring a democratic regime in Romania, and this fact led to major changes at the political and constitutional level. Among the main points contained in the NSF program, it is worth mentioning the organization of free elections, restoration of political pluralism, freedom of expression, transition to a market economy. From the legislative point of view, all of these things had to be contained in an official document, and this has led to the development of the 1991 Constitution.

Nowadays, as a system of Government, Romania is a semi-presidential republic because the representatives of the people are those who make the laws, and the Executive power is divided between the Prime Minister and the President, the latter having significant powers in the field of foreign policy, defense and security.

The first step that needed to be achieved in order to adopt a new political regime was the removal of the Communist power structures, by applying constitutional principles, including respect for the fundamental rights of the citizen and the State's development in terms of democratic concepts and values.

What is democracy? What are the elements that distinguish it from communism and what principles are promulgated by it? The term democracy appeared in Ancient Greece, and in an exact translation it means "leading by the people", which causes the development of a political regime based on the will of the people, "people are essentially equal between them and, therefore, each person is entitled to have a word on who governs and how"¹². The concept has evolved over time, and today democracy manifests under its modern usage with regard to the respect for human rights, limitation of state's powers and a multi-party system¹³. Moreover, the

¹¹ John Dryzek, Leslie Holmes, *Post-Communist Democratization. Political Discourses across Thirteen Countries*, Cambridge University Press, 2002, p. 190.

¹² Leon Baradat, *Ideologiile politice – origini și impact*, Editura Polirom, București, 2012, p. 76.

¹³ Charles Tilly, *Democracy*, Cambridge University Press, 2007, p. 11.

modern democracy has advanced and comprises two distinct perspectives: that of liberal democracy, which includes liberal capitalism as an economic principle, and that of democratic socialism, which refers to equality and freedom in a society based on joint action of all the citizens, who have the same rights and responsibilities.

The construction of democracy has been sustained by establishing the old political parties (National Liberal Party, Social Democratic, National Peasant Party), but also by creating new ones such as the National Salvation Front, this political party winning the democratic elections of 1990 and those of 1992, after which Ion Iliescu was elected as president of the country. However, National Salvation Front had a low response rate in restoring the political scenery which was affected during the communist era. Leaders' initiatives are known as a reaction to consolidate their political positions first, leaving for later the legislative regulations. This is largely due to the fact that many members of the NSF had significant ties within the former Communist Party, which has influenced the reform and the radical decisions' process in order to stimulate change¹⁴.

The state's return to democracy has imposed a new Constitution, containing specific provisions and rules of the current political regime. Due to the fact that the Romania's return to democracy in 1989 was not done on a peaceful path, it was urgent to amend the legal framework of the country. A significant number of other normative documents that preceded the 1991 Constitution were put in place, designed to achieve the fundamental legal framework of the evolution toward the legal, democratic and social state. Being consistent with the principles of democracy, the new Constitution was passed by Parliament and approved by referendum in 1991, in order to legitimize the new political, social and economic system. This Constitution was revised and approved by a national referendum in 2003 and it is actual at the present time.

Since the first title of the Constitution it is presented the character of the Romanian State, which is a state of law, democratic and social, with a unitary structure, in which national sovereignty belongs to the people who exercise it through its representative bodies or by referendum. One of the most important duties of a democratic regime is the right to private

¹⁴ Lavinia Stan, Diane Vancea, *Post-Communist Romania at twenty-five: linking past, present and future*, Lexington Books, 2015, pp. 44-45.

property. This, along with other rights such as the right to information, the right to vote or the right to stand as a candidate, are contained in the second title.

Political leadership is no longer strictly reserved to a single political party, promoting political pluralism and the association action encouraged by law. As we stated, political parties are established and reestablished, and this is confirmed in article 37 of the new democratic Constitution, according to which citizens may freely associate into political parties, trade unions and other forms of association. Parties or organizations which, by their aims or activities militate against political pluralism, rule of law principles or sovereignty, integrity or independence of Romania are unconstitutional¹⁵. In order to ensure the transparency of the democratic system, these provisions are also limited- some people may not be part of political parties, such as Constitutional Court judges, lawyers, magistrates, active members of the army, police and other civil servants established through organic law¹⁶. The role of mediation and decision that they have in society does not allow them to be part of political parties in order to avoid influencing the decision making process. At the same time, secret associations are prohibited under the law.

If the Communist regime's description says that freedom is restricted, even noticing the existence of an organization of surveillance and repression, we note that the freedom in democracy has a completely different definition and a much broader spectrum of applicability. Thus, in accordance with articles 29 and 30, the freedom of conscience and the freedom of expression are encouraged and guaranteed by law. Freedom of thought, and opinion, and also of religious beliefs cannot be restricted in any way. No one may be coerced to adopt an opinion or to adhere to a religion contrary to his beliefs (remember that during the communist regime, the religious practices were under the control of authorities)¹⁷. Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable. Censorship of any kind is prohibited. Freedom of the press implies the freedom to establish publications¹⁸. In addition to these rights, paragraph 7 of the present article, indicates that the defamation of the country and of the nation,

¹⁵ The Constitution of Romania from 1991, *Article 37*.

¹⁶ *Ibidem*.

¹⁷ *Idem*, *Article 29*.

¹⁸ *Idem*, *Article 30*.

any instigation to an aggression war, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as any obscene conduct contrary to accepted principles of morality¹⁹ are prohibited by law.

Democracy guarantees to its citizens a series of rights and freedoms, as far as they comply with their obligations. Thus, contrary to the Communist regime when the property could not be other than a common good, this time appears the concept of private property, guaranteed by the State. According to Article 41, paragraphs 1 and 2 of the 1991 Constitution, the right to property, and claims against the State, are guaranteed. The content and limitations of these rights are established by law. Private property is equally protected by law, regardless of its owner. Foreigners and stateless persons cannot acquire ownership of land²⁰.

The 1991 Constitution is the best example to illustrate the changes made in legislative terms through the transition from a totalitarian regime, in this case from a communist regime to a democratic one. Because the subject risks to be considered unsuitable, we should mention the main changes to the law through the 2003 referendum, organized with the purpose of updating it to its needs and to the current geo-political context. Thus, the main changes emphasize the guarantee and protection of private property by law; modify the mandate of the President of the country for a new one of five years. Moreover it sets out the limited parliamentary immunity, comprising also mentions about adapting the national law to the community law, in the context of the state's accession to the European Union.

Regarding the promulgation of democratic principles towards a responsible civil society, intellectuals have established non-governmental organizations, in order to strive for respect for human rights, equality before the law, the elimination of discrimination, equal access to education and social services etc.

Conclusions

The Communist era was characterized by the abolition of private property, this one being replaced by the state and cooperative property, plus the leadership exercised by a single political

¹⁹ *Ibidem.*

²⁰ *Idem, Article 41.*

party, the Communist Party, the existence of a centralized economy and a limitation of freedom of expression.

Measures adopted immediately after the moment of 1989 on the transition to a new political regime, represented by the democracy movement, had a special significance for shaping the new framework of social life, political and economic of the country, characterized from now on by a system based on the separation of powers, free elections and the respect for fundamental human rights.

Applying a certain type of political regime in a country defines its character and its position in international relations board. Romania's transition from communism to democracy was not achieved in a peaceful manner, it is known as the 1989 Revolution, this event being followed by a transition period characterized by various actions in order to adapt to the new political reality. The current environment made it necessary to adopt a new Constitution to ensure the principles of democracy and the ruling of the law, which was materialized first through the elaboration of normative acts. Although Romania has understood very well which are the appropriate measures to be taken, the difficulties emerged in the implementation sphere. These challenges lead to a weak development in terms of economic, political and social spheres of the State. From this point of view, Romania has integrated quite late in the European Union, together with Bulgaria, and it still continues the fight for the last places in the structure of the European construct.

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