

The evolution of the right of association from constitutional standpoint in Romania

PhD student **Valentin MINOIU**¹

Abstract

Starting from the principle that the history, on the whole, it is an analysis of the past in order to understand the present and to guide future behaviour, we intend to demonstrate that the historic landmarks on the evolution of constitutional regulations concerning rights and fundamental freedoms and the right of association are particularly important for consistency of the contemporary debates on issues of constitutional reform. In this context, we have been concerned about presenting an analysis from historical perspective on the evolution of the regulations, taking into account the main moments in the evolution of Romanian constitutionalism. This analysis is the result of a research method based on the historical and documentary analysis, where we have taken into consideration on one hand the evolutionary analysis of the issue from its earliest manifestation forms on the Romanian territory until present day, and, on the other hand, the analysis, through checking and comparing identified data and the documents that were issued during the reference periods linked to it. Also, analysing bibliographic sources has provided a fundamental ideological support for our scientific approach.

Keywords: *Constitution, constitutionalism, fundamental rights and freedoms, the right of association*

JEL Classification: K10

1. Introduction

The evolution of the Romanian constitutionalism describes the changes of social and political life of society, numerous fundamental changes to the act and their frequency highlighting a serious instability among political decision-makers in the respective years, and reduced importance given to its supremacy. The permanent concern to mainly concentrate political power at various state governing bodies (Parliament, Presidency and Government - regardless of the historical stage and form of organization), with the inherent tensions generated in the political and social level, was, on the one hand, the source of efforts to reform a constitutional state, and, on the other hand, a factor which, unfortunately only sometimes, managed to censor autocratic tendencies of some leaders.

¹ Valentin Minoiu - "Titu Maiorescu" University of Bucharest, valimin2007@yahoo.com.

In this context, we have considered performing an analysis that presents, from historical perspective, the constitutional regulations on the rights and fundamental freedoms of Romanian citizens generally, and, particularly, the right of association.

Of course, this evolution can only rest on historical landmarks in the evolution of Romanian constitutionalism.

This analysis is the result of a research method based on the historical and documentary analysis, where we have taken into consideration the evolutionary analysis of the issue from its earliest manifestation forms on the Romanian territory until present day, and on the other hand, the analysis, through checking and comparing identified data and the documents that were issued during the reference periods linked to it. Also, analyzing bibliographic sources provided a fundamental ideological support for our scientific approach.

2. The right of association in Romanian constitutions

One cannot discuss the right of association from constitutional perspective, without presenting it within the totality of fundamental rights and freedoms, which, given the doctrinal approach, we can circumscribe to the fundamental rights phrase².

Fundamental rights, regardless the acceptance of different authors can only be analyzed according primarily with human nature, and, secondary, with the legal status of the citizen.

Thus, considering the first perspective, the concept includes, according to JJ Rousseau's "essential gifts of nature, which no one can touch in any way."³

Also, from the perspective of the citizen as the holder of fundamental rights, the concept has major importance for trinomial state-society-citizen, being determinative for the rapport between the three entities and, consequently, for political and social stability. This idea is based on admitting, in the Declaration of the Rights of Man and Citizen of 1789, and subsequently, by taking over, in the preamble to the French Constitution of 1793, of the so-called right of resistance to oppression, that "when the government violates the rights of the people,

² In the acceptance of many contemporary Romanian literature authors in the field of constitutional law (I.Muraru, Gh. Iancu, M. Badescu, I. Rusu) there is no difference in content between the two concepts, namely the fundamental right and the fundamental freedom, these, in terms of law, being even synonymous. Thus, appropriating the idea, they quote the author H. Kelsen, who in "The Law of the United Nations" (London, 1951, p. 29) even considers that "formulation of human rights and fundamental freedoms is incorrect because freedoms are human rights". It admits nuances of terminology between the two concepts, as determined on the one hand, by traditional reasons generated by the initial appearance of freedoms as expression of human rights, with an evolution between the need to proclaim, the need to promote, to protect and to guarantee, on the other hand, determined by the expressiveness and the beauty of the law language.

³ See Rousseau, Jean-Jacques. Discourse on the Origin and foundations of inequality among men. Translation Codruța-Ioana Ivanciuc. Best Publishing, pp. 26-28

insurrection is for each one of them the most sacred of the rights and the most indispensable of duties".⁴

Finally, we conclude by presenting one of the reference definitions provided by the legal doctrine of fundamental rights, to which we rally ourselves, according to which these are the individual rights of citizens, essential for their life, freedom and dignity, and indispensable for the free development of human personality, rights established by the Constitution and guaranteed by the Constitution and laws.⁵

Going back to the right of association, in order to achieve a correct classification in all rights and fundamental freedoms, it is necessary to highlight their classification on the basis of content criterion. This criterion generates five major categories of fundamental rights and freedoms: inviolabilities, socio-economic and cultural rights and freedoms, exclusively political rights, socio-political rights and freedoms - where we also find the right of association – and the guarantee rights.⁶

One can outline the question: why the right of association is a fundamental right? Certainly, the analysis is quite complex and can focus on more sides, since, itself, the right of association interacts with many of the other fundamental rights and freedoms. There is a fundamental element that determines its existence, namely the need for individuals to unite in order to achieve the common goal. One of the most valuable descriptions of the need of association was stated also by JJ Rousseau, who expressed it as it follows: "finding form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before."⁷

Obviously, in the context of those presented by reference to the definition of the fundamental right, fact that the right of association (or freedom of association, as we find mentioned by the international regulations on human rights) falls within the field of the rights and fundamental freedoms being through the content according to the mechanisms that support the free development of personality.

From the perspective of the constitutional course in the Romanian area, before the 1866 Constitution, the rules with a constitutional character only managed partially to establish certain rights and freedoms, in those respective

⁴ See Năstase Georgescu, Maria. Reflections on the the constitutional regime of some rights, in the Magazine "The Romanian Rule of Law" year 21 (55), no. 3, Bucharest, 2009, p. 3/203, quoting Ionescu Cristian. Political Institutions and Constitutional Law, University Publishing House, Bucharest, 2007, p. 128

⁵ See Muraru, Ioan Tănăsescu, Elena Simina. Constitutional Law and political institutions, Vol. I, Issue 12 All Beck Publishing House, Bucharest, 2005, p. 140

⁶ See Bădescu, Mihai, Andruș, Cătălin, NĂSTASE, Cătălina. Constitutional Law and political institutions. The Universe of Law Publishing House, Bucharest, 2011, p. 118

⁷ See Rousseau, Jean-Jacques. About Social Contract or Principles of Political Law, translated by N. Dașcovici, Mondero Publishing House, Bucharest, 2007, p. 33

stages and not with a general application, but basing on and claiming, however, major inequities existing at social level.

1. The first constant concern regarding the establishment of rights and freedoms, certainly in a specific manner according to politico-ideological times, is found in the 1866 Constitution, acknowledged, as stated above, as the first proper Constitution of Romania.

Not only that it has included rules on fundamental rights and freedoms for the Romanian citizens which leads to considering it a fundamental modern act relevant for the respective historical stage, but also the fact that it has a whole chapter for this regulatory area – “Title II - About the rights of Romanian people”, placed before the title destined to describe state powers. It is, therefore, a proof of existing concern at that time in the state leadership on ensuring rights and freedoms of Romanian citizens, at art. 10 even proclaiming that “there is no distinction of class in the State”. All Romanians are equal before the law and ought to contribute without distinction to paying taxes and public duties and, at the art. 13, that “individual liberty is guaranteed”.⁸

This view is contradicted by some authors, supporters of the Marxist-Leninist theory⁹, which believes that most of the principles introduced by the new fundamental law “have remained ... only formal statement, only a dead letter since their application would prejudice dominant classes ... and (o.n.) constitutional provisions and guarantees are set only for the exploiting minority and not for the great mass of the people.”¹⁰

Regarding the right of association, it finds its regulation in art. 27, that “Romanians have the right to associate, complying with the laws regulating the exercise of this right.” Notice, therefore, that the constitutional text states only at declarative level the right of association, leaving at the lawmaker's hand setting the limits within its exercise will be done. This mechanism, common in the case of other rights institution, it is not appreciated by the personalities of that time, who raises the risks of abuse which may occur from the legislative power by restricting through enactment the constitutional freedoms, at the lack of jurisdiction of a court to assess the constitutionality of laws. Also, it is considered necessary that, after a long period of constitutional life forms in the text of the future Constitution guarantees to enroll in the form of sanctions.¹¹

⁸ The text of the United Romanian Principalities Constitution was published in the Romanian Official Journal no. 142 of July 13, 1866

⁹ Mentioning also in the content of the analysis the position of the supporters for the Marxist-Leninist ideology or of those who supported exclusively merits of communism in the development of the Romanian state is made in order to represent somehow the evolution of the interpretations on the issue and based on the influence of historical stages in which the authors have presented the results of their own research, which is not equivalent to our rallying to the ideas presented.

¹⁰ See Ionescu, Dionisie, Țuțui Gheorghe; Matei, Gheorghe. Romanian state's constitutional development. Scientific Publishing House, Bucharest, 1957, p. 167

¹¹ See Iunian Grigore. Abuses of authority and the civic guarantees in the “Constitution of 1923 in contemporary debates”, Humanitas Publishing, Bucharest, 1990, pp. 503 and 506

2. The next stage in the evolution of the Romanian constitutionalism, the Constitution of 1923, does not bring radical changes in the field of fundamental rights regulation.

Moreover, in itself, the new fundamental law is built on the structure of the Constitution of 1866, bringing a higher form from the legislative technique point of view, modernised and specialised language, which adapts the old texts at the political, economic and social situation in the postwar period.¹²

It is preserved the priority given to Romanians rights legislation in the Title II of the Constitution which begins at art. 5, with a general statement in the field of their guarantee, according to which: *“Romanians, irrespective of ethnic origin, language or religion, enjoy freedom of conscience, of education, freedom of the press, of assembly, freedom of association and all rights and freedoms established by laws ”*.¹³

Compared to the previous formulation, we note that the new text provides additionally for the abolition of access to fundamental rights on discriminatory criteria, so that citizens enjoy these rights irrespective of ethnic origin, language or religion. This principle is established both for fundamental rights and freedoms in the Constitution and for all other established by legal regulations. In the same sense is art. 7, according to which: *“The difference on grounds of religious beliefs and denominations, ethnic origin and language, does not constitute an obstacle to obtain civil and political rights and to exercise them in Romania.”*

Another important novelty is the concern to ensure the elimination of gender discrimination, entirely regarding the civil rights and partially when accessing political rights. According to art. 6, on the one hand, civil rights are established on the basis of total equality between the sexes and, on the other hand, the conditions in which women may exercise political rights are left to the legislator, which can be provided through special law adopted by a majority of two thirds of the votes.

Regarding the right of association, it is instrumented, in substance, in a similar way to the previous fundamental act, meaning that it is invoked declaratively, but the authority accorded to the legislator to determine the conditions of exercise being preserved, of course, maintaining the general outlook described above regarding the abolition of discrimination based on ethnic origin, language or religion.

It appears, however, a new element which consists of limiting the right of association related to the creation of legal entities, the legislator being again empowered to regulate the applicable conditions through a special law.

Certainly, the followers of Marxist-Leninist ideology consider those regulations as purely formal, the intended purpose by introducing them is to defend the class interests of explorers and their domination over the masses.¹⁴

¹² See Foçșeneanu, Eleodor. Constitutional history of Romania (1859-1991), Humanitas, Bucharest, 1992, p. 67

¹³ The text of the 1923 Constitution was published in the Official Journal no. 282 of 29 March 1923

¹⁴ See Ionescu, Dionsie, Țuțui, Gheorghe, Matei, Gheorghe. *op. cit.*, p. 251

3. About *1938 Constitution*, regardless the author who deals with the issue, it is blamed the unnatural way in which King Charles II introduced it, using a plebiscite organised through a vote by verbal statement recorded in writing lists, at the end being used even the mechanism of repeal the previously fundamental act, a fact unprecedented up to that date. All this took place under an autocratic monarchy.

Of course, in this context, the issue concerning a constitutional settlement of the fundamental freedoms and rights becomes slightly different, in terms of approach, compared to previous constitutions. Thus, even if in this matter, the new Constitution retrieve most of the fundamental rights and freedoms of the 1923 Constitution, the new texts add a number of constraints which removes the liberal spirit that influenced their existence in the previous constitutional texts. As a general observation, fundamental rights are further treated in Title II, but this title begins with a chapter for civic duties - "About Romanians debts" and later in Chapter 2 - "About Romanians rights", rights are being described. The order of prioritization of the two categories demonstrates the very spirit of the new fundamental law, given that, traditionally, the purpose of a constitution is to guarantee the rights of the citizens in cases of misuse of authority/abuse of power and not to impose their debts, considering to be the legislator's authority to set up and requires mandatory.¹⁵

Also as a general, the concern to eliminate discriminatory criteria of ethnic origin and religious faith is preserved in the new Constitution, alongside those related to social class, but are set for duties, and those relating to the gender difference are found invoked only regarding the election of deputies and senators, not in the sense of establishing rights, but meaning to determine the legislator's competence in establishing them through the electoral law.

Regarding the right of association, we find it governed by Article 26, which states that "Romanian citizens have the right to associate, complying with the laws. The right to free association does not imply the right to create legal entities. The conditions for granting legal personality are established by law"¹⁶. We note, therefore, that there are no differences between the two constitutional laws regarding the right of association, of course, considering that in the new Constitution there are no longer explicit references to the elimination of differences of ethnicity, language or religion, in the case of fundamental rights.

4. After the suspension of the 1938 Constitution in September 1940, the regime established by General Ion Antonescu, both in the Legionnaire period and after that, was not based on a constitutional act itself, but on a series of decrees – the Decrees from September 1940 – which did not contain positive provisions, principles or rules of organization of state powers, but only restrictive, suppression and dissolution provisions.¹⁷

¹⁵ See Focșeneanu, Eleodor. *op. cit.*, p. 74

¹⁶ The text of the 1938 Constitution was published in the Official Journal no. 48 of February 27, 1938

¹⁷ See Focșeneanu, Eleodor. *op. cit.*, p. 83

In this context, the issue of constitutional regulation of fundamental rights is virtually meaningless. This is not equivalent to their full recognition in the reference period, but the lack of a firm commitment of the state to ensure constitutional guarantees in this matter could have determined, in fact, through the decisional mechanisms which it has taken, the authoritarian regime to dispose in a discretionary basis, reaching a total ignorance of some of them.

The fact that in reality things were not exactly so it is proved by the general Antonescu's attitude who, sanctioning the abuses committed by the Legionnaires in front of the Legionnaires ministers from his office, declared intolerance towards trespassing, stating that "inviolability of the home is guaranteed by the Constitution". The reference to the Constitution in a period in which a fundamental act was not applicable proves that Antonescu considered entirely applicable its fundamental principles, from which it could not be derogated from only motivated by an exceptional situation and not by an abuse.¹⁸

Following this reasoning, we can say that in the field of fundamental rights and freedoms during the period concerned, the situation was generated by the respect for values and principles previously declared by constitutional acts, because, except for the 5 months of Legionnaire government, it can be considered that we cannot discuss about serious and massive violations of human rights and liberties.¹⁹

5. Furthermore, given the common ideology of constitutional origin of the communist period, the analysis will consider simultaneously regulations on the rights and fundamental freedoms, and the right of association of the *Constitutions of 1948, 1952 and 1965*.²⁰

"The ideological character of the law is obvious to anyone who goes through communist constitutions, which were used not so much to regulate the relations between state institutions or to establish fundamental rights, but to assert political principles. This feature leads to the fact that it is found in the basic acts of Romania at that time statements which today may seem hilarious and, legally speaking, can not be considered legal norms, but no more than political statements, whose place it is not in a legal text" - shown in the final report of the Presidential Commission for Analyzing the Communist Dictatorship in Romania.²¹

Regarding the issue of fundamental rights and freedoms during the period of applicability of the three Constitutions, one can identify a discrepancy between the way of the constitutional texts and their compliance in practice. If, from a formal point of view, fundamental rights and freedoms find their rules fairly broad,

¹⁸ See Focșeneanu, Eleodor. *op. cit.*, pp. 82-83

¹⁹ See IONESCU, Cristian. "Political institutions and constitutional law," Legal Publishing House, Bucharest, 2006, p. 299

²⁰ The Constitution of 1948 was published in the Official Journal no. 87 bis of 13 April 1948 that of the Constitution of 1952 was published in the Official Journal no. 1 of 27 September 1952, while the 1965 Constitution was published in the Official Journal RSR no. 1 of 21 August 1965

²¹ See Final Report of the Presidential Commission for Analyzing the Communist Dictatorship in Romania, Bucharest, 2006, the document is available online at http://www.presidency.ro/static/ordine/RAPORT_FINAL_CPADCR.pdf, p. 399

"after the working people was released ... the Nazi occupation... and (o.n.) managed ... to conquer their fundamental rights and freedoms", changing the "idea of the world and life of the entire working people"²², not the same thing can be said about their compliance by the repressive government, at least in the first period of the development of socialist rule, when political rights were severely restricted or abusive violated, a practice that determines a formal nature of the constitutional regulations. Also, insufficient guarantee of social and economic rights implied that citizens did not receive a sufficiently constitutional framework that was proclaimed.²³

Likewise it is shown in the content of the Final Report of the Presidential Commission for Analyzing the Communist Dictatorship in Romania, according to which the Republic, regardless of the name worn at the time, "will not present itself but as a state which respects individual freedoms and deepens democratic principles, up to the last of their consequences". The main remark falls within the exercising of the civic rights - they can not be imagined as entering in a conflict with the popular interests (interests represented by the single party) as they can not jeopardize the order of the regime. In this way, the rights lack their substance, by systematically eliminating the guarantees that granted them credibility in the first place of their legal existence.²⁴

In terms of content of the constitutional texts in the three Constitutions, we find the beginning chapters on the fundamental rights and duties of citizens declarative rules as a general title on the elimination of discriminatory criteria, working people, citizens of the republic, irrespective of sex, nationality, race, religion or culture degree, are equal before the law, making it fully ensuring equal rights in all areas of economic, political and cultural life. Any direct or indirect restriction of the rights of the working people, the establishment of direct or indirect privileges on the basis of race or nationality they belong to, any manifestation of chauvinism, hatred of race, hatred of national or national chauvinistic propaganda is punishable by law. Also, discrimination based on gender difference is prohibited, women having equal rights with men in all fields of state, economic, social, cultural, political and private law. Also, the woman has the right to equal work and equal pay with the man.

As regards the approach of the right of association, the 1948 Constitution governs it in art. 32, which states that "citizens have the right to associate and organise, if the intended purpose is not directed against the democratic order established by the Constitution. Any fascist or antidemocratic association is prohibited and punishable by law."

1952 Constitution treats the right of association to art. 86, which states that "in accordance with the interests of the working people and for the expansion of political and public organizations of the masses, citizens of Romanian People's

²² See Ionescu, Dionisie, Țuțui Gheorghe, Matei, Gheorghe, *op.cit.*, p. 364

²³ See Ionescu, Cristian. *Op. Cit.*, p. 299-300

²⁴ See the Final Report of Presidential Commission for analyzing Communist Dictatorship in Romania, cited above, p. 402-403

Republic shall have the right of association in public organizations, in professional unions, cooperative unions, women's organizations, youth organizations, sports organizations, cultural, technical and scientific associations. Any association with fascist or antidemocratic character is prohibited. Participating in such associations is punishable by law. The most active and the most aware citizens of the working class and among other layers of the working people unite in Romanian Workers' Party, the vanguard detachment of the working people in the struggle to strengthen and develop the system of popular democracy and build socialist society. Romanian Workers Party is the driving force of both the organizations of the working people and the institutions and state bodies. Around it there gather all the organizations of the working people of Romanian People's Republic. "Regarding the Constitution of 1965, it regulates the right of association to art. 27, which states that "citizens of the Socialist Republic Romania have the right to associate in a union, cooperative, youth, women, social-cultural, in creative unions, scientific, technical associations, sports and other public organizations. State supports mass organizations and public activity, creates conditions for the development of material base of these organizations and protect their heritage. Mass and civic organizations ensure wide participation of the masses in political, economic, social, cultural life of the Socialist Republic of Romania and the exercise of public control - an expression of the democratic socialist order. Through the mass and public organizations, Romanian Communist Party creates an organised link with the working class, the peasantry, the intellectuality and the other categories of the working people, mobilizes them in the fight for completing the construction of socialism. "

However, the fundamental act stipulates in art. 26 the fact that "the most advanced and the most aware citizens among the workers, peasants, intellectuals and other categories of the working people unite in Romanian Communist Party, the highest form of organisation of the working class, its vanguard detachment. Romanian Communist Party expresses and serves faithfully the aspirations and vital interests of the people, fulfills a leadership role in all fields of socialist construction, guides the mass and public organizations and also the state bodies. "

Also regarding the right of association, we find provisions in art. 29, according to which "any association with fascist or antidemocratic character is prohibited. Participating in such associations and fascist or antidemocratic propaganda are punishable by law. "

We note, therefore, the progress achieved by constitutional texts which describe the manifestation of the right of association. If at the level of 1948 there was declared a general right of association and organisation, provided that the aim is not directed against the democratic order established by the Constitution, any association with fascist or anti-democratic being prohibited and punishable by law, later the constitutional texts develop, reaching the types of associations that may result from exercising the right, the areas where they can activate, also the framework within the most active and the most aware of the workers, peasants, intellectuals and other categories of people of work in the highest forms of

organization of the working class, respectively the vanguard detachment of the Romanian Workers Party / Romanian Communist Party. Everything is dotted with a series of slogans on genuine positive decisive role of the unique party in the political, social and economical life of the state.

Additionally, the 1965 Constitution makes a commitment of the state to support the work of the mass and public organizations to create conditions for the development of the material base of these organisations and protect their heritage, recognizing them the role to ensure broad participation of the masses in political, economical, social, cultural life of the Socialist Republic of Romania and the exercise of public control.

6. Next, we will analyse the issue related to the period after the Revolution of December 1989, taking into account the *1991 Constitution*²⁵ and its review in 2003²⁶.

The post-December political and social context in which the process of drafting and adopting of a new constitution led to a new approach at the state's level regarding the proclamation and guarantee of fundamental rights and freedoms started, including Romania's alignment with the international standards on human rights, adopted through legal instruments to whom our country already adhered. In this regard, the constitutional text adopted in 1991 includes all fundamental human rights and freedoms established in international regulations, making a commitment to art. 20, according to which constitutional provisions applicable to the fundamental rights and freedoms matter shall be interpreted in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is signatory. It also states that, in the event of inconsistencies between the international provisions of human rights and the national law, the international regulations will apply with priority.

Despite the fact that the constitutional text provides an extensive enumeration of fundamental rights and freedoms, the provided guarantees are insufficient, a significant example is found in art. 49, which states that " the exercise of certain rights or freedoms may be restricted only by the law and only if necessary, where appropriate, for: the defense of national security, public order, health or morals, rights and freedoms of the citizens; conducting a criminal investigation; preventing the consequences of a natural disaster, or an extremely severe catastrophe." Thus, we note the absence from the established formula of procedures for establishing these limitations and of the competent authority who could dispose them, which can create a favorable context for the occurrence of abuses, to which the citizen does not have a legal and constitutional procedure to oppose them."²⁷

²⁵ Published in the Official Journal no. 233 of November 21, 1991, entered into force on December 14, 1991 after the Communiqué of Central Electoral Bureau on the outcome of the national referendum on the Constitution of Romania was published in the Official Journal no. 250 of December 14, 1991

²⁶ Published in the Official Journal no. 767 of October 31, 2003

²⁷ See Focșeneanu, Eleodor. *Op. Cit.*, p. 150

Beyond this, one fact is certain, namely that in this historical stage we find the most complete constitutional commitment related to fundamental rights and freedoms, whose safeguard, although unconsolidated through explicit norms, is largely covered by limiting the temptation for state bodies to commit abuses after the suppression of the communist dictatorial regime.

Regarding the right of association, art. 37 from 1991 Constitution provides that: "citizens may freely associate into political parties, trade unions and other forms of association. Political parties or organizations which, by their aims or activity, militate against political pluralism, the rule of law principles or the sovereignty, integrity or independence of Romania are unconstitutional. Constitutional Court judges, advocates of the people, magistrates, active members of the military, policemen and other categories of civil servants established by organic law can not join political parties. Secret associations are prohibited."

We notice, therefore, on the one hand, the types of associations that may result from the exercise of that right and, on the other hand, the criminalization and prohibition of creating associations outside the law, while limiting the exercise of this fundamental right for certain categories of people involved in posts in public administration.

It should also be noted that trade unions find a devoted regulation in the Constitution at art. 9, according to which "trade unions are formed and operate according to their statutes, under the law. They contribute to defending the rights and promoting the professional, economic and social interests of employees." This shows the importance given by the constituent legislator to these forms of association in order to protect the rights and promote the professional, economic and social interests of the citizens that perform activities as an employee.

The constitutional revision of 2003 had three major objectives: increasing constitutional guarantees of fundamental rights and freedoms, fulfilling constitutional conditions for Romania's EU and North Atlantic Treaty accession, and also solving malfunctions noted in the decision-making process at the level of public authorities.²⁸

Although, in general, the changes brought by reviewing the 2003 Constitution can be considered as positive, declaratory norms still remain in the fundamental act, with a poor normative content, which makes questionable the degree of achievement of some objectives.

Regarding the issue of fundamental rights and freedoms, we find among the new constitutional texts formulas that aim to update the previously used terms with the current language and legal institutions.

A significant change is found in the commitment provided by art. 20, according to which constitutional provisions applicable to the fundamental rights and freedoms field shall be interpreted in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is signatory. Concerning the situation of inconsistencies between the

²⁸ See Muraru, Ion Tănăsescu, Elena Simina. *Op. Cit.*, p. 108-109

international provisions on human rights and the national law, the international regulations will apply with priority, unless the Constitution or national laws contain more favorable provisions.

It was also envisaged the introduction of new rights and freedoms, such as: access to culture, the right to a healthy environment, the right to be elected to the European Parliament, the right to social assistance or economic freedom, while reconsidering some existing (eg. Free access to justice, individual freedom and inviolability of the home - the establishment of additional guarantees, private ownership - removal of the interdiction for foreigners and stateless people to acquire ownership of land and setting limits in which this fact can now be achieved, the right to education – additionally it was introduced the state's obligation to grant social scholarships to children and young people from disadvantaged families and to those institutionalized, according to the law.

Also about the restriction of exercising some rights or freedoms, we find a change of the circumstances in which this can be achieved legally, namely only if it is necessary in a democratic society and applied without discrimination.

Regarding the right of association, the constitutional texts record a change to art. 40, within the meaning of extending the enumeration of entities resulting from its exercise by including employers. Incidentally, the same change is also found on the text of art. 9 applicable to trade unions, which is reformulated by including employers and professional associations in the regulatory area.

3. Conclusions

Regarding the development of constitutional regulations on human rights and fundamental freedoms, we note that, at least declaratively, since the Constitution of 1866 until now, they were quite well reflected by the fundamental act.

Also in the case of the right of association, which is the central preoccupation of our research, the applicable constitutional provisions have the same situation. We highlighted throughout the analysis of their evolution from its simple proclamation to wider norms, with the cession of the burden to draw boundaries that will achieve the exercise in favor of the legislator, identifying the types of entities generated by association and state commitments to ensure certain conditions for manifestation.

The concern to demarcate between freedom of association and economic has been frequent, starting from the limitation of the possibility to create legal entities through association, so far, when we find the economic freedom of identity, specifically regulated by the constitutional text.

It is certain that the fundamental acts which formed the basis of Romanian state in its historical evolution, sometimes only formally provided the rights and freedoms of citizens. However, a constitution should not be confined to a statement

of principles, not that it would have no moral value, but it does not have enough power to guarantee the recognized rights.²⁹

The guarantees offered at the constitutional level were, unfortunately, directly proportional to the interest of the state to provide the most flexible exercise of fundamental rights and freedoms. Always the trend of state bodies toward institutional abusive behavior was reflected in the absence or insufficient establishment of the necessary guarantees to a proper exercise of the rights and freedoms of citizens. Also, another haven for this purpose represented the attribution of large competences given to the legislator for establishing conditions for the exercise of fundamental rights and freedoms.

It is true that the Constitution currently in force provides, on the one hand, the conditions in which, generally, the restrictions of fundamental rights and freedoms can be regulated, namely only if they are necessary in a democratic society and applied without discrimination, and, on the other hand, ensure the existence and functioning of the Constitutional Court, which is the safeguard of the supremacy of Constitution.

Besides this, it is worth mentioning the idea of the same author quoted above who believes that the ultimate guarantee of these freedoms must be found in a strong and conscious public opinion and continues, quoting Alexis de Toqueville, saying "there is in the constitutions of all nations a point in which the legislature is obliged to relate to common sense and virtue of the citizens ... there is no country in which the law can provide all and institutions to rely on reason and manners".³⁰

But for the public opinion to work towards setting up a completely and correct framework to exercise citizen's freedoms, it itself must be generated by the individual capabilities existing in society because "freedom is not a gift, it must be conquered. Free is only the one who deserves to be free. The freedom is void if the person is not free. How much someone's personality will be worth, so much its rights and freedoms will value. Therefore, who wants to give freedom must think first to form personalities".³¹

Therefore we state that there is no perfect constitutional provision in the matter of human rights and fundamental freedoms to exhaustively proclaim them, together with all the necessary guarantees for their unrestricted and free exercise, so that every citizen, individually, can have all possible liberties and to exercise them fully unrestricted. We believe that such a mechanism could not be applicable, at least if we consider one of the ideas of JJ Rousseau, according to which an individual is not free until he gives up his freedom for the benefit of the general freedom. Each individual, part of the society to which they request the guarantee of their fundamental rights and freedoms, is bound to give up some of their own rights and freedoms for the benefit of exercising others freedoms, and everyone's

²⁹ See Iunian Grigore. *op. cit.*, p. 502

³⁰ See Iunian Gigore. *op. cit.*, p. 515

³¹ See GUSTI, Dimitrie. The individual, society and state in the future constitution, the "Constitution of 1923 in contemporary debates", Humanitas, Bucharest, 1990, p. 605

renunciations constitute the state power that will ensure the individual rights as far as they are circumscribed to the general interest.

Considering the features of the right of association in the form of its current constitutional provision, how can we imagine, or in other words, what effects would cause total freedom to association without any limitations, provided at the individual level to each citizen. More precisely, hypothetically, political parties and organisations which, by their aims or activity, militate against political pluralism, the rule of law principles or the sovereignty, integrity or independence of Romania to be accepted in society and considered constitutional. Also, secret associations are not banned and Constitutional Court judges, advocates of the people, magistrates, active members of the military, policemen and other categories of public officials can join political parties.

This hypothetical situation, that could only be an assumption by absurd, would cause that, by exercising the right thus provided, at the society level, to operate freely and accepted as such, forms of association - parties or organizations - that would pursue interests contrary to rule of law principles or the sovereignty, integrity or independence of Romania. At the same time, secret associations would be free to have activities impossible to control regarding the consequences, and the Constitutional Court judges, advocates of the people, magistrates, active members of the military, policemen and other categories of civil servants, in parallel with professional activity, would freely perform political activity as members of certain parties.

All these effects would lead, on the one hand, to obvious violations of other constitutional provisions, which translates as a unconstitutionality of constitutional norms themselves, reaching the absurd. On the other hand, those effects would cause violation of rights and freedoms of other citizens, including serious damage to the general interest of the state, which would also lead to an absurd, since we started from the acceptance that JJ Rousseau's theory is correct.

See how this reasoning, to the extent that the constitutional legislator consider him honestly and not as a screen to cover authoritarian impulses of the state, justifies some of the ways to provide fundamental rights and freedoms of citizens on the evolution of Romanian constitutionalism.

In this context, we state that, at the level of the Romanian state, its institutions, particularly those existing on the conflicting positions, have created sufficient contemporary constitutional practice that a future debate on topics related to the revision of the active Constitution or, why not, a wider constitutional reform to acquire enough consistency.

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