

**CONSECRATION OF THE CONCEPT OF
“CONSTITUTIONAL DEMOCRACY” AND
“SUPREME VALUES” PROVIDED IN ARTICLE
1 OF THE ROMANIAN CONSTITUTION
REPUBLISHED AND ALSO THROUGH THE
CONSTITUTIONAL COURT OF ROMANIA**

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ABSTRACT: *Any human society needs an organizational framework for running the activity. In the broadest sense, this framework is the state. The revised Constitution of Romania practically sets a few coordinates for this framework respectively “the constitutional democracy” (Romania being characterized by Article 1 as a democratic and social rule of law). Moreover, it adjoins to this framework a number of supreme values (“the human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism”). This paper tackles the way the Romanian Constituent understood the fact of establishing these basic notions and concepts, approach supported including through the constitutional justice.*

KEYWORDS: *constitutional democracy, supreme values, Article 1 of the Revised Constitution of Romania, the Constitutional Court of Romania*

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1. NORMATIVE CONSECRATION

We find the two concepts mentioned in the title of this survey, expressly provided for in Article 1 paragraph 3 and 4 of the Constitution of Romania, republished. Thus, according to Article 1 paragraph 3 of the Constitution of Romania, republished “*Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be*

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*guaranteed*⁴. And paragraph 4 of the same article states that “*The State shall be organized based on the principle of the separation and balance of powers - legislative, executive, and judicial - within the framework of constitutional democracy.*”

So the Romanian state - democratic and social rule of law - operates within the constitutional democracy, frame necessary for the existence of certain “*supreme values*” such as human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and the political pluralism.

The following question appears inherently: Is it necessary the constitutional consecration of such concepts? Answer (also inherent): Definitely yes!

Obviously, the second question follows: Why the consecration of such notions is necessary, and not in any form, but straight constitutionally?

At least the following answers may be considered:

Firstly, because that gives them *weight* being raised to the level of *constitutional principles* respectively general and fundamental principles of a constitutional system, of a state and of a democratic political system (Ionescu C., 2003a, p. 2), which must embody (according to the author’s opinion) “the identity card of a state” (Muraru I., Tănăsescu E.S., in Muraru I., Tănăsescu E.S., (coord.), 2008, p. 3).

Secondly, because they should be the *cornerstones* of a democratic, modern, rooted in reality society and capable to govern itself. No other alternative has proved viable until now.

Thirdly, because this way they will resist better and will be more effective in their role (which they should have): *solid reference points* for a society in transition (and obviously more or less (in)stable)). Perhaps, from this perspective the completed amendment is not completely meaningless introduced in the revision procedure of 2003 with regard to Article 1 paragraph 3 respectively by adding the phrase “*in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989*”, they being made constitutional (Dănișor D.C., 2009, p. 77).

Fourth, the concepts “constitutional democracy”, “human dignity”, “citizens’ rights and freedoms”, “free development of personality”, “justice” and “political pluralism”, as well as other essential concepts (constitution, independence, solidarity, autonomy (notion related to the concept of “globalization” and decentralization (Stan M.I, 2014, pp.40-45), law, public authority etc.) *are determined sequentially while they condition each other.*

Fifth (certainly, or maybe not, the last) there are “words” to which there is (still) a certain *attachment*. They are “dear words”, but strong, which inspire, animates, mobilize, encourage, perhaps even determine attitudes, reactions, actions of an individual or a nation.

2. THE CONTENT OF THE CONCEPTS “CONSTITUTIONAL DEMOCRACY” AND “SUPREME VALUES”

The concept of “constitutional democracy” is the *general framework* established by the Constitution, for the exercise of governance through the participation and involvement of people in the process. This concerns, admittedly, an indirect participation, performed by several instruments such as: *representativeness* (although the people are the holders of the sovereign power, exercised indirectly through the representative bodies chosen through free, fair and regular elections); *referendum* (in Romania this way of exercising

the national sovereignty by the people is regulated¹, specifically as a form or means of direct consultation and expression of the sovereign will of the Romanian people regarding: a) the revision of the Constitution; b) the dismissal of the President of Romania; c) issues of national interest plus the local referendum); lifting the legislative initiative and the right to initiate the constitutional revision to the rank of *fundamental rights*.

But the democratic feature of the state involves inherently also other elements: the proclamation of the rule of law, of the equality of all the citizens before the law; the recognition and guarantee of the rights and fundamental freedoms; the guarantee of political pluralism; the establishment of a review of the constitutionality and legality of laws and activity of public authorities; the affirmation and achievement of the principle of free access to justice and its independence (Deaconu Ș., 2012, p. 105; Selejan-Guțan B., 2008, p. 194).

Rule of law

According to Article 1 paragraph (3) of the Constitution of Romania, republished, the Romanian State is a rule of law. Respectively, it is the “the state of the rule of law” (Drăganu T., 2000, vol. I, p. 288) in which the entire activity, both of the state and of its bodies, but also of the population is governed solely by the law. Thus the Constitution of Romania republished provides in Article 16 paragraph (2) that “*no one is above the law*”. Linking the concepts, the rule of law has been defined (Drăganu T., 2000, vol. I, p. 290) *as the state organized on the principle of separation of powers and aims through its legislation to promote the rights and freedoms inherent in human nature, which ensures the strict compliance with its rules by all bodies in its the entire activity*.

The theory of the rule of law appeared on fertile ground (both ideological and anchored to a social and political reality) and requires a certain vision of the state (abstract and collective entity distinct from the “civil society”) and law (seen as expressing the ideal of “justice”, especially an independent one) (Chiriac L., 2014, pp. 21-35)). The rule of law is based on a conception of power and individual liberties which crystallized in France during the Revolution and it is considered to have come to meet the need for turning to new regulatory mechanisms, related primarily to the liberal ideology. Thus, the rule of law appears as “a political and social organization designed to put into practice the principles of liberal democracy” (Habermas J., 1992, cited in Chevallier J., 2012, p. 51).

Separation of powers

Paragraph 4 of Article 1 of the Constitution of Romania refers to another component of the “constitutional democracy”: the separation of powers within the state. Although published before the concept of “constitutional democracy” or of the “constitution” (given the modern meaning), the principle of separation of powers is nowadays one of the fundamental principles of constitutional law and one of the premises of the rule of law.

Moreover, the principle is closely linked to the idea of a representative system where the danger of tyranny (*Oxford – Dicționar de politică*, 2001, p. 363), the abusive restrictions and violations of individual rights and liberties are eliminated. It has been

¹ According to Law no. 3/2000 on the organization of referendum (published in the Romanian Official Gazette no. 84 of 24 February 2000).

outlined in the state's life to the extent the need for the establishment of a constitutional regime was felt. That is why most of the modern constitutions enshrine, with different shades, this principle (Duculescu V., Călinoiu C., Duculescu G., 1999, p. 938).

Separation of powers in state assumes the *assigning and exercise of different functions of the State to certain bodies, separate and independent of one another* (Drăganu T., 2000, vol. I, p. 253). The content of this concept of "separation of powers" emerged after a long historical and doctrinaire process. The emergence of the constitutional review of laws, the increased involvement of political parties in appointing the important decision policy factors (legislative assemblies, governments) and the shaping of a new relation of power, the one between the parliamentary majority and the opposition, the use of the legislative delegation procedure, the streamlining of the legislative power, but also the efforts to offset the depreciation legislative forum have influenced the evolution and the content of the theory of separation of powers in state (Ionescu C., 2003b, pp. 245-248).

The express consecration of the principle of separation of powers was made with express reference to the concept of "constitutional democracy". Placing the principle of separation of powers within the "constitutional democracy" denotes the option of the Romanian constituent legislator to also consider, in fact, the other state authorities that can not fit into any of the three traditional powers, "as they are the expression and the consequence of their collaboration, as it is the Constitutional Court, the Ombudsman or the Court of Accounts" (Constantinescu M., in Constantinescu M., Iorgovan A., Muraru I., Tănăsescu E.S., 2004, p. 3).

The social character

The social character of the Romanian state, enshrined in Article 1 paragraph (3) of the Constitution of Romania, republished, emphasize the role – and obligation – gradually significant of the state involvement in the social-economic activity (management of the national economy, welfare system, etc.) in order to achieve "the common wealth" and to provide for all citizens an active and balanced involvement for the benefit of fundamental rights and freedoms (Drăganu T., 2000, vol. I, p. 354). By this, the welfare state is "the normative formula whereby by linking it to the actual realities of life the Constituent tends to counteract the immanent and natural tendency with the inequality manifested in society in the context of freedom. As such, the establishment and maintenance of an acceptable equality socially requires regulatory intervention" (Scutea N., 2007, p. 73). May be considered ways of achieving the role of social state: the regulatory imposition of a minimum wage, recognition and guarantee of social- economic rights (the right to work, right to education, the right to social protection of labor, etc.); implementation of certain forms of social protection (social assistance, state pensions); ensuring a decent standard of living; imposing fair taxes; protection of public health; right to a healthy environment, etc. (Muraru I., Tănăsescu E.S., 2006, p. 75; Deaconu Ș., 2012, p. 105; Selejan-Guțan B., 2008, p. 194).

In this framework already established by the Constitution - that of constitutional democracy - fits what is called "supreme values": the human dignity; the human rights and freedoms; the free development of human personality; justice; political pluralism.

Human Dignity

The Romanian constituent legislator understood that he had to build a democratic constitutional system with a nucleus such as “*the human being*” seen in a double aspect: as a human being and as a political being (Ionescu C., 2003a, p. 5). Practically *the human being as a supreme value* was introduced in the philosophy and practice of the government (direct consequence of a political philosophy having as the main “culprit” - Aristotle).

Human’s rights and freedoms

Accepting as such the generous idea that “the rights and freedoms are the foundation of any democracy” (Deleanu I., 2003, p. 137), we must implicitly accept the idea that “States have the obligation to promote the universal and effective respect of the human’s rights and freedoms” (Muraru I., Tănăsescu E.S. (coord.), 2008, p. 137).

The human’s fundamental rights and freedoms are defined as *those rights of the citizens, which, considered essential for the physical existence and mental integrity, their physical and intellectual development, as well as for ensuring the involvement in state government, are provided and guaranteed by the Constitution* (Drăganu T., 2000, vol. I, p. 151).

Outlining the concept of human rights was, in fact, a synthesis operation, consisting of generalizing ideas consecrated in various countries, in legal documents with a rich moral and political content that have withstood time (Călinoiu C., Duculescu V., 2005, p. 148). By regulating these ideas and by transposing them into legal rules under the concept of “fundamental rights and freedoms” legal means for the protection of the citizen as an individual have also emerged because, it was argued, even in this individual position, the citizen is the most vulnerable (***, 1992, p. 3) in its relations with the state (Etinski R., 2008, pp. 3-18). The fundamental rights and freedoms must be regarded and regulated as personality attributes of the individuals considered both as individual persons, but also as members of the community in which they are embedded (***, 1992, p. 5). Because the most important human rights and freedoms, those considered essential, in order to be better protected, they are provided and guaranteed by the very text of the Constitution, although this can be also achieved by the exercise of constitutional justice. As by ensuring supremacy of the Constitution, in consequence, the guarantee and protection of these rights and freedoms (Valea D.C., 2013, pp. 21-26) is ensured.

Equality

Although it is not specifically mentioned in Article 1 of the Constitution (a separate article being actually booked – Article 16), in our opinion equality should be considered also as a supreme value. Thus consecrated, the fundamental principle of equality of rights is one of the most important principles of exercising the people’s rights and freedoms. It assumes equal opportunities and equal treatment for all citizens before the law. Essential requirement of democracy and of the rule of law, the principle found its consecration in the Constitution of Romania, republished, and also in the associated legislation. Thus, according to Article 4 paragraph (2) of the Romanian Constitution, “*Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.*” And, Article 16 of the Constitution of Romania,

republished, named “equality of rights” requires some landmarks of equality (Drăganu T., 2000, vol. I, p. 186)²:

- paragraph (1) the equality of all citizens *before the law and authorities, without any privilege or discrimination* [in terms of Article 4 paragraph (2) - regardless of the activity or other issues, without any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin, which assumes equality of opportunities (Muraru I. in Constantinescu M., Iorgovan A., Muraru I., Tănăsescu E.S., 2004, p. 21; Muraru I. in Muraru I., Tănăsescu E.S., (coord.), 2008, p. 151);

- paragraph (2) which provides: “No one is above the law”. Reiterating (Muraru I. in Muraru I., Tănăsescu E.S., (coord.), 2008, p. 152)³ this obligation of all (people and state) to comply with the law, this sentence summarizes exceptionally the cornerstones of democracy: “respect for the human person and the rule of law”⁴;

- paragraph (3) according to which: “Access to public, civil, or military positions or dignities may be granted, according to the law, to persons whose citizenship is Romanian and whose domicile is in Romania. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities”. Although it seems curious the placement of such a provision in the content of an article entitled “Equality of rights” (Selejan-Guțan B., 2008, p. 126)⁵, its existence and limitation resulting from the first thesis of the paragraph is justified by the special nature of public functions and dignities which involves the exercise of the state power (Drăganu T., 2000, vol. I, p. 133) and therefore a duty of loyalty to the holders’ country (Selejan-Guțan B., 2008, p. 126). The second thesis of the paragraph is a particular application of equality and also the assuming by the Romanian State the obligation to promote and guarantee equal opportunities between men and women to fill these positions, but without being in fact the only constitutional consecration of equality between women and men.

- paragraph (4) which provides: “*After Romania’s accession to the European Union, the Union’s citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies*”. Including this particular manifestation of equality in the text of the Basic Law is part of the string of the consequences of Romania’s accession to the European Union. It is a right of the European citizens⁶ conferred by the *Treaty on the Functioning of the European Union* (TFEU) and the *European Union Charter of Fundamental Rights*.

² It is the general framework, as the Constitution also contains other particular applications determined by social or natural considerations.

³ The opinion according to which the text could miss apparently with no serious consequences in the Constitution.

⁴ According to the Charter of Paris for a New Europe of 21 November 1990, published in the Official Gazette of Romania no. 181 of 9 September 1991 – „Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.”

⁵ The Article contains an apparent exception from the principle of equality, exempting all persons that do not have Romanian citizenship or Romanian residency. - see Bianca Selejan-Guțan, *Drept constituțional și instituții politice*, p. 126.

⁶ http://ec.europa.eu/justice/citizen/index_ro.htm (seen on 16 November 2013).

Contributing to the concept of equal rights, the Constitutional Court ruled consistently (starting with a first decision which addressed the issue of equal rights - Decision no. 1 of 8 February 1994⁷) in that the constitutional principle of equality requires the establishment of an equal treatment for situations which, depending on the purpose, are not different. Therefore, it does not exclude, but rather requires different solutions for different situations⁸ or it sets peculiarities of equality. The Constitutional Court of Romania ruled, in a decision issued in 2004, the right conferred to citizens' organizations belonging to national minorities to participate in elections is an actual way of applying the principle of equality between citizens⁹.

Thus, the equality of rights is a guarantee provided by the Constitution, but which refers to all the rights and freedoms (provided in the Constitution and other normative laws).

Justice

Even starting from the basic meaning of the word (Academia Română, DEX, 1998, p. 320)¹⁰, the concept of "justice" must be linked to "justice", and especially to the *free access to justice* - another guarantee of protecting and complying with the rights and freedoms (Năstase Georgescu M., Mihăilescu S.Th.L., 2011, p. 157), the phrase summarizing all legal means (for details, Odină N.A., 2006, pp. 12-17) available to the citizens to address the court for protecting the rights and liberties against any abuse or injury. It is enshrined in Article 21 of the Constitution of Romania, republished, according to which "Every person is entitled to bring cases before the courts for the defense of his legitimate rights, liberties and interests" the constitutional text providing at the same time guarantees for the effective achievement (2) "The exercise of this right shall not be restricted by any law." (3) "All parties shall be entitled to a fair trial and a solution of their cases within a reasonable term." (4) "Administrative special jurisdiction is optional and free of charge." As supported in the legal literature, the free access to justice requires not only a right of an individual to address the court, but also the correlative obligation of the competent court to decide on the approach of the litigants (Drăganu T., 2003, p. 7).

Even the Romanian Constitutional Court was given the opportunity to apply and comply with the principle of free access to justice, being offered thus consistency when it was seized with a plea of unconstitutionality by a court of commercial arbitration from abroad (in this case, France - The International Court of Arbitration - International Chamber of Commerce in Paris). On this occasion¹¹ the Constitutional Court of Romania considered itself legally apprised (in the shadow of Article 21 - Access to justice, of Article 142 paragraph (1) on the Constitutional Court's role as guarantor of the supremacy of the Constitution and of Article 1 paragraph (5) of the Constitution of Romania which

⁷ Published in the Official Gazette of Romania, Part I, no. 69 of 16 March 1994.

⁸ Decision of the Constitutional Court no. 123 of 5 March 2013, published in the Official Gazette of Romania no. 214 of 16 April 2013.

⁹ Decision of the Constitutional Court no. 53 of 12 February 2004, published in the Official Gazette of Romania no. 240 of 18 March 2004.

¹⁰ According to DEX (dictionary), „justice” means „moral and legal principle which requires that everyone should be given and to have his/her rights respected”, „equality”.

¹¹ Decision of the Constitutional Court no. 123 of 5 March 2013, published in the Official Gazette of Romania no. 214 of 16 April 2013.

provides that “*in Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory*”), but also in agreement with the interpretation of the European Court of Human Rights given in its case law to the concept of “tribunal” provided by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (meaning that “it doesn’t need to be understood as a classic type of court, integrated by the country’s ordinary judicial structures [...]; also it may contain a body charged to examine a limited number of disputes, provided that it always provides the appropriate safeguards”¹²). Therefore, an international court of commercial arbitration fits perfectly (more about the internal and international court of commercial arbitration, Roba R.M., 2012, pp. 93-99).

Political pluralism

Political pluralism is defined as “*the existence of diversity of parties, forces and political groups, ideologies, political views and interests*” (terms which refer directly to the fundamental right of freedom of expression and association) and it is regarded as a guarantee and a supreme value of democracy [resulting from the provisions of Article 1 paragraph (3) of the Romanian Constitution] and implies the existence and operation of several political factors (political parties) as a “prerequisite and guarantee of the constitutional democracy” [Article 8 paragraph (1) of the Constitution].

In Romania, the political parties have received a constitutional regulation due to the importance and the role these associations {according to Law no. 14 of 9 January 2003 on political parties, published in the Official Gazette no. 25/17 May 2003} have in a democratic society, which is founded on pluralism, among other principles. Thus, the right of association in political parties (and other forms of association) is considered a *fundamental right* (and is governed by Article 40 paragraph 1 of the Constitution of Romania revised), and the unconstitutionality of the goals and actions of political parties is punishable. According to the Constitution, the parties or organizations which, by their aims or their activities militate against political pluralism, the rule of law or the sovereignty, integrity or independence of Romania shall be unconstitutional. The authority to decide on complaints regarding the constitutionality of a political party returns, according to the Constitution (Article 146 letter k) to Law no. 47/1992 republished (Article 39 paragraph 1) to the Constitutional Court of Romania. According to certain opinions expressed in the legal literature, by exercising this authority, the Constitutional Court has a role of *guarantor of the constitutional right of association in political parties* (Constantinescu M., Amzulescu M., 2007, p. 35).

3. JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA

Even before 2003, the Constitutional Court, consistently held that Romania is organized and operates on the principle of separation of powers even if “the Constitution does not enshrine any text *expressis verbis*, this principle arising “*out of the way the Basic*

¹² The Decision ruled in the case *Campbell and Fell v. Great Britain*, of 28 June 1984, paragraph 76; Decision ruled in the case *Lithgow and others v. Great Britain* of 8 July 1986, paragraph 201 – in the Decision of the Constitutional Court no. 123 of 5 March 2013, published in the Official Gazette of Romania no. 214 of 16 April 2013.

*Law governs public authorities and their powers*¹³. Also, the provisions of Article 1, Article 2 paragraph 3 and Article 27 paragraph 1 of G.O. no. 137/2000 on preventing and sanctioning all forms of discrimination were declared unconstitutional insofar as they mean that the courts have the power to cancel or refuse the application of certain laws laid down by law, considering that they are discriminatory, and to replace them with judicially created rules or provisions contained in legal acts not taken into consideration by the legislature to adopt laws deemed discriminatory... as they violate the principle of separation of powers enshrined in Article 1 paragraph 4 of the Constitution and Article 61 paragraph 1, according to which Parliament is the sole legislative authority of the country¹⁴.

From the Constitutional Court of Romania case law, several aspects can be summarized which were considered unconstitutional precisely because they represented violations of fundamental rights and freedoms provided by the Constitution of Romania.

On several occasions, the court sanctioned constitutional provisions considered discriminatory or provisions considered as *obstacles or interference brought to the exercise of certain rights or fundamental freedoms*. For example, Article 31 paragraph 3, 4, 7, 8 and 9 of Law no. 1/2000 for the restoration of property rights on farmland and forest land required according to the provisions of Law no. 18/1991 and Law no. 169/1997 were declared unconstitutional (under the conditions they govern a free transfer of state property to private individuals or private businesses, the conditions provided for by Article 44 paragraph 3 of the Constitution on expropriation not being fulfilled. This is contrary to the provisions of Article 44 paragraph 2 first thesis of the Constitution because they favor the owners of private property rights - natural or legal persons who received reconstituted ownership of forest land on which the investments are listed in the criticized law texts in relation to other holders entitled to restoration of property rights on forest land on which no such buildings exist¹⁵.

The provisions of Law no. 82/2012 on the retention of data generated or processed by providers of public electronic communications networks and providers of electronic communications services destined to the public but also for amending and supplementing the Law no. 506/2004 on the processing of personal data and privacy in the electronic communications were declared unconstitutional as they contained interference with the exercise of fundamental rights and freedoms, namely the right to privacy and intimacy and secrecy of the correspondence and freedom of expression¹⁶.

The Constitutional Court of Romania sanctioned as unconstitutional the initiatives of the Constitution revision, when the opportunity was given, considering that some proposals may result in the *removal of the guarantees* of fundamental rights and freedoms: the right of ownership by eliminating the presumption of the legality of

¹³ Decision of the Constitutional Court no. 27 of 25 May 1993, published in the Official Gazette of Romania no.163 of 15 July 1993; Decision of the Constitutional Court no. 209 of 17 February 2009, published in the Official Gazette of Romania no.76 of 21 February 2009.

¹⁴ Decision of the Constitutional Court no.818 of 3 July 2008, published in the Official Gazette of Romania no. 537 of 16 July 2008.

¹⁵ Decision of the Constitutional Court no. 602 of 20 May 2008, published in the Official Gazette of Romania no.533 of 15 July 2008.

¹⁶ Decision of the Constitutional Court no.1258 of 8 October 2009, published in the Official Gazette of Romania no. 798 of 23 November 2009; Decision of the Constitutional Court no. 440 of 8 July 2014, not published at the time of drafting this survey.

property¹⁷; the right of ownership by eliminating the possibility to appeal the Superior Council of Magistracy in court, violating the free access to justice; the proposal of eliminating the parliamentary inviolability which would cause the suppression of a fundamental right of the person who occupies a public position; exclusion of the judicial review of the administrative acts relating to fiscal and budgetary policies of the Government has the effect of suppressing free access to justice; the increasing number of civil society representatives and the changing proportion of representation in the Council of Magistrates has as an effect the violation of the judicial independence¹⁸.

The constitutional court of Romania has had the occasion to rule also on the principle of free access to justice. Thus, the provisions of Article 281 paragraph 1 of G.E.O. no. 34/2006 regarding the award of public procurement contracts and of public works concession contracts and services concession were deemed unconstitutional to the extent they do not allow the complaint against the pleas resolved by the National Council for Solving Complaints to be addressed directly to the competent court, which amounted, in the Court's view, a violation of Article 21 of the Constitution regarding *free access to justice*¹⁹. Article 32 paragraph 1 of G.O. no. 2/2001 on the legal regime of contraventions was declared unconstitutional because it is an administrative impediment, which has no objective or reasonable justification that could eventually deny the right of *free access to justice for the person*, violating, flagrantly the provisions of Article 21 paragraph 1-3 of the Constitution²⁰.

However, the Constitutional Court of Romania related to the provisions of the *Convention for the Protection of Human Rights and Freedoms* (and its additional protocols)²¹, basing their decisions on some texts of the Convention²² or by invoking for the argumentation of solutions, decisions from the European Court of Human Rights case law (a very consistent case law (Ploeșteanu N., Chibulcutean D., 2013, pp. 37-40)), stating a violation of some articles (for example, freedom of association²³, the right of not being discriminated²⁴, etc.) but also of the Convention against discrimination in education

¹⁷ Decision of the Constitutional Court no. 85 of 3 September 1996, published in the Official Gazette of Romania no. 211 of 6 September 1996.

¹⁸ Decision of the Constitutional Court no.799 of 17 June 2011, published in the Official Gazette of Romania no. 440 of 23 June 2011

¹⁹ Decision of the Constitutional Court no. 569 of 15 May 2008, published in the Official Gazette of Romania no. 537 of 16 July 2008.

²⁰ Decision of the Constitutional Court no. 347 of 3 April 2007, published in the Official Gazette of Romania no. 307 of 9 April 2007.

²¹ Adopted by the Council of Europe on 4 November 1950 and signed by Romania on 7 October 1993.

²² From the jurisprudence of the Constitutional Court results that the Constitutional Court discovered violations of the provisions of the Convention for the protection of human rights and freedoms through various laws or ordinances subject to the constitutional review.

²³ Decision of the Constitutional Court no. 35 of 2 April 1996, published in the Official Gazette of Romania no. 75 of 11 April 1996.

²⁴ Consistently, the European Court of Human Rights, pursuant to Article 14 on prohibiting discrimination in the Convention for the Protection of Human Fundamental Rights and Freedoms, that it is a violation of these provisions any breach of these provisions any difference in treatment by the state between person found in analogous situations without an objective and reasonable justification (Decision of 13 June 1979, pronounced in the case *Marckx v. Belgium*; Decision of 29 April 2008, pronounced in the case *Burden v. Great Britain*). Moreover, through the Decision of 6 April 2000, pronounced in the case *Thlimmenos v. Greece*, the European Court of Human Rights stated that the right of not being discriminated, guaranteed by the Convention is violated not only when the states treat the persons found in analogous situations differently, without being any reasonable

(Article 4), or the International Covenant on Economic, Social and Cultural Rights (Article 13 section 2)²⁵.

In conclusion, although some terms or phrases seem inappropriate (“constitutional democracy” may be considered a pleonasm, not an oxymoron (Muraru I., Tănăsescu E.S., în Muraru I., Tănăsescu E.S., (coord.), 2008, p. 9)), because the democracy cannot exist without a constitution) and others obsolete (justice) or some of them seem to lose their content through their implementation (social state), they are still “light” reference points along the path of transition.

Eventually, “*democracy (remains) the best variant of all possible*” (Churchill).

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and objective justifications but also when the states fail to treat persons differently, again with no reasonable and objective justifications, persons found in different situations.

²⁵ Decision of the Constitutional Court no. 72 of 18 July 1995, published in the Official Gazette of Romania no.167 of 31 July 1995.

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