

MIRUNA TUDORASCU

University “1 Decembrie 1918” of Alba

ORCID: 0000-0003-4641-4578

e-mail: Iuliamiruna762001@yahoo.com

DOI: https://doi.org/10.59444/2024MONredBis_SER_AILr9

Romanian Constitution and Fundamental Civil Rights and Freedoms

The Constitution of Romania of 1991 was amended and completed by the Law No. 429/2003 on the revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, No. 758 of 29 October 2003, republished by the Legislative Council on the grounds of article 152 of the Constitution, with the updated denominations and the renumbered texts (Article 152 became, in the republished form, Article 156).

The Law No. 429/2003 on the revision of the Constitution of Romania was approved by the national referendum of 18-19 October 2003, and came into force on 29 October 2003, the date of the publication in the Official Gazette of Romania, Part I, No. 758 of 29 October 2003 of the Decision of the Constitutional Court No. 3 of 22 October 2003 for the confirmation of the result of the national referendum of 18-19 October 2003 concerning the Law on the revision of the Constitution of Romania.

The Constitution of Romania, in its initial form, was adopted in the sitting of the Constituent Assembly of 21 November 1991, was published in the Official Gazette of Romania, Part I, No. 233 of 21 November 1991, and came into force after its approval by the national referendum of 8 December 1991¹.

In the title of our material, we said that we will talk about the Romanian Constitution, but in connection with the fundamental rights and freedoms, without neglecting the structure of our Constitution, but just as a general presentation. So, in the first title of the Fundamental Law, we find the “general principles”, such as: Romanian state, sovereignty, territory, rules about the unity of the people and equality among citizens, provision about the citizenship, the right to identity rules about Romanians living abroad, about pluralism and political parties, about trade unions, employers’ associations, and vocational associations, international relations, international law and national law, national symbols, official language

¹ <http://www.cdep.ro/pls/dic/site.page?id=371&idl=28&par1=1> [Accessed on: 17.03.2020].

and the capital. The second Title of the Constitution will be the main domain of our study, and we will detail it in the following article. The third Title of the Romanian Constitution is settling rules in connection with the existence and the attribution of the public authorities, like the Parliament, the President of Romania, the Government, public and local authorities, the judicial authorities, and the next Titles (IV-VIII) are settling provisions about: economy and public finance, constitutional court, Euro-Atlantic integration, revision of the Constitution and final and transitory provisions.

We will concentrate our article on the fundamental rights and freedoms, such as they are provided in the Romanian Constitution. We will refer to – TITLE II – Fundamental rights, freedoms, and duties (Romanian Constitution). Chapter 1 from this title is in connection with General provisions, so we mean: Universality (art. 15) “(1) All citizens enjoy the rights and freedoms granted to them by the Constitution and other laws, and have the duties laid down thereby. (2) The law shall only act for the future, except for the more favourable criminal or administrative law”; Equality of rights (art. 16) “(1) Citizens are equal before the law and public authorities, without any privilege or discrimination. (2) No one is above the law. (3) 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. (4) 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”; Romanian citizens while abroad (art. 17) “Romanian citizens while abroad shall enjoy the protection of the Romanian State and shall be bound to fulfil their duties, with the exception of those incompatible with their absence from the country”; Aliens and stateless persons (art. 18) “(1) Aliens and stateless persons living in Romania shall enjoy general protection of persons and assets, as guaranteed by the Constitution and other laws. (2) The right of asylum shall be granted and withdrawn under the provisions of the law, in compliance with the international treaties and conventions Romania is a party to”; extradition and expulsion (art. 19) “(1) No Romanian citizen shall be extradited or expelled from Romania. (2) By exemption from the provisions of paragraph (1), Romanian citizens can be extradited based on the international agreements Romania is a party to, according to the law and on a mutual basis. (3) Aliens and stateless persons may be extradited only in compliance with an international convention or in terms of reciprocity. (4) Expulsion or extradition shall be ruled by the court”; international treaties on human rights (art. 20) “(1) Constitutional provisions concerning the citizens’ rights and liberties shall be interpreted and enforced in conformity with the Universal

Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.”; Free access to justice (art. 21) “(1) Every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests. (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”.

We will make a scientific approach to the next Chapter, directly related to the civil rights², the main purpose of our study:

- a. Right to life, liberty and the integrity of the person;
- b. Right to equal protection of law;
- c. Right to be recognized as a subject of law;
- d. Right to a citizenship;
- e. Right to get married and have a family;
- f. Right to property and inheritance;
- g. Right to respect of private life;
- h. The liberty of the opinion.

We will deal with these issues, step by step. Talking about **the right to life**, liberty, and the integrity of the person, we have to mention a few aspects and rights in connection with the right not to be tortured, cruel or inhuman treatments, the right not to be kept in slavery, not to be in prison without a legal reason *etc.*, facts that we are finding settled in Art. 22 from the Romanian Constitution³.

In doctrine, the right to life, embraces two dimensions: a minimal one⁴ when we are talking about the protection of the human body against the actions of other persons, and the maximal one⁵, meaning an ensemble of life collateral rights.

The right to life is an intangible right, being recognized for all the persons, in any circumstances. It is a right in full connection with the right to liberty or the inviolability of person, and it can include: the right not to be a slave, not to be

² N. Purda, N. Diaconu, *Juridical protection of human rights*, 3rd Edition, Universul Juridic, Bucharest 2016, pp. 170-171.

³ Article 22: “(1) The right to life, as well as the right to physical and mental integrity of person are guaranteed. (2) No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment. (3) The death penalty is prohibited”.

⁴ N. Pavel, *Theoretical considerations about the right to life and the physical and mental integrity*, “Dreptul” Review, no. 5/2003.

⁵ C.D. Draghiciu, *New aspects in connection with the right to life and the integrity of person in EU*, Pro Universitaria Publishing House Bucharest 2008, p. 21.

forced to execute labours without the consent of the person, not to be in prison without a legal reason, *etc.*

If we are talking about the protection of the right to life, in doctrine were a lot of discussions about the abortion, the euthanasia, the capital punishment, the suicide, cloning of the persons, organs transplant *etc.* Of course, there are a lot of international rules established at international level, at EU level, but in our case, at national level, as we mentioned before, we are talking about the settlements at national level, in fact, about the settlements from Romanian Constitution, as Art. 22; by Art. 23 as well, the individual liberty and the safety of the person are inviolable.

In connection with “the right to equal protection of law”, this is also a very complex right that includes more issues like the equal access to public services, the possibility to equally benefit of the Constitutional rules and national laws, the defending right without discrimination, the right to be judged by an impartially and independent tribunal, the right for any person that in every litigation he/she is involved, to be examined in public and equitable mode, the right for every person to benefit of the reasonable doubt, as long as the guilt was not established in legal frames.

As legal regime, the Romanian Constitution agrees by Art. 21 the followings:

- (1) Every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests.
- (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.

To complete this Article, we will also mention the Art. 23 of the Constitution⁶ that mentions the procedural guaranties of the suspect in connection with committing

⁶ Article 23: “(1) Individual freedom and security of a person are inviolable. (2) Search, detainment, or arrest of a person shall be permitted only in the cases and under the procedure provided by law. (3) Detention shall not exceed twenty-four hours. (4) Preventive custody shall be ordered by a judge and only in the course of criminal proceedings. (5) During the criminal proceedings, the preventive custody may only be ordered for 30 days at the most and extended for 30 days at the most each, without the overall length exceeding a reasonable term, and no longer than 180 days. (6) After the lawsuit has begun, the court is bound, according to the law, to check, on a regular basis and no later than 60 days, the lawfulness and grounds of the preventive custody, and to order at once the release of the defendant if the grounds for the preventive custody have ceased to exist or if the court finds there are no new grounds justifying the continuance of the custody. (7) The decisions by a court of law on preventive custody may be subject to the legal proceedings stipulated by the law. (8) Any person detained or arrested shall be promptly informed, in a language he understands, of the grounds for his detention or arrest, and notified of the charges against him, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his own choosing or appointed ex officio. (9) The release of a detained or arrested person shall be mandatory if the reasons for such steps have ceased to exist, as well as under other circumstances stipulated by the law. (10) A person under preventive custody shall have the right to apply for provisional release, under judicial control or on bail. (11) Any person shall be presumed innocent till found guilty by a final decision of the court.

a crime, and Art. 24 of the Romanian Constitution⁷ is talking about the right of defence. Of course, that the Constitutional Provisions, are detailed also by domestic special laws, such as: Civil Code (Art. 30 that provides the equality in front of civil law), Law no. 51/1995 – Lawyers special law – that provides aspects in connection with the right of defence, Penal Code, Civil Procedural Code etc.

Talking about **the right to be recognized as a subject of law** we will precise that the person who is a subject of law can deal with legal relations, the capacity of that person being recognized and being protected by legal international provisions, such as Universal Declaration for Human Rights or International Pact regarding the civil and political rights.

At national level, in this context, we precise the Civil Code, which settles in Art. 25 that “the subjects of civil law are physical persons and juridical persons. The physical person is the human, by his individuality, as a holder of civil rights and obligations. The juridical person is any form of organization, which is fulfilling requires to be imposed by the law, is a holder of civil rights and obligations”. Also, in Art. 58 Civil Code, we find that “any person has the right to life, health, physical and mental integrity, dignity, own image, respecting the private life, and other such rights recognized by the law. These rights are not transmissible.”

The right to citizenship it is provided in the Romanian Constitution in Art. 5: “(1) Romanian citizenship can be acquired, retained or lost as provided by the organic law. (2) Romanian citizenship cannot be withdrawn if acquired by birth”. The citizenship is an institution that is made by the ensemble of legal norms, that settles the legal-political relationship between a physical person and the State, when the citizen is the holder of some rights and obligations that form the State or its legal condition⁸.

Articles 17 from the Romanian Fundamental Law, provides the followings:

Romanian citizens while abroad shall enjoy the protection of the Romanian State and shall be bound to fulfil their duties, with the exception of those incompatible with their absence from the country”, followed by Art. 18 that states “(1) Aliens and stateless persons living in Romania shall enjoy general protection of persons and assets, as guaranteed by the Constitution and other laws.(2) The right of asylum shall be granted and withdrawn under the provisions of the law, in compliance with the international treaties and conventions Romania is a party to”.

(12) Penalties shall be established or applied only in accordance with and on the grounds of the law.
(13) The freedom deprivation sanction can only be based on criminal grounds.”

⁷ Article 24: “(1) The right to defence is guaranteed. (2) All throughout the trial, the parties shall have the right to be assisted by a lawyer of their own choosing or appointed *ex officio*”.

⁸ D. Stefanescu, *Citizenship legal and historical evolution in Romanian Law*, Bucharest 1974, Doctoral Thesis, p. 4

The family is the natural and fundamental element of a society, being protected by the society and by the State⁹. So, “the right to get married and have a family” was studied by a lot of doctrinaires, we will not provide in this material the international legal orientation for this civil right, but we will underline the national provisions that guaranties the protection of this fundamental right.

The family has a lot of functions in a society, first we can talk about an educative one, that means that the social values, ethical values, or religious values must be promoted, as well as an economical function that leads to assuring a good life for the family and its members. The New Civil Code regulates family relations in Book II, entitled *About Family*, Articles 258-534. Marriage is still defined as the freely consented union, but the New Civil Code stipulates that it can only be between men and women, sex differentiation being one of the first fundamental conditions for a valid marriage. Marriage is concluded under the legal provisions, primarily producing civil effects, the religious celebration being possible to take place subsequently. Establishing a family is the determinant cause of marriage¹⁰.

In the Romanian Constitution we find the main regulation about family in Art. 48, that settles:

(1) The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children. (2) The terms for entering into marriage dissolution and nullity of marriage shall be established by law. A religious wedding may be celebrated only after the civil marriage. (3) Children born out of wedlock are equal before the law with those born in wedlock”.

So, in this article we have dispositions that settle the entering into a marriage, ending of a marriage, the legal character of the family.

Another fundamental right that is guaranteed in any democratic state is “the right to property and inheritance”. The property is the absolute, exclusive and perpetual right of its owner, perhaps one of the most important guaranteed rights, of which a person can enjoy, an individual (physical person) or a juridical person¹¹. By Article 552 Civil Code:

Property is public or private”. With reference to the Romanian Constitution, Art. 136 provides: “(1) Property is public or private. (2) Public property is guaranteed and protected by the law and belongs to the State or Administrative Units. (3) Riches of public interest, the air, the waters with hydropower national interest, beaches, territorial waters,

⁹ D. Mazilu, *Human rights*, Lumina Lex Publishing House, Bucharest 2003, p. 89

¹⁰ D. Buda, *The Administrative Reform in Romania: The New Civil Code and the Institution of Marriage*, “Transylvanian Review of Administrative Sciences”, no. 36 E/2012, pp. 27-49.

¹¹ M. Tudorascu, I. Ienciu, L. Oprea, *The institution of property in the new Romanian civil code*, SGEM2014 Conference Proceedings, Bulgaria, pp. 521-528.

natural resources of the economic zone and of the continental shelf, and other assets established by organic law, shall be exclusively, public property. (4) Public property is inalienable. (5) In accordance with the law, they can be managed by the autonomous administrations or public institutions or may be leased or rented; also, they can be given for free use to public institutions”.

In Article 44 of the Romanian Constitution, we find:

(1) The right of property, as well as the debts incurring on the State, are guaranteed. The content and limitations of these rights shall be established by law. (2) Private property shall be equally guaranteed and protected by the law, irrespective of its owner. Foreign citizens and stateless persons shall only acquire the right to private property of land under the terms resulting from Romania's accession to the European Union and other international treaties Romania is a party to, on a mutual basis, under the terms stipulated by an organic law, as well as a result of lawful inheritance. (3) No one shall be expropriated, except on grounds of public utility, established according to the law, against just compensation paid in advance. (4) The nationalization or any other measures of forcible transfer of assets to public property based on the owners' social, ethnic, religious, political, or other discriminatory features. (5) For projects of general interest, the public authorities are entitled to use the subsoil of any real estate with the obligation to pay compensation to its owner for the damages caused to the soil, plantations or buildings, as well as for other damages imputable to these authorities. (6) Compensation provided under paragraphs (3) and (5) shall be agreed upon with the owner, or by the decision of the court when a settlement cannot be reached. (7) The right of property compels the observance of duties relating to environmental protection and insurance of neighbourliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom. (8) Legally acquired assets shall not be confiscated. Legality of acquirement shall be presumed. (9) Any goods intended for, used or resulting from a criminal or minor offence may be confiscated only in accordance with the provisions of the law”.

The national legal provisions set clear, therefore, that the property is divided into two institutions, the public property and the private property. Property classification is very important in this form, for us to understand the legal nature and the applicable regime for each type of property. We believe that any approach of the property right is insufficient, because of the scale and the importance of this juridical institution. Moreover, the property right, either private or public, it has an elite regulation in most European laws, but also in universal laws, the respect for it and the guarantee of this right also can be found in the fundamental human rights, in the international treaties, and in the Constitutions of different nations¹².

¹² *Ibidem*.

If we are talking about “the private life”, in international debates had a particular attention to promoting, settling and protecting the private life¹³.

If we try to describe this right, we make connections to the right of private life secret, the right to own image, the right to establish social relations, the secret of sexual life, the right to respect the family life, the right to the inviolability of the domicile, the secret of the correspondence, the respect for the person, even after the death of that person.

All the issues, mentioned before, are more or less integrated in Art. 26 of the Romanian Constitution, “(1) The public authorities shall respect and protect the intimate, family and private life. (2) Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals”. Also, in Art. 27 we have settled the followings:

(1) The domicile and the residence are inviolable. No one shall enter or remain in the domicile or residence of a person without his consent. (2) An exemption from the provisions of paragraph (1) can operate, according to the law, for the following instances: a) carrying into execution a warrant for arrest or a court decree; b) removing a risk to someone’s life, physical integrity, or a person’s assets; c) defending national security or public order; d) preventing the spread of an epidemic. (3) Searches shall only be ordered by a judge and carried out under the terms and forms stipulated by the law. (4) Searches during the night shall be forbidden, except for crimes in flagrante delicto.

And in Art. 28: “Secrecy of the letters, telegrams and other postal communications, of telephone conversations, and of any other legal means of communication is inviolable.”

“The liberty of the opinion” is a civil right, but also, after some doctrinaires, a political right, but anyway we will analyse it in this category. From my perspective, I will analyse two different aspects, the freedom of expression and the freedom of conscience.

Talking about the first aspect, it is also considered a fundamental right of the person, and a very important pillar in all human rights. It can include the freedom of opinion, and the freedom of being informed, without any form of censure. In the Romanian Constitution, we find this right consecrated in Art. 30 and 31¹⁴.

¹³ D. Mazilu, *Human rights*, 2nd Ed., Lumina Lex Publishing House, Bucharest 2003, p. 90.

¹⁴ Art. 30 – Freedom of expression “(1) 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. (2) Any censorship shall be prohibited. (3) Freedom of the press also involves the free setting up of publications. (4) No publication shall be suppressed. (5) The law may impose upon the mass media the obligation to make public their financing source. (6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one’s own image. (7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law. (8) Civil

If we are talking about the freedom of conscience, there are also a few aspects worthy to be mentioned, after showing art. 29 of the Romanian Constitution:

(1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions. (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect. (3) All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law. (4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults. (5) Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages. (6) Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them”.

So, the conclusion for this issue, after analysing the article mentioned before, is that the freedom of conscience can include the freedom of thoughts, of conscience and of the religion.

The conclusion of this material is that we could have made much vast research in the scientific covered area, and we had the possibility just to underline the most specific issues of the legal aspects mentioned, but we believe that is a great opportunity to open a new door for future ample research in this domain.

References

- Buda D., *The Administrative Reform in Romania: The New Civil Code and the Institution of Marriage*, “Transylvanian Review of Administrative Sciences”, No. 36 E/2012.
- Draghiciu C.D., *New aspects in connection with the right to life and the integrity of person in EU*, Pro Universitaria Publishing House, Bucharest 2008.
- Mazilu D., *Human rights*, 2nd ed., Lumina Lex Publishing House, Bucharest 2003.
- Pavel N., *Theoretical considerations about the right to life and the physical and mental integrity*, “Dreptul” Review, no. 5/2003.
- Purda N., Diaconu N., *Juridical protection of human rights*, 3rd ed., Universul Juridic, Bucharest 2016, pp. 170-171.

liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law”; Art. 31 – Right to information: “(1) A person’s right of access to any information of public interest shall not be restricted. (2) The public authorities, according to their competence, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest. (3) The right to information shall not be prejudicial to the measures of protection of young people or national security. (4) Public and private media shall be bound to provide correct information to the public opinion. (5) Public radio and television services shall be autonomous. They must guarantee any important social and political group the exercise of the right to broadcasting time. The organization of these services and the parliamentary control over their activity shall be regulated by an organic law”.

Stefanescu D., *Citizenship legal and historical evolution in Romanian Law*, Bucharest 1974, Doctoral Thesis.

The Romanian Constitution (English version) http://www.cdep.ro/pls/dic/site2015.page?den=act2_2&par1=2&idl=2 – for the English text of Romanian Constitution [Accessed on: March 17, 2020].

Tudorascu M., Ienciu I., Oprea L., *The institution of property in the new Romanian civil code*, SGEM2014 Conference Proceedings, Bulgaria 2.

Romanian Constitution and Fundamental Civil Rights and Freedoms

Summary: In the following material, we will try to present some general issues about the Romanian Constitution, but also the main aspects of the fundamental civil rights and freedoms at the constitutional level. A Constitution is the ensemble of rules which points the organization and function of the public authorities, and living in society, so it is important for us to know constitutional aspects. Like the majority of different States Constitutions, the Romanian Constitution begins to settle aspects about Romanian State. We will see, step by step, the issues mentioned in the title of the material how it is framed in our Constitution.

Key words: Constitution, fundamental rights, freedoms, Romania, State

Konstytucja Rumunii a podstawowe prawa i wolności obywatelskie

Streszczenie: Artykuł przedstawia kilka ogólnych zagadnień dotyczących rumuńskiej konstytucji, ale także główne aspekty dotyczące podstawowych praw i wolności obywatelskich na poziomie konstytucyjnym. Konstytucja to zespół przepisów, który określa organizację i funkcje władzy publicznej oraz życie w społeczeństwie, dlatego tak ważna jest dla nas znajomość aspektów konstytucyjnych. Podobnie jak większość konstytucji różnych państw, konstytucja rumuńska zaczyna regulować aspekty dotyczące państwa rumuńskiego. Zobaczymy, krok po kroku, jak kwestie wymienione w tytule są ujęte w naszej Konstytucji.

Słowa kluczowe: Konstytucja, Rumunia, prawa podstawowe, wolności, państwo