

THE EVOLUTION OF HUMAN RIGHTS IN ROMANIA

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Abstract in original language

In Romania, conceptions regarding human rights and their protection system were crystallized and were promoted under the influence of humanistic ideas on human freedom and equality promoted at European and international level and were developed once with the evolution of the Romanian State, over different historical epochs, reflecting the social, economical and political conditions and requirements corresponding to these epochs. The aim of the present study is to present both the development of theoretical and conceptual dimensions of institution of human rights in Romania and the evolution of the main documents and institutions designed to guarantee the protection of human rights at national level.

Key words in original language

Human rights; protection of human rights; national and international means of protecting human rights; democratic society.

In Romania, the conceptions regarding human rights and their protection system were crystallized and affirmed under the influence of the humanist ideas regarding the human liberty and equality promoted at a European and international level and they were developed at the same time with the evolution of the Romanian state, across different historical ages, reflecting the social, economical and political requirements and conditions corresponding to these times.

Until 1918, when the unitary national state was constituted, the conceptions regarding the human rights were developed in the process of accomplishing the freedom and national unity aspirations manifested on the territory of the three Romanian states: Moldova, Walachia and Transylvania. Situated at the confluence of three great empires (the Czarist Empire, the Austro-Hungarian Empire and the Ottoman Empire), the Romanian countries faced many political and economical difficulties that sensibly delayed their accession to the line of the constitutionally parliamentary states, considering that, when Europe¹ was crossing the series of the great liberal-democratic transformations, the Romanians were forced to suffer a permanent fight

¹ For many of the European countries, the 19th century represents the age of the nations affirmations, of the constitutional national state and of the parliamentary system. (*A. Banciu, Constitutional history of Romania – national desiderata and social realities*, Lumina Lex Press, Bucharest, 2001, p. 21)

against national domination and oppression. However, on the territory of the three states, there was developed an intense activity in order to elaborate certain modern political-juridical forms of state and social organization and management inspired from the European models.

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

We must say that, before adopting this constitution, we could also find a series of stipulations referring to the human rights in the legislation of the three Romanian states. Among the oldest attempts to establish certain rights, we may evoke – The Document of Leon Tomşa (ruler of Walachia -1628-1632) emitted on July, 15th 1631 that consecrated, among others, the generality of the principle that nobody can be killed without being judged, that guilt must be proved and that the capital punishment can be applied only if the laws stipulates it etc., and also – certain social-economical reforms elaborated in the manner of the 18th and 19th centuries. Therefore, stipulations referring to a series of rights and liberties were included in different reform programs with social-economical features, such as:

- *Supplex Libellus Valachorum* (in Transylvania) in 1791 and 1792
- Tudor Vladimirescu's Proclamation (in Walachia) in 1821³
- Carbonari's Constitution in 1824 (in Moldova)⁵

2Supplex Libellus Valachorum (meaning *Petition of the Vlachs in Transylvania*) is the name of the memoirs brought by the leaders of the Romanian nation in Transylvania to the emperor Leopold II-lea of The Holy Roman Empire (in 1791 and 1792). The **Supplex's** requirements were structured around the following ideas: acknowledge the Romanian as a law nation in Transylvania, giving again to the Romanian nation all its historical rights, acknowledging the right equality of the Romanian church with the other cults and proportional representation in the leading and administrating organs. The *Supplex's* text transparently refers to The Human and Citizen's Rights Declaration of France and it also includes certain historical reasons and statistics related to the Romanians (that were almost 55% of Transylvania's population). The petition was rejected so that the Romanians' status remained the same.

(http://ro.wikipedia.org/wiki/Supplex_Libellus_Valachorum_Transsilvaniae)

³The most important programmatic document of Tudor's Revolution is "Requirements of the Romanian People", a document that contains the basic principles of a new social order. This document claimed to abolish the nobility's privileges and the obligation of the ruler named by the Ottoman Empire to respect the will of all the people he rules; the access to the state jobs must be made only basing on worth; it claimed a large reform in the field of justice, administration, school, army; it claimed the abolishment of the intern customs.

(<http://www.verticalonline.ro/proclamatia-de-la-pades>).

⁴The project was finally removed as a consequence of the opposition of a part of the great nobility.

- Islaz Proclamation adopted on June, 9th/21st in Walachia⁶
- Blaj National Claims Program in Transylvania on May, 4th/16th 1848⁷
- Moldavia Revolutionary Program in August 1848 called “Desires of the National Party”⁸,

The same kind of stipulations was also included in certain international documents referring to the Romanian Principalities such as: Bucharest Peace Treaty in 1812, Paris Convention in 1858⁹.

The 1866 Constitution, the first modern constitution inspired from the Belgian constitution, considered at its time the most liberal one in Europe, contained the citizen rights and liberties in a political-juridical conception proper to the philosophical and political thinking of the Western Europe in the first half of the 19th century. This conception was influenced, at its turn, by the spirit of the Human and Citizen’s Rights Declaration adopted by the France National Assembly¹⁰. Being elaborated in extern circumstances, but

⁵It is considered the first political and juridical document of the Romanians where it is regulated a system of the human and citizen’s rights and liberties, one of the most important constitutional projects in Romania, which stipulated the guarantee of the property right, of the religious freedom, everybody’s equality when gaining a public job, the individual freedom. (A. Iorgovan, *Constitutional Law and Political Institutions. General Theory*,

„J.L. Calderon Galleries” Press, Bucharest, 1994, p. 103).

⁶It had the value of a constitutional document where it was stipulated the equality in exerting the political rights, the equal access to education, respecting the private property, electing a ruler by all the social classes and who could come from any of these classes, Gypsies’ emancipation etc. (T. Drăganu, *Constitutional Law and Political Institutions*, vol. I, Lumina Lex Press, Bucharest, 1998, p. 105).

⁷Therefore, by this document the Romanian nation required the possibility of the representation in the administrative, judicial and military services, the possibility to use the Romanian language in the administration, the equality in rights of the Romanian church with the other churches of Transylvania, providing the personal freedom, settling schools in Romanian, abolishing the privileges etc. (V. Duculescu, *Juridical Protection of Human Rights*, Lumina Lex Press, Bucharest, 1998, p. 32)

⁸The document suggested a real program of democratic regulations and we only mention some of them: abolishing the birth privileges, everybody’s equality regarding the taxes, abolishing the slavery, equality in civil and political laws, electing the ruler by all the social classes, free and equal access to education, abolishing the death punishment etc. (E. Cernea, E. Molcuț, *History of The Romanian State and Law*, „Șansa” Publishing House, Bucharest, 1996, p. 188).

⁹C. Ionescu, *Contemporary Constitutional Law Treaty*, the second edition, C. H. Beck Press, Bucharest, 2008, p. 670-671.

¹⁰ *Idem*.

also in intern, complicated ones delicate for the Romanian nation¹¹, the Constitution contains 133 articles that regulate the most important social relations. Dealing in detail, in the 2nd Title “About the Romanians’ Rights”, the Constitution stipulated and guaranteed the most important basic rights of the citizens: inviolability of the person and of the residence, the mail secret, the freedom of the consciousness, of the press, of the education, of the association and of the reunions. The Constitution abolished the privileges, the interdiction of the death punishment and the fortune confiscation. The property was declared as “sacred and inviolable”, existing only three causes of expropriation for public utility (communications, salubrity and the works for protecting the country)¹². Although it declared that, inside the state, there was no class differentiation and that everybody was equal in front of the laws, because of the fact that the electoral rights were granted reported to the fortune, the equality in rights of all the citizens was in a certain manner contradicted.

The historical events occurred after the Big Union in 1918¹³ generated a visible tendency of certain political parties and groups, and also of certain political, judicial, cultural personalities of that time to participate to the elaboration of certain legislative projects regarding the new state organization of the reunified Romania¹⁴. Giving expression to the new realities determined by the settlement of the Big Union in 1918, it was adopted in our country the Constitution of March, 29th 1923, a document that represented a juridical document much more elaborated than the 1966 Constitution and that was directly oriented towards the requirements of the society development in a law state. The 1923 Constitution consecrate the principles of freedom and equality of all Romanians, no matter their ethnicity, their religion, their birth or their social class, the universal, equal, direct and secret vote (of the majority citizens, men), the individual freedom, the consciousness freedom, the expression freedom, the press freedom, the work freedom, the residence inviolability, the privileges

¹¹The 1866 Constitution is the result of the intense political problems unleashed after deposing Al. I. Cuza on February, 11th/23rd 1866. At the same time, in that time period, Romania had not gained its entire independence yet and it was surrounded everywhere by absolutist empires (the Ottoman Empire, the Austro-Hungarian Empire, Prussia and Czarist Russia), and France, that had supported it the most in its national aspirations had become under Napoleon II an absolute monarchy. (T. Drăganu, op.cit., p. 369).

¹²A. Banciu, op. cit., p. 51

¹³The Union on December, 1st 1918 represents the main event of the history of Romania and, at the same time, the accomplishment of a desideratum of the inhabitants of the borders of the old Dacia, the union of Transylvania and Romania (after 1862, when it was accomplished the Small Union – Moldova and Walachia by Al. I. Cuza). The day of December, 1st has become after the events of December 1989 The National Day of Romania.

¹⁴A. Banciu, op. cit., p. 87.

interdiction, the property right, adding to the expropriation causes for the public utility stipulated by the 1866 Constitution another 2 ones determined by the cultural interest and by the direct, general interest of the state and of the public administrations etc.

The Romanian political system, between the years 1930-1938, was featured by a complicated and contradictory evolution with direct repercussions on the profile and the functionality of the institutional traditional state and party mechanisms. In frame of this sinuous evolution, there was a process of gradual dissolution of the parliamentary system, of sensible erosion of the political parties, at the same time with the transformation of the monarchic institution, having as a result the change of the democratic system under the conditions of the 1923 Constitution when installing an authoritative system¹⁵.

In the concrete conditions of the year 1938, the king Carol II installed on February, 10th 1938, the personal dictatorship. This dictatorship is judicially consecrated and accomplished by the new Constitution promulgated on February, 27th and published on February, 28th 1938. The Constitution contained 100 articles, the 2nd Title being called “About the Romanians’ Obligations and Rights”. By consecrating the royal dictatorship, the stipulations of the Constitution were expressing the limiting of the democratic rights and liberties. Therefore, for the first time, there are stipulated the citizens’ obligations and then there is a reference to the rights. In 1940, the king is forced to abdicate and the Constitution is suspended. Even in the conditions of suspending the 1938 constitution, the citizens’ rights have been generally respected so that, except the time period between September 1940-January 1941¹⁶, we cannot talk about massive and serious violations of the civic rights and liberties.

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

The end of the Second World War confirmed Romania’s affiliation to the Soviet influence sphere, with all the consequence coming from it, so that at the beginning of the `50s, Romania was a typically communist country, the system promoting – according to the model imposed by Moscow – a policy

¹⁵**Ibidem**, p. 220.

¹⁶During September **1940 – January 1941, Romania was proclaimed as a national-legionary state**. The legionary dictatorship promoted a deeply antidemocratic policy of terror, liquidating actually the democratic rights and liberties.
(<http://www.scribte.com/istorie/regimul-politic-din-romania-se202219412.php>).

of enrolling the population and repressing any type of opposition¹⁷. The state organization between 1945 and 1989 was regulated by the 1948, 1952 and 1965 Constitutions and the feature of the civic rights and liberties proclaimed in the mentioned Constitutions reflected the nature of the socialist political system, in its different time periods. Despite the fact that both the stipulations of the Romanian People's Republic Constitution in 1952 and the ones of the Socialist Romanian Republic Constitution in 1965 contained provisions regarding the basic civic rights, although Romania has become a signatory part of the Universal Declaration of Human Rights since the communist system (1955), the communist dictatorship has never respected totally the human rights and the rights of its own citizens. We must say that, between 1948 and 1964, the repressing feature of the governing cannot be contested, the 1965 Constitution consecrated a certain liberalization tendency of the juridical institution of the civic rights as much as it could be allowed by the nature of the socialist system, especially emphasizing the social-economical rights (except the right to strike and to decent living standards). But it is true that, due to their insufficient guarantee, the population did not benefit satisfyingly from the constitutional frame of their proclamation¹⁸.

The analysis of the constitutional provisions and also of other normative documents of this time allows identifying certain serious deviations from the democratic principles and we only mention some of them:

The constitutional system during the communism has brought serious changes to the citizens' property right. Therefore, the 1948 Constitution, even if it acknowledged the existence of three property categories (state property, co-operative one and particular one) proclaimed the supremacy principle of the state and co-operative property compared to the private one, and also the special protection of the state property constituted of the subsoil riches, the forests, the waters, the communication and transmission ways. Because, when elaborating the Constitution, some of these goods were in particular property, these stipulations have constituted the juridical reason of the nationalization laws of the big majority of the industrial, bank, mining, transporting and insurance companies¹⁹. Although in art. 10 of the 1948 Constitution it was stipulated that the expropriation may be accomplished only "for the public utility cause, basing on a law and with a fair compensation established by the court", the same Constitution stipulated in

¹⁷Among the most important consequences of this fact, we mention: installing a communist government in Bucharest (March, 6th 1945), abolishing the monarchy, installing the "people's democracy" system (December, 30th 1947), publishing the first communist Constitution (April 1948), nationalizing the country industry in June 1948, starting to collect the agriculture in March 1949 etc. (<http://www.ars-longa.com>).

¹⁸C. Ionescu, op. cit., p. 670-671.

¹⁹A. Banciu, op. cit., p. 320.

art. 11 that, if the general interest asked for it, “the production means, the banks and the insurance societies that were the private property of the physical or juridical persons may have become the state property”, more specifically using the confiscation and with no compensation. Even more serious limitations of the property were brought by the 1952 Constitution that stipulated in art. 11 that “the people’s democratic state consequently accomplishes the policy of bordering and removing the capitalist elements” and by art. 36 of the 1965 Constitution that expressly limited the area of the personal property right, referring only to “the incomes and the savings come from work, the living house, the household around it and also the field where it is and the personal use and comfort goods ”²⁰. And, subsequently, different normative documents limited and then abolished the individual property on land. By Law no. 59/October, 29th 1974 regarding the territorial fund, it was forbidden to estrange or gain lands, excepting only the inheritance and his having serious limitations and by Law no. 4/1972 a family could possess in its personal property only one lodge and only one rest house, and in case of gaining in any manner (inheriting, buying, donating) a second lodge (or rest house), it was forced to estrange or to give up one of them in a certain term stipulated by the law. Injuring the property right was extended also to the persons who wanted to emigrate definitely from the country and they were forced to give up the personal property lodges to the state in exchange for certain symbolic money compensations (in case of the fraudulent departures abroad and of the rejection of coming back to the country, the lodges were automatically owned put in the state property), being even forced to pay the expenses supported by the state with their schooling²¹.

Referring to other basic civic rights and liberties, even if they were formally acknowledged and guaranteed by the 1948 Constitution, there were introduced a series of restrictions and interdictions regarding their exertion, creating a visible discrepancy between the political and juridical realities and principles. Therefore, while it was stipulated and guaranteed every citizen’s right to elect and to be elected in the state organs, there were stipulated a series of electoral incompatibilities to the forbidden persons with no civil and political rights and who are unworthy, considered as such by the competent institutions, a fact that allowed the political marginalization of certain citizens basing on political and ideological criteria²².

²⁰V. **Duculescu**, op. cit., p. 38.

²¹ **A. Banciu**, op. cit., p. 355.

²²**Ibidem**, p. 323.

Even if, by the 1948 Constitution, it was stipulated the individual freedom, and nobody could be arrested or kept for more than 48 hours without an arresting mandate or convicted without a judicial sentence, it remained purely formal and declarative without certain procedural juridical guarantees²³.

By stipulating and guaranteeing the freedom of press, of word, of reunions, the 1948 constitutional document stipulated that the exertion of these rights was provided by the fact that the printing means, the paper and the reunion places were put at the disposition of the ones who worked, obviously by the socialist party and state. And the 1965 Constitution stipulates that these liberties cannot be used in purposes that are contrary to the socialist organization and to the interests of the working people. A strict system controlled the respect of the regulations regarding owning and using the typing machines and the multiplication means²⁴.

Although the 2nd Title of the 1965 Constitution consecrated the citizens' equality, no matter their nationality, their right to work, their right to rest, their material insurance for the old age, for the disease or for the work incapacity, their right to education, the use of the maternal language by the national minorities, the equality in rights of woman and man, the freedom of word, of press, of reunions etc. these stipulations must be circumscribed to the political system of that time. Therefore, the equality in rights was many times disrespected by introducing certain discriminating conditions when hiring, in order to accept for certain jobs and to admit in colleges, considering the political and social membership²⁵. There were professions and jobs that only persons having special conditions could choose, excluding the persons who had had political convictions, the persons having relatives abroad, the divorced persons etc²⁶.

Also, even if art. 30 of the 1965 Constitution guaranteed the freedom to exert religious cults stipulated, at the same time, that no religious confession, congregation or community can open other educational institutions beside the special schools for preparing the cult staff.

By following the family stability and the stimulation of the birth rate, the communist legislation will brutally interfere in the intimate life and in the

23 Idem.

²⁴In this sense, it was emitted the Decree of the State Council no. 98 regarding the system of the multiplying machines, of the materials needed in order to reproduce the writings and the typing machines, a decree that has become Law no. 12/1983.

²⁵ V. **Duculescu**, op. cit., p. 39-41.

²⁶**Ibidem**, p. 44.

family relationships, - by Decree no. 770/October, 1st 1966 in order to regulate the interruption of the pregnancy course and by Decree no. 771/October, 1st 1966 in order to change the Criminal Code, the abortion was forbidden and it was instituted the woman's obligation to give birth to a number of 4 children. Also, there were introduced political-ideological and moral criteria of promoting the work or in different jobs that would consider or not the marital status of the citizens, the number of children etc.

The right to life with the entire cortege of adjacent rights was seriously violated considering that the communist system refused to accept the international documents forbidding the death punishment²⁷, in Romania the death punishment being abolished by the Law-Decree number 6 on January, 7th 1990 and replaced with detention for life.

Regarding the person's right to circulate and to move freely, this right has suffered many limitations both regarding its movement inside the country and outside the borders, existing interdictions regarding the establishment of the residence in certain cities, but also the mandatory feature for certain professional categories to establish their residence in the localities where they developed their activity. Regarding the travelling abroad, a series of normative documents has established an extremely difficult procedure in order to obtain a passport and there is no obligation to motivate the rejection of the release²⁸.

The work legislation also had certain stipulations that injured the human rights such as measures for the lack of payment of the overtime crossing a certain quantum, the violation of the OIM Convention regarding forbidding the women's night shifts. Serious limitations were brought to the citizens' possibilities to save currency amounts as a consequence of the activities developed abroad. Severe stipulations forced the citizens obtaining currency incomes to give an important share to the state²⁹.

Facing starting with the '80s a lack and then crisis of food products, electric and thermal energy, natural gases and other combustibles, the communist system adopts austerity measures in these fields, limiting in the first place the particular consumption and determining the gradual depreciation of the material and cultural level of most of the individuals, affecting thus the right to decent living standards³⁰.

²⁷ **Ibidem**, p. 41.

²⁸ **Ibidem**, p. 43.

²⁹ In 1974 it was proclaimed the Decree no. 233 regarding certain rights and obligations of the Romanian citizens that accomplish currency incomes.

^{30A} **Bonciu**, op. cit., p. 350-356.

The events in December 1989 have caused deep transformations in the Romanian society, removing the communist dictatorship and in this context the elaboration and the validation in 1991 of the new Romanian Constitution³¹, changed and completed by the Law revising the Constitution no. 429/2003³², have answered to the need to accomplish the basic juridical frame of the evolution to democracy, freedom and human dignity, to edifying a law state based on political pluralism, free elections and providing the clear respect of the human rights and liberties.

Therefore, the change of the political system after December, 22nd 1989 has brought a new conception of the Romanian legislator on the state role regarding the proclamation and the real guarantee of the civic rights and liberties, after 1989 permanently promoting and supporting Romania's connection to the international standards in the field of the human rights. Thus, Romania accessed the international conventions regarding the protection of the human rights³³, where it was not part of it and it took back

31 The new Constitution was voted in the Constitutive Assembly and submitted to the national referendum on December, 8th 1991, being approved with a percentage of 77,3 % of the participants. When validating the new Constitution (December, 8th 1991) the 1965 Constitution was expressly abrogated.

32Published in the Romanian Official Gazette, part I, no. 758 on October, 29th 2003.

33In the field of the national minorities rights, Romania consecrated both by the constitutional stipulations, and by a series of other normative documents, an extremely favourable juridical system, having at present one of the most advanced European legislations in this matter. Therefore, in Romania, the national minorities enjoy rights such as:

- In the administrative-territorial unities where the citizens belonging to the national minorities are more than 20% of the inhabitants number, the authorities of the public local administration placed in their suborder and also the decentralized services provide the use, in the reports with them, of the maternal language of the citizens belonging to the national minorities;
- In the administrative-territorial unities where the citizens belonging to the national minorities are more than 20% of the inhabitants number, the authorities of the decentralized public local administration, the public institutions placed in their suborder, and also the decentralized public services provide the public announcement of the agenda of the local or county Council also in the maternal language of the citizens belonging to the national minorities;
- In the local councils where the local counsellors belonging to a national minority represent at least a fifth of the total number, at the council meetings they may also use the maternal language of the national minorities;
- In the administrative-territorial unities where the citizens belonging to a national minority are more than 20% of the inhabitants number, the normative decisions are publically announced also in the maternal language of the citizens belonging to the respective minority and the individual ones are communicated, when it is demanded, also in the maternal language;
- In the administrative-territorial unities where the citizens belonging to a national minority are more than 20% of the inhabitants number, in their reports with the authorities of the public local administration, with the speciality machine and the organisms subordinated to the local council, they

its reserves to other agreements in this matter³⁴, the Romanian Constitution containing at present the entire range of basic human rights and liberties consecrated in the reference international documents in this field³⁵. More than that, article 20 of the Constitution shows that the stipulations regarding the civic rights and liberties will be interpreted and applied according to the Universal Declaration of the Human Rights, to the pacts and to the other treaties Romania participates to. And if there are non-concordances between the pacts and the treaties referring to the basic human rights Romania participates to, and the intern laws, the international regulations are the ones

may address orally or in written also in their maternal language and they will receive the answer both in Romanian and in their maternal language;

- In the administrative-territorial unities where the citizens belonging to the national minorities are more than 20% of the inhabitants numbers in jobs that have in their attributions the public relations will also frame persons who know the maternal language of the citizens belonging to the respective minority;
- In the administrative-territorial unities where the citizens belonging to the national minorities are more than 20% of the inhabitants number, the authorities of the public local administration will provide the inscription of the localities name and of the public institutions under their authority and also the display of the public interest announcements also in the maternal language of the citizens belonging to the respective minority;
- In the administrative-territorial unities where the citizens belonging to a national minority are more than 20% of the inhabitants number, at the official ceremonies, besides Romanian, we may also use the language of the respective minority;
- In the administrative-territorial unities where the citizens belonging to a national minority are more than 20% of the inhabitants number, the marriage officiation may also develop, when demanded, in the maternal language of the persons that are to be married, if the civil officer knows the respective language;
- The legislation in the field of the judicial system and of the functioning of police, of health contains a series of regulations regarding the linguistic rights of the minorities;
- The persons belonging to the national minorities have the right to study and to be educated in their maternal language at all the education levels and types.

³⁴ When finishing the Vienna Reunion of the representatives of the states that had participated to the Conference for Security and Cooperation in Europe, the Romanian delegation was the only one that formulated a series of reserves, dissociating from certain principles in the human rights field that had been already adopted by all the other participant states (including by the former socialist countries). On January, 6th 1991, the Romanian Ministry of External Affairs declared, to the satisfaction of the other states, that our country retracted “its interpretative declarations and reserves” formulated on January, 15th 1989, referring to the document adopted at Vienna, confirming the acceptance of this integral document. (V. **Duculescu**, op. cit., p. 52).

³⁵ **I. Muraru**, *Constitutional Protection of the Freedom of Opinion*, Lumina Lex Press, Bucharest, 1999, p. 15.

that have priority, excepting the case where the Constitution or the intern laws contain more favourable stipulations³⁶.

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

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

Since the events of December 1989 until nowadays, Romania crossed a sinuous road during which it registered both notable events and many failures trying to edify a real democratic society. Therefore, even if in post-Decembrist Romania we cannot speak about a large range disrespect of the basic rights and liberties consecrated both in the constitutions stipulations and in the international and regional documents our country participates to, we cannot ignore the fact that, on December, 31st 2008, our country was the third, after the Russian Federation and Turkey, as a defendant in different causes placed in the examination of a judicial formation of the European Court of the Human Rights in Strasbourg³⁷.

Although, indeed, the institution of the Human rights in Romania has evolved in time, by knowing a laborious and long crystallization process, being presented actually as an extremely complex institution related both to the juridical, intern order and to the international one, being at present not only a reality, but also the ending of the entire human democratic activity.

36C. **Ionescu**, op. cit., p. 671.

37 <http://www.echr.coe.int>. The European Court for Human Rights pronounced on October, 12th 2010 its first pilot decision against Romania in the cause of Maria Atanasiu and others against Romania that practically suspended the similar causes of CEDO role and forced thus the Romanian state to take measures, in a 18 months term in order to improve the retrocession problem. The pilot decision is extremely important whereas it determines the Romanian state to solve the restitution problem, in the direction of respecting the basic rights and of instituting a functional mechanism of retrocession and compensation. (<http://www.romania-actualitati.ro/rtrapages/view/20249>)

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