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FUNDAMENTAL CHARACTERISTICS OF MODERN DEMOCRACY

S.I. GOIA

Simina Ioana GOIA

University of Oradea, Law Faculty

Oradea, Romania

ORCID: 0000-0003-1331-4327

Abstract

Democracy is a political regime based on the will of the people. The main principles of democracy are universal vote and popular sovereignty. The essence of modern democracy is related to respecting human rights, ideological pluralism, limitation and separation of state powers.

Keywords: *modern democracy, guaranteeing rights, institutional pluralism.*

INTRODUCTION

If, in the past, democracy meant that all people could directly participate in the decision making power, in modern era, democracy is mainly seen as a way for citizens to take part in the exercise of power which has the purpose of protecting and guaranteeing their fundamental rights (an authentic modern democracy does not exist unless the people have direct power or control the exercise of power). Modern democracy also implies political freedom due to the fact that public authority is based on the will of the people it constrains.

Ensuring a fair balance between the interests of society and protecting the lives of European citizens has become the main challenge of modern times and it has required a joint effort of the governments of member countries, but also a firm reaction of European Union institutions (*Pătrăuș M., 2021, p. 123*).

I. THE UNIVERSALITY OF THE PARTICIPATION OF THE PEOPLE IN PUBLIC AFFAIRS

I.1 Universal suffrage

The universality is materialized through universal suffrage, specified in article (art.) 36 of the Romanian Constitution. Dispositions related to the right to vote are also found in art. 21, paragraph (par.). 3, in the Universal Declaration of Human Rights: *'The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting*

procedures.' The right to vote is a political right which belongs not only to Romanian citizens living inside the country, but also to Romanian citizens who live outside the country.

1.2 The establishment and guaranteeing of public or private rights and liberties

The rights of the citizens must be referred to in legislative acts, together with modalities of guaranteeing the use of such legislative acts. Regardless of the generosity with which we acknowledge and establish human rights, the Human Rights Institution would lose its efficiency without a guarantee which is manifested as sanctions that are used when established rights are disobeyed (*Safta M., 2021, p. 34*).

Nationally, a necessary, complementary guarantee of the rule of law is manifested as a control system which ensures that laws are in conformity with Constitutional dispositions. According to the principle of constitutional supremacy, constitutional norms take precedence over inconsistent laws that become inapplicable. In Romania, the above mentioned control system belongs to the Constitutional Court.

Since its establishment, the Constitutional Court has been notified about and has ruled on the content of certain rights and the extent of their application, such as the case of the freedom of movement for which a tax for leaving the country (Constitutional Court of Romania, *Decisions nr. 71/1993 and nr. 139/1994*) has been applied, freedom of association (Constitutional Court of Romania, *Decision nr. 2/1993*), freedom of private life (Constitutional Court of Romania, *decision nr. 40/1993*), freedom of religion, restrictions of certain rights in the context of the pandemic (Constitutional Court of Romania, *Decision nr. 157/2020*). The Court has been notified in order to decide whether a form of discrimination has been created, which would have been a violation of the equality before the law principle (Constitutional Court of Romania, *Decision nr. 70/1993*).

1.3 Protection of fundamental rights

Fundamental rights are to be protected not only from possible legislative power abuse, but also from executive acts, by establishing a judiciary control. According to art. 52 in the Romanian Constitution, a party that has been injured by a public authority, either because of a legislative act or, on the contrary, because of the refusal to issue a legislative act on time, is allowed to receive official acknowledgement of the right in question, to receive the annulment of the act and to receive damage repair. The conditions of this right are established by Law nr. 554/2004 of Administrative Law and the settlement in this case is decided in Administrative Law courts.

1.4 The Institution of the Ombudsman

There also are non-jurisdictional means of ensuring conformation to fundamental rights, such as the institution of the Ombudsman which has been created together with the Constitution of 1991. The Ombudsman is responsible for protecting the rights and freedoms of the citizens in front of state authority. In order to accomplish its role, the Ombudsman presents annual reports in front of

the Parliament, reports which contain recommendations regarding the legislation or other means of ensuring the protection of the rights of the citizens.

II. INTERNATIONAL AUTHORITY

II.1 The European Convention on Human Rights and the United Nations Organizations

All of the above mentioned means are used at a national level and are based on the self-limiting will of the state, a will that is hard to maintain, therefore, the solution was to use a higher authority than that of the state, an international authority which guarantees the established human rights (*Barac L, 2018, p. 171*). These guarantees can be jurisdictional (on the European continent) or non-jurisdictional (United Nation Organization).

In Europe, the European Convention on Human Rights, which was ratified by our country in 1994, uses a resultful procedure which implies a jurisdictional control. If a state is being accused by another member state or by a private company that it has violated one of the fundamental rights recognised by the Convention, and has thus ignored the obligations which are well established by the Convention, the European Court of Human Rights may be notified. This is the real international institution that will give a decision that has the same authority as any judicial ruling. The state responsible for violating human rights principles can be sentenced and obliged to compensation. Over time, the Court has given decisions regarding rights related to the use of language, the trade union freedom, sexual education, preventive arrest, freedom of the press, the right for a fair trial, etc.

II.2 Guarantees for established rights)

In the case of the United Nations Organizations, the guarantees established for ensuring the conformation to fundamental human rights remain fragile (*Niculae F., 2020, p. 176*). In the case of traditional freedoms, a Human Rights Committee has been appointed, having the exclusive role of informing the way in which states respect fundamental rights.

a. The Ideological pluralism

Ideological pluralism allows free speech for various opinions related to public affairs orientations. Opinions may be debated and the population can adhere to those it considers necessary. The possibility to choose between different opinions must be established by the fundamental law of the state.

There is a strong connection between ideological pluralism and democracy. The correlation is between cause and effect: ideological pluralism determines and conditions democracy in Romania. It constitutes a *sine qua non* condition for democracy (*Toader T., Safta M, 2019, p. 44*). Such an organic interconnection guarantees democracy and ensures its efficiency, guarantees the power of the people and its implication in the governing power, the solutions required in public affairs. Ideological pluralism, the guarantee of democracy, is incompatible with dictatorship and totalitarianism. This principle is theoretically reaffirmed in European Union institutions and is materialized as the possibility of the people to publicly state and exchange opinions (*Pătrăuș M., 2021, p. 94*).

b. The use of the principle of the majority

This principle allows the establishment of a mutual will that is involved in shaping and making decisions. The decision of the majority must not cause violence towards minorities (the opinion of the majority must be imposed through persuasion and not through force or fear). The opposition must not be neglected, an opposition which, in a real democracy, plays the role of controlling the majority.

Beyond the utopic search for perfect harmony, the principle of majority remains the fundamental rule of the democratic principle, considering that it never acts as a form of an absolute principle based on which the majority can choose whatever it wants. The principle of majority is always limited by the rights of the minority. In a modern democracy, the principle of absolute majority is not accepted. Modern democracy implies a limited majority.

c. Institutional pluralism

Institutional pluralism implies a simultaneous existence of several organisms exercising power (institutional pluralism is the materialization of the principle of the separation of powers). The Romanian Constitution from 1991, even though it did not specifically establish the principle of the separation of powers, it established mechanisms which did not allow a confusion between state powers. Therefore, art. 80, par. 2 in the Constitution, an article which states that the President of the country is a mediator between state powers, can only be considered as an indirect establishment of the principle of the separation of powers in the state of Romania.

This democratic principle has evolved throughout the years, reevaluating the classical theory stated by Montesquieu. The original model of the separation of powers in a state would function poorly in modern times, therefore, the classical idea has reorientated towards the idea of balance and collaboration between state powers, a collaboration that must be governed by mutual respect and constitutional loyalty (*Verteş-Olteanu A., 2019. p. 113*).

The Romanian Constitutional Court has similarly defined the principle of the separation of powers in a state involved in its jurisprudence, especially after 2003 when the Constitution was revised and the Constitutional Court had a new responsibility – that of solving constitutional juridical conflicts between public authorities.

According to art. 146, par. e in the Romanian Constitution, the Constitutional Court 'settles juridical constitutional conflicts between public authorities at the behest of the Romanian President, of one of the presidents of the two Chambers, of the prime minister or of the president of the Superior Council of Magistracy'. Due to notifications placed with the purpose of settling such conflicts, the Constitutional Court has encountered behaviours of the representatives of the three powers which, even though were formally consistent with Constitutional requirements, were, nevertheless, capable of causing an imbalance in the principle of state power separation or of creating institutional blockages, which created the need for rectifications. In certain cases, these blockages have been caused by the lack of

specific constitutional regulations which would have defined the behaviour necessary in certain practical situations (*Vida I., 2004, p. 202*). We argue that no Constitution could ever foresee all possible situations.

In other cases, the general forming of constitutional stipulations has made it possible for a power to abuse another power, a situation which could have been avoided through a proper interpretation of the Constitution, implying the obligation of public authorities to respect constitutional loyalty.

II.3 Constitutional loyalty

The jurisprudence of the Court has evolved from a simple enunciation of concepts such as 'loyalty' and 'loyal behaviour' to stating circumstances of 'constitutional loyalty norms', derived from a specifically established principle in the Constitution - that of the separation of and balance between the powers of the state. This derived principle has been established for the first time in the jurisprudence of the Federal Constitutional Court of Germany, however, it has been quickly adopted by jurisprudences of other European Courts.

CONCLUSIONS

The principles of modern democracy have been incorporated in several constitutional articles. Nowadays, Romania is a constitutional state, a democratic and social state in which human dignity, the rights and freedoms of the citizens, the freedom of human personality development, fairness and political pluralism represent guaranteed higher values which respect the spirit of democratical traditions of the Romanian people (*Goia S.I., 2019, p. 245*).

National sovereignty belongs to the Romanian people who exercise it through its representative bodies which are established through free, periodical and fair elections and through referendums. A group or a person could never exercise sovereignty on their own (art. 2, par. 2, revised Romanian Constitution). In Romanian society, pluralism represents a condition and a guarantee of the constitutional democracy (art. 8, par. 1, revised Romanian Constitution).

In our modern society, an important factor in guaranteeing democracy is represented by the Constitution. This document, voted by the people through a freely organized referendum, sets the norms for the rights and freedoms a person has in a state and it defines the limits of the power that various leaders of the state and government have. It also defines fundamental principles and establishes the structure, the duty and the power of the government (*Deaconu Ș., 2020, p. 54*).

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