

## **FREEDOM OF ASSOCIATION AND DEMOCRATIC IMPACT ON RULE OF LAW**

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### **Abstract**

*The role and place of civil society in the political relations between government and opposition are the basis of the analysis performed in this article. This study approaches theoretical and methodological issues, and analyzes the behavior of political actors in terms of their interests, related to the national interest.*

*The ways of involving civil society components in the relations between the government and the opposition have also been assessed. There is also an investigation of the feedback of this relationship, the extent to which the content and quality of the struggle for power influence and mark the civil society profile in Romania. Freedom of association is approached as the existential safeguard of NGOs; another topic of discussion is the civil society involvement in mediating relations between government and opposition.*

*The development of non-governmental organizations (NGOs) has a psychological dimension, which helps articulate the concerns of civil society by promoting their own interests. They can gather information, lobby for legislation, inform the public about the governmental process. NGOs, evaluate the approach to public issues and represent the link between the citizen and the institutions exercising political power, in a society governed by the rule of law.*

**Keywords: freedom of association, democracy, civil society, power relations**

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## 1. Introduction

Widely seen as a consequence of democracy<sup>†</sup> and as a barometer of democratic values in civil society<sup>‡</sup>, non-governmental organizations (NGOs) have emerged in the 19<sup>th</sup> century, the pioneering one being the Red Cross, founded in 1864. Based on art. 71 of the UN Charter, the Economic and Social Council is authorized to establish arrangements for consultations with NGOs in areas falling within its competence.

The NGOs Conference organized in March 1994 by the International Foundation for Electoral Systems marked the beginning of the second phase of democratization of civil society in Romania. If the ultimate goal of democracy is “government by the people”<sup>§</sup>, the development of organizations representing the people was the first stage in the development of democracy. While political parties are the foundation for aggregating interests and achieving compromises in Romanian civil society, NGOs are the main mechanism for shaping the interests of civil society, for the oversight of the parties’ aggregative function and also of the government’s function, as well as for the multiplication of power management information to civil society.

## 2. Legal bases for the freedom of association

The ordinance no. 26 of 30 January 2000, amended on 9 March 2010, represents the legal framework for the establishment of associations and

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<sup>†</sup> Tanasă R., “Societatea civilă și procesul electoral: observarea alegerilor”, in V. Moșneaga, V. Teosa (eds) *Organizațiile nonguvernamentale și impactul lor asupra proceselor de transformare*, Chisinau, Ed. Business-Elita, 2004, pp.148-153.

<sup>‡</sup> Bucataru I., “Partidele politice și organizațiile neguvernamentale: modalități de interacțiune (cazul Republicii Moldova)”, in V. Moșneaga, V. Teosa (eds), op. cit., pp.105-117.

<sup>§</sup> Țirdea B., “Republicile parlamentară și prezidențială: impactul alternativelor constituționale asupra societății civile”, *MOLDOSCOPIE (Probleme de analiză politică). Partea a XV-a*, Chisinau: CEP USM, 2001, pp. 133-154.

foundations. \*\* Through article 40, the “freedom of association” is recorded in the fundamental law of Romania – the revised Constitution of 2003, as a right that allows citizens to join various associations involved in politics.

The establishment of a legal person is therefore the will of constituents, not of the state. In principle, neither the creation nor the operation of the legal person can be limited by the State. This fact must be accepted on the real assumption that, as far as the state is concerned, associations or any other form of NGOs become a group of control and pressure vested with initiative and dynamism, that might oppose its will oppose to the will of the state.

Freedom of association, supported by the Constitution and by international law, has quite early origins in Romania, by the promulgation of law no.21 of 6 February 1924. The legislative text which refers to legal entities (associations and foundations) has established itself as a tool through which public opinion can be defined to the state. According to the law, the state has no administrative influence on the legal person.

With the development of civic awareness, it was found that civil society is an indispensable component of the functioning of democracy and hence of the proper functioning of state institutions. The multiplication of associative forms is also necessary, as a safeguard of social order.

The right of association is a fundamental, classical, political, social right, usually placed in the category of freedoms of opinion, along with freedom of conscience, freedom of expression etc., with which and through which its content is explained.

This right includes the possibility of Romanian citizens to associate freely in political parties or unions, employers’ organizations and other forms and types of organizations, leagues and unions in order to participate in the political,

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\*\* Ordinance no. 26 of January 30, 2000 was amended by the Ordinance no. 37/2003, in turn rejected by the Law no. 213/2005, repealed by the Law no. 246/2005.

scientific, social and cultural life, and to produce a series of common legitimate interests.

Understanding the scope of art. 40 of the Constitution requires an accurate and clear delimitation of associations that result from the exercise of this right and other associations and companies that are the result of contacts between associations. In other words, art. 40 of the Constitution refers to the association of constitutional law.

They are associations of public law under the freedom of association, not under the contract of associations and private companies. The associations referred to in art. 40 are not for profit, are not aimed at obtaining or sharing benefits; they must have political, religious, cultural aims that must express the freedom of thought and expression of thoughts, opinions, beliefs – of political freedom.

Such explanations are intended to show that art. 40 of the Constitution cannot be considered a legal basis for the request of companies or of other for-profit associations. The revision of the Basic Law, in 2003, gave the latter a constitutional status in art. 45, referring to economic freedom.

Guaranteeing the right to free association, the constitutional provisions establish the forms of association. As in other cases, the difficulty of establishing a complete inventory led to the use of two methods, namely: a) nominating parties, unions and employers' associations, b) stating other organizational forms by 'other forms of association'.

The nomination of political parties, trade unions and employers' associations was required given the correlation between art.40 and art. 8 para. 2 and art. 9 of the Constitution, articles that directly concern the purposes of these forms of association.

But the right of association cannot be an absolute right. Therefore, naturally, limits occur. These constitutional limits regard to three points:

- a) The purposes and activities;

- b) The members;
- c) The nature of the association, basically resulting from the constitution.

Regarding the purpose and activity of associations by para. 2, those parties or organizations that militate against political pluralism, the rule of law or against national sovereignty shall be deemed unconstitutional. A simple reading of the text shows that it seeks to protect the political, legal and state values established in the first title of the Constitution. These values, practically entering the constitutional order, cannot affect the abusive exercise of the right of association. For this reason, associations that oppose these values are unconstitutional. Finding and declaring an association unconstitutional is the responsibility of the Constitutional Court.

The right of association allows citizens to express their views and their options related to governance. The exercise of political power can be corrected in case of error by the social, political groups, pressure groups, street groups, and by the media. From this perspective, associations and other non-governmental groups can be considered extra-parliamentary opponents.

Therefore, we can say that the right to free association is not only a civic freedom but involves several connotations in the constitutional context. Associations are established in order to establish a dialogue with the political power, leading to the development of a framework for democratic governance.

The opposition between civil society and the state must be understood through mutual influence, through dialogue, since civil society needs communication with the political power.

### **3. Nongovernmental associations – a tool for democracy**

One of the major concerns of modern democracies is the alienation of citizens from the political process. In this context, as in many others, civil society constitutes an important element of the democratic process. This gives citizens an alternative way of channeling different views, alongside those provided by political

parties and lobbies, and ensures that variety of interests are taken into account in the decision making process.

The Committee of Ministers of the Council of Europe has recognized, in CM/ Recommendation (2007) 14 October 2007, “the essential contribution made by NGOs in the development and realization of democracy and human rights, in particular by promoting public awareness, participation in public life and assuring transparency and accountability of public authorities”.

NGOs and civil society organizations are essentially involved in the development and realization of democracy and human rights. A Council of Europe definition of NGOs can be found in the above mentioned Committee of Ministers Recommendation (2007), which states that “NGOs are organizations or voluntary self-governing organizations established in order to pursue the essentially non-profit objectives of the founders or their members”. The core activities of NGOs are focused on values of social justice, human rights, democracy and the rule of law. In these areas, the purpose of NGOs is to promote causes and improve people's lives.

NGOs are an essential component of participation in an open and democratic society through engaging a large numbers of individuals. The fact that many of these people are voters underlines the complementary relationship with representative democracy.

NGOs can contribute with knowledge and expertise in making independent decisions. This prompted institutionalized bodies of power at all levels, from local and regional to national and international institutions, to seek relevant experience and expertise of NGOs in policy development and implementation. NGOs enjoy a unique trust from their members and society to voice concerns, to represent their interests and get involved in causes, thereby providing crucial input into policy development. This text highlights the contribution of organized civil society in the democratic process and it is not related to civic participation, i.e. individuals.

In this case, it is understood that the act of developing associations and community organizations constitutes an act of independent social organization and it is not purely centered on individual action. It is understood that organized groups exist to meet the needs of their members and for the benefit of society in general; therefore, they act as a means of increasing participation<sup>††</sup>.

Regardless of the nature and goals of nongovernmental organizations, they serve as mediating structures between citizens and the state, by their ability to influence the decisions of administrative authorities. Contradictions between the declared goals and the obtained results are an influence on their work.<sup>‡‡</sup>

There is a strong link between civil society and the state, which it is manifested in the fact that without the state, civil society cannot exist, and the state without a developed civil society is not democratic. The development of civil society structures requires a political power which guarantees their legitimacy.<sup>§§</sup>

#### **4. Conclusions**

Democracy is a model of government based on popular sovereignty, the participation of citizens in public affairs as responsible members of the social body. The phenomenon of political participation is an integral and complex recruitment of citizens in politics.

It includes an overwhelming variety of participatory forms – from simple elementary ones, to some upper characteristics to political leaders. Ultimately, political participation is presented as an “output” (output function), as the real effect of a particular pattern of behavior, as a reflection and expression of specific processes of political socialization, as its efficiency.

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<sup>††</sup> Conference of INGOS of the Council of Europe, 2009, “CONF/PLE(2009)CODE1”.

<sup>‡‡</sup> Anikin, V., *Grazhdanskoe obshchestvo v Respublike Moldova*, Chisinau, 2001, p.117.

<sup>§§</sup> Avtsinova, G., “Grazhdanskoe obshchestvo v Rossii: problemî i perspektivî”, *Vlasti*, 2000, No. 2, 26.

An unbroken tradition of democracy theories has given more attention to the political participation of citizens, which it is interpreted as a primary mean to defend individual rights, as a civic duty, as an indication of political welfare of society and finally, as a *sine qua non* condition of democracy. Institutional democratic reforms that are not supported by an active involvement of the citizens in the governance process have proved to be formal and ineffective.

Thus, political parties affirm their status as key players in the electoral competition in terms of establishing a real political pluralism based on equal conditions in their struggle to seize the state power, these new rules of the political game being tested in elections.<sup>\*\*\*</sup> As a result, political parties have acquired a strong motivation to seek social support and to position themselves as agents promoting the interests of the population. But the citizens have mostly treated with neglect the offer of the political parties, to indirectly participate in decision-making as a member or as a supporter.<sup>†††</sup>

The political role of NGOs is that, as elements of civil society, they actively interact with political parties, make the link between society and the state, indirectly participate in the legislative process, achieve influence and exert pressure on the political class by organizing mass actions (meetings and other forms of protest). Thus, they have chosen to influence the policy decisions without direct participation in the process of adopting them, and without sharing the political responsibility for the consequences and effects arising from those decisions.<sup>‡‡‡</sup>

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<sup>\*\*\*</sup> Muraru, I., Tănăsescu, E.S., *Drept constituțional și instituții politice*, București, Ed. C.H. Beck 2001, p. 304.

<sup>†††</sup> Ionescu, C., *Drept constituțional și instituții politice*, București, Ed. Lumina Lex, 2002, p. 403.

<sup>‡‡‡</sup> Frunțașu P., Rusnac G., *Republica Moldova pe calea democratizării. Probleme, concepte, teorii*, Chisinau, USM, 2000; Moșneaga V., Rusnac G., Tanasă R., “Activismul electoratului în Republica Moldova (analiza politologică)”, *MOLDOSCOPIE (Probleme de analiză politică). Partea a XVIII-a*, Chisinau, USM, 2002, pp. 37-61.

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“CONF/PLE(2009)CODE