

THE EVOLUTION OF THE RIGHT TO A DECENT STANDARD OF LIVING AND ITS COMPONENTS FROM THE 1923 CONSTITUTION TO THE PRESENT

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Abstract

This study analyses the evolution of social rights and the right to a decent standard of living in Romania in the past century. Focusses on the 1923 Constitution, the communist constitutions, and the 1991 Constitution, including its 2003 revision. By examining these documents, the study investigates the impact of changing political regimes on the social rights of Romanians.

The research employs historical and legal analysis of constitutional texts, international treaties, and relevant legal frameworks. The results indicate that the right to education has consistently been a fundamental social right, crucial to a decent standard of living, and has seen progressive expansions. Furthermore, Romania's adherence to international treaties, such as the European Social Charter, demonstrates its commitment to protecting and guaranteeing social rights, including the right to a decent standard of living. The implications of this study are significant for understanding the interplay between political regimes and social rights. It highlights the progressive nature of social rights development in Romania and the influence of international standards on domestic policies. This analysis provides insights into how legal and political changes have shaped the right to a decent standard of living in Romania, providing a foundation for future policy and constitutional reforms.

Keywords: *Romanian Constitution, Social State, Constitutional History, Decent Standard of Living*

1. Introduction

This study investigates the problem of how the right to a decent standard of living has evolved within Romanian constitutional law, particularly under Article 47 of the

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1991 Constitution², which embodies the social character of the state as declared in Article 1. Although this right was formally recognised as a fundamental right only in the 1991 Constitution, its components had been regulated for over a century, representing a culmination of the state's social objectives.

The novelty of this study lies in its comparative approach to existing doctrinal analyses by tracing the evolution of the right to a decent standard of living from the 1923 Constitution³, the first constitution of reunited Romania, through the communist constitutions and up to the present day. This study also examines the development of the social state during this period.

The research is structured as follows.

1. Introduction to the problem and historical context.
2. Analysis of the 1923 Constitution and its provisions for social rights.
3. Examination of the communist-era constitutions and their enhancements to social rights.
4. Detailed exploration of the 1991 Constitution and its 2003 revision.
5. Conclusions and implications.

The research uses historical and legal methods, analysing constitutional texts, legislative frameworks, and international treaties. For example, while the 1923 Constitution provided for free primary education, the 1952 Constitution⁴ made elementary education compulsory and free. By the 1965⁵ and 1991 constitutions, state education was mandated to be free. Similarly, while the 1923 Constitution mentioned social insurance without specific regulations on labour protection, later constitutions introduced extensive worker rights, such as regulated working hours and the right to rest.

This article does not consider the 1938 Constitution⁶ due to its regression in fundamental rights and its suspension shortly after enactment.

The study proposes that the evolution of constitutional provisions and guarantees regarding social rights in Romania is closely linked to the political regimes that govern the country. The monarchical-liberal regime offered minimal social rights protection, while the communist regime introduced more extensive social rights guarantees. Post-communism, the constitutional framework seeks to balance state obligations with liberal principles of individual responsibility.

The implications of this study highlight the interaction between political ideologies and the development of social rights, providing information for future constitutional and policy reforms to ensure a decent standard of living for all citizens.

² Published in Official Gazette no. 233/1991. The revised version was republished in Official Gazette no. 767/2003.

³ Published in Official Gazette no. 282/1923.

⁴ Published in Official Gazette no. 1/1952.

⁵ Published in Official Gazette no. 1/1965. Republished with changes in Official Gazette no. 65/1986.

⁶ Published in Official Gazette no. 48/1938.

2. Analysis of the 1923 Constitution and its provisions for social rights

After the end of World War I and the unification of Transylvania with Romania, the Great National Assembly at Alba Iulia on 1 December 1918 adopted a resolution calling, among other things, the implementation of a radical agrarian reform. This reform aimed at the registration of properties, especially large estates, to ensure that peasants could obtain adequate land for their work and families, promoting social equality. Furthermore, the resolution demanded that the working class receive the same rights and benefits as those in the most developed industrial states of the West.

To contribute to the development and adoption of the future constitution, the Romanian Social Institute, led by the sociologist Dimitrie Gusti as president, prepared a volume consisting of 23 public lectures⁷, all dedicated to the new draft constitution. These lectures were developed at a time when the ideology of socialism was gaining increasing ground in the political landscape, a fact reflected in the content of the lectures.

Vintilă Brătianu⁸, the Minister of Finance at that time, argued that the concept of equality in that era no longer meant the utopian application of the great revolution formula, which would impose absolute equality among all people by law. Instead, the aim was to provide conditions that would allow everyone to pursue their dreams, provided that they met the necessary requirements. He also argued for the elimination of any privileges not due to personal activity but rather to historical inheritance or other external factors.

Brătianu also advocated for the extension of the right to expropriation, the application of fiscal measures to prevent excessive accumulation of capital through a progressive taxation system, and the reconsideration of inheritance taxation. He recognised the right of workers not to be treated as mere tools but as collaborative partners entitled to benefits and prosperity in their contributing activities.

At the same time, Vintilă Brătianu criticised Bolshevik excesses, but believed that the state should intervene to meet the legitimate demands of citizens, considering the deteriorating living conditions caused by the war.

In his lecture on '*Education in the Future Constitution*,' Ion Nistor⁹ emphasised the need to maintain and even extend free primary education. In this context, he proposed measures to allow 'poor students' to access vocational, secondary, and higher education through fee waivers and support of living costs through scholarships and dormitories.

⁷ *Noua Constituție a României. 23 de prelegeri publice organizate de Institutul Social Român*, Tiparul Cultura Națională, 1922.

⁸ Vintilă I. Brătianu, *Nevoile statului modern și Constituția României Mari*, în *Noua Constituție a României. 23 de prelegeri publice organizate de Institutul Social Român*, Tiparul Cultura Națională, 1922.

⁹ Ion Nistor, *Învățământul în viitoarea Constituție*, în *Noua Constituție a României. 23 de prelegeri publice organizate de Institutul Social Român*, Tiparul Cultura Națională, 1922.

Dan Claudiu Dănișor highlights that the 1923 Constitution of Romania was a preventive reaction to the communist revolution in Russia, integrating economic and social interests into political representation. Although revolutionary for its time, the Constitution remained partially liberal and nationalist, maintaining a separation between the political and social spheres. State control over non-political associations and the political election of most legislative members continued. The Constitution did not promote Marxism but aimed to prevent a revolution and support the organic development of the national political community¹⁰.

He also mentions that it is not enough to grant voting rights to those dependent on labour; they must be provided with material resources to engage in public affairs. The state must promote real equality through positive interventions and regulate workers' social insurance to prevent conflicts and a proletarian revolution. The 1923 Constitution incorporates these ideas into Article 21, guaranteeing economic and social rights to facilitate the real exercise of liberties. This adaptation reflects a common trend in Western systems to establish a social rule of law that complements political democracy¹¹.

The 1923 Constitution represented a significant advance over the 1866 Constitution in terms of protecting a decent standard of living, even though this aspect was not explicitly formulated. Article 23 of the 1923 Constitution recognised the right to equal protection for all actors in the production sphere. However, the state reserved the right to intervene by law in the relations between these actors to prevent economic or social conflicts. It also explicitly recognised the necessity and existence of social insurance systems for workers in cases of illness, accidents, and other similar situations. The constitution also recognised pension funds, including military personnel. Regarding education in the 1923 constitution, it remained compulsory and free for primary classes. Furthermore, Article 24 clearly specified that students in financial difficulty were entitled to assistance and facilities from the state, counties, and municipalities.

However, there are opinions that the notable differences from the 1866 Constitution were due to attempts to prevent a communist revolution by incorporating some Marxist criticisms into the constitutional system, in line with a European movement. This resulted in the introduction of economic and social rights into the Constitution.

The 1923 Constitution remained in effect until the enactment of the 1938 Constitution, which was suspended in 1940. By Royal Decree No. 1626 of 31 August 1944¹², the fundamental rights as provided in the 1923 Constitution were reinstated within the framework of the 1866 Constitution and with the amendments of the 29 March 1923 Constitution.

¹⁰ Dan Claudiu Dănișor, *Spre un (nou) constituționalism românesc? – Constituția României din 1923 între liberalism, naționalism și marxism*, "Review of Juridical Sciences/Revista de Științe Juridice", vol. 42, nr. 1, 2023, p. 31.

¹¹ *Ibidem*, pp. 31–32.

¹² Published in Official Gazette no. 202/1944.

In conclusion, although the 1923 Constitution represented progress over the previous constitution and was relatively modern, it did not establish a social state, but rather a liberal one.

3. Examination of the communist-era constitutions and their enhancements to social rights.

The 1948 Constitution of the People's Republic of Romania¹³ was the next fundamental law in effect on Romanian territory, marking the first republican constitution of the country. Article 12 of this constitution explicitly recognised for the first time the state's responsibility to support the improvement of the standard of living. Thus, work was identified as the cornerstone of the economic life of the State and was regulated not only as a personal duty, but also as a state duty to provide support to all those who work, protect them from exploitation, and raise their standard of living.

Additionally, for the first time within a constitutional framework, citizens' right to rest was recognised. This right was implemented through the regulation of working hours, paid leave according to the law, and the organisation of rest homes, sanatoriums, clubs, parks, sports grounds, and specially arranged facilities (Article 20).

The constitutional provisions also addressed the field of education. Although it affirmed that all citizens have the right to education, this right remained limited to primary education, which continued to be compulsory and free. The provision of scholarships for deserving students was also mentioned, without the reference to those lacking means as specified in the 1923 Constitution, probably due to ideological considerations, as it was inadmissible in a communist society for individuals to lack means.

Another significant aspect was the recognition, for the first time, of the fundamental right to health. According to Article 25, the state committed to establish and developing medical services and support physical education. Various social insurance rights were also regulated, including health, accidents, disability, and old age. Although these rights already existed legally, they were elevated to constitutional status only in 1948.

The 1948 constitution was soon replaced by the 1952 constitution of the People's Republic of Romania. It can be argued that the 1952 Constitution was to the 1948 Constitution what the 1938 Constitution was to the 1923 Constitution – a clear regression in terms of individual rights and freedoms aimed at consolidating dictatorial power.

¹³ Published in Official Gazette no. 87bis/1948.

A notable feature of the 1952 Constitution, highlighting its restrictive nature regarding fundamental rights in line with communist ideology, was the limitation of private property to what was defined as personal property. Personal property was restricted to incomes and savings derived from work, the dwelling house, the auxiliary household of the house, household objects and personal use items, as well as inherited goods (Article 12).

At the same time, the state assumed responsibility for supporting farmers and craftsmen to improve their welfare (Article 10), even proclaiming a continuous increase in the material and cultural welfare of workers (Article 13).

The communist constitution also recognised the fundamental right to work, defining it as 'the right to obtain guaranteed and paid work according to its quantity and quality' (Article 77). The state pledged to eliminate the possibility of economic crises and eliminate unemployment. In theory, these objectives should have led to an increase in standard of living, as economic crises and unemployment were considered 'evils.' However, these measures were mere manifestations of a market economy that contradicted communist ideology.

The right to rest continued to be recognised, explicitly stated as an 8-hour workday for workers and employees (Article 78). Additionally, it acknowledged a workday of less than 8 hours for workers in arduous or particularly difficult conditions. Unlike the 1948 constitution, the 1952 Constitution explicitly stated that paid leave was granted annually, a welcome clarification.

The right to an old-age pension was still recognised, covering both sickness and work incapacity. Compared to the 1948 Constitution, there was a reduction in technical terms, as the old age pension, according to Article 79, was granted only in cases of sickness or work incapacity, not simply upon reaching retirement age, as specified in Article 25 of the 1948 Constitution. However, in terms of medical assistance, it was explicitly stated that it was free for workers, unlike the previous regulation, which did not mention gratuity but stipulated that rights and contributions were determined by law.

The 1952 Constitution recognised the right to education in Article 80, ensuring it through 'general, compulsory, and free elementary education'. Thus, the 1952 Constitution used the term 'elementary education' instead of 'primary education.' It also mentioned the continued provision of scholarships for deserving school students.

Furthermore, the 1952 Constitution included a special provision for women and families in Article 83. Constitutionally guaranteed facilities included assistance for mothers with multiple children or single mothers, paid maternity leave, the establishment of maternity homes, and the creation of nurseries and kindergartens.

Finally, the last communist constitution adopted in Romania was the 1965 Constitution of the Socialist Republic of Romania. This constitution introduced a

structural change, placing the regulations regarding fundamental rights at the beginning rather than at the end, as was customary in previous versions.

A first point of interest is Article 13, which established that the primary objective of the state was a continuous increase in the material and cultural welfare of the people.

The right to work continued to be regulated, but with some subtle modifications. It stated that every citizen is guaranteed the possibility of carrying out, according to his training, an activity in the economic, administrative, social, or cultural field, remunerated according to its quantity and quality (Article 18). This represented an extension of the right to work, explicitly mentioning that citizens could engage in activities according to their training. However, remuneration remained linked to the quantity and quality of work, without specifying a salary level to ensure a decent living according to the Constitution. Additionally, the Constitution provided for special protective measures for women and young people.

Regarding the right to rest, the 1965 Constitution did not bring fundamental changes compared to the 1952 Constitution, maintaining the 8-hour workday and introducing weekly rest (Article 19).

In the field of social insurance, the 1965 Constitution did not significantly change the previous regulations but distinguished between the state social insurance system for workers and employees and a separate system for members of cooperative organisations or other public organisations organised by these organisations (Article 20). The state remained obligated to provide medical assistance through its health institutions, but the gratuity was no longer mentioned. Paid maternity leave was still guaranteed, as specified in the previous constitution.

The 1965 Constitution guaranteed the right to education through general, compulsory, and free education and extended the gratuity of state education to all levels (Article 21). This regulation represented an extension of the fundamental right to education, including all levels of education, from primary to higher education, within the scope of gratuity.

In conclusion, during the period of communist constitutions, there were certain progresses in ensuring social rights, which were much better defined. However, simply declaring rights was insufficient; their effectiveness was also necessary.

4. Detailed exploration of the 1991 Constitution and its 2003 revision

During the period from December 1989 to December 1991, Romania did not have a constitution in force. The change in the communist regime necessitated the drafting of a new, liberal constitution that would address both economic aspects and the fundamental rights and freedoms of citizens, while also preserving the social rights gained under the communist regime.

To prepare for the adoption of the new constitution, the Constituent Assembly first approved a series of preliminary theses. In the context of this article, we focus on thesis no. 22, which outlined the following principles.

'The state, through its economic development policy and its social protection policy, is obligated to ensure optimal conditions for a decent standard of living for its citizens, corresponding to everyone' contribution to the socioeconomic progress of the country. The law will establish measures for an ecologically balanced environment; the development of localities based on a modern urban planning concept; the healthy development of children; the reduction of newborn and infant mortality; the prevention and treatment of diseases; and the combating of the spread of epidemics. Taxes on citizens' incomes can only be established by law and must ensure a fair distribution of fiscal burdens. '¹⁴

This thesis emphasises the state's commitment to the welfare and health of its citizens, as well as its responsibility to protect the environment. It also stipulates that taxes on citizens' incomes can only be set by law and must be equitably distributed.

It is important to note that this thesis covers not only fundamental rights, but also fundamental duties, such as financial contributions through taxes.

First, the thesis establishes a clear obligation for the state to provide optimal conditions for a decent standard of living. This responsibility must be fulfilled through two main means: economic development and social protection. However, it should not be overlooked that the state's obligation is attached to two conditions: citizenship and the contribution of everyone to the socioeconomic progress of the country. This latter aspect suggests that the right to a decent standard of living may be linked to the right or even an implicit duty to contribute to socioeconomic progress through work. In other words, the lack of contribution to socioeconomic progress may be equated with the lack of the right to a decent standard of living. This can be a valid interpretation, especially in the context of a social insurance system that involves contributions. However, it is important to mention that, in the case of social assistance, which does not rely on contributions, the Constituent Assembly may not have intended to eliminate this fundamental right.

Second, the thesis provides examples of measures that target both economic development and social protection, as well as public policies in general, to ensure a decent standard of living. For example, the adoption of measures to protect the environment can be seen both as an economic development measure and as a general policy, indicating an interconnection between economic development and environmental protection.

¹⁴ Dumitru Ionciică, Ortansa Stângă, Valentina Puiu, *Geneza Constituției României 1991 : lucrările Adunării Constituante*, Ed. Regia Autonomă „Monitorul Oficial”, București, 1998, p. 194.

Third, the thesis establishes the principle of legality regarding the tax system, specifying that taxes can only be imposed by law and must be applied equitably. Fiscal equity is particularly important, especially in the context of a liberal state, where taxation plays a significant role in formulating economic and social policy.

Finally, following debates in the Constituent Assembly, the 1991 Constitution was adopted. Article 1, paragraph (3) of the Constitution declares Romania, among other things, a social state. In this article, we will analyse Article 43 – ‘Standard of living’, Article 38 – ‘Labour and social protection of labour’ and Article 32 – ‘Right to education’.

Article 43 regulates the decent standard of living, partially incorporating the thesis mentioned above in an essential way. It should be noted that the article does not define what constitutes a decent standard of living, a problem often expressed in specialised doctrine: The phrase ‘decent standard of living’ belongs to the constituent legislator, who intended to regulate this right with a complex nature and, therefore, difficult to define.¹⁵

The first paragraph of this article essentially incorporates the first part of the preliminary thesis but does not mention the condition of contributing to socioeconomic progress. The second paragraph of the article details several rights related to social insurance and assistance, such as the right to a pension, paid maternity leave, medical assistance in state health units, and unemployment aid, without being an exhaustive list.

The social protection of labour is regulated in Article 38, paragraphs (2) and (3). Here, the existence of measures for workplace safety and hygiene, the establishment of a minimum wage, weekly rest, paid vacation, and the normal workday duration of 8 hours are established. However, forced labour is prohibited, with exceptions mentioned in Article 39.

For children and young people, the 1991 Constitution establishes a special regime of protection and assistance, providing measures such as state allowances for children, aid for sick or disabled children, the prohibition of child exploitation or their involvement in harmful activities, the prohibition of hiring minors under 15 years of age, and the obligation of authorities to contribute to ensuring conditions for young people to participate in political, social, economic, cultural, and sports life.

In addition, people with disabilities benefit from special protection according to Article 46. Measures such as prevention, treatment, rehabilitation, education, training, and social integration of persons with disabilities are mentioned, highlighting the importance of this policy at the national level.

The right to education is guaranteed through compulsory general education, as well as other forms such as high school, vocational, or higher education. State education is specified to be free, according to the law.

¹⁵ Andrei Popescu, Elena Simina Tănăsescu, *Nivelul de trai*, în Ioan Muraru, Elena Simina Tănăsescu (ed.), *Constituția României. Comentariu pe articole*, ed. a 2-a, Ed. C.H. Beck, București, 2017, p. 415.

The right to health protection is also guaranteed, with the state obligated to implement measures to ensure public hygiene and health. The organisation of medical assistance and a social insurance system for illness, accidents, maternity, and recovery is mentioned.

Shortly after the adoption of the Constitution, Romania ratified the revised European Social Charter through Law No. 74/1999¹⁶, adopted in Strasbourg on May 3, 1996. This act reaffirms the commitment of Council of Europe member states to ensure social rights to improve living standards and promote social well-being. By ratification, the provisions of this charter became mandatory in Romania, according to Article 20 of the Constitution, which prioritises international regulations when they are more favourable than domestic ones.

Part I presents the rights provided by the Charter in a summary, to be detailed in Part II.

The Charter regulates 31 social rights: (i) the right to work; (ii) the right to fair working conditions; (iii) the right to safety and hygiene at work; (iv) the right to fair remuneration; (v) the right to form and join trade unions and employers' associations; (vi) the right to collective bargaining; (vii) the right of children and young people to protection; (viii) the right of working women to maternity protection; (ix) the right to vocational guidance; (x) the right to vocational training; (xi) the right to health protection; (xii) the right to social security; (xiii) the right to social and medical assistance; (xiv) the right to benefit from social services; (xv) the right of persons with disabilities to independence, social integration, and participation in community life; (xvi) the right of the family to social, legal, and economic protection; (xvii) the right of children and adolescents to social, legal, and economic protection; (xviii) the right to engage in gainful occupation in the territory of other Contracting Parties; (xix) the right of migrant workers and their families to protection and assistance; (xx) the right to equal opportunities and treatment in employment and occupation without discrimination based on sex; (xxi) the right to information and consultation; (xxii) the right to take part in the determination and improvement of working conditions and the working environment; (xxiii) the right of elderly persons to social protection; (xxiv) the right to protection in cases of dismissal; (xxv) the right of workers to the protection of their claims in the event of the insolvency of their employer; (xxvi) the right to dignity at work; (xxvii) the right of workers with family responsibilities to equal opportunities and treatment; (xxviii) the right of workers' representatives to protection; (xxix) the right to information and consultation in collective redundancy procedures; (xxx) the right to protection against poverty and social exclusion; (xxxi) the right to housing.

¹⁶ Published in Official Gazette no. 193/1999.

Through Law No. 429/2003¹⁷, a revision of the 1991 Constitution of Romania was carried out, bringing some significant changes relevant to the purpose of this research. These changes include:

- (i) Elevating to the constitutional level the right of children and young people from disadvantaged families and those institutionalised to receive social scholarships.
- (ii) Introducing the right to access culture.
- (iii) Introducing the right to a healthy environment.
- (iv) Introducing the right to economic initiative.
- (v) Introducing the right to private social insurance.

These changes have provided additional protection and recognition of individual rights and freedoms, expanding the scope of fundamental rights in the Constitution of Romania.

The 1991 Constitution introduces a decent standard of living as a fundamental right as a goal of the social state, and public authorities must take steps to achieve this goal. The Romanian social state is still not well defined, at least at the constitutional level.

5. Conclusions and implications

The Romanian state has had numerous constitutions throughout its existence. Some constitutions prioritised the fundamental rights of citizens, while others were adopted precisely to curtail these rights. However, all of them, in essence, the need for progress.

Today, fundamental rights represent the most important provisions of a constitution as they limit the discretionary power of public authorities and establish positive obligations for states.

Social rights have progressively emerged, with the right to education being among the first social rights to be regulated. Subsequently, the regulations expanded to the realm of labour, social protection of labour, social insurance, and healthcare.

In Europe, thanks to the European Social Charter, we have a social system aimed at improving people's living standards, and the Romanian Constitution pursues the same objective. Although Romania does not recognise all the rights provided by the European Social Charter, some of these rights can still be implemented through laws passed by Parliament.

In conclusion, the evolution of the right to a decent standard of living in Romania, from the Constitution of 1923 to the present, has been marked by the political and economic changes.

¹⁷ Published in Official Gazette no. 758/2003.

It is imperative that the next revision of the Constitution reevaluates the social rights provided in the Romanian Constitution to align them with the European Social Charter and other international regulations in this regard, ensuring that constitutional protection is as effective as possible.