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**The Right to Protest - A Constitutional
Right Exercised on the Fringe of Law**

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Abstract: The right to protest is fundamental to the health of a democratic thinking. It represents one of the way of expressing the freedom of thought, manifestation, and association. In Romania, the recent events regarding the protest actions, mostly against the political class, have been characterized by a series of distinct features compared to the traditional movements: the transformation of the cyber space into a public space of contestation, the use of social networks for organizing and mobilizing the persons involved in such actions called spontaneous, the absence of an assumed leadership - all these characteristics has established that this constitutional right to protest, recognized since the Antiquity, was exercised on the fringe of law. This right represents one of the legal instruments by which the citizens can transmit to authorities their disagreement about their actions or interests.

Keywords: protest; democracy; action; freedom of thought; freedom of association

Introduction

Contesting and protest movements are indispensable tools for a functioning democracy. Before the right to vote, we had the right to protest. The protest is a means of report the government, a means of forming a community and having a voice that might be powerless by itself. But, together with other voices, this one voice becomes strong. This is a means of amplifying a message and, at the same time, represents a means of physical resistance. A strong

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In these circumstances, we consider appropriate to analyze the evolution of the protest in Romania, beginning with the events of '89 up to now, taking into account the legal regulation in the field and the great influence of the development of information technology in the recent years on the exercise of the right to protest.

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Evolution of the Protest in Romania

The protests represent forms of social movement the objective of which is to change the functioning of social and political institutions when they deviate considerably from the expectations of citizens. These protests can be moderate when they do not involve violence, radicalism and the replacement of a regime, involving violent manifestations and attacks on the existing institutions. The contestation denies a certain undesirable social and political order, a right is claimed or an obligation is denied. Any contestation is usually finalized with a demand aimed at changing or bringing the purpose of contestation to the bounds of desirability.

The trigger of the protests may be a gesture, a decision or a fact labeled and interpreted as an undesirable behavior of political leadership.

In the case of Romania, the protests in recent years have been triggered by the violation of the principle of good governance by the arrogance, lack of transparency and the lack of interest of political class shown for the fundamental rights of citizens (the right to vote, the right to be informed, consultations, etc.). Since the revolution in 1989, the evolution of protests in Romania were closely connected to the technological progress and the means of information dissemination.

If in the past (for example, in the June 1990 or the protests organized by trade unions) a leader had to assume the organization and the leadership of a far-reaching manifestation, the social networks have now wiped out the need for a revolutionary personality. The first moment when Facebook mobilized the people in the street was on the occasion of the protest against the Health Law in January 2012, when in our nation's capital and in other 51 cities in the country, thousands of Romanians went out in the street for 5 days. Violence, between protesters and law enforcement occurred in Bucharest. The protesters expressed their solidarity with Raed Arafat, the founder of SMURD and expressed their opposition against the new health system promoted by the Government. The effect of this event was a victory for the protesters: Raed Arafat returns to his position of Undersecretary of State at the Ministry of Health, and the new project regarding the Health Law was cancelled.

Another big protest in the autumn of 2013 took place over a month, against the Rosia Montana project when, in the name of General Solidarity, almost 200,000 people were chanting "Only being united we can save Rosia Montana" and "Leave your houses if you care!" The protest in October 2015, having a great emotional impact after the Colectiv tragedy, resulted in the resignation of the government at that time.

The series of protests cannot be concluded without mentioning the impressive street movements in the winter of 2017 against the measures taken by the government in the field of justice, when about 600,000 people manifested for several days throughout the country, the effect being again victory for the dissatisfied.

Until now, the common aspect of the protests in Romania was the generally absence of violence or peacefulness. Unfortunately, during the protest of August 2018, the diaspora against the government, the violence has degenerated, with confrontations between the protesters and the law enforcement, resulting in significant personal injuries in both sides.

This is the moment when the debate about the lawfulness of exercising the right to protest took place in the public space and targeting the so-called *spontaneous* protest and consequently, unassumed.

I believe that the answer this question requires to understand how these spontaneous protests arise, and the answer lies in the influence of the virtual environment in mobilizing the masses.

The Role of Social Networks in Organizing the Protest Actions

If 1989 was the year of the revolution on television, the protests in recent years are characterized by the mobilization through social networks. However, the televisions play the role of a resonant box, an amplifier of the message, but the force of protest lies in the ability of the virtual space to transform itself into a symbolical space of contestation and mobilization of citizens.

Under the shield of anonymity, the keystone of the protests is formed by social movement activists, with experience in organizing such events, well positioned in the nodes of social networks.

The key issue for the protests is centered on generating solidarity by linking the individual interests and emotions to the collective interest and emotion. The undesirable behavior of politicians has been defined and labeled as a generator of uncertainty, perceived as a real threat to the individual goals. The multiplication effect is based on the need to reduce the uncertainty by associating the identity with the participants to the movement and the dissociation from others. Thus, the phenomenon WE and THEY appears. The vulnerability of the system (the accused politicians do not communicate with them, the gendarmes do not react violently) amplifies the individual courage to define their virtual (on Facebook) or real (in the street) membership to the protest movement. This is the mechanism which favors the expansion, the diffusion and the institutionalization of the protest.

Then, the process of certification or recognition of the movement by authorities or the media takes place. In parallel, the public support or recognition by the silent majority takes place. As the critical mass is reached, the emotional effect is amplified and the mobilization of individuals in protests is much more likely.

The crowd generates the impression of collective force, a force that otherwise cannot be exercised individually. Therefore, the association with the protest crowd is an act of reducing the individual uncertainty. The normative pressure of society is diluted in the crowd, and the disobedience is much more likely under the anonymity and the protection of the protest crowd. The crowd led to de-personalization or loss of lawful restrictions on the deviant behavior. The feeling of belonging to a protest group can sometimes be strengthened by practicing a deviant behavior under individual conditions. Under the empire of the crowd, the communication of message often takes place peripherally (emotionally, based on credibility, dispositions and assignments) and not centrally (using rational arguments).

The spaces used by protesters such as the University Square or Victory Square have become symbolic spaces for contestations, which give legitimacy to the protest actions. This legitimacy attributed by the contestants is sufficient, in their view, to ignore the legal regulations in the field of protests. Practically, their right to protest, in any form and under any circumstances, is more important than other legal norms.

Therefore, most contestations are, at the beginning, on the fringe of law, but the violation of rules (lack of legal protest permits, blocking traffic on public roads) becomes for the protesters irrelevant compared to the legitimacy of their protest.

New Legal Provisions on Protests

Public meetings - the protest - alongside the right to vote - are considered the essence of the democratic rule of law. Over the years, people have become aware that public gatherings are one of the most effective ways to fight injustice.

If, in the long-forgotten centuries, the organization of a protest was not such a complex process, today, in today's Romania is important to know that the freedom of assembly and expression is guaranteed by Law 60/1991.

According to Law 60, the public meetings are authorized on the basis of application submitted by initiators, who are the organizers of the assembly (they are in charge of conducting the respective action in good condition, they cooperate with the authorities, communicate the directions of mass flow, etc.)

But not only Law 60/1991 regulates the right to protest, which is also guaranteed by the Constitution of Romania according to Article 39, regarding "The Freedom of Assemblies". The article clearly states that the public assemblies should be held only peacefully: "*Public meetings, demonstrations, processions or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind*".

The novelty regarding the conduct of protests within the legal framework refers to the recent decision of the High Court of Cassation. If, prior to the Court's decision, Article 3 of Law 60/1991 did not provided the obligation to declare and assume in advance the spontaneous protest – "*Should not be declared in advance of public meetings whose purpose is cultural and artistic events, sports, religious, commemorative, the provision of official visits, as well as those taking place outside or inside the premises or property of legal persons of public or private interest*"- at present, after the last violent protest in August 2018, things have changed radically.

The High Court of Cassation and Justice decided that the spontaneous or announced protests in the virtual space, then organized in the street, should be declared illegal if not assumed by anyone. Anti-government protests in Victory Square, for example, will now be considered illegal unless they have been previously announced to the City Hall and implicitly are not assumed by one or more organizers.

"There is an obligation to declare in advance the public meetings when meetings are to take place in markets or on public roads or other places in the immediate vicinity of the premises or buildings of legal persons of public or private interest."

Obviously, the reactions of protest supporters against this decision emerged very quickly, as they considered that the decision affected their right to free expression, the protest being a part of free expression. The representatives of the association *The Institutional Evolution* also argue that the ICCJ has limited the right of citizens to protest spontaneously and offers the possibility of the Gendarmerie to practice abuses by large fines and by force intervention, even if it is a peaceful protest.

Leaving aside all the legislative burden, it would be ideal that all those taking part in a protest comply with three simple rules. The purpose of the meeting would already be half reached if the following rules would be understood and observed by everyone:

- No verbal violence;
- No damages;
- No provocation against law enforcement.

At the same time, it is important to note that the explicit regulation of the conditions for organizing, preparing and conducting the public assemblies does not represent an attempt by the state to limit a fundamental right of the citizen, but a plastic expression of the protection of public values.

I believe that a useful solution in this respect would be an update of the 60/1991 law by the government, in consultation with the parties and civil society, and the freedom of assembly to be doubled by assuming natural responsibilities in order to avoid hooligan incidents and anarchic manifestations.

Also, in order to have an ample and fair picture of public gathering issues, the competent authorities are required to take into account the requirements of those anonymous organizers working in the online environment responsible for mobilizing people in the street because their influence can no longer be denied. Social networks became so powerful they can change the political agenda of parties at some point. The case of the Government Ordinance on Pardoning and Changing the Criminal Code or the Rosia Montana Project are edifying.

Thus, the politicians need to be prepared to accept that they are no longer alone on the stage of power. Now, complementary power centers acting as regulators in the functioning of democracy appear, which represent not alternative but complementary means.

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