

# PRINCIPLES OF SOCIAL JUSTICE IN ROMANIAN CONSTITUTION

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## **Abstract:**

*Economics (and the public policies, as well) are today seriously preoccupied by the fairness of organizing and functioning of the society, so the morality of social cooperation becoming more and more increasing. In a word, the economic theory seems to join to the commandments of the social justice principles and institutions. In such a context, the paper perform a logical and institutional analysis of the Romanian Constitution in order to identify, classify, and assess the main constitutional clauses belonging to the social justice area. Such an analysis is not done by now, at least from the economic perspective, and the value added of the paper could be both of conceptual, institutional (i.e. political), and practical (i.e. regarding the just social cooperation). The basic conclusions could ground future revisions of Romanian Constitution so the Romanian society becoming more and more a fair one.*

Keywords: social justice, Constitution, fairness, social cooperation, morality

JEL Classification: B41, C02, H41

## **Preamble**

The social justice is increasingly entering the public debates regarding the quality of life, the free society, and the democratic functioning of such a society. While economists are focused especially on the economic inequality (Collins, 2019) measured as distribution (and, finally, as level) of income or wealth, the policy makers should pay also more attention to issues of normative (primarily, constitutional) provisions aimed at to ensure avoiding of (or, at least, reducing of) such an economic inequality. In other words, while the economists are preponderantly looking at the final result, or to the state-vector of economic inequality, the policy makers (but also, the sociologists, philosophers and others of the same) must be interested by the mechanisms (processes) which lead to that final state. Or, equally, they must examine the structural (i.e., normative) causes which are likely to move the society towards one or other of the economic inequality states.

The author of this paper thinks that the basic structure of a society is, in its very ground, stipulated into Constitution. In fact, I believe that the Constitution is basically, a set of axioms (or constitutional principles) from which are derived, within a democratic mechanisms, the „theorems”, that is, the primary, secondary, and tertiary legislation that drive the forming of the final state of the distribution and holding of economic product.

In fact, the elaboration of the Constitution, being the second stage of building up the basic structure of the society (after the social contract being „signed”) confers either a procedural character or a outcome-based one to the social justice (Barry, 2015) functioning.

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## Objectives of the Paper

The paper aims to get four main objectives:

- whether Romanian Constitution contains a procedural social justice or an outcome-based one (or a mix of the two);
- whether Romanian Constitution accounts on the human being capabilities;
- whether Romanian Constitution contains clauses regarding the social justice extending beyond the human beings (towards non-human animals or to international relationships);
- whether Romanian Constitution is focused (and in which degree) on the social capital of society.

## Methodology Used

The methodology used in the paper consists in two inter-related ways:

- i. a logical examination of the constitutional clauses in force of the Romanian Constitution, based on which the conclusions regarding the potential of these clauses to provide (or „deliver”) the social justice is extracted and interpreted;
- ii. an institutional assessing of the constitutional provisions regarding social justice, on which the conclusions on the feasibility of those provisions in the social practice.

## Research Organization

In this context, the research is organized in the following steps:

- a. scrutinizing of the Romanian Constitution, in searching all the clauses regarding the social justice;
  - *expected result:* the list of clauses in force (constitutional „axioms”) aimed at to regulate the social justice objectifying and functioning;
- b. identifying and applying of a criterion to distinguish between procedural social justice and outcome-oriented one, as such a mark can be extracted from the constitutional clauses;
  - *expected result:* the institutional qualifying of the type of social justice in Romania, as it is designed into Constitution;
- c. identifying and interpreting of the capabilities of human being (individuals, citizens) which, either explicitly or implicitly, Romanian Constitution stipulates as mandatorily be publicly provided;
  - *expected result:* additionally characterization of the social justice type that is working in Romania;
- d. identifying and evaluating the constitutional provisions on the social justice in its extension towards non-human animals or towards the international (or global, if the case) social justice;
  - *expected result:* to get an image on the sphere of social justice as it is embedded by the constitutional provisions in force;
- e. identifying and assessing the species of social capital which are nominalized or presumed (after the case) in the constitutional text;

- *expected result*: an evaluation of the degree (and quality) in which Romanian Constitution has in its attention the social capital as „vehicle” to deliver the social welfare (Dean, 2020) as well as the individual wellbeing (Cloninger, 2008).

The five results expected to be got by the research have the potential to reach the four main objectives assumed. In addition, they could open new directions for further research in the field of social justice (or, narrower, economic justice).

## Clauses Regarding Social Justice in Romanian Constitution

By scrutinizing Romanian Constitution, the following clauses regarding social justice have been identified (Table 1).

**Table 1**

### Collecting the Social Justice Clauses in Romanian Constitution

Title	Art.	Clause	Code
General principles	1(3)	Romania is a state governed by the rule of law, democratic and social, in which human dignity, the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism are supreme values...	C1
	4(2)	Romania is the common and indivisible homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin	C2
Fundamental rights, liberties, and duties	16(1)	Citizens are equal before the law and public authorities, without privileges and without discrimination	C3
	16(2)	No one is above the law.	C4
	16(3)	Romanian state guarantees equal opportunities between women and men...	C5
	20(1)	The constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the Covenants and the other treaties to which Romania is part	C6
	22(1)	The right to life, as well as the right to physical and mental integrity of the person are guaranteed	C7
	23(1)	Individual freedom and security of the person are inviolable	C8
	25(1)	The right to free movement is guaranteed	C9
	25(2)	Every citizen is guaranteed the right to establish his domicile or residence in any locality in the country, to emigrate, as well as to return to the country	C10
	26(1)	Public authorities respect and protect intimate, family and private life	C11
	26(2)	The natural person has the right to dispose of himself, if s/he does not violate the rights and freedoms of others, public order or morals	C12
	29(1)	Freedom of thought and opinion, as well as freedom of religious faiths, cannot be restricted in any way. No one can be compelled to adopt an opinion or adhere to a religious faith contrary to his convictions	C13
	29(2)	Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect	C14
	29(6)	Parents or guardians have the right to ensure, according to their own beliefs, the education of minor children for whom they are responsible	C15
	30(1)	Freedom of expression of thoughts, opinions or beliefs and freedom of creation of any kind, by word of mouth, writing, images, sounds or other means of communication in public, are inviolable	C16
	30(6)	Freedom of expression cannot prejudice the dignity, honour, private life of the person or the right to one's own image	C17
	31(1)	The right of the person to have access to any information of public interest cannot be restricted	C18
	32(1)	The right to education is ensured through compulsory general education, through high school and vocational education, through higher education, as well as through other forms of instruction and improvement	C19
	32(3)	The right of persons belonging to national minorities to learn their mother tongue and the right to be trained in that language are guaranteed; the modalities of exercising these rights are established by law	C20
	32(4)	State education is free, according to the law. The state grants social scholarships to children and young people from disadvantaged and institutionalized families, in accordance with the law	C21
	32(7)	The state ensures the freedom of religious education, according to the specific requirements of each cult. In state schools, religious education is organized and guaranteed by law	C22
	33(1)	Access to culture is guaranteed, in accordance with the law	C23
	33(2)	The freedom of the person to develop his spirituality and to access the values of national	C24

	and universal culture cannot be restricted	
34(1)	The right to health care is guaranteed	C25
35(1)	The state recognizes the right of every person to a healthy and ecologically balanced environment	C26
36(1)	Citizens have the right to vote from the age of 18, fulfilled until election day inclusive	C27
36(2)	The mentally weak or alienated, placed under interdiction, and the persons condemned, by final court decision, to the loss of electoral rights do not have the right to vote	C28
39	Rallies, demonstrations, processions or any other gatherings are free and can be organized and conducted only peacefully, without any weapons	C29
40(1)	Citizens can freely associate in political parties, trade unions, employers' associations and other forms of association	C30
41(1)	The right to work cannot be restricted. The choice of profession, trade or occupation, as well as the job is free	C31
41(3)	At equal work, women have equal pay for men	C32
41(5)	The right to collective bargaining in labour matters and the binding nature of collective agreements are guaranteed	C33
43(1)	Employees have the right to strike to defend their professional, economic and social interests	C34
44(1)	The property right, as well as the claims on the state, are guaranteed	C35
44(2)	Private property is equally guaranteed and protected by law, regardless of the owner	C36
45	The free access of the person to an economic activity, free initiative and their exercise under the law are guaranteed	C37
46	The right to inheritance is guaranteed	C38
47(1)	The state is obliged to take measures for economic development and social protection, in order to ensure a decent standard of living for its citizens	C39
47(2)	Citizens have the right to a pension, to paid maternity leave, to medical assistance in state health units, to unemployment benefits and to other forms of public or private social insurance, provided by law. Citizens also have the right to social assistance measures, according to the law	C40
48(1)	The family is based on the freely consented marriage between the spouses, on their equality and on the right and duty of the parents to ensure the upbringing, education and training of the children	C41
48(3)	Children out of wedlock are equal before the law with those in marriage	C42
49(1)	Children and young people enjoy a special regime of protection and assistance in the realization of their rights	C43
49(2)	The state provides allowances for children and aid for the care of sick or disabled children. Other forms of social protection of children and young people are established by law	C44
49(3)	The exploitation of minors, their use in activities that would harm their health, morals or that would endanger their lives or normal development are prohibited	C45
49(5)	The public authorities have the obligation to contribute to ensuring the conditions for the free participation of young people in the political, social, economic, cultural and sports life of the country	C46
50	People with disabilities enjoy special protection. The state ensures the implementation of a national policy of equal opportunities, prevention and treatment of disability, in order to effectively involve persons with disabilities in community life, respecting the rights and duties of parents and guardians	C47
51(1)	Citizens have the right to address public authorities through petitions made only on behalf of the signatories	C48
52(1)	The person injured in a right or in a legitimate interest, by a public authority, by an administrative act or by not resolving a request within the legal term, is entitled to obtain the recognition of the claimed right or legitimate interest, annulment of the act and damage repair	C49
53(1)	The exercise of certain rights or freedoms may be restricted only by law	C50
53(2)	Restriction can only be ordered if it is necessary in a democratic society. The measure must be proportionate to the situation which gave rise to it, be applied in a non-discriminatory manner and without prejudice to the existence of a right or freedom.	C51
57	Romanian citizens, foreign citizens and stateless persons must exercise their constitutional rights and freedoms in good faith, without violating the rights and freedoms of others	C52

*Source: Romanian Constitution (author's processing).*

## Core Analysis

1. Regarding objective 1: what kind of social justice provides Romanian Constitution?

Social justice can be, principled, of two basic kinds: a) procedural social justice; b) outcome-based social justice.

(a)Procedural social justice (PSJ)<sup>17</sup> implies to establish the basic principles agreed by the participants parts when have „signed” the social contract (*Dent, 2008*), so that they certainly and always ”deliver” as fair results as those basic principles are in turn.<sup>18</sup> Although PSJ is not factually testable, it can be tested, instead, in a confirmabilism form, if such a testing is autonomously put in place.

(b)Outcome-based social justice (OSJ)<sup>19</sup> implies to provide a list of final results which social justice applying must achieve. OSJ is assessed as fair (or not) to the extent in which the results of its applying are fair (or not). OSJ is, so, factually testable, although not in a very known factually way, but rather by natural experiments.<sup>20</sup>

PSJ is „announced” by the primary goods providing or distribution, because their possession are aimed to ensure the getting of secondary or tertiary goods. In fact, according to the pervasive acceptance of the social justice (Rawls, 1999), there are two fundamental primary goods: 1) equal liberties provided to individuals; 2) equal access of individuals to social opportunities (positions and benefits) offered by the social cooperation guaranteed by social contract (Gibbons, 1999). On these bases, we will examine the provisions collected in Table 1, in order to identify those clauses claiming the primary goods distribution in Romanian society. The results of this scrutinizing are as follows (Table 2).

**Table 2**

**Selected Clauses in Romanian Constitution Focused on the Social Justice Type**

PSJ		OSJ	
Regarding equal liberties spreading	Regarding equal opportunities availability	Regarding outcome naming	Regarding outcome guaranteeing
C12	C2	C8	C7
C17	C5	C30	C10
C52	C19	C31	C14
-	C25	C35	C36
-	C32	-	C37

Source: *Romanian Constitution, Table 1 (author’s processing)*.

Main findings regarding the first objective of research are the following:

- The numbers of clauses aimed at to regulate the two types of social justice are almost equal: eight clauses for PSJ, and nine clauses for OSJ. This means that Romanian Constitution (*The Constitution of Romania, 1991*) provide principles (”axioms”) equally for both those types;
- Within PSJ, more clauses are stipulated about an equal access to social opportunities (five) than clauses stipulated about an equal spreading (distribution) of liberties at individual level (three). This means that Romanian Constitution is concerned more about the actual functioning of the freedom into society than its nominal allowing;

<sup>17</sup> The most known exponent of the procedural social justice is John Rawls with his *A Theory of Justice* (The Belknap Press of Harvard University Press, 1999).

<sup>18</sup> To be observed that this kind of social justice does not allow a direct factual testing (for example in a Popper-ian way).

<sup>19</sup> The most known exponent of the outcome-based social justice is Martha Nussbaum, with her *Frontiers of Justice* (The Belknap Press of Harvard University Press, 2006).

<sup>20</sup> A natural experiments consists in observing, based on a program of such observation, a given phenomenon or event in its genuine development (not in a dedicated organized experiment).

- Within OSJ, the guaranteeing of social justice outcomes is contained into five clauses, while nominal providing of those outcomes is contained into four clauses, which means that a more importance is given by Constitution for guaranteeing than for naming the concrete cases of ensuring the outcomes of social justice.

## 2. Regarding objective 2: Is social justice in Romania referring to capabilities?

Generally, by capabilities, in the sense of social justice, are understood those results which individuals' life reaches within the society, so that they can compose the bases of their plenary human life, with both worth and dignity. In specialty literature (Nussbaum, 2006), are held ten such results that are named capabilities, as follows: 1) life; 2) bodily health; 3) bodily integrity; 4) sense, imagination, and thought; 5) emotions; 6) practical reason; 7) affiliation; 8) other species; 9) play; 10) control over environment (political and material).

Based on such a list of capabilities, from Romanian Constitution can be extracted the following clauses involved by those items (Table 3).

**Table 3**

### Selected Clauses in Romanian Constitution Focused on the Social Justice Type

	Focused on PSJ	Focused on OSJ
Life	C7; C11	-
Bodily health	C25	C26
Bodily integrity	-	C8
Sense, imagination, and thought	C18; C19; C21; C23	C14
Emotions	C16	-
Practical reason	C13	-
Affiliation	C20; C32; C33; C34	C27; C29; C30
Other species	-	-
Play	-	-
Control over environment	-	-
-Political	-	-
-Material	-	C10

*Source: Romanian Constitution, Table 1 (author's processing).*

Main findings regarding the second objective of research are the following:

- The constitutional clauses focused on the procedural social justice are twice more numerous than those regarding the outcome-based social justice, which means Romanian Constitution is rather a procedural one;
- Regarding the PSJ, the most constitutional clauses address two capabilities of individuals (four for each of them): a) sense, imagination, and thought; b) affiliation;
- Regarding the OSJ, the most constitutional clauses address the affiliation;
- In total, the most addressed capability is the affiliation;
- There are three capabilities which are at all addressed: a) other species; b) play; c) control over environment. Although, in last instance, C42 and C43 could be counted as addressing, somewhat tangential the capability of play. Likewise, the material dimension of the capability called material control over the environment seems be addressed by C10.

### 3. Regarding objective 3: Is social justice in Romania extended beyond humans?

In specialty literature, there are held three "worlds" outside and beyond human beings which could (or, often, should) be subject of social justice: a) non-human animals<sup>21</sup>; b) other living species; c) international political environment (Nussbaum, 2006).

Table 4 collects the clauses regarding the three areas, as they are mentioned in Romanian Constitution.

**Table 4**

**Selected clauses in Romanian Constitution focused on the social justice type**

Non-human animals	Other living species	International Political Environment
-	-	C2
-	-	C6
-	-	C10
-	-	C20
-	-	C52

Source: Romanian Constitution, Table 1 (author's processing).

Main findings regarding the third objective of research are the following:

- In Romanian Constitution no clause addresses the non-human animals or other living species;
- Regarding the International political environment, five specific clauses were been identified, which means Constitution put the basic principles in order to build and configure Romanian international relationships.

### 4. Regarding objective 4: Is social justice in Romania related to social capital?

In my opinion, social justice implementing (objectifying) is strongly conditioned by its relationship with social capital (Putnam, 2004) . Generally, by social capital is understood that axiological features (either formal or informal) of social cooperation that ensure, both at individual level and of societal one, a plenary functioning of life.<sup>22</sup> There are six types of social capital, grouped in two classes, as following:

a. Based on socialization criterion (**IS**), that is: the process of insertion of the individuals into the society (i.e., of building of the society by the individuals):<sup>23</sup>

- **(C) communication**: the degree and the quality in which the individuals can freely communicate, live, and work with other individuals; this type of social capital is especially „responsible” for the communitization process (building up of such communities as: families, teams, clubs, organizations, countries, integrated regions, all types of social networks etc.);
- **(P) participation**<sup>24</sup>: the degree and the quality in which the individuals have the possibility to participate to the public decision making<sup>25</sup>; this type of social capital is especially "responsible" for building up the political<sup>26</sup> structure of the society;

<sup>21</sup> Humans are considered a "functional" mix between animality and consciousness.

<sup>22</sup> A macro-measure of such a plenary life functioning is the social welfare (see the study *Social justice – a vehicle of social welfare*, in processing for Institute of Research of Quality of Life (RIQL), Romanian Academy, authors: Emil Dinga and Gabriela-Mariana Ionescu).

<sup>23</sup> See the study *Social justice – a vehicle of social welfare*, above mentioned.

<sup>24</sup> Notions as engagement or implication can be considered as equivalent.

<sup>25</sup> This includes the formal construction of institutions themselves that follow to host the participation of the individuals.

<sup>26</sup> Here the notion of political has the widest possible signification.

- **(M) mutualisation**: the degree and the quality in which common goals and common means can be built from the inter-individual harmonization or competition<sup>27</sup>; this type of social capital is "responsible" for all contractual<sup>28</sup> associations among individuals (including the nation, or the state) (Rousseau, 2014).
- b. Based on individualization criterion (**SI**), that is: the process of autonomization of the individual inside the society (i.e., of building of the individuals by the society):
- **(F) freedom**: the degree in which the individuals can use their own free will<sup>29</sup>;
  - **(T) trust**: the degree in which the individuals freely agree to pass some of their rights or interests to the state (the Government);
  - **(S) symmetry**<sup>30</sup>: the degree in which the individuals have the same access to the societal positive externalities (education, justice, health, other public goods or chances).

Table 5 synthesises the clauses in Romanian Constitution that are referring to the social capital as described above.

Table 5

Selected Clauses in Romanian Constitution Focused on the Social Justice Type

IS			SI		
C	P	M	F	T	S
C13	C5	C3	C1	C11	C4
C14	C9	C33	C8	C35	C12
C16	C23	C38	C37	C38	C17
C18	C27	C40	-	C41	C32
C48	C29	C44	-	C47	C36
	C30	-	-	C49	C42
-	C46	-	-	C52	C43

Source: Romanian Constitution, Table 1 (author's processing).

Main findings regarding the third objective of research are the following:

- All the categories of social capital are addressed by the Constitutional clauses;
- Regarding the social capital of socialization, the most represented is *participation*, with seven clauses, followed by communication, and mutualisation, with five clauses each;
- Regarding the social capital of individualization, *trust* and *symmetry* are focused with seven clauses each, while freedom is addressed by three clauses:
- In fact, the two classes of social capital (of socialization, and of individualization, respectively) are equally addressed in Romanian Constitution, namely by 17 clauses each, which means Constitution gives the same attention for each of these classes of social capital.

<sup>27</sup> See here also the concepts of *bonding social capital* (for homogenous individuals), or of *bridging social capital* (for heterogeneous individuals), introduced by **Robert D. Putnam**.

<sup>28</sup> Generally, by contract must be understood simply a free agreement, without any compulsory written or other persistent prove (for example, the J.J. **Rousseau**-ian social contract).

<sup>29</sup> Shortly, the free will signifies the possibility, capacity and willingness of the individuals to oppose or reject external decisions or acts (more precisely, to forbear or refuse them).

<sup>30</sup> Probably, a more appropriate denomination for this concept could be homogeneity.

## Results and Conclusions

The paper, on the base on a logical examination, identified the main clauses in force in the Romanian Constitution and argued their potential to offer the individual the two types of social justice, social procedural justice (PSJ) and social justice based on results (RSJ).

We concluded that the number of clauses aimed at regulating the two types of social justice, as they were defined and explained in this paper are almost equal in number in the Romanian Constitution and provides equal principles for both types of social justice.

In terms of capabilities, the clauses in the Romanian Constitution focused on procedural social justice are twice as numerous as those on results-based social justice, which leads to the conclusion that the Romanian Constitution, as I have argued, is rather a procedural one.

Referring to the three worlds outside and beyond human beings that could be the object of social justice, the paper concluded that in the Romanian Constitution no clause refers to non-human beings but there are, stipulated in clauses, the basic principles for building and configuring Romanian international relations.

In conclusion, it was shown that all categories of social capital are addressed through constitutional clauses.

The author considers that, in the current stage of the research, the main objectives established in the paper have been achieved.

## Further Research Suggestions

It can be appreciated that on this research segment of social justice there can be at least three future directions of research that the author proposes. The first direction of research could be to examine other European constitutions, but the research could be extended to the Constitution of the United States of America. The second direction of research could materialize in the elaboration of a study on the project, for the time being, abandoned, of the elaboration of a European Constitution. The third direction of research could be materialized by elaborating proposals to modify the Romanian Constitution, from the perspective of social justice, taking into account the conclusions of this paper. In fact, this paper aimed at the more prominent and analytical representation of social justice, both procedural social justice and outcome-based social justice, in the Romanian Constitution (Comparative Constitutions Project, 2016). The paper argues that the application of social justice measures ensures the social sustainability of society which is the basis of economic sustainability and not the other way around, as will be argued in future papers to be developed on this research segment of social justice.

## Acknowledgment

The author, as a PhD student and co-organizer of the Seminar „Logic and Research Methodology of Economic Knowledge "Nicholas Georgescu-Roegen", taking place at the Center for Financial and Monetary Research „Victor Slăvescu” within Romanian Academy, thanks to the full members and guests for valuable comments and ideas expressed in the debate sessions which also covered the field of social justice.

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