

BUCHAREST UNIVERSITY OF ECONOMIC STUDIES

Doctoral School Council

Doctoral School of Law

**CIVIL SOCIETY – THE FOUNDATION OF FUNCTIONAL
DEMOCRACY**

LOREDANA D.F. COSTINA

Doctoral supervisor: Prof. univ. dr. MIHAI BĂDESCU

București, 2025

SUMMARY

KEYWORDS: *functional democracy, civil society, associations, foundations, trade unions, employers' organizations, pressure groups, popular initiative for constitutional revision, legislative popular initiative, transparency in decision-making, active legal standing of civil society, representativeness, legitimacy, Economic and Social Council, Supreme Council of the Judiciary, advocacy, lobbying, petitions, protests.*

Starting from the premise that democracy cannot be exercised solely through voting or periodic elections held at intervals established by constitutional and legal norms, but rather must be practiced daily through mechanisms that enable citizen participation in governance — even if indirect, yet more active than the mere delegation of power from the people to elected representatives — and also through oversight and direct involvement in decisions affecting the daily life of the polity, this doctoral thesis seeks to analyze the legal foundations of continuous civic participation. It focuses on the institutionalization of civil society as a legitimate and indispensable actor within a functional democracy.

This thesis offers a comprehensive analysis of the legal and institutional role of civil society in the architecture of a functional democracy, based on the premise that the rule of law cannot be sustainably upheld without an autonomous, normatively articulated civil society capable of exercising effective control over public power.

It presents original contributions both from a theoretical standpoint — by examining the concepts of "functional democracy" and "civil society" from a legal perspective rather than a sociological or political one — and from a practical standpoint, by providing a basis for developing legal instruments that enhance civil society's capacity to fulfill its critical and constructive role in a genuine democracy, including through the formulation of *lex ferenda* proposals.

SUMMARY

ABBREVIATIONS	7
INTRODUCTION.....	9
1. Motivation for Choosing the Topic	9
2. Research Methodology	12
2.1. Research Questions	12
2.2. Research Methods	13
2.3. State of Research	15
I. FUNCTIONAL DEMOCRACY.....	20
1.1. The Concept of Democracy.....	20
1.2. Evolution of the Concept of Democracy	21
1.3. Types of Democracies	35
1.4. The Legalization of Democracy	42
1.5. Functional Democracy.....	54
1.6. The Constitutionalization of Functional Democracy.....	57
1.7. Conclusions	73
II. THE CONCEPT OF CIVIL SOCIETY IN LEGAL SCIENCE.....	76
2.1. The Notion of Civil Society	76
2.2. Origin and Evolution of Civil Society	83
2.3. The Role of Civil Society in Democracy.....	89
2.4. Levels of Action of Civil Society.....	96
2.5. Defining Characteristics of Civil Society Organizations.....	107
2.6. Pressure Groups.....	112
2.7. Controversial Aspects of Civil Society	119
2.7.1. Legitimacy.....	119
2.7.2. Representativeness	122
2.7.3. Funding Transparency	124
2.8. Conclusions	127
III. THE LEGAL STATUS OF TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS	129
3.1. Legal Status of Trade Unions.....	129
3.1.1. History of Trade Unions in Romania	129
3.1.3. Trade Unions after 1991: Analysis of 4 Laws.....	139
3.1.4. Trade Union Members in ECtHR Case Law	149
3.1.5. The Concept of Trade Union Representativeness	152
3.2. Legal Status of Employers' Organizations	159
3.2.1. Origin and Evolution of Employers' Organizations	159

3.2.2. Employers' Organizations after 2001: Analysis of 3 Laws.....	160
3.2.3. The Concept of Employers' Representativeness.....	165
3.3. Conclusions	167
IV. THE LEGAL STATUS OF ASSOCIATIONS AND FOUNDATIONS.....	171
4.1. History of Associations and Foundations in Romania	171
4.1.1. Associations and Foundations in Roman Law	171
4.1.2. Associations and Foundations in the Calimach Code	173
4.1.4. Freedom of Association in the 1923 Constitution	Eroare! Marcă în document nedefinit.
4.2. Critical Analysis of the Current Legal Framework	178
4.2.1. Non-Profit Character of Associations	179
4.2.2. Establishment Procedure: Between Control and Modernization.....	186
4.2.3. Registration of Association Members	191
4.2.4. The Censor in Associations with Fewer than 15 Members	195
4.2.5. The Beneficial Owner of Associations and Foundations	198
4.2.6. Granting Public Utility Status	208
4.3. Conclusions	209
V. LEGAL INSTRUMENTS FOR CIVIL SOCIETY ACTION.....	212
5.1. Citizens' Initiative to Revise the Romanian Constitution	212
5.2. Popular Legislative Initiative	219
5.3. European Citizens' Legislative Initiative	225
5.4. Participation in Public Debate on Secondary Legislation	228
5.5. Economic and Social Council	232
5.6. Supreme Council of Judiciary	241
5.7. Legal Representation of Civil Society.....	244
5.8. Advocacy and lobby.....	248
5.9. Conclusions	250
CONCLUSIONS AND PROPOSALS DE LEGE FERENDA.....	252
BIBLIOGRAPHY	272

Summary of the Thesis

All the research questions of our doctoral study were addressed throughout the thesis, which is structured into six chapters:

1. Functional Democracy
2. The Concept of Civil Society in Legal Science
3. The Legal Status of Trade Unions and Employers' Organizations
4. The Legal Status of Associations and Foundations
5. Legal Instruments for Civil Society Action
6. Conclusions and *Lex ferenda* Proposals

Since the present thesis explores the role of civil society as a cornerstone of functional democracy, we found it necessary to dedicate the first chapter to identifying, based on the relevant literature, and outlining a legal theory of functional democracy. Starting from the observation that democracy, like many other concepts used in law, is borrowed from other fields—especially political science—we considered it essential to analyze, in this chapter, how this significant concept has undergone a process of legalization, through which it was transformed and adapted to become a genuine tool of legal reasoning.

With regard to what we mean by *functional democracy*, this chapter makes it clear that we are not proposing a new term or a new type of democracy. Rather, drawing on the core features of democracy, we aim to offer a more useful and pragmatic understanding: in a truly functioning democracy, the governed do not leave the task of deciding their fate entirely to the governors. They remain involved in public life and remember that they are the holders of national sovereignty—something that entitles them to supervise and guide the exercise of state power by the governors, who are merely temporary agents of that power.

In the second chapter, we analyzed the concept of civil society through a legal lens, examining its highly significant legal implications, especially since civil society is considered one of the fundamental values of Western constitutional systems. Given that, from a legal standpoint, the concept is poorly defined in the literature, we sought to clarify what civil society means, decipher the roles and functions of civil society organizations, and address controversial issues such as legitimacy, representativeness, and funding transparency.

Beginning with the third chapter, our research leaves the theoretical framework of the first two chapters and undertakes a concrete analysis of the legal regimes applicable to the main types of civil society organizations. In this chapter, we examined the key legal instruments governing the establishment and functioning of trade unions and employers' organizations, identifying how these norms are applied in judicial practice and what issues arise from the inconsistent jurisprudence of the courts.

The fourth chapter constitutes one of our most significant personal contributions to the field, as it provides a critical analysis of Government Ordinance No. 26/2000, the main piece of legislation regulating associations and foundations in Romania. Drawing on case studies selected from the author's own practice as a lawyer specialized in this field, we were able to gather substantial data on how Romanian courts apply this legal framework. This enabled us to paint a broader picture and to argue that the current legislative regime for associations and foundations is in urgent need of reform and adaptation to the requirements of 21st-century society, in order to fully secure their role in a democratic system.

The fifth chapter offers a thorough analysis of the main legal instruments available to civil society organizations to influence democratic decision-making processes. The chapter examines the relevant laws governing mechanisms such as the citizens' initiative to revise the Constitution, the popular legislative initiative, the European Citizens' Initiative, and the role of civil society in key state institutions such as the Superior Council of Magistracy and the Economic and Social Council. It also explores the representative role of civil society organizations in national and international courts, as well as controversial discussions about the need to adopt legal regulations for practices such as advocacy and lobbying.

A significant part of the issues identified in the legislative frameworks discussed in the last three chapters are addressed in the final part of the thesis, where we present the research conclusions and put forward *lex ferenda* proposals aimed at improving the role of civil society in supporting democratic mechanisms.