

CONSIDERATIONS REGARDING THE GUARANTEEING OF HUMAN RIGHTS IN ROMANIA

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Abstract

In our country existed and exists still a constant concern to respect and guarantee human rights and fundamental freedoms, especially after 1989, when Romania became a member or acceding to international or regional treaties and conventions enshrining such rights.

Taking into consideration the importance of respecting human rights, we consider that is necessary to research how they are secured in Romania, because only when these guarantees are known by their beneficiaries and those involved in their protection, actions which affect these values of humanity can be avoided.

In human rights, rules of international law have priority over those entered in the domestic law if they contain provisions which may be interpreted differently on the same matter, unless the Constitution or national laws contain more favourable provisions.

Keywords: *ensuring human rights, fundamental liberties, constitutional dispositions, freedom of thought, rights of foreigners.*

Introduction

Ideas concerning human rights have existed from the dawn of Romanian civilization, in all the areas of the planet, reason for which it may be affirmed that human rights are not the exclusive attribute of none of the time periods, or of any corner of the world, or of any culture¹.

Knowing the stage of progress achieved in ensuring human rights by the Romanian country, permits the establishment of future objectives for correlating the regulations and means of protection of rights with the aid of international instruments from the domain.

Over the years, Romania has been actively involved in promoting the principles upheld by the UN, including through the dissemination of the ideals and universally accepted principles and norms enshrined in the United Nations Charter, The Universal Declaration of Human Rights and relevant international human rights instruments.

Romania has assumed the highest international standards in the area of human rights, becoming party to all major regional and international treaties and protocol in the field of human rights, international humanitarian law and refugee law.

Up to present our country has ratified the most important universal treaties, such as: the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant of Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Child and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide, the four Geneva Conventions and two Additional Protocols, the Rome Statute of the International Criminal Court etc. The provisions of these treaties and of the Universal Declaration of Human Rights are directly applicable within Romanian legal framework.

Similar to other states of the Council of Europe, Romania is interested in achieving the standards stipulated in the European Convention of Human Rights². Moreover, the dispositions of the

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¹ Jean Bernard Marie, *La Commission des droits de l'homme de l'ONU* (Paris, A. Pedoné, 1975), p.5.

Universal Declaration of Human Rights were transformed into legal obligations, as well as in other member states of the United Nations Organization, as to create a legal system for protection, guarantee and implementation of human rights³.

The Romanian Constitution adopted in the year 1991, amended and completed⁴, regulates in Chapter II the rights and fundamental liberties of the citizen, thus correlating them with the dispositions of international treaties from this domain.

Regarding the relation between international law and internal law in human rights area, art. 20 of the Romanian constitution regulates the primacy in enforcement of international rules over the national ones as regarding human rights, establishing two special rules: interpretation and enforcement of constitutional norms regarding human rights and primacy in enforcement of international acts over internal laws. Through this provision is given effect to the principle of supremacy of international law over the national law, the supra-constitutional character of international law in a multilevel state being outlined.

As regarding the first rule, constitutional provisions concerning the human rights and freedoms shall be interpreted and enforced in conformity to the Universal Declaration of Human Rights, with the covenants⁵ and other treaties Romania is a party to. This rule starts from the idea that, according to art. 11, all the treaties, including those regarding human rights are incorporated into the national law only if they are in conformity to the constitution. In other words, the inconsistencies between the two types of norms are inappropriate and if so, their interpretation and enforcement should assure the mutual conciliation and should remove any conflicts of norms. The second rule endorses the primacy of enforcement of international provisions over the internal laws. In this case also the interpretation of internal laws should assure the conciliation with international rules in human rights area. If there are inconsistencies between the two types of norms, the conflict is solved following the principle of primacy of enforcement of international rules over the internal ones. But the derivative constituent power added the principle *mitior lex* according to which the primacy of enforcement of international rules is valid only if internal laws and Constitution of Romania comprise more favorable provisions⁶.

Two major consequences can be inferred from these provisions: the legislator should mandatory check if the bills adopted are in correlation with the international treaties Romania is a party to; the public authorities with competencies in negotiating, concluding and ratification of the international treaties should be aware of the correlation between an international act and Romanian laws and in difficult situation it should make reserves and declarations to the treaties.

Rights guaranteed in the Romanian Constitution and other regulations

In the Romanian Constitutions there are regulations regarding the nine categories of guaranteed international rights, which are discussed throughout the content of this paper.

a) Concerning the right to *non-discrimination*, in art. 16 from the Constitution, the principle of citizen equality before the law and public authorities is proclaimed, without privileges and discriminations, as nobody is above the law.

² Bianca Selejan-Guțan, *Protecția europeană a drepturilor omului*, 4-th edition, (Bucharest, CH Beck, 2011), p. 79 and foll.

³ Doina Micu, *Garantarea drepturilor omului în practica Curții Europene a Drepturilor Omului și în Constituția României*, (Bucharest, All Beck, 1998), p.79 and foll.

⁴ By the Law of reviewing the Romanian Constitution, no. 429/2003, published in the Official Gazette of Romania, Part I, no. 758 from 29 Oct. 2003, republished by the Legislative Council, in conformity with the art.152 from the Constitution, with upgrading the denominations and renumbering the texts.

⁵ Covenant regarding civil and political rights and Covenant regarding social, economic and cultural rights

⁶ SiminaTănăsescu, *Despre autoritatea constituțională a unui tratat european*, Revista Sfera politicii, <http://www.sferapoliticii.ro/sfera/120-121-122/art4-siminatanasescu.html>.

Moreover, in art. 4 par. 2, it is stated that „Romania is the common and indivisible homeland of all its citizens, without discrimination in race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, fortune or social origins”.

The equality in rights constitutes a guarantee referring to the exercising of fundamental rights stipulated in the content of the Constitution, but also whose rights and subjective liabilities are regulated in the content of other normative documents.

As a guarantee of observing this right, in the art. 247 from the Penal Code, the offense of abuse in service by limiting certain rights, which sanctions the limitation by an agent of using or exercising of these rights by a citizen, or creating situations of inferiority for the later based on nationality, race, sex or religion is considered a crime.

b) Regarding the right concerning *the integrity of every person*, guaranteed by international instruments, in art. 22 of the Romanian Constitution it is stated that the right to life and to physical and mental integrity of a person are ensured. Nobody may be submitted to torture, any type of punishment, inhuman or degrading treatment, the death punishment being also prohibited.

In the Romanian Penal Code the offenses against life, as well as against physical integrity or health are considered punishable (art. 174 – art. 184), which constitutes an important guarantee for protecting these rights by sanctioning of those which breach them.

Moreover, in conformity with art. 266-268 from the Penal Code, the illegal arrest and abusive investigating, submitting the persons under arrest or detained or in execution of a safety or educational measure to ill-treatments and unjust repression against persons that are legally searched are punishable

In these cases, the Romanian authorities apply domestic legal dispositions in conformity with the regulation of the European Convention regarding Human Rights, of other international instruments and the practice of the European Court of Human Rights.

c) Concerning the right regarding *liberty of every natural person*, guaranteed by international documents, guarantees are stipulated in the Romanian Constitution, as well as in other laws, in view of the fact that our country grants a particular importance to the defence of this right.

Thus, in art. 23 of the Constitution it is stipulated that the liberty of each individual and the safety of each person are inviolable, and the search, detention or arrest of a person is permitted only in cases and with the procedure stipulated by the law.

The withhold, which can be ordered by the public prosecutor or the legal police, can not surpass 24 hours, and the arrest may be ordered for a maximum of 30 days by the judge, who has the right to prolong its duration in the conditions admitted by the law. The person in case will be informed of the reasons of retain or arrest as soon as possible, and the accusation will be transmitted before an elected or appointed lawyer.

The release of the person retained or arrested is mandatory, if the motives on which these measures are based have disappeared.

No punishment can be established or applied except in the conditions and based on the law.

These constitutional principles, which defend the liberty of each person, are detailed in the Penal Code in which the case and procedures for ordering the measures that deprive a person's liberty are stated.

The guaranteeing of the right referring to the liberty of the person is also achieved by incriminating illegal arrests (art. 266 par. 1 penal Code), illegal retain or detention or submitting a person to execute a punishment, safety or educational measures, in another manner than the one stipulated by legal disposition that are punished with jail. Moreover, the liberty of a person is guaranteed by incriminating unjust repression (art. 268 Penal Code) which criminally sanctions the act of disposing arrest or condemning a person, knowing that she is innocent.

Referring to the right of free circulation (consecrated by art. 39 of the Treaty establishing the European Community), in art. 25 from the Romanian Constitution it is stated that „the right to free circulation in the country and abroad is guaranteed”, the ordinary law establishing the conditions of

its exercising. Moreover, each citizen is guaranteed the right to establish its domicile or residence in any locality in the country, to emigrate, as well as to return in the country.

The regulations from the Romanian Constitution complies with the subject of international dispositions⁷, as it contains a general form which does not state the legal exceptions regarding the exercising of the right of free circulation, which will be established by ordinary laws.

As a guarantee of these rights being defended stands the incrimination of the act of limiting the liberty of every person, in an illegal manner (art. 189 Penal Code).

d) Regarding the *procedural rights*, as in the international domain, in the domestic law these do not refer to a material liberty, but the guarantees a person disposes of in a state of law as to value its rights and liberties.

Thus, the right to a fair trial is proclaimed in the art.21 of the Romanian Constitution, in which it is shown that every person may address the law for the defence of its rights, liberties and legitimate interests, as no law may restrict the exercising of this right.

The parties have the right to a fair trial and to solve the causes in a reasonable term, as the administrative special jurisdictions are optional and free of charge.

The right to petitioning is proclaimed in art. 51 from the Constitution, where it is stated that the citizens and organizations that are legally founded have the right to address the public authorities with petitions, being exempted of stamp duty. The public authorities are compelled to respond to the petitions in the terms and conditions established by the law.

In conformity with art. 52 in the Constitution, a person who is harmed in its right or legitimate interest, by a public authority, by an administrative act or by not solving the request in a legal term, is entitled to obtain the acknowledgement of the right claimed or of its legitimate interest, as well as the annulment of the act and compensation for the damage.

The State shall bear patrimony liability for the damage caused by the legal errors and the magistrates who exercised their function in ill will and gross negligence will not be exempted from their liability.

In art. 124 from the Constitution it is stipulated that the justice is rendered in the name of the law, this being unique, impartial and equal for every one.

Art. 126 states that justice is achieved by legal instances, their competence and procedure being stipulated by the law; moreover, the founding of courts of exception is prohibited.

Still as a guarantee of the capitalization of legal rights, the hearings are public, except the cases stipulated by law (art. 127).

In art. 128 from the Constitution certain rights for minorities referring to the possibility of using interpreters before the courts of justice are guaranteed, and in art. 129 the right to use legal appeals against the decisions of the courts is stated.

The right to a fair trial, the right to an appeal, the legality principle of criminal offenses and penalties, as well as other procedural rights are also guaranteed by regulations stipulated in ordinary laws such as: the Criminal Code and Criminal Procedure Code, as our country is facing a process of permanent correlation of the dispositions in the domestic law with community and international regulations.

e) *The right to compliance with private and family life*

The protection of the private and family life occupies an important role in the preoccupations of the Romanian legislator, as Romania is adhering or is taking part in the international instruments that have this object⁸.

⁷ Jean-François Renucci, *Tratat de drept european al drepturilor omului*, (Bucharest, Hamangiu, 2009), p. 636 and foll.

⁸ Loredana-Bianca Macrea, *Dreptul privat la viață privată în Justiție, stat de drept și cultură juridică. Sesiunea științifică* (Bucharest, Universul Juridic, 2011), p. 164 and foll.

In conformity with art.26 in the Constitution, the public authorities respect and protect the intimate, private and family life. The natural person has the right to dispose of itself, if it does not breach the rights and liberties of other persons, the public order or the good morals.

Thus, the Romanian state guarantees the liberty of the private life and the right to engage in marriage. Moreover, it respects and protects the private life of every person, depending on the preferences, provided that it does not harm the rights of other persons, the public order or the good morals.

The intimacy of the private life⁹ and the right to make connections and relations with other persons is also guaranteed.

The right to respect private life also embodies the person's right to a healthy environment, this principle being guaranteed by the art. 35 in the Romanian Constitution, in which it is stipulated that „The state acknowledges the right of any person to a healthy and ecologically balanced environment”. It is also stated that „the state ensures the legislative framework for exercising this right, and the natural and legal persons have the duty of protecting and improving the environment”.

Except for the principles contained in the Constitution, these rights are also guaranteed by the dispositions stipulated in the ordinary laws, such as: the Family Code in which the conditions for concluding a marriage are established, as well as the relations between the parents and children, the rights and obligations of family members, etc. It is the case for the Penal Code, where incriminations by which the influences brought to the rights analysed are stipulated, such as the offense for abandoning the family (art. 305), according to which the breach of the obligations stipulated by the law in favour of the family members etc. and that are related to maintenance and mutual assistance are punished.

f) *The freedom of thought*, respectively the liberty to think freely, the liberty of consciousness and religion are also stipulated in our country's legislation, thus ensuring all means of manifestation and other guarantees to ensure that they are respected.

Thus, in art. 29 of the Constitution it is stipulated that the freedom of thought and opinions, as well as the freedom of religious beliefs can not be restricted under any circumstance. Nobody is to be constrained to adopt an opinion or to adhere to a religious faith, which is contrary to its beliefs.

Moreover, the freedom of consciousness is guaranteed; it just expresses itself in the spirit of tolerance and mutual respect.

Religious cults are free and are organized according to personal statute, in the conditions permitted by the law, as in the relations between cults any form, means, acts or actions of religious enmity are prohibited.

Religious cults are autonomous towards the state and enjoy its support, including by the facilitation of religious assistance in the army, hospitals, penitentiaries, shelters and orphanages.

The parents and tutors have the right to ensure, according to personal convictions, the education of minor children in their care.

These dispositions stipulated in the Constitution are in accordance with the dispositions of the European Convention of Human Rights and with the practice of the European Court of Human Rights, as well as with other international instruments regarding the freedom of thought, of religious beliefs or the spirit of tolerance and mutual respect between the persons that have different beliefs or who practice other religious cults, thus imposing one single limit, namely of religious enmity.

In conformity with the Constitution, the Romanian citizens are guaranteed not only the right to these liberties, but also the possibility to manifest their convictions in the social and political life of the country.

The liberties presented are also guaranteed by ordinary laws, thus existing even regulations according to which those who negatively influence these rights, such as incrimination for preventing

⁹ Ioana Vasii and Lucian Vasii, *Criminalitatea în cyberspațiu*, (Bucharest, Universul Juridic, 2011), p. 272 and foll.

the liberty of cults are sanctioned. Thus, in conformity with art.318 in the penal Code, the acts of preventing or disturbing the liberty of performing religious cult, that is organized and functions in accordance with the law, or to compel a person, by forcing her, to participate to the religious services of a cult or to fulfill a religious act related to the performance of a cult are sanctioned.

g) *The freedom of social and political actions*

The right to freedom of assembly and association are also guaranteed by the regulations in our country, similarly to those stipulated in the international instruments.

Thus, the freedom of assembly is consecrated by the dispositions contained in art. 39 from the Romanian Constitution, in which it is stated that: „ The meetings and demonstrations are free and can be organized and performed only in a peaceful manner, without the use of weapons”.

The freedom of peaceful assemblies can also refer to private, as well as public meetings.

Some of them are submitted to authorization, however this measure does not influence the freedom of assemblies, but aims at ensuring their peaceful nature by the state authorities; public manifestations can be prohibited if there are serious signs that the public order and security are being threatened.

The regulations in our country referring to the peaceful nature and absence of weapons related to assemblies are in conformity with the practice promoted by the European Court of Human Rights.

The right to association is proclaimed in art. 40 par. 1 and 2 in the Romanian constitution, in which it is stated that citizens may freely associate in political parties, syndicates, patronates and in other forms of association, however the organizations that militate against the political pluralism, of the principles regarding the state of law, of sovereignty, integrity or independence of Romania are unconstitutional.

Associations are groups with a durable character, a permanent target and that function based of a structure that is accepted by its members¹⁰.

In conformity with par. 3 of art.40 in the Constitution, the Judges of the Constitutional Courts, the lawyers of people, the active members of the army, the police and other categories of public workers established by the organic law, may not be part of the political parties. They may however, participate in professional and scientific associations, etc.

The Constitution limits the right to association for the organizations that embody a secret nature, which are forbidden. (art. 4 par. 4).

h) *The right to a property*

In art.44 from the Romanian Constitution the right to property is stipulated and guaranteed, also stating the circumstances in which this right may be limited.

Thus, it is stated that the property right and the debts of the state are guaranteed, the contents and limits of these rights being stipulated by the law. Moreover, it is stated that public property is guaranteed and protected equally by the law, regardless of the owner. In the same text from contained in the Constitution it is stated that nobody may be expropriated except for a cause of public utility, established in conformity with the law, with the just and prior compensation.

The nationalization or any other measures of forced passage in the public property of goods based on social, ethical, religious, political affiliation or any other discriminating nation of owners is prohibited.

As a limitation of the use concerning property right, the Constitution establishes that referring to the works of general interest, the public authority may dispose of the basement of any real estate, with the obligation of compensating the owner for the damages brought to the soil, plantations or constructions, as well as for other damages imputable to the authorities. The compensations are established, similar to the expropriation, as a mutual agreement with the owner, or, in case of dispute, by appealing to court.

¹⁰ Nicolae Purdă and Nicoleta Diaconu, *Protecția juridică a drepturilor omului*, 2-nd edition, revised and added (Bucharest, Universul Juridic, 2011), p.339 and foll.

Another limitation of exercising prerogatives concerning the property right is that the owner will guarantee the observance of tasks regarding environment protection. Moreover, the later must ensure the Neighbourhood policy and other tasks that, according to the law or custom, are in the care of the owner.

As a guarantee of observing the right to property, the Constitution also stipulates that the fortune gained in an illicit manner will not be confiscated, as the legal nature of acquiring it is presumed. Moreover, the goods destined, used or resulted from offenses or contravention may be confiscated only in the conditions of the law.

As it can be observed, the principles from the Romanian Constitution, regarding property or the right to property, correspond in their majority, to the dispositions and the spirit of the European Court of Human rights and other international instruments in the domain.

Moreover, the ordinary laws that refer to property are adopted in the spirit of the principles stipulated in the Constitution and are meant to ensure the appropriate exercising and guaranteeing of the right to property.

An extra guarantee of observing the right to property is the fact that in the Penal Code many acts are incriminated by which this right is influenced negatively, such as: theft (art. 208 și 209), destruction of property (art. 217), fraudulent management (art. 214) etc.

i) *The rights of foreigners*

Foreign and stateless citizens living in Romania enjoy the general protection of persons and fortunes, guaranteed by the Constitution and other laws (art. 1 in the Constitution).

Generally, foreigners and stateless persons have the same rights as Romanian citizens, but with certain limitations imposed by the social-political realities, such as the one resulting from the art. 16 par. 3 in the constitution, according to which the public, civil or military functions and dignities may only be occupied by persons which have the Romanian citizenship and are domiciled in the country.

In the Constitution there are also other applicable dispositions referring to the rights of foreigners or stateless persons, such as in art. 18 par. 2, according to which the right to an asylum is granted and refused in conformity with the law, with the observance of international treaties and conventions to which Romania took place. Moreover, in conformity with art. 19 par. 3 in the Constitution, foreign citizens and stateless persons may be extradited only based on an international convention or in conditions of reciprocity.

Conclusions

For all the nine categories of analysed right, their regulation in the Constitution constitutes a guarantee of achieving a special protection, a reality which enlists Romania among the countries capable of ensuring the persons the necessary conditions for accomplishing the fundamental rights and liberties.

The control over the constitutionality of laws and organizing the legal system in such a manner that it may take measures for the restoration of rights breached by the state bodies or other individuals, also constitutes strong guarantees for observing the human rights and liberties in our country.

The most important guarantee in the sense of observing the rights and liberties of persons, in accordance with the international regulations, is the principle subscribed in art. 20 from the constitution, according to which the *constitutional dispositions concerning the rights and liberties of the citizens* will be interpreted and applied in conformity with the Universal Declaration of Human Rights, with the pacts and other treaties in which Romania has taken part.

Romanian government pays constant attention to matters related to the implementation of human rights norms. Over the last sixteen years, a thorough process of reform has been carried out in order to bring the national legislation and institutional mechanism in full compliance with the

relevant international requirements. However, Romanian law and practice in some areas (for example the housing legislation) falls far behind international human rights standards.

As there are still numerous infringements of the human rights, it is necessary to act in the direction of improving the legislation, as the bodies of the state will have been clearly informed of their attributions in this domain, as well as the liabilities for breaching the respective norms. Moreover, it has been imposed that more serious acts, by which the human right have been negatively influenced, to be incriminated by the penal law, which would prevent the majority of actions that affect these social values.

Since the events of December 1989 until nowadays, Romania crossed a sinuous road during which it registered both notable events and many failures trying to edify a real democratic society. Therefore, even if in post-Decembrist Romania we cannot speak about a large range disrespect of the basic rights and liberties consecrated both in the constitutions stipulations and in the international and regional documents our country participates to, we cannot ignore the fact that, on December, 31st 2008, our country was the third, after the Russian Federation and Turkey, as a defendant in different causes placed in the examination of a judicial formation of the European Court of the Human Rights in Strasbourg¹¹.

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¹¹ The European Court for Human Rights pronounced on October, 12 th 2010 its first pilot decision against Romania in the cause of Maria Atanasiu and others against Romania that practically suspended the similar causes of CEDO role and forced thus the Romanian state to take measures, in a 18 months term in order to improve the retrocession problem. The pilot decision is extremely important whereas it determines the Romanian state to solve the restitution problem, in the direction of respecting the basic rights and of instituting a functional mechanism of retrocession and compensation. (<http://www.echr.coe.int>; <http://www.romania-actualitati.ro/trapages/view/20249>).