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RESTRICTION ON THE EXERCISE OF CERTAIN RIGHTS OR FREEDOMS: LEGISLATIVE AND JURISPRUDENTIAL STANDARDS

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Abstract: *The notion of individual freedom, used in Article 23 of the Romanian Constitution, designates the physical possibility of a person to manifest himself within his natural limits, without being subject to any restrictions or impediments other than those established by law. Thus, as in the case of other fundamental rights and freedoms, individual freedom is not absolute, so its exercise may be restricted in the cases provided for in Article 53 of the Constitution, namely, "for the defense of national security, public order, health or morals, the rights and freedoms of citizens; the conduct of criminal proceedings; the prevention of the consequences of a natural calamity, a disaster or a particularly serious incident".*

As established by Art. 53 para. (2) of the Fundamental Law, the restriction in these cases may be ordered only if it is necessary in a democratic society, and the measure must be proportionate to the situation that determined it, be applied in a non-discriminatory manner and not prejudice the existence of the right or freedom. These coordinates, established by the fundamental provisions of art. 53, have the value of a constitutional principle, being applicable to all fundamental rights and freedoms of citizens.

In addition to analyzing the legislative standards that circumscribe the content of the restriction of the exercise of certain rights or freedoms, this study also aims to highlight the requirements that emerge from the jurisprudence of the Constitutional Court and the European Court of Human Rights.

Keywords: *freedom; restriction; fundamental rights; Constitutional Court; European Court of Human Rights.*

Introduction

In its case law, the Constitutional Court has held that the exercise of a right cannot be made absolute by eliminating all restrictions inherent in the existence of other rights belonging to other holders, to which the state authority is equally bound to protect. In other words, liberty, with its usual meaning, that of a legal framework within the limits of which the exercise of rights is legitimate, ends where the liberty of other subjects of law begins[1].

In legal terms, liberty is a subjective right and the subjective right is a freedom, so that the shades of meaning assigned to the same legal concept are explained by considerations of history and tradition.

Positive law is "the unit of measurement by which we measure freedom", notes Professor Gh. Mihai (Mihai, 2005, p. 100), adding that law without man's freedom of action is without substance. If the general principle of liberty represents the foundation of objective law and a universal, unconditional value for human beings, positive law is limited to recognizing in favor of the subject of the law only certain prerogatives - subjective rights, which "are nothing else than potential content of legal freedom, not freedom in general".

Therefore, the State legally guarantees the freedom of individuals, by stating in Article 23 of the Constitution that "Individual freedom and security of a person are inviolable". The constitutional text refers to "the physical liberty of the person, his right to behave and move freely, not to be held in slavery or in any other form of servitude, not to be detained or arrested, except in the cases and in the forms expressly provided for by the Constitution and the laws". Constitutional law decisively shapes freedom at the level of jurisdiction and gives it specific coordinates.

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[1] Decision no. 587 of 8 November 2005, Official Journal no. 1159 of 21 December 2005.

Constitutional law is “an expression of the reconciliation of freedom and authority”, of the balance between the individual and the community, between the part of freedom that the individual sacrifices and the benefit that society gives him in return. Therefore, the law is designed to establish the necessary balance between the exercise of the rights and freedoms of individuals, which cannot be suffocated by excessive coercive measures, and the need to ensure social order and harmonious coexistence of the members of society.

The analysis of the concept of freedom-autonomy, developed by Kant, allows us to understand that, by defining law through the coexistence of freedoms and emphasizing the need to limit individual freedom in order to make the freedom of all subjects of law possible, only an apparent restriction of freedom is achieved. Essentially, it is a subtle mechanism which the law uses so that, by disciplining individual freedoms, the freedom of all members of society is secured, which in fact means that individual freedom is confirmed rather than restricted.

Kant substantiates law, understood as the necessity of the coexistence of freedoms, on the interdependence between free wills. For the German philosopher, "law is the set of conditions under which the arbiter of one can agree with the arbiter of the other, following a general law of freedom”. It is the idea of freedom-relation. Since the purpose of law is to make the coexistence of freedoms possible, it intervenes to limit each freedom, to mediate between freedoms, to ensure the freedom of all and social order.

The doctrine states that if individuals were capable of understanding the freedom of others, of accepting their fellow human beings and relating to them by setting their own limits and rules, they would no longer need external constraining rules. But the basis of law is not human nature but a kind of “human distortion”; law exists as long as individuals are incapable of morality (Dănişor, Dogaru, & Dănişor, 2006 , p.33).

Restriction on the exercise of certain rights or freedoms

Seen from this philosophical perspective, restricting the exercise of certain constitutional rights and freedoms is not only permissible, but also necessary to meet the need to ensure legal certainty for the rights and freedoms of others. However, the essence of the constitutional legitimacy of the restriction on the exercise of a right or freedom is its exceptional and temporary nature. As the Constitutional Court has ruled in its case-law, in a democratic society, the rule is that fundamental rights and freedoms may be exercised without restriction, and the restriction is provided for as an exception, unless there is no other solution to safeguard the values of the State which are jeopardized[1].

Therefore, the adoption of measures restricting the exercise of certain rights can only be realized under the strict and limitative conditions set out in Article 53 of the Constitution. Thus, in order for the restriction to be justified, the requirements expressly laid down in Article 53 of the Constitution must be cumulatively met, namely: it must be provided for by law; it must be necessary and fall within the scope of the grounds expressly provided for by the Constitution, for: the protection of national security, public order, public health or morals, the rights and freedoms of citizens; the conduct of criminal investigations; the prevention of the consequences of a natural calamity, disaster or particularly serious disaster; it must be necessary in a democratic society; it must be proportionate to the situation which has given rise to it; it must be applied in a non-discriminatory manner; it must not prejudice the existence of a right or freedom.

The Constitutional Court and the courts of law are the main national state institutions that have the competence to guarantee respect for the exercise of citizens' fundamental rights and freedoms, therefore the conditions and limits of this constitutional principle have been developed through case law.

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[1] Decision no. 1414 of 4 November 2009, Official Journal no. 796 of 23 November 2009

First of all, the Contentious Constitutional Court has consistently held that the scope of art. 53 of the Constitution is limited to the restriction of the exercise of rights or freedoms provided for by the Fundamental Law, and not to the restriction of the exercise of any subjective right, even if it arises from a normative act[1]. Therefore, the enjoyment of additional salary entitlements, such as vacation bonus, does not represent a fundamental constitutional right, and the provisions of art. 53 of the Constitution are not relevant to their regulation. Consequently, the legislator is entitled to grant, amend or terminate them and to determine the period during which they are granted[2].

The Constitutional Court has also ruled that the right to drive a motor vehicle is not one of the rights laid down in the Constitution, and art. 53 of the Constitution sets out the conditions and limits for restricting the exercise of certain fundamental rights or freedoms, not other rights[3].

The exercise of a right by its holder can only take place within a certain framework, established in advance by the legislator, in compliance with certain requirements, to which the establishment of certain time limits, after the expiry of which the exercise of the right is no longer possible are also subject. Far from representing a denial of the right in itself, such requirements give expression to the order of law, the absolutization of the exercise of a particular right having the consequence of either denying or cutting off the rights or legitimate interests of other persons, to whom the State is bound to protect, in full accordance with the provisions of art. 53 of the Constitution[4].

As regards the requirement that the restriction be provided for by law, the Constitution limits the possibility of intervention of the law of restraint only to certain situations, clearly and restrictively provided for, situations that involve the defense of social and human values which, by their functions and importance, can substantiate such measures.

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[1] Decision no. 65 of 27 January 2011, Official Journal no. 133 of 22 February 2011
[2] Decision no. 117 of 24 February 2005, Official Journal no. 405 of 13 May 2005
[3] Decision no. 503 of 16 November 2004, Official Journal no. 53 of 17 January 2005
[4] Decision no. 61 of 17 February 2004, Official Journal no. 213 of 11 March 2004

In this background, it should be recalled that in its case law on the actions and measures ordered during a state of alert, pursuant to the provisions of Government Emergency Ordinance no. 21/2004[1], the Constitutional Court has ruled that the provisions of art. 4 of Government Emergency Ordinance no. 21/2004 are constitutional only to the extent that the actions and measures ordered during the state of alert do not aim at restricting the exercise of fundamental rights or freedoms.

Therefore, with regard to the objection concerning the possibility of imposing restrictive measures on fundamental rights by means of administrative acts, the Court holds that the actions and measures ordered during a state of alert, pursuant to the provisions of Government Emergency Ordinance no. 21/2004, cannot relate to fundamental rights or freedoms. Furthermore, the Court finds that the delegated legislator cannot delegate to an administrative authority/entity what he does not himself have competence to do. As the Court has consistently held, according to the constitutional rules contained in art. 53 para. (1) and art. 115 para. (6) the impairment/withdrawal of fundamental rights or freedoms can only be achieved by law, as a formal act of Parliament.

The principle of proportionality, as laid down in the particular case of art. 53 of the Constitution, entails that the restrictions on the exercise of fundamental rights or freedoms are exceptional in nature, which necessarily implies that they are temporary. Since the public authorities can resort to restricting the exercise of certain rights in the absence of other solutions, in order to safeguard constitutional values, it is logical that this serious measure should cease under the conditions and within the time-limit laid down by law, when the cause which led to the measure being ordered has ceased to exist.

Therefore, the legislator must be concerned to ensure that the requirements laid down are sufficiently reasonable not to entail an excessive restriction on the exercise of the right such as to call its very existence into question[2]. Therefore, in one case, the Constitutional Court

[1] Decision no.157 of 13 May 2020, Official Journal no. 397 of 15 May 2020
[2] Decision no. 119 of 1 March 2005, Official Journal no. 375 of 4 May 2005

found that the measure to reduce the amount of salary/allowance/pay by 25% represents a restriction on the exercise of the constitutional right to work which affects the right to a salary, *under the observance of the provisions of art. 53 of the Constitution*[1].

According to the principle of proportionality, any measure taken must be appropriate - objectively capable of achieving the aim, necessary, indispensable for the fulfillment of the scope and proportionate: the right balance between actual interests in order to be appropriate to the aim pursued[2].

According to the constitutional provisions of art. 53 para. (1), the restriction on the exercise of certain rights, by law, shall not be conditioned by the general interest, but by the "defense of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe"[3].

The revision of the Constitution added an extra condition for the restriction to operate: it must be necessary in a democratic society, thus capitalizing on the provisions of the international documents in the field. The criterion of the necessity of limitation, placed in the context of a democratic society, represents a point of reference in the particular analysis of each individual situation, both for the legislator, when he adopts such measures, and for the constitutional judge, when he is called upon to review the constitutionality of such a measure (Constantinescu, Iorgovan, Muraru, & Tănăsescu, 2004, p. 109).

The existence of limits on the exercise of certain fundamental rights is justified by constitutional protection or the protection of important human or state values by international legal instruments. Notwithstanding, state authorities shall not be allowed to restrict in a

[1] Decision no. 874/2010, published in Official Journal. 433 of 28 June 2010

[2] Decision no. 462 of 17 September 2014, Official Journal no. 775 of 24 October 2014, Decision no. 270 of 7 May 2014, Official Journal no. 554 of 28 July 2014

[3] Decision no. 375 of 6 July 2005, Official Journal no. 591 of 8 July 2005

discretionary and abusive manner the exercise of rights which are themselves constitutionally guaranteed, in the name of such values.

From the analysis of the case law of the Constitutional Court, we note that art. 53 para. (1) of the Constitution provides, among other situations, that the exercise of certain rights may be restricted in order to protect public order, citizens' rights and freedoms. Therefore, between the exercise of the right to drive motor vehicles by certain persons for whom there are indications that they have acquired a driving license without having completed a training course or without passing the theoretical and practical examination stages or by formally passing them, and the protection of the general interest, which in this case is identified with the need to maintain road safety on public roads, the legislator has understood to give priority to the latter[1].

The interest of protecting national security also justifies the restriction of certain rights: the temporary restriction of the right to freedom of movement is within the limits provided for by art. 53 para. (1) of the Constitution, being expressly established for the protection of national security, public order, public health or morals, the rights and freedoms of citizens[2].

Furthermore, constitutional case law has also held that the use of audio or video recordings as evidence in a criminal trial is consistent with art. 53 of the Constitution, which recognizes the legitimacy of restrictions on the exercise of certain rights or freedoms, including the exercise of the right to respect and protection conferred by public authorities to intimate, family and private life, if they are made by law and in order to protect important social values, such as the conduct of criminal investigation or prevention of criminal offences[3].

The introduction of precautionary measures is intended to protect certain categories of persons, in view of the special situation in which they find themselves, and does not infringe the provisions of art. 44, para.

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[1] Decision no. 399 of 24 March 2011, Official Journal no. 337 of 16 May 2011
[2] Decision no. 544 of 7 December 2004, Official Journal no. 152 of 21 February 2005
[3] Decision no. 134 of 1 February 2011, Official Journal no. 188 of 17 March 2011

(1) and (2) on private property rights. The reasons for the measure justify the restriction of the exercise of this right, in full compliance with the provisions of art. 53 of the Fundamental Law[1].

Both the Romanian Constitution, in art. 53, and international documents on human rights, for example, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, allow for the possibility of reasonably reducing the degree of protection afforded to certain fundamental rights, at certain times or in certain situations, subject to certain conditions, as long as the very substance of the rights is not affected. The reasonable and temporary reduction in the salaries of the staff of budgetary units, combined with a series of measures to manage the financial problems facing the state budget in the period of global financial crisis, represents a restriction of the right to work of this category of employees which is compatible with the Fundamental law[2].

Constitutional Court Decision no. 226/2001 found that some provisions of international regulations do not preclude circumstances and even restrictions on the exercise of freedoms. Therefore, according to the provisions of art.19 item 3 of the International Covenant on Civil and Political Rights, "the exercise of the rights can be subject to certain restrictions, but these shall only be such as are prescribed by law and are necessary, among others, for the protection of national security or of public order". Furthermore, art.2 para. 2 of the same covenant provides that the rights must be exercised without unreasonable restrictions, which implies that the exercise of those rights may be subject to conditions.

The Constitutional Court has found that the Universal Declaration of Human Rights, adopted and promulgated by the General Assembly of the United Nations by Resolution No. 217 A (III) of December 10, 1948 provides the following in art. 29, item 2: "*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are*

[1] Decision no. 1364 din 26 October 2010, Official Journal no. 819 of 8 December 2010
[2] Decision no. 1414 of 4 November 2009, Official Journal no. 796 of 23 November 2009

determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." In the light of these provisions, as well as of art. 6 and 8 of the European Convention on Human Rights, the European Court of Human Rights held in case *Klass and Others v. Germany*, 1978, that "the power of secret surveillance of citizens is a characteristic of the police state and is tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions". Furthermore, it held that "the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime"[1].

Therefore, at the level of European legislation, which forms part of domestic legislation under art. 11 of the Constitution and takes precedence under art. 20 of the Fundamental Law, the European Convention on Human Rights expressly regulates, in art. 8 to 11, that the rights enshrined in these provisions may be subject to limitations/restrictions. These limitation clauses are expressed by 3 conditions: "prescribed by law", "legitimate aim pursued" and "necessary in a democratic society"; they are to be interpreted restrictively since they provide for an exception to the right regulated in para. (1) of the conventional texts. In its turn, the first mentioned standard, namely "prescribed by law", entails two essential components, namely the accessibility and predictability of the law, while the second standard, the legitimate aim pursued, is the prohibition of arbitrary measures being regulated by law.

With regard to the condition that the interference must be provided for by law, we emphasize that, in a rich jurisprudence, the European Court of Human Rights has mentioned the importance of ensuring the accessibility and predictability of the law, establishing a series of guidelines that the legislator must take into account to ensure these requirements. The expression

[1] Decision no. 57 of 21 February 2002, Official Journal no. 182 of 18 March 2002

"prescribed by law" requires, first of all, that the contested measure be based on national law. Second of all, it refers to the quality of the law in question, requiring that it must be formulated with sufficient precision to be accessible to the person concerned, who must, moreover, be able to foresee, to an extent that is reasonable in the respective circumstances, the consequences which a given action may have [*see, among other judgments, The Sunday Times v. United Kingdom (no. 1), 26 April 1979, item 49, series A. no. 30, and Michaud v. France, no. 12.323/11, item 94-96 ECHR 2012*]: "a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. He must be able to foresee the consequences which a given action may entail"; "a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen – if need be with appropriate advice – regulate his conduct"; "In particular, a norm is foreseeable when it offers a certain guarantee against arbitrary encroachments of public power" - *Sunday Times v. United Kingdom of Great Britain and Northern Ireland, 1979, Rekvényi v. Hungary, 1999, Rotaru v. Romania, 2000, Damman v. Switzerland, 2005.*

Furthermore, the European Court of Human Rights, by means of the Judgment of 9 February 1995, pronounced in case *Vereniging Weekblad „Bluf!" v. The Netherlands*, decided that the access to public information can be restricted in order to protect national interest, according to the provisions of art. 10 para. 2 of the European Convention on Human Rights. Therefore, in order to comply with the provisions of the Convention, the restrictions on freedom of information must meet the following conditions: a) to be prescribed by the law; b) to have legitimate aim pursued; c) to be necessary in a democratic society. By the judgment of July 8, 1999, delivered in case *Sürek v. Turkey*, the human rights court ruled that it is within the discretion of the state to decide if and when certain information needs to remain confidential and, consequently, the state has a wide margin of appreciation in this matter[1].

[1] Decision no. 302 of 1 March 2011, Official Journal no. 316 of 9 May 2011

The limitation on the use of restrictions of rights is also provided for in art. 18 of the Convention: "*The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed*", this article serves as a reference point for the European Court of Human Rights in interpreting the restriction clauses contained in other provisions of the Convention or in its protocols[1].

The notion of a hidden purpose is related to that of bad faith, but they are not necessarily equivalent in every case. A right or freedom is sometimes restricted solely for a purpose which is not prescribed by the Convention. But it is equally possible that a restriction is applied both for an subsequent purpose and a purpose prescribed by the Convention; in other words, that it pursues a plurality of purposes [*Merabishvili v. Georgia (MC), 2017, item 292*].

Therefore, when examining a claim under Article 18, the Court must therefore determine: whether the restriction imposed on the applicant's right or freedom had a hidden purpose; whether the restriction pursued both a purpose provided for by the Convention and a hidden one, that is, whether there was a plurality of purposes; and which purpose was the predominant one [*Merabishvili v. Georgia]*

Similarly to art. 14, art. 18 of the Convention does not have an independent existence; it can only be applied in conjunction with an article of the Convention or its Protocols which sets forth or defines the rights and freedoms that the High Contracting Parties have undertaken to secure to persons within their jurisdiction.

In the following cases, the Court based its finding of a violation of art. 18 taken in conjunction with art. 5 on direct written evidence of the existence of a hidden purpose. In the case of *Gusinskiy v. Russia*, *2004*, the applicant, a wealthy businessman, was charged and placed in pre-trial detention in order to pressure him into selling his media company to a state-owned enterprise. The direct evidence results from a written

[1] https://ks.echr.coe.int/documents/d/echr-ks/guide_art_18_rum

agreement, approved by a government minister, which links the dropping of charges against the applicant to the sale of the company, as well as from the wording of the decision to discontinue the criminal proceedings against him, which referred to that agreement; the respondent government did not attempt to deny this connection. In the case of *Lutsenko v. Ukraine, 2012*, the Court relied on the arguments presented in the prosecutor's request for the applicant's pre-trial detention, namely that by communicating with the media, he was attempting to mislead public opinion, discredit the prosecution authorities, and influence his future trial. The Court considered that this demonstrated that the detention was aimed at punishing the applicant for publicly proclaiming his innocence.

Conclusions

From a philosophical perspective, it has been argued in legal doctrine that, since law imposes and constrains, freedom within the framework of law lacks authenticity: "freedom, in its absolute sense, is only possible in the field of Ethics" (Popa, Dogaru, Dănişor, & Dănişor, 2002, p. 221). The purpose of law is not the exercise of freedom, but its limitation.

The action of the general principle of liberty is achieved through the just limitation of individual freedom, in the sense of coordinating all freedoms. However, we have emphasized that this limitation is only apparent; In the final instance, this leads to a confirmation of freedom. Essentially, it is a brake against a potential excess of freedom in society to the detriment of individuals; in this way, the individual receives the necessary guarantees regarding the exercise of their own freedom. Therefore, unlike true freedom, which knows no limits or constraints, freedom in law requires restrictions.

Article 53 of the Constitution provides a legal solution for adapting the legal regime for guaranteeing fundamental rights and freedoms to the realities of the constantly changing social, economic, and political life. In order for public authorities to fulfill their role, without abandoning the

legal protection of human rights, art. 53 of the Constitution allows for the restriction of the exercise of certain rights and freedoms of citizens, but with respect for the standards regarding the exceptional nature of the measure.

References

Anghel, E. Principiile fundamentale, un dat al dreptului (The Fundamental Principles, a „Given" in The Field of The Law), *SARA Law Research Center, International Journal of Legal and Social Order*, https://www.ccdsara.ro/ijlso, pp 181-187.

Boghirnea, I. (2023). *Teoria generală a dreptului. Curs universitar, (General Theory of Law)*. Sitech.

Constantinescu, M, Iorgovan, A., Muraru, I., & Tănăsescu, E.S. (2004). *Constituţia României revizuită- comentarii şi explicaţii (The revised Constitution of Romania - comments and explanations)*. All Beck.

Dănişor, D. C., Dogaru, I., & Dănişor, Gh. (2006). *Teoria generală a dreptului (General Theory of Law)*. C. H. Beck.

Djuvara, M. (1995). *Teoria generală a dreptului (General Law Theory. Legal Encyclopedia)*. All.

Mihai, Gh. (2005). *Fundamentele dreptului. Dreptul subiectiv. Izvoare ale drepturilor subiective (vol. IV*). All Beck.

Popa, N., Anghel, E., Ene-Dinu, C., & Spătaru-Negură, L. (2023). *Teoria generală a dreptului. Caiet de seminar, Ed. 4*. C.H. Beck.

Popa, N., Dogaru, I., Dănişor, Gh., & Dănişor, D.C. (2002). *Filosofia dreptului. Marile curente (Philosophy of law. Major currents)*. All Beck.

Popescu, S. (2000). *General theory of law*. Lumina Lex.

https://ks.echr.coe.int/documents/d/echr-ks/guide_art_18_rum.