

THE CONSTITUTIONAL PRINCIPLES APPLICABLE TO THE FUNDAMENTAL RIGHTS, LIBERTIES AND DUTIES OF ROMANIAN CITIZENS

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Abstract

Fundamental rights, freedoms, and duties are not only a reality but also a condition for a democratic society. Fundamental rights, freedoms, and duties, with their many ramifications and theoretical and practical implications, are an important area in the concerns of each state. The constitutional principles applicable to the fundamental rights, freedoms, and duties of Romanian citizens are generally recognized mandatory rules that have proven their reliability over time. Their institutionalization at the constitutional level provides them with the most effective legal guarantee, as they benefit both from mechanisms guaranteeing the supremacy of constitutional norms, as well as from legal mechanisms specific to the protection of subjective rights. Regulated in the Constitution of Romania, these principles refer to universality, no retroactivity, equality, legal protection, free access to justice, restriction of rights or freedoms, and the presumption of innocence. The present paper will try to make a brief presentation of these constitutional principles, which constitute the fundamental source of the fundamental rights, freedoms, and duties of the Romanian citizens.

Keywords: *universality, no retroactivity, equality of rights, legal protection, extradition or expulsion, free access to justice, restriction of rights or freedoms, presumption of innocence*

The universality of fundamental rights, liberties and duties

The universality of rights and liberties is the citizen's vocation to all the rights and liberties. [1, 158] The universality also represents the idea that all the citizens of a state benefit from these rights and liberties. Certainly this is a judicial possibility, general and abstract, given by the Constitution to every citizen, the concrete revaluation and the actual exercise of these rights and liberties are also guaranteed by the Constitution but the manner of exercise of these rights depends on every citizen.

The universality of rights also implies the universality of duties. It also is natural that the citizen has both rights and duties towards his siblings and the society. [2, 194] These principles basically express the indissoluble bond between rights, liberties and duties, their interconnectivity. In a broader and concrete division, the duties also become guarantees of the rights and liberties. [3, 300]

This rule is also explicitly stated in the two international pacts regarding human rights which show that „the individual has duties towards others and towards his

collectivity and he is bound to make efforts in promoting and keeping the recognized rights.” [4, 203]

The non-retroactivity of law

According to this principle and adopted law that is put into effect causes only future judicial consequences because it is absurd to ask from a person to answer for a conduct that was previous to the coming into force of that law. [3, 300] The constitution also provides an exception, namely the more favorable criminal and contravention law.

Regarding the exceptions of the non-retroactivity of law, within the doctrine there are certain pertinent and conclusive observations, worthy of being examined. Thus, it is shown that the constitutional principle of the non-retroactivity of law is seldom found within the law of other states. In France, it has been provided by the Constitution of year III but it has never been applied. In 1948 and 1946 the proposals of its constitutional regulation had been rejected. This principle is also unclearly regulated by the Constitution of USA. In accordance with other authors it is shown that the non-retroactivity should be reexamined, at least regarding the civil law, and this, along with the criminal and contravention one, to be able to be retroactive. Such a regulation would be demanded by certain situations that can occur in the social life. Certain retroactive civil regulations could be the „waiver” laws that are *leges confirmatoriae* and *leges annullatoriae*. The first have the purpose to retroactively modify some states of fact, with beneficial effects. Thus the risk of nullity or the unjustified prescription can be avoided.

Within the doctrine there is sometimes examined, still as an exception, the interpretative law. This is not an exception from the non-retroactivity of law because the general-compulsory interpretation, as well as any other interpretation for that matter, clarifies the meaning of the interpreted norm but does not add to or modify that meaning.

Any act of applying a norm of law implies its previous interpreting in order to establish whether it is applicable or not within the judicial situations taken into consideration. Usually such an interpretation lies within the competence of the organ who issued the norm.

The principle of the non-retroactivity of law is expressly stated within the Civil Code, art. 6, according to which „The civil law is only applicable as long as it is in effect. It does not have retroactive power” as well as in the Criminal Code, art. 11, according to which „the criminal law does not apply to the deeds that, when they were committed, were not labeled as offenses.”

There are only two exceptions from this principle when the law is also retroactively applied:

- when the new criminal law is more favorable then it is retroactively applied
- In the case of interpretative laws.

In what concerns the interpretative law, it is retroactively applied only when it does not bring new regulations, otherwise the non- retroactivity principle is kept.

The non- retroactivity principle ensures:

- the stability of the earned legal right;
- prevents the law abuse trough modifying the regulation, in the case of power rotation;
- ensures the legitimacy of law, its recognition as compulsory and just;
- Abiding a nonexistent law cannot be asked until that certain law comes into effect. [4, 203]

The non-retroactivity of law, as a constitutional principle, is compulsory for all fields of law, without exception, not only for those that explicitly provide it. Then, besides the exception established by the Constitution, no other exception can limit this constitutional principle. [5, 159]

The principle of the non-retroactivity of law is presented as a fundamental guarantee of the constitutional rights, especially of the liberty and safety of the individual.

The citizens' equality of rights

According to art. 16, points 1 and 2, as well as art. 4 point 2 of the Constitution, Romanian citizens regardless of race, nationality, ethnicity, language, religion, gender, opinion or political affiliation, wealth or social origin, can benefit equally from all the rights and laws provided by the Constitution, can equally participate in political, economical,

social and cultural life, without privilege or discrimination and are equally treated by both public authorities and the other citizens.

The citizens' equality of rights is the constitutional principle according to which the Romanian citizens are equal regardless of race, nationality, ethnicity, language, religion, gender, opinion or political affiliation, wealth or social origin, and they can equally benefit from all the rights and laws provided by the Constitution, can equally participate to the political, economical, social and cultural life, without privilege or discrimination, receive equal treatment from both the public authorities and by the other citizens.

The citizens' equality of rights regards all rights and all Romanian citizens without discrimination or privilege and manifests itself in all fields of activity. No measure taken in case of public danger that threatens the existence of the nation cannot lead to discrimination based only on race, color, gender, language, religion or social origin. [3, 301] The law guarantees equal protection to all citizens and punishes discrimination.

Within the specialty doctrine it is stated that equality of rights has three aspects, namely: equality of rights of women and men; equality of rights of citizens regardless of race, nationality, ethnicity, language, wealth or social origin; equality of rights of citizens regardless of religion, opinion or political affiliation. [6, 138]

Equality of rights of men and women represents the reality that women are half of the country's population and that is why they must benefit equally from all the rights and duties.

Equality of rights of women and men is guaranteed by certain means, including by the special care that is given to the mother and by the protection and assistance granted to the family.

Equality of rights of citizens regardless of race, nationality, ethnicity, language, wealth or social origin states the reality that within the territory of Romania, across history, there settled, lived, worked and fought alongside Romanians citizens of other nationalities (national minorities) such as the Romanian people, Hungarians, Germans, Serbs, Turkish people, Hebrews, Armenians etc.

All these citizens benefit in equality with Romanians of all rights and liberties and can equally take on the fundamental duties.

According to art. 6, paragraph (1) of the Constitution, the state recognizes and guarantees to national minorities the right to keep, develop and express their ethnic, cultural, linguistic and religious identity.

In the practice of the European Court of Human Rights it has been decided that the principle of equality is violated and discrimination is committed in cases where there has been established that children who are French speakers have the right to go to a school in a city only if their parents live in that city (Belgium linguistic case – 1968).

The aspect referring to the equality of rights of citizens regardless of religion, opinion or political affiliation seeks that the political or religious opinions of people do not represent means of discrimination.

In the practice of the Constitutional Court there have been established several landmarks having the value of principles for our law system and for the principle of equality, thus, it has been decided that „within the normative structure of the Constitution the criteria of non-discrimination are nominated by art. 4 paragraph (2), these being race, nationality, ethnicity, language, religion, gender, opinion, political affiliation, wealth, social origin, However, this being of utmost importance, the constitutional dispositions must be correlated and interpreted in relation with the dispositions of the international judicial instruments concerning human rights, only thusly being able to establish the equality of rights of citizens in their judicial meaning and dimensions.

The protection and duties of Romanian citizens abroad

The protection of Romanian citizens abroad as well as their duties is based on the fact that the Romanian citizenship is the political and judicial bond between the citizen and the state that, by its effects determines the judicial status of the individual wherever he might be within or outside the state's frontier. For this purpose, the Romanian citizens that are abroad have the right to call for protection of the Romanian authority and the Romanian authority has the duty to grant it.

The status of Romanian citizen ensures the citizen's right to ask for protection from the Romanian authorities and the authorities' obligation to offer the necessary protection.

In this regard, the protection of the Romanian citizen abroad implies [4, 207]:

- The right to ask from the embassy and the consulate to interfere among the rightful organs of that country to ensure the right to protection, stopping of abuse etc.
- advice on exercising their rights abroad;
- the embassy can notify, require explanation or protect when in the foreign country the rights of the Romanian citizen are violated;
- the performance of certain judicial acts within the embassy in the interest of the Romanian citizen;
- the insurance of a bond between the Romanian citizen and the authorities of Romania as well as with the authorities from the foreign country;
- judicial assistance etc.

The Romanian authorities, in virtue of their duties, close agreements, treaties with the authorities of other states regarding the protection of the Romanian citizens abroad based on the principle of reciprocity.

Benefiting from the protection of the state, the Romanian citizen who is outside Romanian frontiers must, however, fulfill his duties stated by the Constitution and the laws of Romania, if they are not incompatible with his absence from the country.

The foreign and stateless citizens benefit from judicial protection in Romania

Within the constitutional regulation for the status of the foreign and the stateless in Romania, there are taken into consideration:

- the foreign and stateless citizens, as human beings, have certain natural, inalienable and imprescriptibly rights (to live, to dignity, to liberty, to conscience);
- Certain rights can only be given to Romanian citizens.

All constitutional systems state that only that state's citizens have political rights (to elect or be elected) because only they can and must participate to the governing of their own state. This quality is expressly required in order to be able to own lands in Romania or to occupy a magistrate post. [1, 160] Furthermore, the citizens belonging to that state cannot be extradited or expelled at the request of a foreign state.

There also are other subjective rights that can be acquired and exercised regardless of the citizenship. Such rights must also be granted to foreign or stateless citizens who live in Romania.

Article 18 of the Constitution regulates the right to refuge, being known that asylum is by excellence a right belonging to the foreign and stateless citizens. The right to asylum implies the hosting and protection granted by the Romanian state to these people because in their state of origin they are pursued or prosecuted for political activities in favor of humanity, progress and peace, being also called political asylum. People that are granted asylum by Romania benefit from all the rights and have all the duties except for the ones that exclusively belong to the Romanian citizens. At the same time, these people cannot be extradited.

According to international documents regarding this matter, the asylum is a peaceful and humanitarian act and cannot be considered an unfriendly act towards that state.

Likewise, both the international judicial documents and the practice of the states in this field believe that any person has the right to request and obtain asylum in another country. A certain right cannot be summoned by people considered to have committed a crime against peace, a war crime or a crime against humanity, by the understanding of the international instruments that have dispositions referring to such crimes. The assessment of the motivation of asylum is to be made by the state that grants it, in the exercise of its sovereignty.

Romanian citizens cannot be extradited or expelled from Romania

This principle represents an application of the rule recognized by the states of the world according to which that state's citizens cannot be extradited or expelled. As a consequence to the European and euro-atlantics opening of Romania, in art. 19 paragraph (2) of the Constitution a derogation of this rule is regulated, stating that Romanian citizens can be extradited but not expelled, based on the international conventions that Romania is part of, within law terms and based on reciprocity. As a consequence, to extradite Romanian citizens all the conditions stated by the Constitutions

must be fulfilled along with the ones from law (Law no. 296/2001 regarding extradition) and the European Convention regarding the approved extradition by Law no. 80/1997.

Likewise, according to art. 19 paragraph (3) of the Constitution the foreign and stateless citizens can be extradited only based on a convention or condition of reciprocity.

It is observed that there is a difference between the constitutional requirements based on which Romanian citizens can be extradited and the ones for the stateless or foreign citizens. In the case of the latter only the fulfillment of one condition is sufficient, a convention or reciprocity. [3, 303]

Extradition and expulsion are two very serious measures that especially regard the individual liberty and the right to free circulation.

Extradition

□ It is the judicial institution that allows a state to require from another state on whose territory one of its citizens requested asylum to surrender him. It insures that people who have committed crimes, especially serious international crimes, to not escape without judgment or punishment by hiding on the territory of other states.

□ It is an act of judicial interstate assistance regarding criminality that aims for the transfer of an individual that is criminally pursued or convicted from the judicial sovereign domain of a state into the one of the other state.

Extradition is not accepted when it is requested for political causes or when in his own country the individual might be sentenced to death or there is the risk that the individual might undergo torture or other cruel, inhuman or degrading punishment or treatment etc. Extradition is accepted and practiced in case of nautical or aerial piracy, women or children trafficking, weapon traffic, drug traffic, terrorism, genocide etc.

Expulsion

□ It is the judicial institution that allows public authorities of a state to force a person (foreign or stateless citizen) to leave the country, thus ending the person's residence on that state's territory.

The expulsion measure is usually taken for the protection of the rightful order, being motivated by political, economical or judicial considerations, such as public nuisance, illegal actions or political actions against the safety of the state, insults to the state of residence or to a foreign state.

Within the international law some rules have been established in regard to the expulsion stating the expulsion execution must not be useless, brutal, fast or insulting and the expelled has the right to choose the state where he is going to be sent meaning that the expulsion is made while keeping the inherent human rights.

According to art. 7 of the Declaration of Human Rights of the people that do not have the nationality of the country they live in (O.N.U 13th of December 1985) „a foreign person that resides legally on the territory of a state can only be expelled if a decision is made according to law, only if serious national security issues do not interfere, he must have the possibility to gather reasons against his expulsion and to request that his case be examined by the appropriate authority or one or more people especially designated by a certain authority, being represented for this purpose. The individual or collective expulsion of foreigners that are in this situation on grounds of race, color, religion, culture, ethnicity or nationality is forbidden. [2, 203]

Expulsion or extradition are decided by law, within a lawsuit, based on proven facts provided by law. Any expulsion or extradition that is not legally decided by justice represents an abuse, a violation of the right to free circulation guaranteed by the Constitution and the International Conventions. [4, 208]

Towards the reality that both measures seriously harm fundamental liberties, it is normal that justice should decide because within the structure and System of the Constitution of Romania justice is one of the guarantees of the constitutional rights and liberties.

The priority of international regulations

By art. 20 of the Constitution of Romania some rules are established regarding the relation between internal and international law.

The first rule of the constitutional provisions regards the interpretation and application of dispositions regarding the rights and liberties of the citizens according to the provision of the international treaties of which Romania is part.

The explanation for this lies within the attachment of Romania towards the Universal Declaration of Human Rights, the International Pact regarding economic, social and cultural rights and the Pact regarding the civil and political rights (adopted and open to signing, ratification and adhesion on the 16th of December 1966, ratified by Romania in 1974 and put into effect on the 3rd of January 1976 and 23rd of March 1976) as well as towards the European Convention for protecting the fundamental human rights and liberties (1950) which Romania has ratified (1994)

The second rule gives priority to international regulations (from the treaties that are ratified by Romania) in case of the occurrence of certain contradictions, or conflicts – inconsistencies- between them and the internal regulations, other than the Constitution.

Nevertheless The Constitution and the internal regulations will have priority if they have more favorable dispositions. [1, 162]

The opening of Romania towards Europe and the international community is thusly constitutionally guaranteed. This is a modern solution that can be found in the Constitution of France (art. 55), Spain (art. 96 and art. 93 that allow the attribution of constitutional competences to some international organizations or institutions) and Germany.

An issue that can occur regarding art. 20 of the Constitutions is that of knowing the solution if certain international regulations contravene the Constitution. In France, the Constitution provides in art. 54 that „If the Constitutional Council, notified by the President of the Republic, by the prime-minister or by the President of one of the gatherings, has declared that an international commitment includes a clause that is contrary to the Constitutions, the authorities in charge of ratification or approval can only interfere after the revision of the Constitution” and the Constitution of Spain provides in art. 95 that „closing an international treaty that contains dispositions contrary to the Constitution must be followed by a revision of the Constitution.”

The supremacy of the Constitution does not allow the ratification of an international treaty that would contravene with its provisions. In the Romanian judicial system the provisions of the international treaties cannot be placed, under the aspect of their judicial power, above the provisions of the Constitution. From here follows the constitutional obligation of the competent authorities to negotiate and close international treaties while keeping their consistency with the Constitution. If the provisions of some international treaties contain provisions that are against the Constitution, their ratification can only be made after the Constitution is revised.

A certain doctrinaire solution inspired by the constitutions of other states (France, Spain) has been also acknowledged by the Constitution which, in art. 11, paragraph (3) states that if a treaty to which Romania is to become part of has contrary dispositions its ratification can only take place after the revision of the Constitution. A certain constitutional law must be applied to all the international instruments that Romania is to become part of and not only to the ones regarding human rights and liberties.

The free access to justice

Solving conflicts by an independent and impartial power is a guarantee of the rights and liberties if every person has free access to justice. According to this principle anybody must have free access to justice regardless if he is Romanian, foreign or stateless citizen, for protecting his rightful rights, liberties and interests.

The Constitutional Court has decided [7] that any person can appeal to justice in order to protect his legitimate rights and interests and no law can prevent the exercise of this right. Also, a disposition that prevents judicial people to exercise the attack against the lawsuit – verbally, of contravention to the courts of law, violates „the free access to justice”.

The access to justice implies the submission of some applications as well as their solve by the competent judicial authorities, namely the efficiency of the application. In the practice of the Constitutional Court there have been two very important legal issues that regard the content of this principle.

Regarding the first problem, the Court has decided that „according to the provisions of art. 125 of the Constitution, justice are made by the Supreme Court of Justice and by the other judicial courts provided by law. Thus being the existence of some administrative and jurisdictional organs it cannot let to the removal of the intervention of the judicial courts, within the terms provided by law. This consequence also results from the exigencies of the principles of separating the state powers, that, in what concerns the relation between the public and judicial administration, excludes the possibility that an organ of public administration, even with jurisdictional character, to substitute judicial authority. As a consequence, the decision of the administrative jurisdictional organ is subdued to the judicial control of the administrative legal department or other competent institution, according to law, and the parts cannot have limited exercise of a right sanctioned by the provisions of the Constitution.”

Overtaking the jurisprudence of the Constitutional Court, in art. 21 paragraph (4) of the Constitution it has been provided that the administrative jurisdictions are optional and free. These jurisdictions „represent an activity done by a jurisdictional organ which functions within an institution of public administration or some autonomous administrative authorities that is made according the procedure imperatively provided by a special law, procedure resembling the one of the courts of law developed separately by them” [8]. These jurisdictions can be legally regulated or not, that is why they are optional, by once they are regulated they become mandatory, must be notified and are free. At the same time „a difference must exist between the preliminary administrative procedure and the administrative-jurisdictional procedure. [9]

Regarding the second problem the Court has decided that the enforcement of the rule for developing the court trial is to be made by the legislator according to the provisions of art. 125 and 128 of the Constitution. Consequently, the legislator can enforce, taking into consideration special situations, special procedural rules as well as ways of exercising the procedural rights, the principle of free access to justice assuming the open possibility of those interested to use these procedures in their forms and ways that are established by law. Therefore the rule of art. 21 paragraph (2) of the Constitution means

that the legislator cannot rule out from the exercise of procedural laws that he has enforced any category or social group.

The Constitution and its laws does not defend or guarantee any interests but those that are founded on law, custom, generally on sources of law.

The free access to justices allows the submission of any request that can be solved by the courts of law. The legitimate or illegitimate character of the requests will result only after the judgment of the case and will be established by the court order. Using the expression „legitimate interests” the constitutional text does not condition the admission of the action by justice but binds justice to protect only legitimate interests. [3, 306]

The possibility of notifying justice to protect legitimate rights, liberties and interests can be made either through direct action or any other procedural method, including the one of unconstitutional exception mentioned in art. 144, letter c) of the Constitution.

An important part of the free access to justice is represented by the right of the parts to an equal trial and to the solving cases within a reasonable time, regulated by art. 21, paragraph (3) of the Constitution. This text is in accordance with the provisions of art. 6 of the European Constitution for protecting the fundamental human rights and liberties (1950). Regarding this European text and the rules provided by the constitutional disposition there is a very rich jurisprudence of the European Court for Human Rights and also of the Constitutional Court.

The public positions and dignities can only be filled by people that have the country's citizenship and reside within that country

The Constitution uses the terms public positions and dignities. In what regards public dignities, at a closer analysis there can be observed that the position of deputy, senator, head of state, minister is however more than a public function from the point of view of the manner of filling, of attributions and of course as a manner of termination of public dignity. For the constitutional law a certain distinction is not solely terminological but fundamental as well because the dignitaries are not public servants according to the meaning of administrative law.

Public dignity is by excellence a category of the constitutional law.

In what regards the public positions it is without doubt that the constitutional text refers to the ones that imply the exercise of state authority, a certain status and the taking of the oath, according to art, 54 of the Constitution.

Certainly filling a public position or dignity can only be made by people who fulfill all the legal conditions (age, competence etc.) to which the Constitution also enforces two more important conditions, namely: Romanian citizenship and residence on the territory of Romania. In what regards the first condition, double citizenship is allowed by both Constitution and law and the interest of the society is to allow access to public positions and dignities only to people who have Romanian citizenship.

The condition regarding residence on the territory of Romania is, along with the citizenship, a guarantee of the person's attachment to the country to whose governing he participates as a dignitary or public servant. [1, 164] The Constitution regulates within art, 16, paragraph (3) an application of the great principle of equality in the field of filling the public positions and dignities. Thusly, it is provided that the Romanian state guarantees equality of chance between men and women for filling these positions and dignities. A certain constitutional rule does not imply the creation of parity in the domain but only the guarantee of equality of chance for men and women to accede in public positions and dignities. Consequently, the equality of chance must not be mistaken for egalitarianism.

The Constitution also regulates another application of the constitutional principle of equality in art. 16, paragraph (4) according to which the citizens of the Union who meet the conditions of the organic law have the right to elect and be elected within the local public administration authorities.

This text implies certain specifications. Thus, by the examined constitutional disposition it is regulated at the highest level the equality between Romanian citizens and the citizens of the European Union in the election domain. More precisely the national regimen is granted to the citizens of the European Union and the European integration is made in this important field. Regarding the exercise of the right to elect and be elected an organic law must be issued that provides for this purpose the conditions that must be met by the citizens of the European Union, namely which of the citizens of the European Union will be able to elect and be elected. It is certain that this organic law will also decide

regarding with which authorities of the public administration would these rights be exercised.

- firstly, it is observed that only the local public administration authorities are taken into account and not any other type of public authority;
- secondly, within the legislation of the European states the access of foreign citizens to all the local public administrative authorities is not regulated;
- thirdly, the constitutional text refers to people with citizenship not to stateless people;
- lastly, the expression „right to elect” and not „right to vote” is correctly used as it is regulated in art. 36 of the Constitution, due to the fact that the citizens elect one or more people and they do not vote.

The text makes another important specification namely that on one hand the exercise of this rights will be made in accordance to the organic law which will be adopted in accordance with the provisions of the treaty of adherence to the European Union.

The exceptional character of restraining the exercise of certain rights or liberties

According to the Declaration of Human and Citizen Rights „The liberty is the power to do anything that does not harm another. Likewise, the exercise of the natural rights of any human being does not have other limits than those that ensure the same rights to the other members of the society; these limits can only be determined by law”. [10]

The European Convention for Human Rights shows that „NO disposition from the present convention can be interpreted as implying for a state, group or individual a certain right to perform an activity or fulfill an act that follows the destruction o the rights and liberties recognized by this Convention or to bring a higher limit to the rights and liberties than provided by the Convention”. [11] The examination of these provisions concludes that the limits and restrictions are possible if:

- they are expressly provided by law;
- they are needed in a democratic society to protect national security public order, public health or morality, the rights and liberties of the others;
- they are proportional to the cause;

□ They are exclusively regulated in favor of the general good of a democratic society where certain legal restrictions can be enforced for the members of the police' armed forces.

The exercise of the rights and liberties has however special duties and responsibilities.

At the same time, according to art. 15, paragraph (1) of the European Convention the contracting states can take measures that derogate from the duties provided by the Convention in case of war or other public danger that threaten the life of the nation if the situation requests it and if the measures do not contradict other duties of the international law.

According to art. 53 of the Constitution, the restriction of the exercise of certain rights and liberties can only be made by law for: [3, 307]

- protecting the national security, the public order, the public health or morality, the rights and liberties of the citizens;
- the performance of criminal instruction;
- The prevention of the consequences of a natural calamity, a disaster or a severe sinister.

The restriction must be necessary in a democratic society, must not touch the existence of the right or liberty and must be proportional with the situation that determined it and applied in a non discriminatory way.

The presumption of innocence

According to art. 23 point 8 of the Constitution of Romania „until the definitive conviction given by the court of law, the person is considered innocent”.

According to art. 6 point 2 of the European Convention for Human Rights „any person accused of committing a crime is presumed innocent until his guilt will be established by law”.

As a consequence the presumption of innocence provides that:

- a person can only be accused within law limits, based on proof and clues of guilt and only by the appropriate authorities; any accusation that is outside these limits goes under

the incidence of the Criminal Code that provides crimes in this regard such as: illegal arrest and abusive inquiry, slanderous denunciation, unfair repression, slander etc;

□the person is not compelled to prove his innocence, being presumed innocent until the definitive conviction;

□a person who is not definitively convicted by the court of law must be allowed all rights that are entitled to an innocent person;

□The duty to manage the proof of guilt mainly belongs to the competent organs of the state that must do this while keeping the legal procedures; violation this disposition can become a crime of: slanderous denunciation, perjury, abuse of office etc.

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