CONSTITUTIONAL PRINCIPLES GOVERNING THE FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES OF ROMANIAN CITIZENS

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Abstract
The Constitution explicitly guarantees and protects the fundamental human rights and freedoms that are deemed to be of utmost importance. By incorporating them directly into the basic law, their existence and recognition are assured, as well as providing efficient measures for guaranteeing and protecting them. The constitution's language should only include principled restrictions, as that is its purpose. In the realm of basic rights and freedoms, the Romanian Constitution of 1991, with its revisions, establishes certain regulations referred to as principles. In this article, we will provide a concise overview of these principles.
Keywords*: fundamental rights and freedoms, principles, guarantees, Romanian Constitution.*

These principles are fundamental regulations that succinctly encapsulate the core aspects of safeguarding and ensuring human rights and liberties. They are primarily outlined in Chapter I of Title II of the Romanian Constitution, but can also be found in other provisions such as Article 1, Article 4, Article 6, and Article 53 of the Constitution [1].

1. The general applicability of essential rights, liberties, and responsibilities

The formulation of this idea is found in Article 15(1) of the document. Citizens derive advantages from the rights and freedoms protected under the Constitution and other legislations, along with the corresponding responsibilities imposed by them. The idea encompasses both the universal nature of fundamental rights and freedoms, as well as the individuals who possess them. The lawmaker aimed to provide complete equality among people in terms of their ability to effectively exercise their fundamental rights and freedoms. “In the doctrine of constitutional law, this principle is considered the main pillar of the construction of fundamental rights and freedoms, because there is a system of international protection of the individual whose rights have been violated.” [2] Naturally,

the manner in which any individual takes use of this opportunity is contingent upon their aptitude, education, and diligence.

The Constitution aligns with Article 2 of the Universal Declaration of Human Rights by enforcing this principle: Every individual is entitled to exercise all the rights and freedoms stated in this declaration. The same idea aligns with the requirements stated in the introductory statements of both human rights agreements, acknowledging that these rights originate from the inherent worth of every individual and obligating nations to advance widespread and meaningful adherence to human rights and freedoms.

Due to the inseparable connection between rights and obligations, it is acknowledged that the universality of rights also entails the universality of duties. Furthermore, it is inherent in the essence of existence that individuals possess both entitlements and responsibilities towards their fellow citizens and society as a whole. This principle is clearly stated in the two international human rights agreements, which affirm that individuals have obligations to both others and their community. They are expected to actively work towards promoting and upholding the rights outlined in these agreements.

2. Equality in rights of citizens

Articles 4 and 16 uphold the principle that Romanian citizens, irrespective of their race, nationality, ethnic origin, language, religion, sex, opinion or political affiliation, wealth or social background, have equal access to all the rights granted by the Constitution and laws. They are entitled to equal participation in political, economic, and cultural activities, without any preferential treatment or discrimination. Both public authorities and fellow citizens are obligated to treat them equally.

Equality in rights encompasses all the entitlements of Romanian citizens, irrespective of whether they are explicitly enumerated in the Constitution or in other regulatory measures. Simultaneously, this idea is evident in all domains of endeavor.

As per international standards, a rule was enforced stating that any action made in response to a public threat that endangers the nation cannot result in discrimination solely based on race, color, sex, language, religion, or socioeconomic origin.

The idea outlined here establishes the fundamental notion of gender equality, granting women the same rights as men. Women, who constitute half of the population,

actively contribute to all areas of society. Therefore, women have the ability to exercise all rights on par with males and have the opportunity to hold any post under the same circumstances, while getting equal compensation for same labor. The foundation of a family lies in the voluntary agreement between two partners and their equal status.

The Constitution declares the equal rights of citizens, irrespective of their race, nationality, ethnic origin, or language, without regard to their money or social background. This is due to the fact that individuals from various nationalities, including Hungarians, Roma, Germans, Serbs, Turks, Jews, and Armenians, have contributed to the realization of national ideals. They are granted the opportunity to utilize their native language in cultural events and educational settings, while also enjoying unrestricted access to all governmental functions. According to article 6(1), the state acknowledges and ensures that individuals who are part of national minorities have the right to maintain, advance, and demonstrate their ethnic, cultural, linguistic, and religious identity. Another facet of this concept entails ensuring equal rights irrespective of one's faith, viewpoint, or political affiliation. This serves to avoid the conjecture of individuals' political or religious inclinations and, consequently, any form of discrimination.

Article 16(2) stipulates that all citizens are equal before the law and political authorities. This indicates that regardless of one's status within the public authority structure, every individual is considered a regular citizen.

The Constitution allows for some instances of "affirmative" discrimination, which encompass specific measures aimed at providing social safeguards for employment, a particular protection regime for children and young people, as well as special protection measures afforded to individuals with disabilities.

3. Protecting Romanian nationals overseas and their corresponding responsibilities

Romanian citizenship represents the political and legal connection between the person and the state, as expressed by this principle. As per Romanian nationals, they are entitled to state protection when they are outside the country. They have the right to seek protection from Romanian authorities and it is constitutionally mandated for the authorities

to provide it. The cooperation among governments about this strategy is bolstered by a multitude of agreements and conventions.

Nevertheless, the application of this concept should not compromise the authority of the state in which Romanian individuals are situated. Regardless of being beyond Romania's boundaries, the Romanian citizen is nonetheless obligated to execute their duties as outlined in the Constitution and legislation. An exception arises when these commitments are incongruous with the non-presence of citizens within the nation. For instance, a person should not be obligated to engage in numerous benefits aimed at mitigating the impacts of tragedies when they are outside the nation. Being outside the nation does not excuse Romanian citizens from their duty to do military service, pay taxes, or provide for the upbringing, support, and education of their underage children.

4. Legal protection for foreign citizens and stateless individuals in Romania

Articulated in article 18 of the Fundamental Law, this concept showcases Romania's adherence to global norms in safeguarding human rights and liberties. Romania provides comprehensive protection for both foreign and stateless individuals, including their general well-being and safeguarding their possessions. The granting and revocation of the right to asylum in Romania is determined by the legislation, in accordance with international treaties and conventions to which Romania is a signatory.

Internationally, there are three legal regimes that apply to foreigners:

a) The most favored nation clause grants foreigners rights that are at least equal to those given to citizens of any other country;

b) The special regime grants foreigners specific rights that are either specified by the state's legislation or outlined in an international treaty;

c) The national regime grants foreigners the same rights as the country's own citizens, with the exception of exclusive rights.

Romania extends its national regime to foreign citizens and stateless individuals, allowing them to enjoy the same rights and freedoms as Romanian citizens, along with the corresponding responsibilities. However, they are excluded from participating in political affairs and are not required to defend the country. “Practically, foreigners and

stateless persons in Romania can enjoy all the rights and freedoms, except those for which the Constitution or the law imposes the quality of Romanian citizenship." [3]

The right of asylum is exclusively extended to non-citizens or those without a nationality who are being pursued for their political activity. It entails the provision of shelter and protection by the Romanian government. Asylum is provided in accordance with the international treaties and conventions that Romania has ratified. Consequently, granting refuge is considered a humanitarian gesture and should not be classified as an antagonistic action by the state providing it. Individuals accused of crimes against peace and humanity or war crimes are ineligible to receive this protection. Extradition of foreign and stateless individuals is only possible if there is an international agreement or reciprocal circumstances in place. However, this can only occur if there is a court ruling, as stated in article 19 (3, 4) of the rules.

5. Priority of international regulations

In Romania, the Constitution addresses the relationship between international law and domestic law in articles 11 and 20. Article 11 encompasses all international agreements and treaties, regardless of the specific relations they govern. Article 20, on the other hand, specifically pertains to international documents that are related to the protection of rights and fundamental human freedoms.

Article 11 stipulates that the Romanian state is obligated to fully comply with its commitments under the treaties it has entered into, and to incorporate ratified treaties into domestic law in accordance with parliamentary legislation. "Since the Constitution distinguishes between organic and ordinary laws, the consequence is that the ratification of international treaties is to be done by the parliament either through organic laws or through ordinary laws, depending on the field of social relations that form their regulatory object." [4]

By means of ratification, these international agreements are incorporated into domestic legislation. Given the differentiation in our Constitution between constitutional laws, organic laws, and ordinary laws, it is necessary to determine the specific category to which the treaty subject to ratification belongs, considering its regulatory purpose. Under the principle of constitutional supremacy, it is impermissible to enter into

international treaties if the norms or principles of international law conflict with our Constitution. An agreement of this nature can only be established subsequent to the amendment of the Constitution, as long as it does not conflict with the stipulations outlined in article 152, which delineates the boundaries of the revision process.

Art. 20 establishes two important principles. Firstly, it ensures that the interpretation and application of citizens' rights and freedoms align with the provisions of international treaties that Romania has agreed to. Secondly, it establishes that in case of any conflicts or contradictions between international regulations and domestic regulations, the international regulations take precedence. We are specifically referring to the pacts and accords that have been officially approved by our nation, with a particular emphasis on the protection of fundamental human rights.

When examining the three kinds of legislation mentioned earlier, the issue arises as to which of them demonstrates this priority. It is improbable but not impossible for there to be a contradiction between the constitutional and international rules of human rights in our country, considering that our chosen basic legislation closely aligns with the worldwide catalog of human rights. Inconsistencies may arise during the implementation of constitutional principles when the interpretation of texts deviates from international standards, resulting in non-compliance. For instance, it is possible to have a constitutional document that is "in line with" international law. However, if this document is further specified in a parliamentary bill, it may contradict international law.

The ratification of human rights treaties leads to several positive outcomes. Firstly, it fosters the emergence of a civil society that plays a pivotal role in altering the mindset of the population, promoting tolerance and liberal thinking. Secondly, it stimulates the engagement of Romanian non-governmental organizations in safeguarding human rights and strengthening civil society. Thirdly, it encourages solidarity among citizens and their active participation in shaping and reforming Romanian society in line with the principles of the rule of law and European standards. Lastly, it facilitates the development of a national legal framework based on the jurisprudence of the Strasbourg bodies, which actively contributes to the interpretation and application of domestic and international norms, aiming to achieve harmonization.

The constitutional answer provided by Article 20 not only demonstrates a commitment to international norms, but also a strong willingness to embrace their potential and foreseeable changes. However, the most challenging responsibility of modern countries goes beyond the legal assurances. It involves preserving the supremacy of international treaties not only in terms of legal obligations but also in terms of economic and social considerations.

6. Unrestricted availability of legal recourse

Art. 21 enshrines the notion that each individual has the right to seek legal recourse to defend their rights, freedoms, and legitimate interests. The role of justice within the structure of state power, along with the guiding principles that govern the specific actions of judicial authorities, guarantee the efficient implementation of unrestricted access to justice and, more broadly, the enjoyment of basic rights and freedoms. The principles governing judicial action, such as the publicity of debates, orality and adversariality, legality and officiality, and the protection of freedom and the right to defense, ensure the proper functioning of the justice system.

The term “any person” encompasses both Romanian citizens and foreign citizens or stateless individuals. A concern that emerges pertains to the elucidation of the phrase “legitimate interests”. Given that the Constitution does not safeguard and govern all rights and freedoms, it is necessary for the individual's interests to also be grounded in law and its origins. Given that illegitimate interests are inherently in conflict with the principles of legality and the rule of law, it is imperative to combat and penalize them. Article 21 establishes the necessity of clearly distinguishing between the right to pursue legal action and the constitutional duty to safeguard rights, freedoms, and legitimate interests.

Free access grants the ability to submit any request that is within the jurisdiction of the judicial authorities. Furthermore, according to the rule, individuals have the right to submit any request or complaint to the judicial system at any stage of the criminal prosecution and trial, as well as during the implementation of the punishment. The defense of legitimate interests is achieved by both direct action and the utilization of the exception of unconstitutionality as stipulated in Article 146, paragraph d of the basic law.

Given that the Constitution ensures unrestricted access to justice, it is only reasonable that Article 21(2) specifies that no law can restrict the exercise of this right.

7. The exceptional character of the restriction of certain rights or freedoms

According to Article 53 of the Romanian Constitution, specific rights and freedoms can only be limited by law and only if it is necessary for the protection of national security, public order, public health, public morals, the rights and freedoms of citizens, criminal investigations, or the prevention of natural disasters or severe disasters.

“In other words, only the rights and freedoms enshrined in the Constitution are subject to the protection regime enshrined in art. 53 of the Constitution. On the contrary, the rights enshrined by the infra-constitutional legislation can be subject to limitations without respecting the constitutional guarantees applicable to the restriction of the exercise of fundamental rights and freedoms.” [5]

The enjoyment of some rights may be restricted only if it is required for the protection of the collective interest in a democratic society. In the aforesaid scenario, the designated public authority with the legal mandate to conduct the criminal inquiry is alone protected. The measure is not warranted in a democratic society since the protected group interest is of lesser importance and has an indirect impact.

Conclusions

In the current world, it is essential for a person to express themselves as a part of the human society. As civilizing progress grows more dynamic, individuals become increasingly reliant on the collective group they are a member of. They cannot survive without this collective and its operational norms.

Chapter II of the Romanian Constitution guarantees fundamental human rights and freedoms, which offer comprehensive protection to both Romanian citizens and non-citizens residing in Romania.

The rights, freedoms, and fundamental duties of citizens pertain to the connection between individuals and the state in terms of their entitlements, liberties, and responsibilities as outlined and governed in Title II Chapter II of the Constitution.

Without a question, the growth of human rights is one of the most dynamic processes of the latter part of the 20th century. This topic garners increasing attention and forceful actions, both at the national and international levels. In the present day, countries are collaborating more than ever to address both theoretical and practical issues of human rights. Their aim is to safeguard and advance these rights using the most efficient approaches, while also ensuring proper recognition of essential liberties.

References:

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