

CONSTITUTIONALITY OF RESTRICTING THE EXERCISE OF CERTAIN RIGHTS AND FREEDOMS IN EXCEPTIONAL SITUATIONS

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Abstract

The Romanian Constitution uses a simple and efficient procedure for regulating the restriction of the exercise of certain rights and freedoms (common circumstances), through the provisions of a single article. The provisions of Art 53 allow the restriction of the exercise of some fundamental rights and freedoms, but only conditionally. The issue of interpretation and application of the provisions of Art 53 presents a special complexity because the restrictions may concern the exercise of any fundamental right or freedom enshrined and guaranteed by the Constitution, except for those considered to be absolute. The complexity is also due to the diversity of concrete situations that justify the restriction of the exercise of certain rights.

The rules established by the provisions of art. 53 have the value of a constitutional principle, because they are applicable to all the fundamental rights and freedoms of the citizens. The Constitutional Court and the courts are the main state institutions that have the competence to guarantee the observance of the exercise of fundamental rights and freedoms of citizens, to verify the conformity of normative acts with the Fundamental Law and to the constitutionality of limits, conditions and restrictions of exercise of rights, power of Parliament and the Government when adopting restrictive measures.

In exceptional situations, such as the state of emergency or the state of alert established for a long time on the Romanian territory, the rulers have restricted the exercise of some essential fundamental rights, restrictions that seriously affect the private and social life of the people.

In this study we analyse, based on the jurisprudence of the Romanian Constitutional Court, some international courts and other courts, the legitimacy and constitutionality of these restrictive measures.

Key Words: *fundamental rights and freedoms, exceptional situations, restriction on the exercise of certain rights and freedoms, legitimacy and constitutionality of restrictions*

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1. Limitations, restrictions and derogations in the performance of the rights and fundamental freedoms

A Romanian author emphasized that freedom makes sense only in the conditions of the existence of the limit, because in order to manifest itself it must depend on something, to be circumscribed to certain coordinates. "Human

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freedom is interpreted in a bunch of limits that are the condition of its exercise” (Liiceanu, 1994: 11).

The statement and guarantee of human rights through national and international regulations does not exclude the possibility of their limitation. Moreover, the existence of unconditional rights, in theory, cannot be admitted in a democratic constitutional system. The absence of limits and conditions for exercise, provided by the law, constitutions or international legal instruments can lead to arbitrariness or abuse of law, because it would not allow the differentiation of legal behaviour from illegal one. This idea is being expressed by art. 4 of the French Declaration of the Rights of Man and of the Citizen: the exercise of the natural rights of each man has only those borders which assure other members of the society the fruition of these same rights”. Also, the legal doctrine held that in the relations between the holders of rights “the freedom of one stop where the others’ begins, because the inherent condition of the person is his relationship with others” (Deleanu, 1998: 269-270).

The order and social stability refer to tolerance and mutual respect between the subjects involved in social relations. The exercise of rights and fundamental freedoms must not contradict the existing order in social life: the coexistence of freedoms and social protection are the two commandments that underlie the limits enacted by positive law” (Rivero, 1973: 106). The difficulty consists in finding the most appropriate solutions to harmonize individual interests with the public interest and to guarantee the rights and fundamental freedoms in situations where their exercise may be limited or restricted.

In the relationship between rights and freedoms, on the one hand, and society on the other, two extreme attitudes have emerged: the sacrifice of rights and freedoms in the interest of the social order, or the preeminence of rights and freedoms, even if thus the interests and social order are sacrificed (Deleanu, 1998: 205). None of these solutions is justified by the imperatives of an authentic democracy and the requirement of social balance and harmony. In order to be efficient, the constitutional regulations must achieve a balance between citizens and public authorities, then between public authorities and of course, citizens. It must also insure protection for the individual against the arbitrary state interferences in the exercise of his rights and freedoms (Muraru, 1999: 16-17). Therefore, the limits imposed on rights and fundamental freedoms must be adequate for a legitimate purpose, which may be the protection of society, the social, economic and political order, the rule of law, or the protection of the rights of others. The limits must not deprive the rights themselves of their content but must guarantee their exercise in such situations.

The existence of limits for the exercise of fundamental rights is justified by the constitutional protection or by the protection by international legal instruments of some important human or state values. However, it is not permissible for state authorities to discretionary and abusively limit the exercise of rights which are in