

THE REGULATION OF THE FUNDAMENTAL DUTIES IN ROMANIA'S CONSTITUTION

Prof. PhD **Mircea Criste**
University "1 Decembrie 1918" of Alba Iulia

Abstract

One of the facets presented to us by the report of constitutional law, and we are speaking of one of its main hypostases, is represented by the relation established between the citizen, as governed subject, and the governants.

The juridical statute of the citizen is given not only by the rights granted to it by the fundamental law, whose revindication toward the state bodies is granted by special means of constitutional law, but also by the constitutional duties of each citizen.

Romania's constitution stipulates, along a series of rights, also a small number of fundamental duties. Those duties have to be performed with good faith. Romanian citizens, but not only them, must obey the juridical order of the Romanian state, first of all the constitutional one. They are obliged to fidelity toward the country and to defend it, as well as to support the financial effort of the state, which is made first of all in the interest of the citizen, by an equitable distribution of financial burdens.

Keywords: *constitutional law, citizen, the governants, fundamental law, fundamental duties*

Citizenship is identified in the doctrine as the juridical link established between a person, member of a collectivity, and the state that collectivity lives in. The juridical status which citizenship confers to a person comprises, besides a series of rights, also a series of fundamental duties. Romania's constitution regulates, from art. 21 to art. 52, a series of fundamental rights and duties, guaranteeing also the exercise and following of these through the means of instruments which are specific to constitutional law (control of constitutionality and the intervention of the ombudsman). Romanian citizens have though also a series of duties, also regulated by Romania's fundamental law, in Chapter III of the second title. In the following we shall try to make a review of those duties, relating in our analysis to the jurisprudence of the Constitutional Court.

2.1. Following the constitution and the laws (article 1 paragraph 5)

Not only Romanian citizens but also foreigners and stateless living in Romania have the obligation to follow the Romanian law, and each of these subjects of the law, equally physical or juridical persons, is asked to know it. It is necessary to underline that this duty refers to the "law" not only in a narrow meaning, in concerns any juridical norm emanated from a public competent Romanian public authority. From all these norms, the one that has to be primarily followed is the Constitution itself, as the law norm with the greatest juridical power. This stipulation was initially to be found in article 51 of the fundamental law, together with the other fundamental duties, and following the constitutional modification from 2003 it is comprised by the first article (paragraph 5), intending thus to stress the importance granted to it by the constituent.

2.2. The obligation to fidelity to the country (article 54)

The obligation to fidelity to the country is defined by our Constitution as a sacred obligation. It is sacred, generally, for any citizen, the Romanian penal code incriminating the crime of treason, but it is sacred particularly for citizens entrusted with public offices, as well as for members of the armed forces. These are responsible for the faithful fulfillment of their obligations and, for this purpose they will take the oath stipulated by the law. It results therefore that fidelity to the country appears as an essential obligation resulting from the relation of citizenship, a defining relation in the conditioning by the lawmaker of the access to certain public offices or dignities. For that reason, the Romanian constitutional court decided that in order to exercise the right to work, in the case of the public office it is constitutional to add other specific requirements, as that related to citizenship, along with other conditionings related to education, age etc.¹

We have to remind here that by the constitutional amendment of 2003, the stipulations of art. 16 were rewritten, and for occupying public offices and dignities, civil or military ones, the constitutional text stipulates only the condition of holding the Romanian citizenship, as it was in the initial wording of 1991.

The new stipulation can be understood and accepted in the case of MPs up to a certain point and in certain aspects, but its enforcement in the case of the state's supreme magistracy, that of President of Romania, gives birth to a series of confusions and doubts. This is because in the present wording of the constitutional text, nothing stops the chief of state in Romania to hold another/other citizenship/citizenships, besides the Romanian one. But this fact may generate debates related to the harmonization of its oath to faith and fidelity to Romania with one/some similar oath/oaths taken to the service of another/other state/states.

2.3. The obligation to defend the country (art. 55)

This is not only a duty but, according to art. 55 of the Constitution, it is also a right. The constitutional revision of 2003 modified that article removing the stipulation concerning the compulsory military service for men, Romanian citizens over 20. They served in the army as conscripts, reduced-time conscripts or concentrated or mobilized reservists. In the new wording, the conditions concerning the fulfillment of the military duties are regulated by the organic law. For the active military service training, citizens may be drafted starting with 20 and up to 35 years old, except for volunteers.

The constitutional modification does not bring a positive regulation, in the sense of abrogating the obligation of military service, but a negative one, meaning that this obligation has no longer a constitutional value. The concrete way how the military service, compulsory or voluntarily, is fulfilled becomes an area of regulation for the organic law. Though, up to the intervention of the lawmaker, the premise of the matter remained, even after the constitutional revision, the law 46/1996. It stipulated that the preparation of the population for defending the country is done by the fulfillment of the military service and by participating in other forms of training. The alternative military service represented a form of fulfillment of the military service and was done by citizens who were fit for military service but who, for religious reasons, refused to fulfill the military service under arms. The duration of the alternative utility service was of 24 months for common conscripts and of 12 months for reduced-time conscripts and was done in public

¹ CCD no. 226 from 3rd July 2001 concerning the exception of non-constitutionality of the stipulations of art. 6 letter. a) from the bill no. 188/1999 concerning the status of civil servants with its later modifications and completions.

institutions, autonomous administrations, commercial companies, which are further called employers.

Requested to decide if the stipulations of Law 46/1996 are still correspondent to the stipulations of art 55, concerning the defense of the country from the revised constitution, the Constitutional Court established that this law was adopted under the regulations of art. 52 of the unrevised Constitution, a constitutional text according to which the military service constituted an obligation for all men, minus the exceptions foreseen by the law, Romanian citizens, aged 20, who could be drafted until the age of 35. Art. 55 of the Constitution brought important modifications to the regulated area, not stipulating exactly the obligation of the military service for men, but establishing that citizens can be drafted from 20 to 35 years of age except for the volunteers, under the conditions of the organic law. Therefore, as the Court had decided, the fundamental law leaves for the lawmaker to establish the circumstances concerning the fulfillment of the military duties, as well as of the persons who have to fulfill that duty².

Now, the training of the population for the defense of the country is regulated by law 446 from 30th November 2006, published in the Official Journal no. 990 from 12th December 2006. According to this normative act, adopted in order to agree the legislation in that area with the new constitutional regulation, the training of the Romanian citizens for the defense of the country is done by the fulfillment of the military service and by participating to other forms of training organized by the institutions for the defense of the country and for national security.

The military service is done by Romanian citizens, men and women, aged 18 or more, in the following forms: active, alternative and reserve service. The active military service is fulfilled as a professional military, drafted military or student at the educational institutions from the defense system and the national security system, except for the student of military high-schools and colleges, volunteer soldiers or ranked soldiers. Citizens who, out of religious or conscience reasons refuse to fulfill the military service under arms, do the alternative military service, regulated by a decision of the government.

When declaring mobilization and the state of war or the setting of the state of siege, the fulfillment of the military service as a drafted serviceman or concentrated or mobilized reservist is a must for men from 20 to 35 years old, who fulfill the criteria of military service. For the time of the enforcement of this special state, citizens must provide the specialized structures with the information concerning the national safety.

Romanian citizens, during the fulfillment of their military service, must obey the military oath. In the same time, citizens are forbidden to develop political activities in the military units.

2.4. The obligation of financial contribution (art. 56)

The obligation to financial contribution is done through the payment of taxes meant to support public expenses. The legal system of taxation must ensure the just setting of the financial duties. Any other duties are forbidden, except for those foreseen by the law, under special circumstances.

According to art. 2 from the law 500/2002 concerning the public finances, taxation is defined as the obligatory tax, without prestation and non-refundable, done by the public administration, for the fulfillment of the necessities of general interest, and the tax is conceived as being the amount paid by a physical or juridical person, usually for the services done by a company, a public institution or a public service. Those contributions

² DCC no. 149 from 15th March 2005

which are not a revenue for the national public budget, but compensate certain costs supported by the supplier of a service, like those in the area of electronic communications (Law 304/2003) are not included into the category of taxes and duties. These duties are apart from the charges that express the officially established price for services or works done, according to importance, volume and value³.

The existence of an express obligation of each citizen to contribute through the means of taxation and duties to the public expenses must be corroborated with the state's obligation to protect the national interest in the financial activity, according to art. 135 paragraph (2) of the Constitution. The collection of taxes and duties is the main income source of the state, being one of the most obvious expressions of the protection of national interests on a financial level. The Constitutional Court observes that only if the state has these budgetary resources it will be able to fulfill its obligations toward the citizens and companies, among which we can mention the free trade, protection of loyal competition, a favorable frame for putting into value all production factors, the protection of national interests in the economic, financial and currency activity⁴.

The Romanian constitutional court has not accepted, in another case, the critic of non-constitutionality brought to the enforcement of an enhanced taxation of the physical persons who own two or more buildings used for the purpose of housing, arguing that the constitutional principle of the equality of rights, stipulated by art. 16 paragraph (1) is broken, as well as the constitutional stipulations of art. 44 paragraph (1) and (2) first thesis, concerning the right to private proprietorship. In this case the Court considered that there is no kind of discrimination toward the tax-payers owners of several buildings, related to those who own a single building, as to the basics of the criticized text there is a sufficient reason to enforce a different juridical regime, that is the progressive taxation, related to the number of owned buildings. The constitutional judges reached to this conclusion by interpreting the stipulations of art. 56 paragraph (2) of the Constitution, stipulating that "the legal system of taxation must ensure the just setting of fiscal duties". According to the decision of the Constitutional Court⁵, the formulation *just setting of fiscal duties* implies on the one hand to regard the material situation of the tax payers, and on the other hand, the enhanced possibility of those who own several proprieties to contribute through taxes to public expenses.

Regarding the claimed taxation inequality between the state and the other tax payers who own several buildings, the Court stipulates that the conclusions of art. 250 paragraph (1) of the Fiscal Code, according to which there is no taxation for buildings owned by the state, is justified on the one side by the nature and destination of those buildings belonging to the state through the nature and destination of those buildings meant to serve the general interest, and on the other side by the necessity of simplifying some financial operations, considering that that state's institutions are financed from the state budget, and the state contributes to the incomes and expenses of the local budgets through sums defalcated from certain incomes of the state budget and subsidies from the state budget as stipulated by art. 5 from the government's emergency ordinance no. 45/2003 concerning the local public finances.

³ DCC no. 463 from 6th June 2006

⁴ DCC no. 158 from 10th November 1998 concerning the exception of non-constitutionality of the stipulations of art 72 from the Governance Ordinance no 11/1996 concerning the execution of budgetary debts approved and modified by Law no. 108/1996

⁵ DCC no. 477 from 9th November 2004 concerning the exception of non-constitutionality of the stipulations of art 252 paragraph. (1) from Law no. 571/2003 concerning the Fiscal Code.

In its jurisprudence, the Constitutional Court, agreeing with the European Court of Human Rights, established that equality does not mean uniformity, being therefore possible to enforce a different juridical treatment for different situations, when these are rationally and objectively justified.

The Court also observes that it is not sustained to claim that the enforcement of the progressive taxation on buildings according to their number would break the stipulations of art. 44 paragraph (1) and (2) first thesis of the Constitution, because there is not a transfer of the right to proprietorship, but only the issue of the concrete lawful enforcement of the stipulations of art. 56 of the Constitution.

The good-faithed exercise of rights and liberties (art. 57)

Romanian citizens, foreign citizens and stateless persons must exercise their constitutional rights and liberties without breaking the rights and liberties of the others, as stipulated by the constitutional text.

This text must be interpreted, like the constitutional court did, also through the prism of the exercise of public liberties, as the notion of liberty cannot be understood as an absolute right, as long as the liberty of a person ends where the liberty of another person begins. This is the reason why art. 57 stipulates exactly the obligation of exercising in good-faith the constitutional rights, without breaking the rights and liberties of the others⁶.

In applying the stipulations of art. 57 of the Constitution, the Constitutional Court decided that the stipulations of art. 108¹ paragraph 1 number 1 letters a and c from the Code of Civil Procedure which sanctions with judiciary fine the ill-faithed introduction of some requests which are obviously not sustained, this means the ill-faithed gathering of any citation through publicity of any part, are constitutional. The above mentioned text of law does not institute inequalities or discriminations among citizens or categories of persons, but only stipulates the possibility of judiciary fines, in the case of the ill-faithed enforcement of some procesual rights, which corresponds to the exigencies of art. 57 of the Constitution⁷.

BIBLIOGRAPHY

Mihai CONSTANTINESCU, Antonie IORGOVAN, Ioan MURARU, Simina Elena TĂNĂSESCU, *Constitutia Romaniei revizuita – comentarii si explicatii* -, Bucuresti: All Beck, 2004

Ion DELEANU, *Instituții și proceduri constituționale - în dreptul român și dreptul comparat*, București, C.H. Beck, 2006

Tudor DRĂGANU, *Drept constituțional și instituții politice*, tratat elementar, vol. I-II, București, Lumina LEX, 1998

Cristian IONESCU, *Tratat de Drept constituțional contemporan*, ed. a 2-a, Bucuresti, C.H. Beck, 2008

Cristian IONESCU, *Constituția României – Legea de revizuire comentată și adnotată cu dezbateri parlamentare*, București, ALL Beck, 2003

Ioan MURARU, Simina TĂNĂSESCU, *Drept constituțional și instituții politice*, vol I-II, ed. a 13-a, București, C.H. Beck, 2008-2009

⁶ DCC no. 62 from 18th January 2007 concerning the exception of non-constitutionality of the stipulations of art. I pt. 56 from Law no. 278/2006 for the modification and completion of the Penal Code, as well as for the modification and completion of other laws.

⁷ DCC no. 170 from 15th April 2004 and DCC no. 799 from 27th Septmeber 2007 concerning the exception of non-constitutionality of the stipulations of art. 108¹ paragraph. 1 pt. 1 let. a) and c) from the Code pf Penal Procedure

Ioan MURARU, Gheorghe IANCU, *Drepturile, libertățile și îndatoririle constituționale*, 2 vol., București, I.R.D.O., 1992

Genevea VRABIE, Marius BĂLAN *Organizarea politico-etatică a României*, Iași, Institutul European, 2004

Bianca SELEJAN GUTAN, *Drept constituțional și instituții politice*, ed. a 2-a, București, Hamangiu, 2008