

## **APPLIABLE PROVISIONS OF THE CONSTITUTION IN THE SOCIAL ASSISTANCE FIELD**

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**Abstract:** *This paper aims at analyzing the constitutional provisions applicable in the field of social assistance. Legal rules laid down by the Constitution are essential or constitutional, the other rules contained in other legislation are unsubstantiated or ordinary, shall be in accordance with those contained in the Constitution. Their importance, we will present those with implications for social assistance.*

**Keywords:** *constitutional provisions, social assistance, Constitution, Legal rules, the right to identity, unity and solidarity.*

Legal rules laid down by the Constitution are essential or constitutional, the other rules contained in other legislation are unsubstantiated or ordinary, shall be in accordance with those contained in the Constitution. In this paper it will be presented those with implications for social assistance.

The current Constitution of Romania is one of recent date, having been adopted in 2003. Constitution of 2003 replaced the old Constitution of 1991, which amended it and completed a revision of the Constitution Law no. 429/2003, republished by the Legislative Council, by updating the names and to give new numbers.

Act revising the Constitution was approved by national referendum of 18-19 October 2003 and entered into force on October 29, 2003.

On the basis of social assistance, art. 4 of the Constitution provides for national unity and equality among citizens. The 1<sup>st</sup> paragraph of this article provides that "the state is founded on Romanian national unity and solidarity of its citizens". Also, according to the second paragraph, România is the common home for its citizens, regardless of "race, nationality, ethnic origin, language, religion, sex, political affiliation, wealth or social origin".

In the assisting of minorities field, the 6<sup>th</sup> article form the Constitution concern the right to identity, providing them the right to preserve, develop and express their ethnic, cultural, linguistic and religious. But the second paragraph provides a limitation stating that "protective measures taken by the state for preservation, development and expression of national minorities shall conform to the principles of equality and discrimination in relation to other Romanian citizens."

The protection of persons in the field of labor law (the 9<sup>th</sup> article of the Constitution) refers to unions, employers and professional associations, providing that they "are established and operate according to their statutes in the law" and that they help protect the rights and promote the professional, economic and social interests of their members.

A very important constitutional principle, with extensive applications and social assistance is that of equal rights. According to the 16<sup>th</sup> article, citizens are equal before the

law, without any privilege or discrimination. Also, according to the second paragraph, nobody is above the law. On public dignity functions, the 3<sup>rd</sup> paragraph guarantees equality between women and men, provided they have Romanian citizenship and residence in the country.

On foreign and stateless, the 18<sup>th</sup> article provides that if you live in Romania, enjoying the general protection of persons and property, guaranteed by the Constitution and other laws. The second paragraph of this article refers to the right of asylum "shall be granted and withdrawn under the law, respecting treaties and international conventions to which Romania is a party". Also, they can be extradited only in an international convention or under conditions of reciprocity. International treaties that we have listed among the sources of welfare law, if regard the human rights are considered law. The 20<sup>th</sup> article of the Constitution provides that constitutional provisions on the rights and freedoms shall be interpreted and applied in accordance with:

- Universal Declaration of Human Rights
- Covenants and treaties to which Romania is part, and disagreements between them and national laws, international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.

Equally important are the principles of free access to justice, the right to life and physical and mental integrity, the right to personal liberty, the right of defense, and the right to free movement.

On family assistance, relevant is the 26<sup>th</sup> article, which enshrines the right to privacy, family and private. Public authorities must respect and protect the intimate, family and private life. According to the second paragraph, the individual has the right to dispose of himself unless it violates the rights and freedoms of others, public order and morals.

Domicile and residence are inviolable, and could depart from it only in cases expressly provided for in the 27<sup>th</sup> article, namely:

- To execute an arrest warrant or court order;
- To remove any danger against the life, physical integrity or assets of a person;
- To protect national security or public order;
- To prevent the spread of an epidemic;

Also, remember that protects constitutional privacy of correspondence (Article 28), freedom of conscience (Article 29), freedom of expression (Article 30).

The right to information, state that after the first paragraph of the 31<sup>st</sup> article provides that the right of access to any information of public interest can not be restricted and this right to information shall not be prejudicial to the protection of young people or national security.

Also the social care of children and young people, particular importance is the 32<sup>nd</sup> article that promotes the right to education and the 33<sup>rd</sup> article - right to culture. The right to education is ensured through compulsory education by the school or professional in higher education and other forms of instruction and training. Also, is guaranteed the right of persons belonging to national minorities "to learn their mother tongue and be educated in this language". For children and youth from disadvantaged families and children and youth in institutions, the state provides social scholarships.

In social care to patients field, interested the 34 and 35 article which preaches right to health care, namely the right to a healthy environment. The right to health is guaranteed, "the State must take measures to ensure hygiene and public health" and "the organization of healthcare and social security system for sickness, accident, maternity and recovery,

control the exercise of medical professions and paramedical activities and other measures to protect physical and mental health of a person established by law".

Of social care in labor field, the Constitution provides that the right to work can not be restricted, and refers to the social protection measures for employees, employees concerning safety and health, working conditions for women and youth, establishing a minimum gross salary per economy, weekends, paid holidays, work under difficult and special training and other specific situations. The protection of women's rights means that at equal work, women have equal pay with men. The normal daily work is, on average, up to 8 hours. In settled also the right to collective bargaining in labor and binding collective agreements. With special implications for social assistance is also the 47<sup>th</sup> article governing the standard of living. The first paragraph settled that "the state is obliged to ensure economic development and social protection, which would provide citizens with a decent living." The pension rights is for all citizens, women's rights to paid maternity leave, the right of patients to health care in public health centers, unemployed entitled to unemployment benefits and other forms of public and private insurance provided by law. The second paragraph of the text refers specifically to the right to social assistance measures, stating that "citizens have the right to social assistance measures under the law".

On family welfare, suggestive are the provisions of 48<sup>th</sup> article of the Constitution, providing that the family based on marriage between spouses freely consented, equality and the right and duty of parents to ensure the upbringing, education of the children; "the closure, dissolution and nullity of marriage shall be established by law". Also, the social care of children: "children out of wedlock are equal before the law of marriage." Also in assisting children and youth, the 49<sup>th</sup> article guarantees the protection of children and young people, providing that they enjoy a special protection and assistance in achieving their rights. State grant allowances for children and benefits for the care of ill or disabled. Other forms of social protection for children and young people are established by law. The constitutional dispositions prohibits exploitation of minors and their use in activities that would harm their health, morals or endanger their life or normal development, the employment of minors under 15 employees, and "public authorities shall contribute to ensuring conditions for the free participation of youth in political, social, economic, cultural and sporting life of the country".

In the sphere of art remind disabled, the Constitution provides that "persons with disabilities enjoy special protection. State carries out a national policy of equal opportunities, disability prevention and treatment, the effective participation of disabled people in the community, respecting the rights and duties of parents and guardians".

The implications in the sphere of relations between people in special situations and to assist the competent authorities, relevant are 51-53 articles, which concern the right of petition, the right person aggrieved by a public authority and the restriction of certain rights or freedoms. All citizens have the right to address public authorities by petitions formulated in behalf of the free. Also, have this right the legally constituted organizations, on behalf of the bodies they represent. Correlative final paragraph requires public authorities to respond to petitions within terms and conditions established by law. "A person injured in its right or a legitimate interest by a public authority through an administrative act or failure to solve a legal term requests, is entitled to the acknowledgment of those rights or legitimate interest, its annulment and damages ". The state will bear patrimony liability for damages caused by judicial errors. This liability does not preclude, however, on the magistrates who exercised their bad faith or gross

negligence. Finally, the 53<sup>rd</sup> article provides the possibility of limiting freedoms, but only by law and only if it is necessary for:

- Safeguarding national security
- Protection of public order, health or morals
- Rights and freedoms
- Conducting a criminal
- Prevent the consequences of natural disasters, of a disaster or an extremely severe catastrophe.

In the field of minority health, the Constitution concerns the right of Romanian citizens belonging to national minorities to express themselves in their mother tongue before the courts. Also, foreigners and stateless persons who do not understand or speak Romanian have the right to inspect all documents in the file, to speak in court and draw conclusions through an interpreter, and in criminal trials, this right is ensured even free of charge.

**References:**

For more details see Laura Cetean-Voiculescu, "Law in Social Assistance", *Risoprint* Publishing House, Cluj-Napoca, 2008, pp. 67-73;

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273 and 275 Act regarding the adoption procedure and the child, rights protection and promotion.