

## **DEFINITION AND LIMITS INDIVIDUAL FREEDOM, REGULATION, ARTICLE 23 OF THE ROMANIAN CONSTITUTION**

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### *SUMMARY*

*This referat examine the definition of individual liberty based on an analysis of the doctrine of the Romanian and the foreign, especially French. The analysis is based on individual freedom, as provided in this Article. 23 of the Constitution of Romania, taking into account traits that individual freedom is identified as a fundamental human right. Also, the definition and concept size is achieved through analysis of another sintacme, that the "security of person", which is closely related. It lacks any reference to the European Convention on Human Rights and the definition and limits of individual freedom in this international document, by comparison with those present in the Romanian legislation.*

*Key words: individual liberty; individual freedom; Article 23 of the Constitution of Romania; fundamental human right; security of person, European Convention on Human Rights;*

The issue of terminology, as Romanian and foreign doctrine emphasizes, the individual freedom, in a short way, related physical freedom of the person, it's right to behave and move freely, not to be held in slavery or in another form of servitude, not to be deprived of phisycal liberty illegally. A similar definition is used by the French doctrine, which shows that there are many meanings of individual freedom, in a short way having significance safety of the person, as it is dedicated to French Declaration of Rights of 1789.

The safety of the person appears as a guarantee of individual freedom, referring to the legality custodial measures as may be decided by public authorities. The concept of security of person expresses all the guarantees that protect the person in circumstances where public authorities shall take the measures concerning individual freedom, safeguards ensuring that such masures are not illegal. Jean Morange stressed that security of person and principles of habeas corpus that guarantees a „come true only if two conditions are met: the criminal trial should be conducted properly, can be suppressed arbitraly imprisonment.

The British legal language, the right of security of person was appointed habeas corpus and has the meanings given security level fundamental law of every citizen so that, once arrested or detained, it will be referred without delay of a jury be call to decide the release of the accused or the maintenance of the status of detention.

International documents that refer to individual freedom often used expressions "right to liberty and security of person" or "right to liberty and security". Article 3 of the Universal declaration of Human Rights provides that "everyone has the right to life, individual freedom and security of person"; article 9 upholds the right of everyone to not be arrested, detained or exiled arbitrarily, therefore listing the main components of individual

liberty. International Convenand of Civil and Political rights, in article 9, paragraph 1, sentence I state that “everyone has the right to liberty and security of person. The word freedom is also mentioned in article 9 paragraphs 3 and 4, but in article 10 concerning the right of person deprived of liberty to be treated with respect for human dignity to them.

Convention of the Rights of the Child appears the terms “freedom” in article 37 letter B: “no child is not deprived of their liberty unlawfully or arbitrarily, and in article 37 letter C and D.

European Convention on Human Rights and Fundamental Freedoms in Article 5 developing a procedure for the protection of individual liberty and security of person, and in Article 1 of Protocol No.4 upholds the right person to not be deprived of liberty for non-performance of contractual obligations. Article 5 was inspired to art. 3 and art. 9 of the Universal Declaration and resemble those of art. 9 of the International Covenant on Civil and Political Rights.

In national legislation, including the current Constitution of Romania was chosen for a specific regulatory rights and fundamental freedoms, individual liberty with them, from the existing rules of international legal documents, to reflect the principles enshrined in the Habeas Corpus Act, in French Declaration of Human Rights and Citizen of the protection of individual liberty and security of person.

Legal terminology sets the size of legal enforcement, so it is necessary to establish the meanings used by Romanian legislature, in particular article 23 of the Romanian Constitution both in its original wording, and the revised wording.

The text of article 23 on freedom of individuals is as follows:

"(1) Individual freedom and security of person are inviolable.

(2) Search, detainment or arrest of a person shall be permitted only in cases and procedure prescribed by law.

(3) Retention not exceed 24 hours.

(4) preventive arrest ordered by a judge and only during the criminal trial.

(5) In the prosecution may order preventive detention for up to 30 days and may extend up to 30 days without overall length exceeding a reasonable time, and no longer than 180 days.

(6) stage the court is bound under the law, to check regularly, and not later than 60 days, the legality and merits of preventive arrest and have immediately the release of the defendant if the grounds for the preventive custody have ceased or if the court finds no new grounds justifying the continuance of the custody.

(7) The decisions of the court on custody subject to preventive remedies provided by law.

(8) Any person detained or arrested shall be promptly informed, in language they understand, the reasons for detention or arrest and prosecution, as soon as possible, charges shall be made only in the presence of a lawyer, elected or appointed,

(9) The release of a detained or arrested is mandatory if the reasons for such action have disappeared, and in other cases provided by law.

(10) A person under preventive custody is entitled to apply for provisional release, under judicial control or on bail.

(11) until the final decision of the court conviction, the person is considered innocent.

(12) Penalties can be established or applied only in conditions under the law.

(13) deprivation sanction of freedom can only be criminal.”

Reflection on terminology in the wording of the current Constitution the right to liberty and security, the doctrine of recent shows that throughout Title II of the Constitution

in force of Romania to the legislative technique used spelled out the fundamental rights and ensuring the existence of with an indication that other law will govern the content, scope and protection, pointing to Article 23 paragraph 2 that would cap individual liberty by arrest or detention „only in the cases and procedure prescribed by law”. It may be noted that the 1991 Romanian constituent legislature endorsed the concept of monistic, that without the inclusion of human rights in constitutional rules and without appropriate, practical, provided by law for their coverage by each state, the rights and freedoms are inefficient practice and therefore inoperative.

Article 23 of the Constitution of Romania used to express the fundamental freedom enshrined in the following two expressions namely that of personal liberty and security of person, suggesting that not have the same meaning and not form a single legal category. The notion of individual freedom in this context, as noted above, the physical freedom of the person while the person cover all the safety guarantees that the individual is protected against any arbitrary restriction of government within the meaning of physical freedom. Thus, the concept of personal liberty in the Constitution of Romania has a scope and a greater generality than the safety of the person, while security of person may be regarded as a guarantee of individual liberty, as concerns the legality of measures they can take judicial authorities, where and as provided by law. The term means a feature inviolable individual freedom that this right can not be violated, raped, reached arbitrarily. *In cases provided by law*, we understand the situations, circumstances in which the competent public authorities can carry out searches and arrests, detentions, and the procedure prescribed by law is to understand the rules of procedure to be followed necessarily.

Constituent Romanian May and many other terms used in content regulation of the right to individual freedom: searching, which is a measure provided in the Code of Criminal Procedure which may require a criminal judicial bodies to check the existence of any object or document that concern criminal case, detention, procedural-criminal as a preventive deprivation of liberty than 24 hours, which may take judicial bodies to a person suspected of committing a crime (the accused or defendant); arrest is a measure that seriously undermines individual freedom and is deprived of liberty of a person for a period determined explicitly constituted more than the retention period, subject to a reasonable and express rules to extend the arrest, trial procedure, and a number of other safeguards for the right to liberty and security of person, with the maximum length of detention and arrest, such as exclusive role of the judge's determination to make the main custodial measures (excluding retention), the communication language innocence which means a defendant, the degree of jurisdiction in solving measures on the arrest, the right to advocate and ensure the right of defense of the arrested person arrested by law required to establish the provisional release (under judicial control or on bail), limits the application of the two measures preventive deprivation of liberty, consecrated nevinăvăție constitutional principle and the principle of presumption of legality of criminal offenses and legality of the sentence. Romanian Constituent also included in Article 23 and terminology to designate content rule that custodial arrangements impunity can only be criminal.

Subject matter of terminology, Article 23 of the Constitution of Romania's current content includes individual freedom as a fundamental reflection of that right only in criminal matters, with, moreover, an express provision in the last paragraph of Article 23 in that custodial penalties not applicable only in criminal matters.

The Romanian doctrine has held that individual freedom and security of person within the scope of first generation rights, that of civil and political rights, regarded as the most necessary to assert the individual against state power. In terms of classification of

fundamental rights and freedoms on the basis of their content, fall under the inviolability of individual freedom, that those rights and freedoms which, by their content, provides life, can move freely, physical and psychological safety and security of individual home , opinion that is shared by other authors and to subscribe.

As mentioned, the Romanian Constitution uses the expression of personal liberty and safety on that person. European Convention on Human Rights also uses both the word freedom in respect of personal liberty and on the safety, building the institution the right to liberty and security as a fundamental right enshrined in the international document. These two concepts, individual liberty and security of person, have the same meaning, form a single legal category, but it should be used and explained together. Expression of constitutional freedoms is the result of belonging to the person to be covered not only in their entirety, as essential for individual and indivisible, but each one.

Rights and fundamental freedoms, as shown in contemporary doctrine, are subjective rights, and indispensable for the free development of human personality, which is recorded and guaranteed by rules having a particular legal value (declaration of rights, constitutions and other fundamental laws).

Without giving a proper definition of individual freedom, John Deleanu use two alternative expressions to name inviolability enshrined in Article 23 of the Constitution of Romania, namely the right to personal safety and right to individual freedom, stressing that individual freedom and security of person should be enjoy the guarantees supreme, being immanent and natural values of the human being, inseparable from the right to life, since this creature has become self-conscious. The author, emphasizing the existence of common rules in the Constitution of Romania in 1991 and the European Convention on Human Rights takes the view that "the right to freedom concerns the freedom of the individual in the classical sense, ie physical freedom of the person, while the right to safety, although it does not seem to have a fundamentally different meaning of individual freedom, can still evoke a sense, namely, protection against arbitrary interferences by public authorities in the area of individual freedom, nematerializate interference in the custody or possession of the person, right here in question the individual, not her property , and only in relation to the authorities, not with individuals ...". Ion Deleanu their analysis focuses on individual liberty in Article 5 of the European Convention rules and the European Court of Human Rights, stressing that the essence of the right to freedom and safety regulation is to specify rigorously the Convention where, under legal review, a person may be deprived of liberty.

In a recent definition, that subscription, the notion of individual liberty, as it is regulated in Article 23 of the Romanian Constitution, means the right person to be able to act and move freely, not to be held in slavery or any other form of servitude, not to be detained, arrested or detained except in cases where forms and expressly stipulated in the Constitution and laws, this definition being espoused by other authors, it has a clear symmetry with the normative content of individual freedom as regulated by Article 23 of the Constitution of Romania.

In a recent dictionary of criminal law the term freedom of the individual is seen in a broader sense, including physical freedom, mental freedom, freedom of residence, freedom to communicate and sexual freedom, is defined as "important attribute of human personality, consisting the possibility that each member of society must take to act in accordance with the wishes and interests without being subject to physical or mental constraints.

According to Corneliu Barsan, right to liberty and security is an inalienable fundamental right, no one can give, is universal, applying to all persons, including those in state custody and is to the right of every person to not be or remain deprived of his liberty,

except under narrow circumstances the European Convention on Human Rights (Article 5 paragraph 1), and if arrested or detained are to benefit from the guarantees applicable to the Convention, in order to protect the individual against arbitrary state authorities. Right to liberty proclaimed by Article 5 of the Convention envisages individual liberty in its classical sense, ie physical freedom of the individual and essential aims that no one be deprived of this freedom arbitrarily. Surveying the practice of the European Court of Human Rights, the same author points out that the phrase "freedom and security of person" in Article 5 paragraph 1 of the Convention should be cited as constituting a whole, the word "security" being reported to the word "freedom". Deepening nature inalienable right to liberty and security, Corneliu Barsan stressed that, since Article 5 of the Convention proclaimed him for anyone, it means that nobody can be excluded from the recognition of belonging to every individual possesses capacity legal, or major, minor, unable or forbidden by judicial process. Inalienable character separates the consequence that no one can waive this right. Thus, as stated in the ECHR case law, even if a person has expressed at some point you will be restricted to individual liberty, whether imperative of Article 5 does not allow the right to liberty-so important in a society democracy can be lost by the mere fact that a person that person is trapped in the hands of authorities voluntarily.