

## THE RIGHT TO PENSIONS – UNREALISTIC ASPECT OF DECENT LIVING STANDARD

Ph.D. Candidate Lecturer **Oana Șaramet**  
University „Transylvania” from Brașov  
(Counsellor at the Territorial Bureau from Brașov of Romanian Ombudsman)

*Abstract: The art.47 from Romanian Constitution settles that the State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens. So, the same article from Constitution establishes that all citizens, also, have the right to pensions. But, in our opinion, the provisions from the organic law in the field of pensions which develop the constitutional norm mentioned above are contrary to a decent living standard.*

*Key words: Romanian Constitution, economic development, social protection, decent living standard, right to pensions.*

We all must be equal in rights and freedoms, without any privileges or discrimination, due to the fact that we all are human beings. This social equity must be translated as the assurance and the guaranty of a certain living standard that must correspond to a minimal living standard regarding the material conditions. If every human being enjoys their guaranty of right to life as settled in the international documents and in the Constitution, then we must also take into consideration the possibility of settling a special right regarding the way of living and to impose thus to the international communities, by means of their competent bodies, and to the states, by means of the authorities reliable in this field, the obligation of respecting and assuring “some reasonable life conditions, that must ensure to the person and to the person’s family, a civilized and decent living”. [1]

The Universal Declaration of Human Rights settled in 1948 some provisions related to the right to a decent living standard, within the settlements of the right to health and we quote: „Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”.

The States Parties to the International Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Still, the consecration of the decent or sufficient living standard in the international documents and in the constitutions of the states determines the state members and the national states to appreciate this right as one of their priorities. Romania must be regarded as one of the states that confirm what we have already stated the right to a living standard.

The Romanian constitutional legislator settled in the Constitution adopted in 1991, at Art.43, called „living standard”, that the state shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens. The Romanian citizens have the right to pensions, paid maternity leave, medical care in public health establishments, unemployment benefits, and other forms of social care, as provided by law. After the revision of Romanian Constitution, this right is settled in Art.47, but the internal provisions didn't change: „the State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens. Citizens have the right to pensions, paid maternity leave, medical care in public health centers, unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the law”. We must notice that the legislator refers also to the private social securities, not only to the public ones. In this way, “social security is institutionalized as a modern dimension of the measures required to assure a decent living” [2].

The Romanian constitutional legislator preferred to guaranty the right to a *decent* living standard, and not to a *sufficient* living standard, in this way approaching the settlement conferred by Art.25 from the Universal Declaration of Human Rights. We consider that the term decent has a wider significance than the term sufficient, since a sufficient living standard can be approach by means of a minimum social protection, while a decent living standard requires a living standard that cannot infringe upon the personality and the dignity of the individual. The option elected by the Romanian state is quite honorable but hard to be accomplished, especially “under the historical conditions of a convulsive and transient economy – since this aspiration can only be achieved progressively, by means of economical development and social protection” [3].

The Romanian doctrine [4] emphasized with regard to this issue two components of social security, namely: *social assurances*, and we can include here the pensions, paid maternity leave, medical care in public health establishments, unemployment benefits, and *social assistance*, and we refer here to family allowances, the minimum wage, and the protection of disabled persons and the services of social assistance.

Even if the Romanian legislator tried to identify and to consecrate the most adequate legal frame of the right to a decent living standard with regard to the current resources and possibilities of the Romanian state, the public authorities reliable to organize the execution of law in this matter did not make all the efforts in applying the provisions of these laws. In such cases, the persons who suffered infringements in their rights to social protection were obliged to address to some authorities such as the Constitutional Court of Romania, the Advocate of the People (the Romanian Ombudsman) or to legal courts in order to protect their rights and especially to protect their right to a decent living standard settled in the Constitution of Romania.

In a case, the object of exception of unconstitutionality brought *ex officio* in front of the Court of Justice from Mures – the Civil Section was represented by the provisions of Art.95 from Law No. 19/2000 with regard to the public system of pensions and other rights of social assurances, with all its modifications and amendments. According to this article, only the persons who benefit of pension for age limit can ask for a new calculation of the pension and only after they realize a stage of paying the financial taxes and duties of minimum 12 months.

The Constitutional Court pronounced upon the exception of the unconstitutionality of Art.95 paragraph 1 from Law No. 19/2000 with regard to the public system of pensions and other rights of social assurances in the Decision No.264/20<sup>th</sup> of March 2007 [5]. Thus the Court admitted the exception of unconstitutionality and proclaimed that such a

possibility admitted to the person retired for the age limit to ask for a new calculation of the pension and only after they realize a stage of paying the financial taxes and duties of minimum 12 months is against any principle of equality between citizens, since it implies a discrimination between citizens of same condition. The Court also admitted that this article infringe upon the provisions of Art.47 paragraph 2 from the Constitution of Romania, according to which, even if the conditions and criteria of retire differ from case to case, the modality of calculating the pension must be the same and establish by law. Thus, the legislator cannot establish a different juridical treatment for equal juridical situations.

In another example, as a result of the control exert according to the legal and constitutional settlements - we refer to Art.58-60 from the Constitution of Romania, republished, as well as by the provisions of Law No.35/1997 with regard to the organization and functioning of the Romanian Ombudsman -, the Romanian Ombudsman, through its Territorial Office form Brasov, identified other possible aspects of unconstitutionality regarding the right to pensions. Thus, according to the conditions settled in Law No.19/2000, in the cases the conditions regarding the standard age to retire, and the minimum period of labor due in the public system of pensions are accomplished, any assured person can retire for age limit. In the case some conditions settled expressly in Art.49, Art.50 and Art.51 from the above mentioned normative act are accomplished, a person can take benefit of anticipated pension or partial anticipated pension up to the moment of accomplishing all the conditions for the pension for age limit.

In its prior form, the Law No.19/2000 settled in Art.49 paragraph 4, respectively in Art.52 that the passing from the anticipated pension or the partial anticipated pension towards the pension for age limit is made automatically at the date the person accomplished the standard age for retiring. But, due to the revisions brought by Law No.250/2007, starting with 22<sup>nd</sup> of July, the persons who are in the situation described above are entitled to take benefit of the pension for age limit only if they issue a request by means of which they ask for receiving pension for age limit, these person are entitled to their right only from the moment the request was issued and sent to the official bodies, the moment being subsequent to the date the person accomplished the age required for the pension for age limit.

Surely, according to Art.1 paragraph 5 from the Constitution of Romania, republished, the respect to law is mandatory, this respect to law imposing in our opinion the acknowledgement of the laws provisions, therefore the Romanian citizen must know all the settlements of the laws. But the absolutism of this constitutional principle is, from our point of view, an exaggeration since nowadays the legislation is submitted to frequent and essential revisions and amendments, and the "objective popularization" of the normative acts is in an incipient phase. For example, the access to internet is defector in some area, especially in the rural ones, and old persons are not able to use internet.

We must also mention that the inappropriate attitude of the public authorities involved in the process of applying the legislation in the field of pensions is a factor of infringing upon the possibility of acknowledging all the provisions of law.

We must also specify that no campaigns of information are developed so the persons entitled to their rights to take benefit of them. It is necessary to underline the fact that when a person depose the documentation for retiring, the person authorized from the pension offices are obliged to specify the date and the age when a person can benefit of the pension for age limit, accomplishing thus the cumulative conditions required by the legislation.

In this particular case we think that the provisions of Law No.250/2007 are unconstitutional since they restrained the exert of the right to pension – a fundamental component of the right to living standard – infringing upon Art.53 from the Constitution of

Romania regarding the restraint of the exercise of some rights and freedoms, since the authority the person address to already knows the information indicated and required by the same authority. More than that, the recording of the request before the date the person accomplish the age for the pension for age limit will infringe upon the right to retire of a person and upon the pecuniary benefits.

Therefore we appreciate that a revision upon the provisions of the law regarding the retirement and the right to pensions, the Law No.19/2000 is absolutely mandatory, no matter the juridical solution, the repealing of the provisions or the declaring of the unconstitutionality of the mentioned provisions by the Constitutional Court of Romania, for the Romanian legislator to accomplish its obligations settled by Art.147 paragraph 1 from the Constitution.

So, for the examples mentioned above, we can see, in our opinion, that regarding the right to pensions it is difficult to discuss about it like an aspect of decent living standard. Anything can't stop our State to modify and to adapt its legislation in the field of pensions so we can truly speak about decent living standard even we are retired.

The reality proves that the states can't and won't give up their prides and interests, in order to guaranty to their citizens the same standard living – be it decent or sufficient. The difference is created by the internal resources and the level of economical development of every single state, but also by the social policies of social security settled by the national legislator and by the programs that apply these social policies.

[1] M. Constantinescu, A. Iorgovan, I. Muraru, S.E. Tănăsescu., *Constituția României revizuită – comentarii și explicații*, Editura All Beck, București, 2003, pag.98

[2] I. Muraru, S.E. Tănăsescu, *Drept constituțional și instituții politice*, Editura All Beck, București, 200 , vol. I, pag.206

[3] I. Deleanu, *Instituții și proceduri constituționale – în dreptul comparat și în dreptul român. Tratat*, Editura Servo-Sat, Arad, 2003, pag.449

[4] I. Deleanu, *Instituții și proceduri constituționale – în dreptul comparat și în dreptul român. Tratat*, Editura Servo-Sat, Arad, 2003,pag.450

[5] Published in Official Bulletin of România nr.283 from 27 April 2007