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**Reflections on the Petition Right Juridical Warranty in the Romanian
Constitutional Law Doctrine**

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Abstract: The petition right, as a fundamental right of the Romanian citizen has the character of juridical warranty because this right is guaranteed by the Constitution and also is a substantive law. By granting the petition right is assuring a good administration of the state in the citizens' favor. The aims and the objectives of the present research is to present the fundamental petition right of the Romanian citizen at the doctrine level and the characteristics of this guarantee right. Regarding the prior work, the analyses conducted so far have dealt less frequently with the topic approached here. The approach used in the present study was to analyze the Romanian constitutional doctrine. The results of the present study are important to the social society because it makes the correlation between the petition right and the good administration. The paper is original and it brings value from the perspective of the granting the right to petition at a constitutional level which ensures the protection of the citizens in relation with the public authorities and also to other rights, liberties and citizen interests, thus ensuring a good administration of the State to the benefit of its citizens.

Keywords: petition right; good administration; guarantees rights; Romanian constitution; protection of citizens;

1. Introduction

In the present context of a democratic society, we have considered that the aspects approached by this research were particularly important given the society's inclination towards a continuous improvement of its administration, the citizens' aspirations to improve the quality of life and the relation with the public authorities, the need for public safety and security and the need to grant the fundamental citizen rights in a constitutional state.

The doctrine considers the right of petition a guarantee which ensures the accomplishment of the other fundamental citizen rights and freedoms.

Being a subjective right, the right of petition provides a juridical warranty, since it benefits, on one hand from the systems granting the constitutional rule and, on the other, from the juridical warranty of a subjective right.

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2. Doctrine Landmarks with Regard to the Romanian Citizens' Fundamental Right of Petition

The right of petition is a fundamental citizen right which grants a right to demand and to make requests before the authorities of the state. Therefore, this right to demand, being an essential right, warrants the existence and the observance of all other fundamental citizen rights.

The right of petition grants the citizen's civil liberties.

One of the iconic documents where we can find the historical sources of human rights is Magna Carta, a document issued in England in 1215.

Our research revealed that the right of petition was the first fundamental human right acknowledged by Magna Carta in 1215. Therefore, in the content of the aforesaid document, in Chapter 61 (in other translations Chapter 70 [2] – author's note), we have found that a petition announcing an act of injustice should be settled within 40 days.

After 1215, we have identified another British document which is among the first constitutional provisions, namely the Bill of Rights, which in 1689, in Article 5, acknowledged that the citizens who brought petitions to the king would not be condemned or accused for making them.

A first author defined the fundamental rights as being those *“subjective citizen rights, essential to human dignity, to the free development of human personality, to the preservation of human rights, which express some supreme values, rights which are proclaimed by the Constitution and granted by the Constitution and the law, in the economic, social, politic, cultural and historical context of a particular society established as a state.”* (Pavel, 2004, p. 77)

The subjective rights are the *“prerogatives or powers granted by the Constitution and the law to the will of the subjects of the legal relation to act or not in a particular way, which involves the recognition of an area of individual autonomy, or to demand the other subject or subjects some appropriate attitude and, ultimately, to ask for the protection of their right by the state authorities, in case that it is unlawfully reflected on.”* (Pavel, 2004, p. 77)

A second author held that *“fundamental rights are subjective rights. Together with the other subjective rights and their associated duties, they form the legal status of a citizen.”* (Muraru & Tănăsescu, 2016, p. 148)

Fundamental rights are *essential rights* for the Romanian citizens. The fundamental rights and freedoms being *supreme values* and being granted by the Constitution, they form a *system of juridical warranties for the Romanian citizens, for their dignity, values and living.*

In respect of the content of the citizen rights and freedoms, a content which implicitly leads to the accomplishment of these rights, the same author classified the citizen rights and freedoms into several categories: *“A first category is formed by inviolabilities, meaning those rights and freedoms which, through their content, ensure the life, the possibility of free movement, the physical and psychological safety, as well as the safety of an individual's home. We include in this category: the right to life, the right to physical integrity, the right to psychological integrity, the personal freedom, the right to defend oneself, the right of free movement, the right of protection for one's intimate, family and private life, the inviolability of the home. The second category is formed by social-economic and cultural rights and freedoms, meaning those rights and freedoms which, through their content, ensure social and material conditions for living, education and the possibility to protect them. We include in*

this category: the right to learning; the access to culture; the right to protect one's health; the right to a healthy environment; the right to work and to the social protection of labour; the right to strike; the right to property; the right to inherit; the right to a decent living; to right to marry; children's and youth's right to protection and assistance; the right of people with disabilities to special protection. The third category covers exclusively political rights, meaning those rights which, through their content, may be exercised by citizens only for participation in the governance. We include in this category: the right to vote, the right to be elected (inclusively to the European Parliament). The fourth category is that of social-political rights and freedoms, meaning those rights and freedoms which, through their content, may be exercised by citizens at their choice, either by solving some social and spiritual problems, or by participating in the governance. These rights and freedoms give the possibility to express thoughts and opinions, and for this reason they are often called freedoms of opinion. We include in this category: the freedom of conscience, the freedom of expression, the right to information, the freedom of meeting, the right to association, the secrecy of correspondence. Finally, the fifth category is formed by the rights - guarantees, meaning those rights which, through their content, mainly play the role of constitutional guarantees. We include in this category: the right of petition, the right of a person aggrieved by a public authority." (Muraru & Tănăsescu, 2016, pp. 155-156)

A third author said about the right of petition that *"it has some special significance for the relations between a person and the public authorities, being not only a means to request them to fulfil the duties that fall on them, but also a means of control for their activity."* (Deleanu, 2006, p. 529)

A fourth author, with regard to the right of petition, held that *"citizens' petitions may tend to enforce not only rights, but also some simple personal interests. Consequently, even if a personal interest, which is not protected by the possibility, sanctioned by the law, to request a third party to accomplish an action or to refrain from it, is not a subjective right, it can however be protected through the right of petition."* (Drăganu, 1997, p. 185)

The same author also held that, in respect of the right of petition, *"it can be applied both in the political field, and in the economic, social and cultural one, which confers as a matter of fact its characteristic of social-political right."* (Drăganu, 1997, p. 185)

In our opinion, citizens benefit from the right of petition, as a fundamental right, this being a subjective citizen right, *a right which is essential to the protection of fundamental rights and represents a juridical warranty for citizens, ensuring and guaranteeing the good administration by the state in favour of its citizens.*

The subjective right characteristic of the right of petition gives *some prerogatives to the citizen to benefit from its regulatory force, to expect some appropriate behaviour from the passive subject, and in case that the passive subject does not fulfil its duty, the citizen may appeal to the coercive force of the state to have his right accomplished and defended.*

According to paragraph 4 of Article 51 of the Constitution of Romania, *"the exercise of the right of petition is free of charge"* and so it ensures the citizen's free and unconditioned right of access before public authorities. At the same time, according to paragraph 4 of the same article *"public authorities are obligated to answer petitions within the terms and under the conditions established by the law"*, ensuring for the citizen, through the fundamental law, also the right to receive an answer to the requests addressed to public authorities within the term provided by law.

The public authorities that have been approached have the obligation to answer a citizen who formulated a petition within 30 days from its registration at the latest, no matter if the solution is

favourable or unfavourable, according to Article 8 of the Government Decree no. 27/2002¹ on the settling of petitions, approved with changes and additions by Law 233/2002.

The Constitutional Court of Romania pronounced a decision to settle an exception of unconstitutionality concerned with the fact that *“the object of the Government Decree no. 27/2002 is to regulate how citizens exercise their right to address petitions formulated in their name to public authorities and institutions, as well as how these petitions are settled, as an expression of the right of petition stipulated by Article 51 of the Constitution, determining the responsibilities of the public authorities and institutions to which the petitions are addressed, as well as the terms in which they have to settle the petitions, as provided for in paragraph (4) of the same article.”*²

Pursuant to Article 2 of the regulatory document mentioned above *“petition is understood as being the request, the complaint, the announcement or the proposal formulated in writing, or by electronic mail, which a citizen or a legally established organisation may address to central and local public authorities and institutions, to decentralised public services of the ministries and of other central bodies, to national companies, to companies of county or local interest, as well as to autonomous municipal companies, hereinafter called public authorities and institutions.”*

Therefore, several types of petitions and how they are to be settled by the public authorities have been brought under regulation, granting the citizen’s right to address any public authority and determining in this respect also the obligation of such authorities to answer the citizens’ petitions, so guaranteeing for the citizens the good administration of their interests by the public authorities.

Every public institution had the obligation under the provisions of the Government Decision 27/2002 to organise a separate compartment for public relations and to establish a working procedure for the settlement of petitions. Moreover, the aforesaid document has also provided for the sanctions for the public servants who do not comply with the terms for the settlement of petitions, who settle them beyond the legal framework or do not comply with the procedure for the registration and distribution of petitions.

The right of petition has also been granted by the Constitution of the Republic of Moldova³ in Article 52 which states that: *“(1) Citizens have the right to address public authorities through petitions formulated only in the name of their signatories. (2) Legally established organisations have the right to address petitions exclusively in the name of the groups they represent.”*

With regard to Article 52 of the Constitution of the Republic of Moldova, precisely the right of petition, we retain that this is a right granted to citizens and legally established organisations.

The examination of anonymous petitions was declared unconstitutional by the Constitutional Court of the Republic of Moldova: *“Citizens have the right to address public authorities through petitions formulated only in the name of their signatories (...) it is therefore clear that any petition is to be signed, so it must contain the identification data of the petitioner. The Court held that, through its*

¹ Government Decision no. 27/2002 on the settling of petitions, approved with changes and additions by Law 233/2002, published in Monitorul Oficial al României, Part I, no. 84 of 1 February 2002.

² The Decision of the Constitutional Court of Romania no. 307 of 29 March 2007, published in Monitorul Oficial, Part I, no. 279 of 26 April 2007.

³ The Constitution of the Republic of Moldova, published in Monitorul Oficial no. 1 of the Republic of Moldova on 12 August 1994.

express formulation, the constitutional text neither establishes, nor provides legal protection for a right to anonymous petitioning."¹

Upon the completion of this study, we could see the need of the citizen to benefit from good administration by public authorities, to have his needs understood, to receive answers to his petitions and to receive clarifications from a public institution for any possible ambiguity.

In our opinion, good administration is ensured through the accomplishment of the rights that are guarantees. Therefore, the rights that are guarantees ensure the accomplishment of good administration. The protection of citizen rights before public authorities is provided at constitutional level through the right of petition and the right of a person aggrieved by a public authority.

The right to good administration was consecrated *expressis verbis* in Article 41 of the Charter of Fundamental Rights of the European Union. [42] This article is included in Chapter V of the Charter named *Citizens' Rights*. Once the Lisbon Treaty came into effect, the Charter of Fundamental Rights of the European Union [43] became *legally binding*, and this has led to some *substantial reinforcement of the role of the rule of law* in the governance of the European Union.

The right to good administration was also stipulated in the Recommendation CM/Rec (2007)7 of the Committee of Ministers of the member states of the Council of Europe. [44]

The Committee of Ministers, in their Recommendation, considered "*that good administration is an aspect of good governance; that it is not just concerned with legal arrangements; that it depends on the quality of organisation and management; that it must meet the requirements of effectiveness, efficiency and relevance to the needs of society; that it must maintain, uphold and safeguard public property and other public interests; that it must comply with budgetary requirements; and that it must preclude all forms of corruption.*"²

Moreover, the Committee of Ministers, in the Preamble of the Recommendation, stated that *good administration is dependent on adequate human resources available to the public authorities and on the qualities and appropriate training of public officials.*

3. Conclusions

The purpose of this paper was to analyse the juridical warranties of the right of petition in the Romanian constitutional doctrine.

This research is important considering the current situation of the Romanian society, and the citizen's need to improve the quality of life, the relation with the public authorities and the respect for his fundamental rights.

In a constitutional state, good administration is ensured through the accomplishment of the rights that are guarantees. Therefore, the protection of citizen rights before the public authorities is provided at constitutional level by granting the right of petition.

Upon the completion of this study, we could see the need of the citizen to benefit from good

¹ Decision no. 25 of 17.09.2013 for the control of the constitutionality of some provisions referring to the examination of anonymous petitions, published in Monitorul Oficial of the Republic of Moldova no. 276-280/44 of 29.11.2013.

² Recommendation CM/Rec(2007)7 of the Committee of Ministers to the member states of the Council of Europe, adopted by the Committee of Ministers on 20 June 2007 at the 999bis Meeting of the Deputies of the Ministers of the member states of the Council of Europe. Web Page. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?p=&id=1155877&Site=CM&direct=true>, date: 03.31.2018.

administration by public authorities, to have his needs understood, to receive answers to his petitions and to receive clarifications from a Romanian public institution for any possible ambiguity when he needs them.

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