

THE DEMOCRATIC AND ECONOMIC ROLE OF THE CITIZEN IN THE RELATION WITH THE LOCAL PUBLIC ADMINISTRATION

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ABSTRACT: *The subjects of the constitutional legal relations are represented by the people and the state. The democratic, citizen – state’s connection is specified by the article 2 of the Constitution. Local Public Authorities have the obligation to respect and promote the fundamental rights and freedoms of the people, to remove any discrimination, responsible people by paying taxes and duties, to give equal opportunities to all citizens, to provide access to information of public interest.*

KEY WORDS: *constitutional, state law, citizen, rights.*

JEL CLASSIFICATIONS: *K12, K16.*

1. INTRODUCTION

The principles that govern the strict relation between the citizen and the local public administration are dedicated in the Constitution, being those rights and liberties without a state of law cannot establish the democratic goals and interests.

This connection between the citizen and the local administration includes rights recognized to the first subject as well as his duties but also jurisdictional involvement on the part of the second subject.

We will structurally analyze the constitutional rights and liberties of the citizen and his connection with the local public administration, such as those regarding:

- fundamental rights and freedoms: equality in rights;
- social - political rights: the right to information and the right to vote;
- guarantee rights: the right to petition and the right of the injured person by a public authority;
- fundamental duties: financial contribution.

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The fundamental law of any democratic state is the Constitution. It's the essential law that concretely guarantees the rights and liberties of citizens, the principle of separation of powers in the state, equality of citizens, representation.

A democratic society differs from other types of society like totalitarian or authoritarian society, by the fundamental values specific to a modern state in which the dignity and liberties of the person are essential.

In order, to be able to realize a certain role of the citizen in society, firstly we must refer to the essential idea of democracy.

Democracy, literally translated „control by the people” from the Greek language *demokratia*, from *demos*, „people” and *kratos* „power”= „the power of the people” is a political regime based on the wish of the people (<https://ro.m.wikipedia.org>).

Democracy means that power which can be exercised directly or indirectly by respecting fundamental human rights, mentioned both in the Constitution and in the international laws and conventions to which Romania is a parte.

In modern states, the idea of representative democracy has been mentioned, through wich the exercise of political power is done by elected representatives only by the wish of the people.

„The first way mentioned by the constitutional text of art. 2 para.1 gives expression to representative democracy in which the citizens take part in the exercise of state power by appointing representatives who, once elected, will exercise the prerogatives of power in the name and for the whole people.

The Romanian's fundamental law also provides a way for citizens to participate directly in the political decision, stating that national sovereignty can also be exercised directly through a referendum. So, this is the instrument of direct democracy” (Bărbăţeanu, 2016, pp. 1-2).

Both, local and central state's institutions have the obligation to unite the absolute wish of the citizens and at the same time, they have the mission to be competent in representing their interests.

2. THE RIGHT TO VOTE AND THE ACCESS TO PUBLIC INFORMATION

Citizens have an active and decisive role in building a democratic society at the local public administration. The local public administration must crown all its fundamental values, those of transparency, integrity, fairness, professionalism and efficiency, with the most important element: the public interest.

A first essential democratic role of the citizen in relation to the local public administration is the right to vote, a right mentioned by the art. 36 of the Romanian Constitution: Citizens have the right to vote from the age of 18, until the day of the election inclusive [(alin.1)].

Mentally deficient persons, those who are placed under interdiction, and persons sentenced, by a final court decision, to the loss of electoral rights do not have the right to vote [(alin. 2)] (Constitution, November 21, 1991).

“The universality of the vote means that all those who meet certain minimum conditions (age, citizenship, exercise of civil and political rights) have the right to vote. The age required to choose is generally the same age which the individual acquires full

exercise capacity. This is the age at which the individual is presumed to have the intellectual maturity that ensures his decision independence.

The second condition of the right to vote is the ability to exercise one's rights and obligations. The person declared, according to the law, incapable of carrying out this exercise does not have the right to vote. In this situation is the incapable major, the one who is placed under interdiction or the persons who have suffered a criminal conviction, which involves the prohibition of the exercise of electoral rights. Finally, the third condition of the right to vote is that of citizenship. In principle, only the citizen can vote. This principle is minimized at situation of the European Union, where the right to vote in certain elections is correlate to residence and the European's citizenship and not to state of citizenship.

The universality of the vote is connected to its other two characteristics: it is equal and personal. Equality means that every citizen who meets the minimum conditions has one vote, that the same value is attached to each voting -paper. The fact that the vote is personal means that in the electoral matter the representation in the vote is inadmissible" (Dănișor, 2007, p. 336).

Certainly, the electorate is the only legitimate form for the existence of the activity of the local administration. The vote is based on the voter's confidence in the elected representative. Through electoral procedures, citizens exercise their absolute constitutional right to decide whether a candidate for a public service is eligible to represent their rights and interests at the local level. The role of the citizen is a decisive one, the power expressed through a single vote paper makes a modern state, a democratic one.

The perpetual desire of local representatives is to gain popularity of citizens, which is important for the futures elections, as they realize the essential role that voters play in exercising their right to vote.

In an age where the computer system plays a key role in society through the digitization of public institutions, it is proving to be the secure way to promote public access to public information.

A local government needs to be effective modernized to make it much easier to access personal and public information.

Citizens have the right to know how administrative decisions are taken and adopted, how the institution's budget is prepared and how it is used in public services, what are the projects aimed at economic and social development of the community, what are the responsibilities of each department and the organizational structure of public authority local.

Article 31 of the Constitution establishes the right of the person to have access to any information of public interest without prejudice the measures for the protection of young people or national security, as well as the obligation of public authorities to provide correct information to citizens.

"The right of the person to have access to any information of public interest may not be restricted. [(1)]. The public authorities, according to their competences, are obliged to ensure the correct information of the citizens on the public affairs and on the problems of personal interest. [(2)]. The right to information must not prejudice measures to protect young people or national security. [(3)]. The mass media, public and

private, are obliged to ensure the correct information of the public opinion. [(4)]. Public radio and television services shall be autonomous.

They must guarantee the exercise of the right to air on important social and political groups. The organization of these services and the parliamentary control over their activity are regulated by organic law. [(5)]” (Constitution, November 21, 1991).

Not only the fundamental law regulates this right to information but also Law no. 544/2001 on free access to information of public interest and Methodological Norms of February 7, 2002 for the application of Law no. 544/2001 on free access to information of public interest.

Art. 3 of Law no. 544/2001 on free access to information of public interest provides that access to information of public interest is made ex officio or upon request through the public relations department, and in art.5 are mentioned the information of public interest that have the obligation to be communicated ex officio by public authorities and institutions (Law no. 544/2001).

Art.11 of the Methodological Norms of February 7, 2002 for the application of Law no. 544/2001 on free access to information of public interest establishes that access to information of public interest "is made mandatory by:

- a) display on the own website of the public authority or institution (..);
- b) display at the headquarters of the public authority or institution or by publication in the Official Gazette of Romania or in mass media or in own publications;
- c) consultation at the headquarters of the public authority or institution, in the information-documentation points, in spaces specially destined for this purpose, as the case may be” (Methodological Norms from February 7, 2002).

Article 18 of the Methodological Norms mentions that access to information of public interest is free and only the cost of copying services will be borne by the applicant.

Public radio and television services are the best-known mass media.

The right of the person to have access to any kind of information of public interest cannot be limited, in this sense there are sanctions in any respect for exceeding the limits to the right to information. It is considered that incorrectly provided information is likely to adversely affect an entire society.

Article 404 of the Criminal Code clearly states how “the communication or dissemination, by any means, of false news, or information or forged documents, knowing their false nature, if this endangers national security, is punishable by imprisonment one to five years” (Law no. 286/2009).

The public and private mass media, are obliged to ensure the correct information of the public opinion, this being a main rule of the right to information based on which people can create opinions and make decisions.

3. EQUALITY IN RIGHTS, THE RIGHT TO PETITION AND THE RIGHT OF THE PERSON HARMED BY A PUBLIC AUTHORITY

The local public administration cannot exist without citizens. The citizens must become increasingly aware of their democratic role and they need to exercise their right to vote. Thanks to the vote of the elected representatives, the citizens make it possible for the whole mechanism of an efficient local administration to function.

The public servants of the local administration, together with the leader of the institution, have the obligation, through the prerogatives of the current legislation, to offer equal opportunities in rights to any citizen who requests any service of the institution.

Officials will carry out their professional activity in compliance with this principle in dealing with citizens, so that any discrimination can lead to sanctions on those who do not respect the notion of equality between persons.

Citizens are equal before any service belonging to the local public administration and their interests must take priority.

"The principle of equal rights is enshrined in the Romanian Constitution in Article 16, with a complex structure, including both the enunciation of a general rule applicable to all citizens and the exercise of all fundamental rights and freedoms, and a particular application regarding the occupation of functions and dignities publicly" (Safta, 2018, p. 201).

In the sphere of the citizen's connection with the state, the emphasis will be on the role of the two paragraphs of art. 16 of the Constitution, which states that citizens are equal, without privileges and without discrimination and that no one is over the law.

Equality of rights of citizens, regulated both, by fundamental law and at the level of civil law, outlines the same fundamental idea that citizens have equal rights, that they cannot be restricted on the basis of privileges and discrimination on: color, nationality, language, religion, age, wealth, cultural background, political affiliation, gender, social background or any other similar situation.

"The same principle of equality means that no one is over the law, which has the consequence that even public authorities do not enjoy privileges over each other or any of them over citizens" (Safta, 2018, p. 201).

"Being part of the guarantee rights, the right to petition enshrined in art. 51 of the Constitution refers to the possibility for citizens to address public authorities through petitions made only on behalf of the signatories, as well as to the correlative obligation of public authorities to respond to petitions within the terms and conditions established by law. In this way, the citizens enter into a direct connection with the state authorities on their own initiative and have the possibility to solve both personal and general interest problems" (Safta, 2018, p. 295).

In accordance with the constitutional provisions, there are also those regarding the articles of Statute no. 27 of January 30, 2002 on the regulation of the activity of solving petitions. The clear definition of the term petition is given by art. 2 of the Ordinance "the petition means the request, complaint, notification or proposal made in writing or by e-mail, which a citizen or a legally constituted organization may address to the central and local public authorities and institutions, decentralized public services of ministries and other central bodies, companies and national companies, commercial companies of county or local interest, as well as autonomous administrations, hereinafter referred to as public authorities and institutions" (Statute no. 27 of January 30, 2002).

Public authorities and institutions are required to have a public department to receive, register petitions and send responses to petitioners within 30 days of the date of registration of the petition regardless of whether the solution is favorable or not. In case the notified issues require a more elaborate information, the leader of the public authority

or institution may extend the initial term of 30 days, by maximum 15 days, with the prior notification of the petitioner.

The petitioner's obligation when making a petition is to request all his complete identification because the incomplete and anonymous petition cannot be answered and will be closed. In the case of a collective petition, it must contain the identification and the signature of at least one person from the group members. The exercise of the right to petition is exempted from taxes and this obligation of the public authority and institution includes the task of responding to petitions within the legal term.

The petition action allows citizens to seek clarification regarding the issue of personal or general interest in administrative relations with a public authority.

The regulation of this principle is given by the provisions of art. 51 of the Constitution which states that "the person injured in a right or in a legitimate interest, by a public authority, by an administrative act or by the failure to resolve a request within the legal term, is entitled to obtain recognition of the right alleged or legitimate interest, annulment of the act and reparation the loss."

This important right, protected by the Constitution, gives guarantees to citizens who feel harmed by the issuance of an administrative act that directly concerns them to act legally for the benefit of repairing the injury caused.

"It is established that, in order to exercise this right, it is necessary to meet the following conditions:

- incontestable argument of a subjective right or a legitimate interest (it follows, therefore, that not every interest is protected, but only those legitimate interests);
- the injury of the right or the legitimate interest to be done by a public authority;
- the injury may have been caused by an administrative act or by the failure to resolve a request within the legal term" (Safta, 2018, p. 297).

In order to have a normality in the whole activity of the public administrative authorities, these public services must be subject to both, administrative and judicial control.

Also, the provisions of Law no. 554/2004 of the administrative with subsequent amendments and completions (Law no. 554/2004), mentions that the person who considers himself harmed in a right or in a legitimate interest by a public authority, by an administrative act or by the failure to requests, he can legally act in the Administrative Court for the annulment of the act and the reparation the injury, within the terms provided by law.

Before addressing the Administrative Contentious Court, a person injured in his own right or legitimate interest, has the means to request, by a prior petition, the issuing public authority to annulled the act within 30 days from the date of taking to knowledge of the injured party.

If the Court finds the request to be well-founded, it may oblige the public authority or institution to annul, in whole or in part, the abusive administrative act as well as to pay the moral and / or patrimonial injuries.

In a state governed by the rule of law, the connection between the rights of the citizen and the administrative act issued is perfectly normal to be ensured by a judicial review procedure to remove abuses of power by public authorities.

4. FINANCIAL CONTRIBUTIONS

The fundamental duties are those obligations of the citizens of the state, obligations that are essential for the realization of the objectives of the society. Citizens have an obligation to contribute, through taxes and fees, to public spending.

Article 56 states that, all citizens have the obligation to contribute to public spending through local taxes and fees. All these contributions must ensure the "fair settlement of tax burdens", a conclusion which may follow from the fact that there must be a contribution commensurate with the income of each person.

In the fiscal legislation, specified by Law no. 227/2015, there are differentiated taxes on own income, there is also a difference in payments for people who own several residential or non-residential properties, and at the same time exemptions from the payment of local taxes and fees of those categories of vulnerable persons.

The constitutional article also mentions the fact that benefits other than those established by law are prohibited, of course with the particularity of exceptional situations such as those regarding the provision of services but only on a temporary basis and only through an exceptional situation.

History (Caprian & Djugostran, 2012, pp. 115-116), the appearance of the tax is attributed to the period when society was divided into social layers and the state appeared. From the point of view of the institution, in ancient times taxes and fees were decided by the legislative forums and the leaders of these states, and the right to institute taxes and fees represented the prerogative of the state leadership.

The evolution of taxes in the Middle Ages is highlighted in the gradual increase in the number and types of taxes, both those that were levied in kind as determined parts of certain products, and, above all, those levied in money. In the modern evolution of taxes, their establishment with the consent of taxpayers was subordinated to parliamentary competition, as a representative legislative body to regulate taxes and other revenues necessary to cover public expenses.

In many textbooks on finance and taxes, tax is defined as "mandatory payment made by individuals and legal entities levied by the state". It is economically correct, but the definition is not fully developed. First of all, this definition does not determine the non-refundable nature of the tax, which differentiates it from other payments and allowances collected by the state from citizens and businesses and which are then reimbursed to them, without being considered a tax.

Indeed, taxes are taken from taxpayers without any obligation to repay, that's why they have an imposing and non-refundable character. That is why many contributions, deposits and fines that are paid based on the laws in force cannot be reported to taxes. Secondly, this explanation does not determine the meaning of collecting the taxes paid. And, thirdly, the individuality of this payment is not determined, with one exception: its payment cannot be transmitted to another person or group of persons.

The tax is the product of the state, it was created together with it and is established by it, being the prerogative of the legislative authority; the order of payment, collection, its control, responsibility, protection of the interests of the tax subjects - all show the double character of the essence of the tax.

This increases the scientific and practical interest of economists, managers and lawyers, determining the economic-legal specificity of taxation.

So, taxation is a system of income distribution between legal or natural persons and the state, and taxes are mandatory payments to the budget that are taken from natural or legal persons based on the law in order to satisfy social needs. Being an instrument of redistribution, taxes are intended to regulate deviations in the distribution system and to stimulate people in the development of the activity practiced by them.

That is why taxes play such an important role in the financial system of the state, in the contemporary economy. Tax is an economic category, because the monetary relations that are formed between the state and natural or legal persons have an objective character and have a specific social purpose - the mobilization of financial resources at the disposal of the state. According to its essence, the tax represents an economic-legal category. On the one hand, it is a part created from the income highlighted in monetary form, which belongs to the owner who pays it to the state and which is then distributed in public interests, which determines the social-fiscal nature of the tax. On the other hand, the tax category creates budgetary-financial, public and legal relations between the state, its subjects and tax payers.

Thus, the tax is an instrument of economic and budgetary regulation. Until now, economic theory has not developed a single explanation about tax, independent of the political and economic system of society, of the nature of the state's objectives. The tax - mandatory allocation to the budget, of the appropriate level, or in the extra-budgetary fund, which is formed by legal and natural persons in the order and according to the conditions established by legislative acts. The concepts regarding the necessity and role of taxes are based on the theories about the state and the criteria that must be taken into account for the dimensioning of fiscal burdens.

Thus, the theories about the state envisage that the state is the result of a social contract between individuals, or a product of the social and national solidarity of individuals. The establishment and collection of taxes by the state determines an important redistribution of the gross domestic product.

This shows the role of taxes on a financial, economic and social level, a role that differs from one country to another.

The role of taxes derives from their extended function. The first role is the financial role of ensuring the financial resources necessary to cover the largest part of public expenses related to the fulfillment of the duties and functions of the state in order to satisfy the general interests of its citizens. The second role is the social one, ensured by the redistributive function of taxes. Through this role, taxes being collected depending on the contributory capacity of the taxpayers, greater justice is ensured in terms of wealth, and by transferring some of the income collected by the state through taxes to the poorest members of society ensure solidarity between the citizens of the state.

Finally, the third role of taxes is the economic role, supported by its interventionist function. By manipulating the level and structure of taxes and social contributions, the state intervenes in the economy, encouraging certain sectors of activity and certain products and services and discouraging others. Also, although less often, the state can intervene by granting subsidies from tax revenues to support economic interests related to certain products, companies or sectors of activity.

5. CONCLUSIONS

In a democratic state, the rights, liberties and duties of the citizen are essential for the proper operation of society.

The role of the local public administration is to ensure the observance of fundamental rights, to remove any abuse in the administrative act that directly affects the citizen and to act with all the levers offered by the fundamental law and the adjacent laws to eliminate any discrimination and of any abuse.

The local public authority in the connection with the citizen and for the public interest it will have to place above any rule, the most important foundation: the principle of transparency. This principle is based on the idea that in order to be able to carry out its activity in a manner to open to the public, free and unrestricted access to information of public interest should be a priority.

Of course, in order to gain the credibility and trust of the citizen in everything that means local activity, the authorities must not forget the importance of the other categories of fundamental values: professionalism, integrity, efficiency.

The state, through its public and local institutions, is at the service of the citizen, and this principle emphasizes the idea of continuous development and digitalization to adapt to people's needs and have a modern and permanent connection with the citizen.

„The citizen is the titular of all rights and obligations. Citizenship is conceived as a set of specific rights and obligations. Only citizens enjoy all rights, foreigners and stateless persons being excluded from the exercise of some of them. With the object of participating in the political life of the state, citizenship confers only of those who hold political rights, the right to choose and to be elected. But citizenship confers all the rights of the person, not only in the matter of rights that legally transpose liberty-participation, but also in the matter of rights that are a reflection of liberty-autonomy, rights that protect the individual against state interventions in an autonomous sphere of manifestation (...). Citizenship consists of a classical view of all civil, political and social rights” (Dănișor, 2007, pp.191-192).

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