

# POLITICAL IMPACT ON THE OBSERVANCE OF PENSION RIGHTS IN ROMANIA

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## Abstract

*The beginning of 2011 brought some questions for all the persons-romanian citizen – beneficiaries of the pension rights , but also for the middle age persons, which feel a threat for their right to pension. I propose to research the way that the pension right is influenced by the political decision taken by the party temporary governing. Also, I propose to identify the possible effects of these decisions.*

**Keywords:** *political impact; pension; right; observance*

## Introduction

This study talks about the problem of the impact that the decision taken to the political level, regarding the respecting of the pension rights has upon us.

We started this measure from the fact that human dignity is very important for every person, and we are all equal in dignity and rights. Dignity as a value recognized by all the international documents regarding human right, unfortunately it might be in the situation of being violated by wrong political decisions. Also, the equal rights is not the equalization of rights, however, because everyone of us is unique.

From this point of view, the present world society confronts to many and various cases of violating the human dignity, especially for of age persons. For this category/class to provide a decent living, an financial independence, and involvement conditions in social activities that would bring satisfaction, represent a very important aspect. In this context, pension and pension rights after a work life, contributing to society's development in this domain, constitute the essential issue I want to discuss about. Also, when ordaining the pension amount is necessary to take into consideration all the reasons: social and intellectual value of carried out work, the minimum subscription period, special character of working, etc.

Me together with my colleagues, lawyers consider that the pension represents an own right that was violated in Romania, by taking some political decisions of recalculation of these in a negative sense. Therefore, I have decided to demonstrate this miscarriage of justice, as well as the society (not only the Romanian society) needs trained and professional stimulated public servants, as well as servants with special status that must secure our public safety, order and peace that are needed/essential to create, to contribute to society's development.

### 1. Human dignity

The 20th century was witness to propagating the idea of democracy from the political class towards the most of the domains of social life. The belief that **people are equals in dignity and rights** was confirmed by the institutions of mass societies, especially by the diversion industry that develops the ordinary person's ability of placing itself instead of others and watching the life as they would watch.

Dignity represented from 1948 an often treated subject, situated between theory and practice, sometimes with sympathy, other times disdainfully.

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Human dignity is guaranteed by the two important principles of international law that governs the object of human rights, **equality and nondiscrimination**. Those principles postulate the right to exercise all the established rights and the ensuring of protection to every person when facing the possible abuses of the authorities. On the contrary, the inequality and discrimination are a negation of fundamental rights and liberties of the human person. *"If discrimination and its incontestably the most flagrant manifestation- the racism- continue, it is shown in a ONU document, we will not hope to build up an international society founded on human being's dignity and value"*. Or, this Object is connected with the Nations' purposes and its constitutive act states this triptych: equality, nondiscrimination, dignity- in its many articles. The peoples from United Nations- shown in the second line from the preamble of the Charter- declare themselves decided to be reaffirmed "a) the belief in fundamental human rights, in dignity and value of human person, in equal rights of men and women as well as of large and small nations". Under Art.13, The General Meeting is authorized to initiate studies and to recommend in order to "b) promote human rights achievement and fundamental liberty for all, without discrimination of race, sex, language or religion". The principle of nondiscrimination is enunciated in art.55 point c) and 76 point c).<sup>1</sup>

The transposition of these principles in daily life constituted one of the major concerns of the World Forum in New York and of some specialized institutions from its system, finding its materialization both in legal and diplomatic instruments and in various declarations and resolutions. In their synthetical formula they are found in **Universal Declaration of human rights** on 10<sup>th</sup> of December 1948, which in the 1<sup>st</sup> article provides: *"All the human beings are born free and equal in dignity and rights, they are gifted with intellect and conscience and they must behave one to each other in a fraternity spirit"*, and the 2<sup>nd</sup> article disposes that *"every man can avail himself of all the rights and freedoms proclaimed in the present Declaration without any difference, for example of race, sex, language or religion, public opinion, or any other opinion, of national or racial origin, of property, of birth or resulting from any other situation"*.<sup>2</sup>

Regarding the definition of the concept of human dignity, this realised mostly approaching the fundamental human values, as well as through the discovery of the rapport between dignity and the right to a decent life.

The dignity shows the value, the honesty, the moral merits, the degree of appreciation as well as the achieved rank by a person in society. In the Christian teaching, human dignity is a divine gift, that irrespective of the conditions in which the individual lives, he has the God's image as an example. Within society we understand dignity as the self-sufficiency and freedom of thinking and also the individual's behaviour<sup>3</sup>.

The **human dignity** considered as fundamental and the sum of all the rights, it has been defined as **the sum of all the human values and of the respect towards the individual**, characteristics which man receives from the moment he is born and lasts till after his death. It is not and it cannot be considered an object irrespective of race, origin, etc. In the presence of "human dignity" as a fundamental right of freedom of the press and the right of liberty itself, the property rights, to life, the right of expressing opinions, of religious beliefs, the right to a decent life, the right to correspondence and all the other rights are built on human dignity, the corner stone of the civilisation and the entire society<sup>4</sup>. Not by chance the dignity is considered **a right that protects the individual and the image of the individual** even after a person passed the limit between life and death.

Also, it can be said that the human dignity constitutes the keystone that puts together the right to exist, the right liberty and the social right of the community that are mentioned in the Universal

<sup>1</sup> Ionel Cloșcă, Ion Suceavă, *Tratat de drepturile omului*, (Ed. Europa Nova, București, 1995), p. 79.

<sup>2</sup> Ioan Vida, *"Drepturile omului în reglementări internaționale"*, (Ed. Lumina Lex, București, 1999). p. 50.

<sup>3</sup> A se vedea Dicționarul explicativ al limbii române, precum și [www.wikipedia.ro](http://www.wikipedia.ro).

<sup>4</sup> <http://www.dingermania.com/2010/demnitatea-umana/>

Declaration of Human Rights. Thus we find in this document affirmations according to which the human being is unique, irreplaceable, meant to a transcendent life, and not just a unity in a social entity. Thus, human destiny, the vocation of human being can fulfill only within society to all its levels: family, group, ethnicity, nation, etc. It has to be mentioned that the Universal Declaration of Human rights from 1948 recognises not only the individual rights of the human being, but the rights with various human collectivities. The definition of the person as a being in communion, as a solidary entity, loving the neighbours, determines us not to dissociate the human rights by its duties or responsibilities. The art.1 of the Declaration of Human Rights states that all the human beings that are born free and equal in dignity and rights must behave one to each other in a fraternity spirit. And the art.29 of the same Declaration talks about the fact that "any person has duties towards the collectivity, because only within it the free and absolute development of his personality is possible."

So, the formal right on the other hand must be completed with the moral-spiritual dimension of human dignity. The dignity of freedom is conditioned by its ethic foundation, respectively of responsibility. From this point of view the person's rights corroborate with those of the neighbours'. The respect for our neighbour has to be at least equivalent to that we want for ourselves.

## 2. The aged persons' rights and protection

The problem of the person's rights and protection has represented a concern for various organs of the United Nations<sup>5</sup> even since 1948 when the Argentine Government proposed to the third Session of General Meeting of O.N.U. a project of the Declaration on aged persons. This project referred to the art.55 from United Nations' Charta, according to which the member states committed themselves "to create stability and welfare conditions necessary to a peaceful and friendly relation between nations..." favoring "the rising of living standards, total manpower utilization and conditions for economical and social progress and development"<sup>6</sup>.

The project of the Declaration was taken on agenda by the Committee for social problems and by the Committee of human rights, being under discussion till 1971, when this problem was retaken on the occasion of the debates concerning the application of the Declaration on progress and development in the social domain. Also, the study on the aged persons' problems came into notice to the World Health Organisation and the International Labour Organisation and with other specialized institutions they got involved in this activity of attaining a rapport that contains guiding principles of nations politics and of international actions that must be carried on.

So, on the 16th of May 1973, the Economic Council recognized by Resolution no 1751/LIV "that an adequate social security is the most important for aged persons" and that "the aged persons' protection in an important item of any general system of social protection". In the same time, the Council recommended to Governments to assure to old persons sufficient allowances of social security, to create a sufficient minimum of institutions to provide medical attendance for these persons and to oversee by all means that the persons included in the social protection programme to participate (according to their capacities) to creative activities that would morally satisfy them<sup>7</sup>.

On the 14th of December 1973, the General Assembly of U.N. adopted, after examining both a rapport of the General Secretary on the problem of the aged person and the old persons, and a Note of OMS, Resolution no. 3137/XXVIII<sup>8</sup> by which it attentioned the members states "on the necessity of elaborating some politics and programmes on short and long term for aged persons."

Therewith it recommended that when they elaborate national politics and programmes to be respectful of the following principles:

<sup>5</sup>This problem was a study object both of General Assembly of U.N. and ECOSOC, Human Rights Committee and Social Problems Committee.

<sup>6</sup>I.Cloșcă, I.Suceavă – *Tratat de drepturile omului*- (Ed. Europa Nova, București, 1995), p. 200

<sup>7</sup>Ibidem

<sup>8</sup>Ibidem

- To edit programmes for the aged persons' welfare, health and protection, including measures to assure them to the utmost extent economical independence and social integration;
- To elaborate measures of social security to assure them a sufficient income;
- To intensify aged persons' contribution to economical and social development;
- To dismay discriminating attitudes, politics and measures founded exclusively on age that the employment practices;
- To encourage the conclusion of cooperation agreements on social security for the aged persons;
- To encourage the creation of employment possibilities for aged persons, according to their needs.

Between the 26th of July and the 6th of August 1982, in Vienna, took place the World

Meeting dedicated to aged persons and convoked in order to constitute a tribune destined to start a programme for an international activity meant to assure economical and social security in their own country for aged persons. This because the Meeting estimated that the number of these kind of persons would increase spectacularly in the following 20 years<sup>9</sup>, but that these persons represent an important human resource, both in the economical- social domain and in what concerns the transmission of cultural patrimony<sup>10</sup>.

### 3.The ensuring to respect the human dignity through pension rights

**The pension represent the most important performance of social insurance given within the public system.** Any type of pension is given to the person entitled to the requested of the entitled person, of the designated representative by this with special delegacy, of the tutor or of his curator<sup>11</sup>.

It can thus be said that because of the contributions paid by every person employed during his active life, pension is constituted in a gained right, Thus the citizen exerts a property right on the pension and the pension right. Also, **pension both as right and element of private property, represents a claim of the state which forces it to pay and to protect**<sup>12</sup>. From this perspective the quantum of the pension is considered that it cannot be negatively modified, because it is a gained right. Even in the Criminal law domain there is the principle of criminal law more favorable, all the more so in the domain of constituting the quantum on person's pension, if a recalculation is effectuated the more favorable pension is kept with the bigger amount). It is natural to be so, because it is proper for the society to be thus thankful to those who contributed to the society development, in their way.

But in the same time, respecting the Resolution 3137/XXVIII from 1973 (Romania was member of O.N.U. in that moment), the obligation of the state is that to assure the aged persons, on one side, a decent pension-to assure a financial independence and a decent living, and on the other side, the employment opportunity according to needs with the discouragement of the discriminating politics and measures.

These measures are meant to promote and to assure **the respect for dignity of aged persons**, because their brutal removal from the work system and the neglect of their creative capacities, because of the age has dramatical effects on the entire society.

<sup>9</sup> Since 1982 till nowadays (2011), third age population really multiplied, according with present statistics.

<sup>10</sup> I.Cloșcă, I.Suceavă – op.cit.- p. 201

<sup>11</sup> <http://www.cnpas.org/portal/media-type/html/language/ro/user/anon/page/pensions.jsessionid=003C8E1F7316AF28E0EE1A07BB40C684>

<sup>12</sup> <http://www.facias.org/documente/Petitie%20ONG%20Romania%20-%20abuzurile%20guvernului%20Boc.pdf>

#### 4. The impact of the political decision of recalculating negatively the special pensions

In the Romanian Official Gazette, Part 1, No. 527, from 28th of July 2010 was published the Government Decision no.735/2010 **to recalculate the established pensions according to the legislation regarding military state pension, police state pension and civil servant's pensions with a special statute in Prison Administration System**, according to Law no 119/2010 regarding the fixing of some measures in the pension domain.

Also, in the Romanian Official Gazette, Part 1, no 528 from 29th of July 2010 was published Government Decision no. 737/2010 regarding the methodology of recalculating the service pension categories provided in the art.1 points c)-h) from Law no 119/2010 regarding the fixing of some measures in the pensions domain.

The decision regulates the recalculating methodology for service pensions provided by Law no 119/2010 regarding the fixing of some measures in the pensions domain. The envisaged categories of pensions are the following:

- service pensions of staff in the courts and of prosecutors' offices attached to them;
- service pensions of diplomatic and consular staff;
- service pensions of parliamentary civil servants;
- service pensions of deputies and senators;
- service pensions of civil aviation professional staff from civil aviation;
- service pensions of Accounts Court staff.

According to those two normative documents, fixed under special laws, rightful, the service pensions **are recalculated by determining the annual average score and the quantum of every pension**, using the calculation algorithm provided by the Law no 19/2000 regarding the public pension system and other social insurance rights and respecting the methodology fixed by the decision<sup>13</sup>.

This decision taken to a political level had an undeclared purpose-the pension reduction for the persons that activated in domain with a special character. The special character because of some special work conditions, that limited the rights that they would in their civil life. In the case of military and police, as in that of the persons from the National Prison Administration, they made an allegiance to the Romanian people, so they were available all their active period. **I have to specify that the oath of allegiance was made in front of this people, not for those who have the power in the state temporary.** Also, it is very important to consider the danger they faced during their activity, as military, policeman or civil servant in National Prison Administration.

Another specific and very important problem is that, according to work legislation, military state pension, police state pension and civil servant's pensions with a special statute in Prison Administration System, **they didn't contribute in the Social Assurance System!** For all that, the law no. 119/2010 specifies in art. 3 alin.2 that „in the situation of the pensions (...) established based on special laws, the pension in public system makes considering carried out all the conditions specified by the Law no. 19/2000. In other words, even the legislator sanctions a lie, only for seeing made their political interest, meaning reduction the incomes of these categories of persons.<sup>14</sup>

Here's why, in my opinion, who I am not situated in none of these categories of persons, considering the fact that their work not only that was very important, but extremely dangerous, the Government should not even think of recalculating these pensions, especially negatively.

The inmates' reaction to sue the system is justified, a proved fact by the decision in the courts. **These decisions based on the reason that the pension is a gained right, with a patrimonial character.** Hence, the actual Government violates the property right, violating abusively, not only the Romanian Constitution that in the art.44 provides that *the property right, as*

<sup>13</sup> <http://www.juridice.ro/115777/metodologia-de-recalculare-a-pensiilor-speciale.html>

<sup>14</sup> **At the end of January 2011, Romanian Government adopted a new Government Order changing the methodology for calculate again these pensions. The law 119/2010 is still in force, so, the lie is still in force!!!**

well as the claims on state, are guaranteed, and the private property is equally guaranteed and protected by law, regardless the titular, and also the purviews of the Fundamental Rights Charta of European Union: art. 25, art. 17, 91), art. 41 line (2) point a), art. 34 line (1).

The position of international documents which Romania is part to, Lisbon Treaty from 13th of December 2007 specifies in the art. 45<sup>15</sup> the fact that the property right of member states will not be altered.

We also remind that the practice of the European Court of Human Rights (ECHR) in Strasbourg, as well as that of the Justice Court of European Union in Luxembourg stated that the pension represents a patrimonial right, and its reduction would injure this right and would be equivalent with an expropriation<sup>16</sup>.

Thus, in situation *gaygusuz vs Austria*<sup>17</sup> (1996), The Court (ECHR) decided that " *the pension represents a patrimonial right as it is provided by the art. 1 from Protocol 1 of the Convention for the human rights and it is observed a discrimination as it is provided in the art. 14, if it is missing a reasonable objective justification for the diminuation of the complainant's patrimony*".

In the famed situation of *Akdejeva vs. Letonia*<sup>18</sup>(2007), the European Court of Human Rights forced the Lettonian state to pay indemnities, fixing that the art. 16 from the Human Rights Convention was violated and the art.1 from the Protocol 1, in the case which the pension is diminuated by recalculation, being a gained right.

In the situation of *Muller vs Austria*, as well as in various cases like that, was decided that a reduction of the pension would affect the property right and the right to benefit by the insurance social system in the old age<sup>19</sup>.

Besides, the high Court of Cassation and Justice appreciated by its decision from 7th of January 2011 that **"The pension is a patrimonial right and it cannot be recalculated by a Governmental Decision."**<sup>20</sup>

The Romanian Government motivated this decision like any other measures regarding the inmates and budgetaries, relying on the art. 53 from Constitution : *the exercise of some rights or some indulgences might be restricted only by law and only if necessary, after case, for : defending the national security, of order, of health or of civil ethics, of the citizens' rights and indulgences; conducting a criminal investigation; preventing the consequences some natural calamities, of some disaster or of a very grave catastrophe*. Civil society considers that this motivation has no foundation, because the romanian state is not in any of these situations and, thus does not justify the annulation of a gained right. The social security right is violated also the principle of law supremacy.

The motivation of restriction of the right as a measure for the national security is contrary to the concept of national security as in art. 1 from law no. 52 from 1991. According to this normative act, " *by Romanian national security is understood the legal, equilibrium and social stability state, economical and political necessary to living and Romanian national state development, as a sovereign, unitary, independent and indivisible state, to maintain rule of law, as well as the climate to exert the rights, the indulgences and the citizens' fundamental duties, according the principles and the democratic norms settled by Constitution.*" So, **the national security refers to the entire population and not only to inmates and budgetaries.**

<sup>15</sup> [http://europa.eu/lisbon\\_treaty/full\\_text/index\\_ro.htm](http://europa.eu/lisbon_treaty/full_text/index_ro.htm)

<sup>16</sup> [http://www.realitatea.net/cedo--pensia-este-un-drept-patrimonial--iar-diminuarea-ei-ar-leza-acest-drept\\_715423.html](http://www.realitatea.net/cedo--pensia-este-un-drept-patrimonial--iar-diminuarea-ei-ar-leza-acest-drept_715423.html)

<sup>17</sup> <http://www.humanrights.is/the-human-rights-rproject/humanrightscasesandmaterials/comparativeanalysis/therighttoproperty/various/>

<sup>18</sup> <http://www.facias.org/documente/Petitie%20ONG%20Romania%20-%20abuzurile%20guvernului%20Boc.pdf>

<sup>19</sup> Ibidem

<sup>20</sup> <http://www.citynews.ro/cluj/eveniment-29/pensia-drept-patrimonial-in-dosarul-militarilor-clujeni-106186/>

Romanian state makes thus a discrimination, violating the Amsterdam Treaty that accord a great importance to undiscrimination principle.

None of the state that reduced the people's income did not invoked reasons as national safety and security<sup>21</sup>.

The inmates' reaction situated in special categories of celebrating the Unification Day protesting seemed natural as long as their rights were brutally violated by receiving some drastically diminished pensions in January, without accounting for all the considerations that were basis for the real calculation of the pension.

## 5. Conclusions

We agree that the pension system and the social insurance system needs a reform. This reform must not outline a political decision without coverage in real life. In our opinion, it has to regard a direct connection between the contribution that every active person deposits during his life and his pension. Also, it is important the fact that some categories, whose activity is extremely important not only for the citizens, but for the entire country, must benefit of a special abidance, because of the fact that their rights are not limited during his active life as employee. I personally consider, as a citizen, that my safety is very important. The safety of every citizen from this country is also very important, because only in safe conditions and stability we can create, so we can contribute to society development. Thus, one of the most important duty provided by Romanian Constitution- the fidelity to the country- would be solved from all the citizens' opinion. Here's why we need civil servants with a special status!

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<sup>21</sup> <http://www.facias.org/documente/Petitie%20ONG%20Romania%20-%20abuzurile%20guvernului%20Boc.pdf>