THE RIGHT TO A FAIR TRIAL. FREE ACCESS TO JUSTICE

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Abstract: *The right to a fair trial is a fundamental principle of civil process provided for by the code of civil procedure governed by the provisions of Article 6 so that everyone has the right to the judgment of the case in its fair, within optimal and predictable, by an independent and unbiased judgment and established by law. To this end, the instance is obligated to provide for all measures are permitted by law and to ensure that the connected with the allegation in the trial. The right to a fair trial has several components, namely: free access to justice; examining the case in the fair and public hearing within a reasonable period of time; examining the case by a court independent, unbiased as established by law; the advertising of the pronouncement of judgments. The right to a fair trial enshrined in Article 6 of the Code of civil procedure shall establish and certain guarantees conferred on consumers in order for there to be a fair trial and so provided for the right of every person in the judgment of the case in its fair, within optimal and predictable, by an independent and unbiased judgment and established by law. Free access to justice is a right that belongs to any person the right to address the justice for the defense of the rights and freedoms and the interests of his legitimate, while ensuring that the exercise of this right may not be restricted by any law.*

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JEL Clasification*: K0, K30.*

1. Introduction

The functions of the state can be understood as groups of public papers. Leon Duguit knew that neither Montesquieu, when he spoke about the separation of powers in the state did not understand anything other than the separation of the functions in the state, unlike Rousseau, which has called the separation of powers of the state (Duguit, 1911)[1].

The theory of Subservience to the functions of the state. Leon Duguit makes a division of functions the state after the inherent nature of documents, which it executes the public authorities, girand public services. It is a classification of the functions of the state which starts from the legal nature of the acts and subject to the function (Tarangul, 1944).

The function of the laws are characterised by the fact that it has as its object the establishment of rules of conduct social, general and impersonal, with binding and likely to apply sanctions if would be violated by all the force of constraint of the state. These rules are general and impersonal in the sense that although invited to apply to persons, they are submitted in the abstract, i.e. to be all persons from a company or one or more categories of persons defined by certain features in common.

The executive function or administrative action as it is also called the authors (Tarangul, 1944) has as its object the organization of the implementation and application in concrete of the laws, to ensure the proper functioning of the public services established for that purpose and the issue of normative acts and individual or the carrying out of operations materials, through which on the basis of the law is intervenes in the life of the home to direct the activity or to perform certain benefits.

The function had jurisdiction, has as its aim the settlement of a dispute or legal establishment, with the competent working tried, of a report contested or objectionable.

[1] Jean Jakques Rousseau - French philosopher, his ideas are to be found in the massive changes promoted by the French Revolution in 1789. 1712 – 1778. Social Contract - considered a political manual - Theory the most important can in this work he represents the separation of powers in the state Puts emphasis on the importance of the fact that "the one who shall draw up laws do not need to be of the legislative powers". The concept of freedom closely linked at the general will may be maintained only in the absence of a person strong enough as to impose his will. Charles Louis of helped Montesquieu - about the spirit of the laws - translation in the romanian language Ed. Scientific, Bucharest, 1966

Administration of justice is a function of the state, and its administration is one of the essential attributes of power and the sovereign states. This function implies the existence of some state structures able to perform the work had jurisdiction. These structures formations must be organized on the basis of principles, functional and autonomous.

Among these principles we mention: Free access to justice, the independence of the judges, irremovability, gender equality before the court and free of justice all of these being in close connection with the administration of justice and guaranteeing the right to a fair trial the citizens.

The right to a fair trial occupies a special place among the fundamental rights recognized in a democratic society whose guarantee must be inherent in any system of law.

In reality, the right to a fair trial does not have a dimension unique, but reflect a complex with a series of demands that the lawmaker law but also those who are called to enforce the law, including recipients must comply with them. In view of the fact that the right in question applies not only by virtue of the internal standard but also of the supranational, covered by the European Convention of Human Rights, is imported to be determined the meaning of the case law of the European Court of Human Rights of the field of application of the principle of the right to a fair trial.

The right to a fair trial is provided for in Article 6 point 1 of the European Convention for the protection of human rights and fundamental freedoms[1].

At the same time, the Constitution of Romania in Article 21, enshrines the free access to justice "Any person may address the justice for the defense of the rights and freedoms and the interests of his legitimate. May not be restricted by any law the exercise of this right. The parties shall have the right to a fair trial and to the solving of the causes within a reasonable period of time. Special jurisdictions administrative provisions are optional and free of charge."

The right to a fair trial is a fundamental principle of civil process provided for by the code of civil procedure governed by the provisions of Article 6 so that everyone has the right to the judgment of the case in its fair, within optimal and predictable, by an independent and unbiased judgment and established by law. To this end, the instance is obligated to provide for all measures are permitted by law and to ensure that the connected with the allegation in the trial.

The nature of the fair and reasonable time limit of the trial are provided for by Article 8 of the Code of penal procedure thus components judicial authorities have the obligation to carry out the penal prosecution and judgment of the compliance with the guarantees and illegally seizing the rights of the parties and of the subjects procesuali, in such a way as to be recorded at the time and in full the facts which constitute the offenses, no innocent person should not be pulled to penal liability, and any person who has committed a crime to be punished according to the law, within a reasonable period of time.

According to the art.11 from the Constitution of Romania, the Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is a party.

Treaties ratified by Parliament are part of national law.

The text of the constitutional law apply an account of the principles relating to the trust among the Member States and the correlation between international law and national law through the integration of those rules that belong to international law in national law.

[1]Law no.30/1994 on ratification of the Convention for the protection of human rights and fundamental freedoms and of the additional protocols to this convention, published in M. Of. no.135/31.05.1994.

What integration is performed by means of the ratification of the international instruments by the Romanian Parliament and conferring these rules binding character in Romania including specific regulations on human rights.

In this respect Article 20 of the Romanian Constitution establishes that the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.

In the case where any inconsistencies exist between the covenants and treaties on fundamental human rights, in which Romania is part, and internal laws, the international regulations shall take precedence, except where the Constitution or internal laws contain more favorable provisions.

According to Article 3 of the Code of civil procedure, the provisions relating to the rights and freedoms of individuals shall be interpreted and enforced in accordance with the Constitution and the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.

Where any inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to, and this code, the international regulations shall take precedence, except as otherwise provided for in this code shall comprise the more favorable provisions.

The Convention for the protection of human rights and fundamental freedoms and of the additional protocols to this Convention by ratification became a part of the national law and shall apply with priority. Being an integral part of national law, these rules shall apply with priority are compulsory, are the sources of law and shall be applied by the courts, and their decisions shall be subject to control by the C.E.D.O.

According to Article 4 of the Code of civil procedure the mandatory rules of the law of the European Union shall apply on a priority basis regardless of the quality or the status of the parties.

In the framework of Article 124 (2) and (3) of the Romanian Constitution provides that justice is unique, fair and equal for all, and that the judges shall be independent and subject only to the law. Also, in Article 126 (2) shows that justice shall be administered by the High Court of Cassation and Justice and other courts established by law.

The Right 1a a fair trial is a part of the principle of preeminentei right in a democratic society and not that the law to recognize the persons substantial rights in so far as they are not accompanied by the fundamental guarantees of a procedural document, the nature of the putting them in value (Boroi, 2013).

This right is enshrined in Article 6 point 1 of the Convention for the protection of human rights and fundamental freedoms. The Convention for the protection of human rights and fundamental freedoms, within the meaning of Article 6 point 1, provides for the right of every person to a fair trial, thus "Everyone has the right to be examined fair and public and within a reasonable time by a court as an independent and impartial, established by law, which will decide either on the infringement of the rights and obligations of civil, either on an acceptance of any charges in criminal matters directed against it. The judgment must be pronounced in public, but access in the meeting room may be denied the press and the public, for the entire duration of the process or of a part of it, in the interest of morality, public order or national security in a democratic society, where the interests of the minors or the protection of the privacy of the parties to the process so require, or to the extent considered strictly required by the court of first instance, when, on account of special circumstances, advertising would be liable to prejudice the interests of justice".

According to Article 10 of the Universal Declaration of Human Rights[1] shall be established the right to a fair trial according to which, "every person has the right to equal to be heard in an equitable manner and the public by a court as an independent and impartial which will decide either on his rights and obligations of the company or to an acceptance of any weighty accusation in criminal matters directed against it", and Article 30 of the declaration states that "nothing cannot be interpreted as implying for any State, group or person any right to engage in any activity or to refrain from any act aimed at the destruction of any of the rights and freedoms set out in the table of contents or", and by Article 14 point 1 of the International Covenant on the rights of the civil society and the The political[2].

In the analysis of the text of the Convention as a result, the right to a fair trial has several components, namely: free access to justice; examining the case in the fair and public hearing within a reasonable period of time; examining the case by a court independent, unbiased as established by law; the advertising of the pronouncement of judgments.

The right to a fair trial enshrined in Article 6 of the Code of civil procedure shall establish and certain guarantees conferred on consumers in order for there to be a fair trial and so provided for the right of every person in the judgment of the case in its fair, within optimal and predictable, by an independent and unbiased judgment and established by law.

2. Free access to justice

The right to a fair trial may not be designed without the right of a person to refer to the court to try the case with which it is delegated.

Free access to justice requires access to the procedural means by which the justice shall be rendered.

Free access to justice is governed by Article 21 of the Romanian Constitution which provides that any person may address the justice for the defense of the rights and freedoms and the interests of his legitimate. May not be restricted by any law the exercise of this right.

Free access to justice is a right that belongs to any person the right to address the justice for the defense of the rights and freedoms and the interests of his legitimate, while ensuring that the exercise of this right may not be restricted by any law.

The right to refer to the court is provided for by Article 8 of the Universal Declaration of Human Rights according to which any person has the right to an effective

[1] The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations, on 10 December 1948. Adopted and proclaimed by the general meeting of O.N.U by Resolution 217 A (III) of 10 December 1948. Romania has signed the declaration on 14 December 1955 when through the R 955 (X) of the General Assembly of the United Nations, was admitted to the rows of the Member States.

[2] The International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations, on 16 December 1966, which entered into force on 23 March 1976, has been ratified by Romania by Decree No. 212/31.10.1974, published in B. Of. no. 146/20.11.1974. All men are equal in front of the courts and the courts of justice. Any person shall have the right that the dispute in which it has to be examined in an equitable manner and the public by a court competent, independent and unbiased established by law, to decide either on an acceptance of any criminal recriminations directed against them, either on the disputes concerning the rights and obligations of its civil character. The meeting of the court may be declared in the whole or a part of the conduct of themselves or in the interest of morality, public order or national security in a democratic society, or, where the interests of the private lives of the parties concerned so require, either to the extent that the tribunal determines would consider this as absolutely necessary, when given the special circumstances of the case the advertising would harm the interests of Justice; however, any decisions in criminal matters or civil society will be published, except for the cases where the interests of the minors required to do otherwise or when the process refers to the marital disputes or to the care of children.

remedy by the competent national tribunals for acts violating the fundamental rights granted him are recognized by the constitution or by law.

Thus, in accordance with the provisions of Article 6 of the Law no. 304/2004, any person may address the justice for the defense of the rights and freedoms and the interests of his legitimate in the exercise of his or her right to a fair trial. And in accordance with the provisions of Article 6 paragraph 2 of the Law no. 304/2004, access to justice cannot be restricted[1].

More than these normative acts the code of civil procedure expressly provides in Article 5 that judges have the duty to receive and to settle any claim under the authority of the courts, according to the law.

Any Judge may refuse to judge on the ground that the law does not provide, is unclear or incomplete.

In the case where a question cannot be resolved neither in the basis of the law or customary practices, and in the absence of the latter, nor on the basis of the provisions of the laws relating to similar situations, she will have the judgment on the basis of the general principles of law, having regard to all the circumstances and taking into account the requirements of equity.

It is forbidden to judge lay down general provisions made compulsory by the decisions which they acted in the causes of what they are subject.

According to the article 192 of the Code of civil procedure for the defense of the rights and interests of its legitimate, any person may address the justice by sensing the competent court with a request to call in court. In certain cases provided for by law, following a court can be done by persons or other components.

The process begins by registration of the application to the courts pursuant to Article 148 of the Code of Civil Procedure "any request to the courts must be expressed in writing...", but because of modern communication the law provides for and also the request will include, where appropriate, and e-mail or coordinates which have been indicated for this purpose by the parties, as well as the phone number, the fax number or other such"[2].

The judge has the obligation to receive the requests made, irrespective of the manner in which they have been sent to court in the course of the meeting of the court, so article104 paragraphs 14 and 15 of Regulation of internal order provides that applications for, or the documents submitted during the meeting of judgment will be dated, stamped and signed by the chairman of the board of judgment.

In the course of the meeting the court the Registrar shall be recorded in the notes: the file number, its position on the list of the meeting, oral restitute from time to time during the session, deposits of applications and the papers, the measures provided for by the court, as well as all the other aspects in the process and Article 99 (Law no. 303/2004 provides that is misconduct, Unjustified refusal to receive in the file of the applications, the conclusions, pleadings or procedural documents submitted by the parties from the process.

According to this right of free access to justice, the code of civil procedure has several legal provisions from which we mention: in judgment (Article 194), meet (Article 205), counterclaim (Article 209), a request for call (Article 470), a request for appeal (Article 486), the notice of opposition in cancellation 503-508 (Article) The review Article 509-513), the complaint to be executed (711-719) etc.

[1] The Law no. 304/2004 on judicial organization, republished in M.Of.no.827/13.09.2005.
[2] C.E.D.O. - The Decision of 16 June 2009, the cause Lawyer Partners against Slovakia, quoted in C. Birsan, - the European Convention on Human Rights. Comment on the articles, ED, 2, Ed, C. H. Schapper Beck, Bucharest, 2010, p. 442. Law no. 455/2001 on electronic signature, published in M.Of. no. 429/31.07.2001.

In the same sense remember, and the provisions of the Code of penal procedure: the preliminary complaint295-298 (article), the complaint against the measures and acts of prosecution336-340 (article), the settlement of the complaint by the judge of the chamber (preliminary341 paragraph 6(c) and paragraph 7(d), the opposition against the conclusion of the judge of preliminary room (Article 347), the call (Article 412), the appeals 425 (article), the notice of opposition in cancellation 426-432 (article), an appeal in cassation (433-451) (The review Article 453).

These procedural paths ensure that the persons concerned to have access to a court of law, to which the law has set competent to decide in civil or criminal proceedings.

The Convention for the protection of human rights and fundamental freedoms and does not provide legal means for ensuring the right of free access to justice but leave at the discretion of the Member States which have ratified the Convention, to regulate these legal means.

The right of access to justice shall be governed by the national law but this is not an absolute right and is compatible with the limits laid down by the law but only the extent to which they do not affect the right of the substance itself. The exercise of the right of access to justice involves ensuring access to any person to an arbitral established by law and thus, the guarantee of a judicial procedure by which to be able to carry out the right in question.

According to article 2 paragraph 2 of the Law no. 304/2004, Justice shall be pursued by means of the following courts: The High Court of Cassation and Justice; Courts of Appeal Courts; specialized courts; military court; the judges, but this does not mean that the right of access to justice given the opportunity to address all these courts with a specific question or that take advantage of all the ways of attack against a judgment of the Court of Justice. So that, in accordance with Article465 of the Code of civil procedure governing which are subject to the decisions of the call and article483, which are Decisions subject to appeal. In this respect we mention the provisions of Article" item 1(j) of the Code of civil procedure concerning the material competence on the criterion of value, when the district court judge: Any other applications evaluabile in money worth up to 200,000 lei including, irrespective of the quality of the parties, professional or amateur, and applications evaluabile money beyond this value the competent to judge them is the tribunal.

In this respect we remind Decision No. 1/1994 of the Constitutional Court which states that, the legislator may establish, in the light of the special circumstances, special rules of procedure, as well as the procedures for the exercise of procedural rights, the principle of free access to justice assuming the possibility of unlimited of those interested in the use of these procedures in the form and in accordance with the procedures established by law.

Access to the judicial structures and the means of the proceedings, including the legal remedies available to him, shall be carried out with due regard to the rules of competence and procedure of courts established by law.

Free access to justice will be carried only in the respect that all citizens are equal before the law and public authorities, so that any exclusion which would have the significance of the infringement of equal legal treatment is unconstitutional[1].

It is otherwise, a solution that result in firmly from the provisions of Article 126(2) in the Constitution, according to which the competent authority of the courts and procedure of courts shall be provided for only the law" and of the article 129 in accordance with the "Against decisions of the court, the parties concerned and the Public Ministry may exercise ways of appeal, in accordance with the law".

[1] Decision No. 1/1994 a consensus of the Constitutional Court, published in M.Of. No. 69/16.03.1994.

Consequently, the legislator may establish, in the light of the special circumstances, special rules of procedure, as well as the procedures for the exercise of procedural rights, the principle of free access to justice assuming the possibility of unlimited of those interested in the use of these procedures in the form and in accordance with the procedures established by law.

Therefore the rule, Article 21(2) in the Constitution, according to which may not be restricted by any law access to justice, has the significance to the fact that the legislator did not it may exclude from the exercise of the rights of illegally seizing which it has set up a category or social group.

In practice the national courts, the parties have often invoked as a limiting of free access to justice, no about intruding free incited by the obligation imposed by law in the task of the parties for the payment of a fee by judicial stamp duties and is the legal assistance free of charge.

In respect of the legal assistance invederam articles 71 of Law No. 51/1995 for the organization and practice of the profession of lawyer, which provides that, in the cases provided for by law, take proper account ensure judicial assistance in the following forms:

a) in the criminal cases in which the defense is mandatory in accordance with the provisions of the Code of penal procedure;
b) in any causes other than criminal proceedings, as a way for granting public aid the judiciary, in accordance with the provisions of the law;
c) judicial assistance through a lawyer, granted at the request of the components of the local public administration.

In exceptional cases, where the rights of the person or lack of equipment would be prejudiced by delay, Bar dean may approve the granting free of assistance for the specialist legal.

And Article 72 provides that in the case in which, according to the government decree no. 51/2008 on public aid judiciary in civil matters has been ought the aid application of the judicial public in the form of assistance through a lawyer, the application together with the conclusion of the Agreement shall be sent as soon as the presiding judge of the bar in the local district that courts.

Bar dean or the lawyer of which the dean has delegated this task shall designate, within 3 days, a lawyer is entered in the register of the judicial assistance, to whom he shall, together with the Notice of approval, the conclusion of acquiescence. Bar dean has the obligation to communicate and the recipient of the aid of the judicial public the name of the Advocate of the designated.

The beneficiary of the aid judicial public may ask himself the designation of a certain lawyer, with its consent, in accordance with the law.

With respect to the payment of the judicial stamp, we believe it is not a real limiting the right of access to justice as, changing the legal framework for the conduct of civil process through the adoption of the Civil Procedure Code and the implementation of the new institutions adopted by the Civil Code, it was necessary to be modified and the regulatory framework concerning the fees by judicial stamp. To ensure that the tax system to reflect the new structure and the dynamics of the process civil, new procedural guarantees granted to the parties in order to ensure a fair trial, and cover the extra costs for the development of the infrastructure and to ensure the logistics necessary for the implementation of the new legal provisions, taking into account the need to ensure, on the one hand, of an appropriate balance between the budgetary efforts of insurance of a public service quality and the obligation of the citizen who uses this service to help support costs,

but and, on the other hand, the transparency of the application of the rules in matters involving a clear on all the operations which they involve the tax system[1].

The duties of the judicial stamp are owed by all natural and legal persons and represents the payment of the services rendered by the courts and by the Ministry of Justice and the Prosecutor's Office of the High Court of Cassation and Justice. In certain cases provided for by law, the actions and claims brought to court and requests addressed to the Justice Ministry and the Prosecutor's Office of the High Court of Cassation and Justice be exempted from payment of taxs by judicial stamp. According to the art. 42 of the government decree no. 80/2013, individuals can benefit from exemption, discounts, 1.440 or delays for the payment of the judicial stamp, in accordance with the Decree no. 51/2008 on public aid judiciary in civil matters[2].

The court granted to legal persons at the request of the facilities in the form of discounts, 1,440 or delays for the payment of the judicial stamp tax chargeable in respect of the actions and claims introduced to the courts of law.

Pay the import duties by judicial stamp do not impair any theory about intruding free of justice and free access to justice because the losing party process will be obliged, at the request of the party which has won, to pay the expenses of the tribunal", the expenses of the tribunal have been regulated in Article 451-455 of the Code of civil procedure.

In relation to the national provisions set out, the lack of autonomy of civil process could not be invoked successfully as a breach of the free access to justice within the meaning of Article 6 point 1 of the Convention.

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