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# The Specificity of the Right to Strike in the Case of Certain Categories of Public Sector Personnel

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ABSTRACT: The present study aims to analyze some aspects related to the right to strike regime. We aim to start from the general to the individual, from this right, in its capacity as a fundamental right of employees and continuing with the particularities of manifestation within certain categories of people. These are public sector staff in general and some categories of staff in this sector, in particular. A first approach considers civil servants, which is the most discussed and disputed category in the doctrine of labor law and, respectively, the doctrine of public law. The second approach concerns some civil servants subject to a special status, such as staff in the public order and safety system. Can they exercise their right to strike? If not, why not? If so, to what extent? The usefulness of the theme was determined by what is happening in contemporary reality.

KEYWORDS: rights, freedoms, the right to strike, personnel, the public sector, civil servants, civil servants with special status

## The right to strike, a fundamental right of the employee

The Romanian Constitution (1991/2003), revised and republished, recognizes **the employees'** *right to strike* in art. 41 para. (1), and specifies the objectives/ purposes of the strike, respectively *the defense of professional, economic and social interests.*

From the outline of the categories of interests that may be the object of the strike, it results that **the political strike is prohibited**, as expressly provided in art. 190 (art. 190 para. (*2) provides that *"The strike cannot pursue political goals"*) of Law no. 62/2011 of the social dialogue (republished in O.G. no. 315/30 May 2012). This law defines the notion of strike in art. 181 as meaning *any form of collective and voluntary cessation of work in a unit*. A very close definition can also be found in the Labor Code, approved by Law no. 53/2003 (republished in O.G. no. 345/18 May 2011), art. 234, according to which *"The strike represents the voluntary and collective cessation of work by employees".* If we compare the two definitions, we find that the only difference between them is in the final part, Law no. 62/2011 referring to **the place** where the cessation of work is manifested, respectively *in a unit*, while the Labor Code emphasizes **who stops working**, respectively *the employees*. We point out, in this context, **the regulatory parallelism**, which is one of the harmful phenomena faced by the Romanian legal system, contrary to the provisions of art. 16 of Law no. 24/2000 regarding the norms of legislative technique (The text stipulates that *"In the legislative process it is forbidden to establish the same regulations in several articles or paragraphs of the same normative act or in two or more normative acts. In order to emphasize some legislative connections, the reference norm is used"*).

We note from the beginning that although the constitutional text refers to **employees**, in reality it also targets **civil servants** (Popescu and Dima in Muraru and Tănăsescu (coord.) 2019, 353), staff category with a distinct status, currently regulated by the Administrative Code (adopted by GEO no. 57/2019, published in O.G. no. 555/5 July 2019), in its sixth part.

Paragraph (2) stipulates that **the organic law** is to establish three aspects: **the content of the right, its limits,** as well as **the guarantees necessary to provide essential services for society**. *The organic law* to which the Constitution refers is currently represented, as we have shown, by Law no. 62/2011 of the social dialogue. The Labor Code is added to it, which in

art. 233 stipulates that *"Employees have the right to strike to defend professional, economic and social interests".* As noted in the specialty literature, *"this article does nothing but take over the provisions of art. 43 para. (1) of the Constitution (...)"* (Gâlcă 2015, 636) which we have previously stated.

With regard to civil servants, the Administrative Code regulates for them the right to strike in art. 416, which provides, in par. (1), that *"Civil servants have the right to strike, in accordance with the law."* and in par. (2) the fact that *"Civil servants on strike do not receive a salary and other salary rights during the strike."* We find that the Administrative Code establishes a provision that the Labor Code does not expressly enshrine, namely that, during the strike, the participants in it do not benefit from salary or other salary rights. The norm must be corroborated with art. 514 para. (1) letter i) of the Administrative Code according to which, among the cases in which **the legal suspension of the civil service's** employment report occurs is the case in which the civil servant *takes active part in the strike, in accordance with the law*. In our opinion**, this type of suspension should take place by law and not on the civil servant's initiative,** given that **the initiative manifests itself when the civil servant takes part in the strike**. Thereafter, if the civil servant had the initiative to participate, **the suspension shall be *de jure.***

However, the rule is also common to employees. Instead, it is common to refer to a **law regulating the strike conditions**. *The law* to which the Administrative Code refers is the same Law no. 62/2011, resulting in **a common regulatory framework for both employees and civil servants regarding not only the strike regulation, but also of other issues closely related to it,** such as **trade unions** and **labor disputes**, specifying that the content of the law contains specific provisions for civil servants.

**Peculiarities of the right to strike. Special case, the police officers**

There are derogations from any fundamental right, taking into account certain categories of staff. Sometimes such derogations are provided for in the Constitution itself. Example, art. 40 stipulates that *the People's Advocates, magistrates, judges of the Constitutional Court, active members of the army, **police officers** and other categories of civil servants* established by organic law **are exempted from the right of political association**.

As for **the police officers,** they are **civil servants with special status, regulated by Law no. 360/2002** (published in O.G. no. 440/24 06 2002). Art. 45 of this law regulates *the restriction of the exercise of certain rights and freedoms*, and letter **e)** contains the prohibition for the police officer *to declare or participate in strikes as well as rallies, demonstrations, processions or any other political gatherings.*

The restriction of the exercise of certain rights or freedoms is allowed, in principle, by the Constitution, in art. 53, but certain conditions are imposed that must be observed in order for the restriction to be admissible. These are the following: the restriction should be made only **by law**; to be imposed by certain **situations**, which are provided **in a limited way**, respectively *for the defense of national security of order, public health or morals*, *citizens' rights and freedoms, the conduct of criminal investigation, prevention of the consequences of a natural disaster or a particularly serious accident*: the rule of **proportionality** between the restrictive measure and the cause which determined it; application of the restriction measure in a **non-discriminatory** manner; restriction **is necessary in a democratic society**; not to restrict, by restriction, the existence of the right or freedom not **to infringe on the existence** of a right or freedom.

Some of the dimensions established by the constitutional text were enshrined in Law no. 429/2003 revising the Constitution and we refer to **the condition that the restriction be necessary in a democratic society.**

If we relate this constitutional framework to the professional category of police officers, we appreciate that the limits it outlines are respected. First it is a law of restriction; the restriction

rules were established in consideration of the defense of national security and public order, which fall within the competence of the police. According to art. 1 of Law no. 218/2002 (Romanian Police Law, republished in O.G. no. 170/2 April 2020), the Romanian police *is the specialized institution of the state that exercises attributions regarding the protection of fundamental rights and freedoms, of the person, of private and public property, prevention and discovery of crimes, observance of public order and peace, in accordance with the law.* Analyzing these provisions, we find that **the values defended by the Romanian police, in most of them, are limited to those that art. 53 of the Constitution** lists them as conditions that allow a restriction of rights or freedoms, referring to the other conditions that we have listed above, we consider that they are also met, so that the restriction established by art. 45 of Law no. 360/2002 falls within the constitutional benchmarks.

The question is whether in practice these regulations are complied with. What if we are not witnessing a collision between legal norms and administrative practices? In our opinion, unfortunately, the answer is yes. And the fact that this is happening is also explained by the way in which the unions in the police sector act, violating the restrictions established by the law that enshrines the status of the professional category they represent. We believe that things are related to each other. **The unions,** according to art. 9 of the Constitution, have the mission to contribute to **the promotion of the professional, economic and social interests of their members**. Hence the conclusion that **they cannot interfere with politics, they cannot become instruments of political struggle, neither as organizations nor through their leaders**. Not infrequently we find, in Romania and in other states, that trade unions and their leaders become the flag bearer of political battles, engage in political positions, and abandon union work in favor of the political sphere.

We also find the involvement of police officers in carrying out strikes, which they initiate, in which they participate, violating, in our opinion, the specificity of police status, with the rights, but also with the restrictions of rights and freedoms enshrined in law.

Hence the problem: what to do?

## Conclusions

We do not intend to give answers through this study, especially to this question. And especially when the answer would involve a symbiosis between law, sociology, social psychology and politics or geopolitics. Such an approach could be assumed, perhaps, in a doctoral thesis or in a monographic paper.

What we intend to do is **to point out aspects** on which, in the future, not only the legislator, but also the political factor should focus on them. Genuine democracy cannot be conceived outside of strict rules. Regulations regarding the restriction of certain rights or freedoms can also be found in international documents and we have in mind art. 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by Romania by Law no. 30/1994, published O.G. no. 135/31 May 1994) or art. 52 of the Charter of Fundamental Rights of the European Union, which the Member States have undertaken to comply with by the Treaty of Lisbon (The Charter was proclaimed on 7 December 2000 and entered into force with the Treaty of Lisbon on 1 January 2009).

Regarding the mission of the legislator, in our opinion, he should be concerned in the future with the creation of a more categorical and stricter normative framework, which will outline the restrictions, but also impose sanctions that intervene in case of their violation. Everyday realities around the world are fraught with situations in which this public service turns law into a law abuse, in which the principle of proportionality is ignored, reaching the most tragic situations. And the organization of strikes, rallies, demonstrations of all kinds, by the public police service not only takes place, but also acquires dimensions that transform the police officer from a

guarantor of public order and peace, of respect for authority, into a disruptive of these values, which can affect the stability of the state and constitutional democracy.

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