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## **A constitutional perspective on the connection between the state and the economy. Implications of the fundamental right in a decent standard of living**

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**Abstract.** Starting from an indisputable reality, namely that the numerous global and interconnected crises (pandemic crisis, biodiversity crisis, economic crisis and energy crisis, etc.) exacerbate the cost of living crisis and affect the right to a decent standard of living in all states of the world, the present study proposes a "radiography" of the decent standard of living in Romania - between the constitutional consecration and the social reality. The coordinates of the state-economy connection and of the standard of living in the consecration of the Romanian Constitution are presented. It starts from the proclamation of Romania - by the very article 1 of the Constitution, as a "governed by law, democratic and social state" and the provisions of art. 47-"Standard of living" and of art. 135 "Economy" are briefly analysed. Statistical data and conclusions from the "Social report: Quality of life during the pandemic: problems and response policies. A synthetic point of view" are highlighted. The cost of living crisis in Romania is observed from the point of view of the data provided by the study on the quality of life and social well-being - 2022, carried out by Social Progress Imperative with the support of Deloitte and by the conclusions expressed by the People's Advocate in the "Special report on respect of the right to work and the social protection of work", published on January 26<sup>th</sup>, 2022. It is stated that the Romanian state continues to be, in the social sphere and from the point of view of turning the fundamental right to a decent standard of living into reality, the "poor relative" of the developed states of the European Union, that the policy of the "small" state is largely responsible for the vulnerability of our society in the current crisis and - as a possible solution aimed at contributing to the effectiveness of the right to a decent standard of living, the opinion according to which: "*The quality of life in a governed by law, democratic and social state, a quality of life which is generated by fundamental social rights, should be declared, by law, a component of national security and of the safety of the person, as a human being*" is appropriated.

**Keywords.** global crisis, economy, decent standard of living; quality of life; the monthly minimum expenditure basket

### **1. Brief introductory considerations**

Global and interconnected crises (pandemic crisis, biodiversity crisis, economic crisis and energy crisis, etc.) exacerbate the cost of living crisis and affect the right to a decent standard of living in all states of the world.

As in all crises, some countries will be more affected than others. We pay attention to the current situation of Romania – a governed by law, democratic and social state (as stipulated in art. 1 par. 3 of the Constitution), member of the EU.

After the onset of the global crisis in 2008, citizens expected governments to provide them with a certain level of security in front of persistent economic uncertainty. In the new context of global financial markets which are merciless with countries with macroeconomic deficiencies, governments could no longer increase their deficits and were forced to adopt austerity policies, proving themselves to be, at the same time, little capable of adopting policies that would boost economic recovery<sup>1</sup>.

As it results from the title of the communication, the state-economy connection is observed from a constitutional perspective, in correlation with the fundamental right to a decent standard of living.

## ***2. The coordinates of the state-economy connection and of the standard of living in the consecration of the Romanian Constitution***

The 1991 Constitution represents the rebirth of national democracy, being appreciated from the perspective of international standards in matters of constitutionalism.

By the very article 1, the constituent legislator proclaims Romania " *a governed by law, democratic and social state* in which human dignity, the rights and freedoms of citizens, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and ideals of the Revolution of December 1989, and they are guaranteed".

Without going into details about the meanings of the social state, we quote a doctrinal opinion - which we fully support: "the social state results both from the nature (essence) of the state, and especially from its functions. The modern state can and must give all economic, political, and cultural actions a social content based on ethical and human values that create fertile ground for the real expression of citizens' personalities, their rights and freedoms, and their equal opportunities. The social state cannot be a simple business partner, a simple observer, but a participant who must intervene, must take initiative and above all must take measures to ensure the accomplishment of common good. It must protect the weak, the disadvantaged by fate and chance, it must support economic sectors in crisis, but which are indispensable for the promotion of a civilized living, and it must ensure the operation of some protection and social intervention public services<sup>2</sup>."

The consecration of the connection between the state and the economy is a constant of modern constitutions.

Art. 135 paragraph 1 of the Romanian Constitution from 1991 - revised in 2003, stipulates that "*Romania's economy is a market economy, based on free initiative and competition*", and paragraph 2 of the constitutional text outlines the coordinates that the state must ensure in this context, respectively:

- a) freedom of trade, protection of fair competition, creation of a favourable environment for the exploitation of all production factors;
- b) protection of national interests in economic, financial and foreign currency activity;

<sup>1</sup> V. Iuga, Statul bunăstării sociale încotro?, article available on <https://www.revistasinteza.ro/statul-bunastarii-sociale-incotro>

<sup>2</sup> I.Muraru, E.S.Tănăsescu, in I. Muraru, E.S. Tănăsescu (coord.), Constituția României. Comentariu pe articole, 3<sup>rd</sup> Edition, C.H. Beck Publishing House, Bucharest, 2022, page 11.

- c) stimulation of national scientific and technological research, art and copyright protection;
- d) exploitation of natural resources, according to the national interest;
- e) restoration and protection of the environment, as well as the maintenance of ecological balance;
- f) *creation of the necessary conditions for increasing the quality of life;*
- g) implementation of regional development policies in compliance with the objectives of the European Union.

In the legal literature, it was considered that "the subject of state intervention in the economy and in the society revolved around the conflict between two fundamental values - freedom and justice (as equality) - because, ignoring the details, state intervention affects freedom, and non-intervention affects justice (as equality)"<sup>3</sup>.

In our opinion, the intervention of the state in the economy is absolutely necessary, in the fields established by paragraph 2 of article 135 of the Constitution, given its characteristic of a social state, obliged to find effective public policy solutions to ensure a decent standard of living and to aim to protect the public interest.

Article 47, with the marginal title "*Standard of living*" stipulates "(1) *The state is obliged to take measures for economic development and social protection, so as to ensure citizens a decent standard of living.* (2) Citizens have the right to pension, paid maternity leave, medical assistance in state health facilities, unemployment benefits and other forms of public or private social insurance provided by law. Citizens also have the right to social assistance measures, according to the law".

Undefined by the constitutional text, the "decent standard of living" is consecrated both as a fundamental right of citizens and as an obligation of the state, which must take the necessary economic development and social protection measures for the right to be respected.

The constitutional court ruled that the provisions of article 1 paragraph 3 of the Constitution oblige the state, by the provisions of article 135 paragraph (2) letter f), to create the necessary conditions for increasing the quality of life, and by article 41 paragraph (2) and article 47 paragraph (2) provides for the right of employees, namely of citizens, to other social protection and social assistance measures than those expressly mentioned in the Fundamental Law, measures which are established by law.

All these citizens' rights and correlative obligations of the state bear the same characteristic- the fact that, to the extent that they are not expressly nominated by the Constitution, the legislator is free to choose, depending on the state policy, the financial resources, the priority of the pursued objectives and the need to fulfil other obligations of the state equally consecrated at constitutional level,

Dual perspectives in public policies: from the minimal state to the social state, material available on the website: <https://revistasferapoliticii.ro/sfera/156/art05-Ticu.ph> .

which are the measures that will offer citizens a decent standard of living and establish the conditions and limits of their granting<sup>4</sup>.

The right to a decent standard of living - according to its content and complexity, is conditioned by the economic progress of the state, as well as by its social policy.

With an intrinsic social nature, the right to a decent standard of living is part of the second generation of rights, which imposes a positive obligation on the states, namely to take

<sup>3</sup> A.Rader, *The policy process*, Edinburg Gate:Prentice Hall,1997 quoted by D.Țicu,

<sup>4</sup> Constitutional Court of Romania Decision no.508/2015, published in the Official Gazette no.618 of 14<sup>th</sup> of August, 2015;

economic development measures - on two coordinates: a) measures taken for its citizens to value their human potential and b) measures likely to favour the development of activities through which its citizens can obtain a decent living.

Yet, the promotion of social well-being and standard of living improvement are not limited to the dimension of social security rights - stated in paragraph (2) of article 47, interfering with other fundamental rights stipulated in the Constitution, such as the right to education (article 32), access to culture (article 33), the right to a healthy environment (article 35) or others stipulated in international and EU documents, such as the housing right.

### **3. Cost of living crisis in Romania**

The standard of living, which is included in the multidimensional concept of the quality of life, is, from a sociological perspective, an economic category that reflects the degree of satisfaction of material and spiritual life needs of the population of a country, and it expresses "the result of analysing life through a system of needs, demands, aspirations, human ideals"<sup>5</sup>.

On the grounds of article 47 of the Constitution, a rich legislation was adopted within the constitutional framework; the primary legislator (Parliament) and the secondary legislator (Government) adopted numerous normative acts regulating the matter of social assistance and social insurance. Also, strategies on social inclusion and poverty reduction were developed, social policies were developed in order to increase the standard of living and the quality of life.

However, the statistical data included in "*The social report of QLRI (Quality of Life Research Institute-ICCV in Romanian): Quality of life during the pandemic: problems and response policies. A synthetic point of view*"<sup>6</sup>, elaborated by a group of sociologists of the Institute for Quality of Life Research (ICCV) of the Romanian Academy, are not promising at all.

According to the Report, public spending in Romania is among the lowest in the EU, far from European standards: 35% of GDP compared to 45% -the European average. Fundamental social services: health, education, social assistance are underdeveloped, a fact explained by the decreased level of spending share allocated to them in the GDP (3.2% for education, compared to the EU average of 4.7%; 4.7% for health, compared to 7.1%, the EU average).

Analysing the impact of the Coronavirus crisis on the quality of life paradigm, the authors of the Report note that "the interest given to the quality of life of the individual is increasingly complemented by the Quality of Collective Life and the Quality of society. Of course, the economy is too, but the quality of individual and collective life appear as essential factors of well-being. The GDP is good, but not nearly enough. It is very important to urgently build a group of new indicators: the Human Quality of our society and the Quality of Collective Life".

A study<sup>7</sup> on the quality of life and social well-being, carried out by the non-profit organization Social Progress Imperative with the support of Deloitte, at the request of the European Commission, has three main dimensions:

- *basic needs*: food and basic medical care, water and sanitation, housing and personal safety;

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<sup>5</sup> E. Zamfir, Calitatea vieții în strategiile de dezvoltare și etica acțiunii sociale, in E. Zamfir, I. Precupețu (coord.), Calitatea vieții – un proiect pentru România, Academiei Române Publishing House, Bucharest, 2018, page19.

<sup>6</sup> Information available on: <https://acad.ro/SARS-CoV-2/doc/d01-CalitateaVietii.pdf>

<sup>7</sup> Source: <https://economy.ro/studiu-privind-calitatea-vietii-si-bunastarea-sociala-nu-mai-suntem-ultimii-in-ue-ci-penultimii-romania-urca-o-pozitie-pana-pe-locul-43-in-clasamentul-mondial.html#.Y6oJO3ZByUk>.

- *well-being needs*: access to education, to communication and information, health and well-being, environmental quality and

- *elements related to opportunities*: personal rights, personal freedom and freedom of choice, inclusion, the right to work, access to advanced education, etc.

In the world ranking concerning the Social Progress Index 2022, which assesses the quality of life and social well-being in 169 countries, Romania shows a slight progress compared to last year in terms of *basic needs* (40<sup>th</sup> place), going one position up, and a decrease, dropping one position, for elements related to *opportunity* (46<sup>th</sup> place) and *well-being* (51<sup>st</sup> place).

Based on the score, the countries in the ranking are grouped into six categories, in descending order. All European Union member states are in the first two categories of the world ranking, with Denmark (2), Finland (3), and Sweden (6) having a high level of quality of life. According to the study, among the states in the Central and Eastern Europe region, the best position is occupied by Estonia (18), followed by the Czech Republic (23), Slovenia (27), Lithuania (29), Latvia (32), Croatia (34), Slovakia (35), Poland (39), Hungary (42), Romania (43) and Bulgaria (44).

For Romania, the analysis of the scores given to each of the coordinates in the three categories shows that among the best scored are food and basic health care and housing (both on the 34<sup>th</sup> place), followed by personal safety (35<sup>th</sup> place), access to communication and information (36<sup>th</sup> place) and access to advanced education (44<sup>th</sup> place). At the opposite pole, health and well-being (81<sup>st</sup> place), water and sanitation (70<sup>th</sup> place) and access to basic education (65<sup>th</sup> place) were poorly scored. We would say that this low-ranking position in the "*health and well-being*" coordinate is a natural consequence of the way of designing and legislating the minimum expenditure basket for a decent living.

#### **4. *The minimum expenditure basket for a decent living or the subsistence basket?***

Approved by GEO no. 217/2000<sup>8</sup>, the minimum monthly expenditure basket represents - as stipulated in art. 3: "*the essential element of substantiating the minimum wage, the salary policy and other policies in the social field*".

The structure and components of the minimum monthly expenditure basket were established by appendix - an integral part of the normative act. The structure of the minimum expenditure basket for a decent living comprises 11 chapters: (1) food, (2) clothing and footwear, (3) housing, (4) housing equipment, (5) housing expenses, (6) household and personal hygiene products, (7) services, (8) education and culture, (9) health, (10) recreation and holiday, (11) family savings fund.

In its initial form, GEO no. 217/2000 stipulated in art. 2<sup>9</sup>: "The minimum monthly expenditure basket is evaluated quarterly by the National Institute of Statistics and Economic Studies, and its value is approved by Government decision"<sup>10</sup>

As it arises from the statement of reasons of the Draft Law for the approval of the Government Emergency Ordinance no. 217/2000 (*PL-x no. 165/2001*), the minimum basket option was structured so as to "meet the requirements of ensuring a *minimum standard of living*

<sup>8</sup> Published in the Official Gazette of Romania, Part I, no. 606 of November 25<sup>th</sup>, 2000, approved by Law no. 554/2001, published in the Official Gazette of Romania, Part I, no. 672 of October 24<sup>th</sup>, 2001;

<sup>9</sup> Repealed by art. 23 letter a) of GEO no. 11/2004 concerning the establishment of reorganization measures within the central public administration, published in the Official Gazette of Romania, Part I, no. 266 of March 25<sup>th</sup>, 2004.

<sup>10</sup> Available on <https://www.cdep.ro/proiecte/2001/100/60/5/em165.pdf> (browsed on December 3<sup>rd</sup>, 2022);

in relation to the general standard of living achieved in the socio-economic conditions in Romania."

By Law no. 174/2020<sup>11</sup>, significant changes and additions were made to the above-mentioned normative act

- the title of the Ordinance was changed, from Government Emergency Ordinance no. 217/2000 on the approval of the minimum monthly expenditure basket, to *Emergency Ordinance on the structure of the minimum expenditure basket for a decent living in Romania*;
- the establishment of the value of the minimum expenditure basket for a decent living by the National Institute of Statistics and its approval by order from its president (and not by decision of the Government);
- establishing the minimum expenditure basket for a decent living as the main element of substantiation of the paid gross minimum wage per country and of the salary policy (the old wording "the essential element of substantiation of the minimum wage" being replaced).

The gross minimum wage per country is regulated by the Labour Code, a normative act which, in art. 164 para. (1), thesis I, establishes that "*the paid gross minimum wage per country, corresponding to the normal work schedule, is established by Government decision, after consultation with trade unions and employers*"

It was established by *Government Decision no. 1071/2021*<sup>12</sup> that, starting from January 1<sup>st</sup>, 2022, the paid gross minimum wage per country, mentioned in art. 164 para. (1) of the Labour Code, is represented by money, without bonuses and other supplements, *in the amount of 2,550 lei per month*, for a normal work schedule ((on average 167.333 hours per month, representing 15.239 lei/hour)).

The People's Advocate, in *the Special Report regarding the compliance to the right to work and the social protection of work*<sup>13</sup>, published on January 26<sup>th</sup>, 2022, - based on the data published by the National Institute of Statistics regarding the incomes and expenses of households, the official data regarding the gross minimum wage, the information about the consumption basket based on a study<sup>14</sup> carried out by the Friedrich Ebert Foundation Romania and Syndex Romania of *November 2021*, points out that: "*Regarding the paid minimum gross wage, per country, currently 2,550 lei, it is undeniable that that it is insufficient to cover the daily living needs of a family. Based on the calculations made, it can be concluded that as it is currently presented, it does not even cover the value of the consumption basket for a single adult.*"

For the year 2022 (*September*), the information on the consumption basket for a decent living, provided by the Friedrich Ebert Romania Foundation and Syndex Romania, through the Release of October 19<sup>th</sup>, 2022<sup>15</sup>, is the following:

- the value of the minimum consumption basket for a decent living for a family of two adults and two children in September 2022 is 8659 lei per month compared to 7233 lei in September 2021, an increase of +19.7%;

<sup>11</sup> Published in the Official Gazette no. 741 of August 14<sup>th</sup>, 2020;

<sup>12</sup> Published in the Official Gazette no. 950 of October 5<sup>th</sup>, 2021.

<sup>13</sup> Available on <https://avp.ro/wp-content/uploads/2022/01/Raport-special-respectarea-dreptului-la-munca-si-protectia-sociala-a-muncii-1.pdf> (browsed on December 3<sup>rd</sup>, 2022);

<sup>14</sup> The study shows that the value of the minimum expenditure basket for a decent living for a family of two adults and two children is 7,234 lei per month, in September 2021. The value of the basket for a family of two adults and one child is 5,993 lei per month, and for two adults it is 4,417 lei per month;

<sup>15</sup> Available on <https://www.bursa.ro/friedrich-ebert-si-syndx-romania-au-actualizat-valoarea-cosului-minim-de-consum-pentru-un-trai-decent-46220842> (browsed on December 3<sup>rd</sup>, 2022);

- the value of the basket for a family of two adults and one child is 7112 lei per month, for a family of two adults without children, 5322 lei per month, and for a single adult, 3275 lei per month;

- the overall value of the basket increased by more than 16%<sup>16</sup>.

Comparing these data with the amount of the paid gross minimum wage per country, we rhetorically ask ourselves: *The minimum expenditure basket for a decent living or the subsistence basket?* And we start thinking about how relevant Petre Țuțea's approach concerning the connection between family budgets, cost of living theory and good governance in the legal, social-economic and political order of Romania today, put forward in the essay "Bugetele familiale", published in "Cuvântul", April 12<sup>th</sup>, 1938 remains even today:

"Family budgets are the result of applying the cost of living theory as formulated by us and are drawn up taking into account the sex, age and number of members that make up a family. In this context, we can talk about the individual and his family. Until now, the individual's connections with society have been set starting from the expression "the individual and his/her property". We have seen before that, without numbers and without a good political organization, the existence of a great power is not possible. *Good governance aims at: the quantitative and qualitative growth of the population, raising the people to the rank of nation and the state to the rank of great power*"<sup>17</sup>.

#### **4. Final considerations**

The constitutional consecration of the social state and the right to a decent standard of living, without its concrete guarantee and accomplishment, is only a utopia. And, in this context, the provisions of art. 16 of the Declaration of Human and Citizen Rights from 1789<sup>18</sup>: "Any society in which the guarantee of rights is not ensured, and the separation of powers is not achieved, does not have a Constitution" are relevant.

In the search for legal-state solutions to "support" the state to ensure its citizens and their families a decent standard of living, the authorities and state institutions have not always found the necessary approaches for turning this fundamental right, which is closely related to the quality of life, into reality.

As we have previously expressed<sup>19</sup>, unfortunately, the Romanian state continues to be, in the social sphere and from the point of view of turning the fundamental right to a decent standard of living into reality, the "poor relative" of the developed states of the European Union.

In our opinion, the cause must be sought not only in the low level of economic development, but also in the "wise" solutions of the legislator, in the poor quality of governance,

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<sup>16</sup> The increase in the total value of the expenditure basket is determined by the strong increase in costs for the sections: (1) Food (+18.8%), (2) Clothing and footwear (+20.9%), (3) Housing (+31.2%), (5) Housing expenses (+34.0%). Even if we remove the effect of chapter 5 (housing expenses) - the increase in interest rates has a strong impact on the cost of housing and, therefore, on the value of the whole basket.

<sup>17</sup> P.Țuțea, "Bugetele familiale", in the publication "Cuvântul", April 12<sup>th</sup>. 1938 apud M.Voicu, "Ordinea juridică și ordinea social-economică a lui Petre Țuțea din februarie 1938", article available on: <https://www.juridice.ro/368794/ordinea-juridica-si-ordinea-social-economic-a-lui-petre-tutea-din-februarie-1938.html>;

<sup>18</sup> The Declaration of the Rights of Man and Citizen - approved by the Constituent Assembly between August 20<sup>th</sup> and 26<sup>th</sup>, 1789 and enacted by Louis XVI on November 3<sup>rd</sup>, 1789, currently part of the French constitutional corpus, states in its Preamble: "Taking into consideration that ignoring, forgetting or contempt of human rights are the only causes of popular misery and the corruption of governments, they decided to set forth the natural, undeniable, and sacred rights of man in a solemn declaration";

<sup>19</sup> A.J.Niță, "Statul de drept și social – garanție a unui nivel de trai decent, între consacrare legală și realitate socială. Privire specială asupra reglementării coșului minim de consum lunar" in the conference "Dreptul la un trai decent și componentele sale esențiale", coord.A.J.Niță, Universul Juridic Publishing House, Bucharest, 2022, pages 37-48.

in the disarticulation of the decision-making process and the lack of coordination of public projects, programs and policies developed by different systems etc.

And our approach is supported by one of the conclusions expressed in "The social report of QLRI: Quality of life during the pandemic: problems and response policies. A synthetic point of view": *"The policy of the "small" state is largely responsible for the vulnerability of our society in the current crisis. Despite the persistently promoted political image, Romania has a state that is not only "small", but also "weak"*.

We conclude by specifying that we fully support the opinion of Professor Marin Voicu: *"The quality of life in a governed by law, democratic and social state generated by fundamental social rights should be declared, by law, a component of national security and safety of the individual, as a human being"*<sup>20</sup>.

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<sup>20</sup> M.Voicu, "DREPTURILE SOCIALE sunt DREPTURI CONCRETE și EFICACE, GARANTATE sau ILUZORII, în UE și în România, ca Stat membru. Unele coordonate juridice și sociologice", in the Conference "Dreptul la un trai decent și componentele sale esențiale", coord.A.J.Niță, Universul Juridic Publishing House, Bucharest, 2022, page 30.

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