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International Covenant on Economic, Social and Cultural Rights

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Abstract: The text of the International Covenant on Economic, Social and Cultural Rights - a high-class international document on the assurance and legal protection of the human rights - outlined a sum of principles regarding these rights, which fall within the broad range of legal doctrine on fundamental human rights. These principles are not contrary to the principles set out in the Charter of the United Nations and in the Universal Declaration of Human Rights, on the contrary, it were given an evident expression in its text content. That the authors of this Covenant wanted the assertion of these principle provisions, it is actually confirmed by the text of Article 24.

Keywords: The human rights pacts; the inherent dignity of the human person; the respect for the human rights and fundamental freedoms

On December 16th 1966, the General Assembly of UN adopted the International Covenant on Economic, Social and Cultural Rights³ and the International Covenant on Civil and Political Rights. The two Pacts are known as “The human rights pacts” because they include the principles and provisions on the affirmation and promotion of human rights, including their legal protection.

Romania ratified the two Covenants by the Decree no. 212 on October 31st 1974 (Of. Gaz. No. 146/11.20. 1974). Among other things, the United Nations Charter⁴ - signed in San Francisco on June 26th, 1945 - reaffirms “... *faith in the fundamental human rights, in the dignity of the human person ...*” (Preamble), and provided the obligation for the Nations of the world “... *to achieve international cooperation in solving international problems with an economic, social, cultural or humanitarian character, and in promoting and encouraging the respect for the human rights and fundamental freedoms for all without distinction of any kind as to race, sex, language or religion*” (Art. 1, 3).

In the Preamble of the Universal Declaration of Human Rights⁵ - adopted by the UN General Assembly on December 10th 1948 - it was stated that “... *the recognition of the inherent dignity of all members of the human family and of the equal and inalienable rights is the foundation of freedom, justice and peace in the world*”. Also it was stated that “... the disregard and contempt of the human

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³ Adopted and opened for signature by the United Nations General Assembly on 16th December 1966 by the Resolution 2200 (XXI). The Covenant entered into force on January 31st 1976 according to the provisions of article 27. Romania has ratified the The Covenant on October 31st, 1974 by the Decree no. 212, published in the Official Gazette of Romania, Ist Part, no. 146 on November 20th 1974. For the text see http://www.irdo.ro/file.php?fisiere_id=79&inline=, date: 3.06.2013.

⁴ See www.dri.gov.ro/documents/Carta%20ONU.pdf, date 30.05. 2013. The charter was published in the Official Gazette on June 26th 1945.

⁵ For the text of this Declaration, see www.cncd.org.ro/Files/?FileID=63, date 7.06.2013.

rights “were those that led” the human beings “to fear and misery”, hence the obligation of all “people” and nations of the world “that through teaching and education to promote respect for these rights and freedoms “and to ensure” through progressive measures, national and international, the recognition and their universal and effective implementation ... “(Preamble).

In the preamble of the International Covenant on Economic, Social and Cultural can be found reiterate not only ideas that were stated in the text of the Preamble of the Universal Declaration of Human Rights, but also words and even whole sentences. Moreover, in the text of the Covenant we find reaffirmed principles set out both in the United Nations Charter as well as in the Universal Declaration of Human Rights. Indeed, from the Preamble of the Covenant it was reiterated ad litteram that “human dignity” is “inherent to all members of the human family” and that, “in accordance with the principles outlined in the Charter of the United Nations”, “the recognition of” the dignity and of the equal and “inalienable rights” of all members of the human family “... is the foundation of freedom, justice and peace in the world”. In the same Preamble it was stated that “... these rights derive from the inherent dignity of the human person”, in recognition of the human dignity (Dură, 2006, p. 86-128) - which was to make express reference and the Treaty Establishing a Constitution for Europe (see Article 6) - a supreme value, and also an adequate benchmark of measuring the way that shows how the rights and the fundamental freedoms of human (Dură, 2005, pp. 5-33; 2010, pp. 431-464; 2012, pp. 86-95) are or are not stated, asserted and protected.

The text of the International Covenant on Economic, Social and Cultural Rights -a high-class international document on the assurance and legal protection of the human rights - outlined a sum of principles regarding these rights, which fall within the broad range of legal doctrine on fundamental human rights, such as:

1. The obligation of States Parties to ensure the exercitation of the human rights - set out in the text of the Covenant - without any kind of discrimination

“The States Parties to the present Covenant - in the text of the Article 2 & 2 of the International Covenant - undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

As it can be seen, the first principle enunciated by the Covenant was that of non discrimination (Jura, 2003) on human rights that regards the legislative framework for preventing and sanctioning all forms of discrimination.

In Romania, this principle has been outlined in the text of various legal regulations that reached a climax with the law no. 48 of 2002, through which it was actually approved the Ordinance no. 137/2000 on acts of discrimination.

Moreover, in 2002, with the establishment of the National Council for Combating Discrimination - which at that time was actually not only “... the sole body created in EU countries and within the candidate countries”, who could “apply direct sanctions” (Năstase, 2003, p. 8) - but also an efficient instrument for the application of the basic principles set out in Article 2, paragraph 2 of the Covenant on Social, Economic and Cultural Rights. The Covenant provides also the obligation for “developing country” to guarantee “to non-nationals the economic rights recognized in the present Covenant”. Of course, not only “the countries or developing states” have this obligation, but also the developed countries as it is provided in the International Covenants. But, as it is known, to guarantee these rights - by some developed states - on the account of non-nationals, remains a “pium desiderium” (a pious wish).

Under the influence of the Western juridical literature, some Romanian constitutionalists make distinction between the “mandatory” and “title” (Muraru, 1998, p. 169) notions to provide guarantee to these rights and those who are not citizens of these countries.

It should be also noted that the process of globalization (Held, 1999, pp. 84-111) reduce not only the historical sovereignty of states, but also undermine people's ability to enjoy their political, economic, social and cultural rights of the states in which they live, even if they are non-nationals or only stateless. In accordance with the Article 3, States Parties also undertake “... to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights which are set forth in the present Covenant”.

Regarding the limitation of these rights by some states, the text of the Covenant provides that the State “may subject such rights only to such limitations as are determined by law, only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society” (Art. 4). Moreover, it forbids that any provision “in the present Covenant” may be “interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights or freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant” (Article 5 & 1).

Finally, The Pact specified that “there is no restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent” (Article 5 & 2).

2. The Right to work

Reaffirming the human right to work, the Covenant provides that it is “the right of everyone to have the opportunity to gain a living by work freely chosen or accepted”, and that States Parties to the present Covenant have the obligation to take “appropriate steps to safeguard this right” (Art. 6 & 1).

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under condition safeguarding fundamental political and economic freedoms to the individual” (Art. 6 & 2).

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- a) “a fair wage and equal remuneration for work of equal value without distinction of any kind”, in particular women being guaranteed conditions of work not inferior to those enjoyed by the men, “with equal pay for equal work”;
- b) the wage should ensure “a decent living” for everyone and their families;
- c) safe and healthy working conditions;
- d) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, “subject to no consideration other than those of seniority and competence”;
- e) “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays” (Art. 7).

3. The right of everyone to association, for the promotion and protection of his economic interests

Any person has the right to “form trade unions and join the trade unions of his choice” (Art. 8 & 1a).

In the same context it is stated that “the right of trade unions to function freely subject to no limitation other than those prescribed by law ,..., for the protection of the rights and freedoms of others” (Art. 8 & 1c) as well as “the right to strike provided that is exercised in conformity with the laws of the particular country” (Art. 8, 1d).

4. The right of everyone to “social security, including social insurance” (Art 9)

5. The right to family protection and assistance, based on a free consent marriage

The Covenant states that “a widest possible protection and assistance should be accorded to the family, particularly for its establishment and it is responsible for the care and education of dependent children. The marriage concludes Art. 10: 1- must be a free consent between the intending spouses”.

6. Special protection accorded to mothers

According to the Covenant provisions “a special protection should be accorded to mothers during a reasonable period before and after childbirth”. During such period “working mothers should be accorded paid leave or leave with adequate social security benefits”. (Art. 10 & 2).

7. Special measures of protection and assistance on behalf of all children and young persons

The Covenant provides the obligation for the State Parties to take “special measures of protection and assistance on behalf of all children and young people without any kind of discrimination for reasons of parentage or other conditions”. These should also be protected by the state - through its public authorities - “from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law” (Art. 10 & 3).

8. The obligation for the State Parties to ensure “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (Art. 11& 1).

9. The obligation for the State Parties to ensure “individually and through international cooperation the proper measures” for “the fundamental right of everyone to be free from hunger” (Art. 11 & 2).

10. The obligation for the State Parties to the present Covenant to take the proper measure “to recognize” the right “of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Art. 12 & 1).

Among these concrete measures, we mention the creation of condition which would assure to all medical service and medical attention in the event of sickness (Art. 12, 1 d).

11. The right to education and its purpose.

According to the article 13 & 1, the State Parties to the present Covenant recognizes the right for everyone to education. By these ideas the education system should be directed “to the full development of the human personality and the sense of its dignity, and should strengthen the respect for human rights and fundamental freedoms”.

Also through education shall enable “all persons to participate effectively in a free society...” Education should also “promote understanding tolerance and friendship among all nations and all racial, ethnic or religious groups.” (Art. 13, 1).

12. The obligation of States Parties to ensure that education shall be made equally accessible to all by every appropriate means and on basis of everyone’s capacity.

In order to materialize the full enjoyment of the right of everyone to education (Dura, 2009, pp. 203-217), the States must assure:

- a) primary education “compulsory and available free to all”;
- b) Secondary education in its different forms, including technical and vocational secondary education, “shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education”;
- c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction education;
- d) establishment of an “adequate fellowship system”;
- e) the material conditions of teaching staff “should be continuously improved” (Art. 13 & 2).

13. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, to ensure the religious and moral education of their children.

According to the provision written in Art 13& 3, the States Parties undertake “to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions” (Art. 13 & 3).

Therefore, parents or legal guardians have the right to provide religious and moral education of their children in conformity with their own convictions (religious - moral, philosophical etc.).

The Covenant specified that by respecting the freedom of parents or legal guardians to choose for their children education institutions “other than public authorities”, that means schools which provide religious and moral education according to their own religious beliefs, “shall be not construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institution shall conform to such minimum standards as may be laid down by the State” (Art. 13 & 4).

Therefore, the private educational institutions, with a religious character, must respect - in their educational process - to the principles set out in Article 13 & 1 and minimum standards prescribed by the State in educational matters.

As mentioned above, in accordance with the basic principles set out in art. 13 & 1, through education we should follow:

- a) achieving of full development of the human personality and the sense of its dignity;
- b) affirmation and observance of the human rights and fundamental freedoms;
- c) training persons able to play a useful role in society;
- d) creation of tolerant spirits without racial prejudice, ethnic, religious etc, loving and peacemakers.

In their educational process, private schools or religious ones must therefore follow the implementation of these basic principles. Therefore, the private educational institutions, including religious ones that have a sectarian purpose or those that transmit knowledge contrary to humanist values, universally recognized, cannot be approved by the States parties to this International Covenant.

14. The right of everyone to take part in cultural life.

The Covenant recognizes the right of everyone:

- a) “to take part in cultural life”;
- b) “to enjoy the benefits of scientific progress and its application;
- c) “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (Art. 15 & 3).

To ensure this right, the Covenant provided - undertake to respect “the freedom indispensable for scientific research and creative activity” (Art. 15 & 3).

15. The State Parties to the present Covenant undertake to submit in conformity with this part of the Covenant report on the measures which they have adopted and the progress made in achieving the observance of the right recognized herein (Cf. Art. 16, 17, 19).

Naturally, through such measures the respective States can prove that they are not concerned only with ensuring and guaranteeing human rights, but also with their effective exercise by their citizens. It remains to be seen whether the text of these reports has a real coverage in reality.

In this brief presentation of the principles stated by the International Covenant on Economic, Social and Cultural Rights, it could be observed that these are not contrary to the principles set out in the Charter of the United Nations and in the Universal Declaration of Human Rights, on the contrary, it were given an evident expression in its text content. That the authors of this Covenant wanted the assertion of these principle provisions, it is actually confirmed by the text of Article 24, which states that “Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations ...”.

Also, from the examination and assessment of the text of this Covenant, it has been observed that these rights are a part of the human fundamental rights, and that not only the States Parties have the obligation to guarantee them to every human being, but every single man has also “... duties to the his fellow men and to the community to which he belongs, and it is obliged to endeavor to promote and respect the rights recognized in (this) Covenant” (Preamble). In other words, the right of every man to benefit from these rights (economic, social and cultural) - regardless of their civil status (citizens or stateless) - is an “natural justification”, provided by “Jus naturale” (Rousseau, 2008, pp. 55-56; Dură, 2006, pp. 86-128), hence our obligation to promote and respect them, pursuant to the provisions of the International Covenant on Economic, Social and Cultural Rights.

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