

## THE MAIN RIGHTS GUARANTEED BOTH INTERNATIONALLY AND IN ROMANIA

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### Abstract

*There are many human rights enshrined on an international and national level, yet some of them – especially the ones regarding economy, social and cultural – there are no sufficient guarantees in regard to their possible practice.*

*Guaranteeing by the positive right of the human right involves the concrete control over their practice, consisting in non-legal or legal procedures made to ensure practice or settlement of different occurrences concerning the respective rights.*

**Keywords:** *rights, freedom, effective guarantee, international regulations, national regulations*

### Introduction

Consecration of human rights and of their protective means through international universal conventions or regional ones or through internal normative documents is essential for the control procedure functioning and jurisdiction, achieved by responsible bodies, to ensure the necessary conditions for their practice.

There are a lot of freedoms and rights, yet not all of them are effectively guaranteed, in what regards to their practice, more or less, as economic rights, social and cultural ones.

From the effective guaranteed rights and freedoms, in the doctrine<sup>1</sup> are mainly analysed: *the right to indiscriminate, persons integrity, legal person freedoms, rights of procedure, right to respect the private and family life, freedom of thought, freedom of social and political action, right to own.*

### The effectively guaranteed rights and regulations regarding their insurance

**a) The restriction of discrimination.** Proclaimed in art. 1 of the Universal statement of human rights, *the principle of indiscriminate* where it has its origin in the general postulate of the *equal dignity* of all human beings.

According to the European Convention of the human rights, party states have the task to adopt legal and administrative measures to overcome and sentence the discrimination occurred from persons under their jurisdiction<sup>2</sup>, otherwise the discriminated being able to address themselves to the European Court of Human Rights.

Art. 16 from the Romanian Constitution proclaims the principle of equality among the citizens in front of the law and public authorities, without privileges and discriminations, no one being above the law. Likewise, in art. 4 p. 2 shows that „Romania is the indivisible and common homeland of all its citizens, without racial, nationality, ethnic origin, language, religion, opinion, political affiliation, wealth or social origin distinctions”.

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<sup>1</sup> F. Sudre, *Drept european și internațional al drepturilor omului* (traducere), Polirom Publishing house, Iași, 2006, pp. 201-411.

<sup>2</sup> R. Chiriță, *Convenția europeană a drepturilor omului. Comentarii și aplicații*, vol. I, second edition, CH Beck Publishing house, Bucharest, 2007, p. 609.

As a guarantee of this right, in the New Penal Code, the labour abuse is incriminated (art. 297 p. 2, combined with art. 308), which fines/sentence the enclosure, by a public functionary or any other employee of using or practicing the right of any citizen, or creating some inferiority situations for the respective based upon themes regarding racial, nationality, origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, noncontagious chronic disease or HIV infections.

**b) Personal integrity/Persons integrity.** The right to life, physical and moral integrity of the person makes part of the fundamental rights which are owned by any individual, being recognised and consecrated through numerous international legal instruments, as the Universal Statement for Human Rights stipulating that „Any human being has the right to life, freedom and his/her security” (art. 3). The international treaty regarding the civil and political rights shows that „the right to life is inherent to the human being” (art. 6) – the same treaty foresees that this right needs to be protected by law, nobody unable to be deprived of his/her life arbitrarily. The European Convention for Human Rights defence protects, the right to life of each person (art. 2).

In the art. 22 from the Romanian Constitution, the right to life shows, to the physical and psychical integrity of the person is guaranteed. No one being subjected to torture and in no circumstance of punishment or inhuman or degrading treatment, punishment with death, being, in this way, forbidden.

Conversion into practice of these guarantees are done by incriminating in the Penal Code of acts *against life and physical or health integrity* (art. 188 – art. 204), as well as other acts, as: *subjection to harsh treatments* of persons in detention, retention or executing a safety measure or educative (art. 281 P. Code) or *torture* carried out by a public functionary which practices the state authority (or by other person which acts to its instigation), causing a person, powerful psychical and physical sufferings (art. 282 P. Code).

**c) Natural person’s liberties/freedoms.** Insuring the freedom and safety are inalienable rights<sup>3</sup>, having, as a principle, the purpose to protect the person against state arbitrary<sup>4</sup>.

According to art. 3 from the Universal statement of human rights, art. 9 from the international treaty regarding the civil and political rights, art. 5 from the European Convention of human rights a.s.o. any person has in a guaranteed way the right to *freedom and safety*, as well as the right to *freedom of movement*, this being affected only in derogatory situations foreseen in a limited way by current legislations.

The right to *freedom of movement* has certain limits, imposed by objective situations foreseen by the International Treaty in regard to the civil and political rights (art. 12) and in the European Convention of human rights. Thus, the right to move and to reside freely on a state territory, recognized by nationals, is guaranteed to foreigners only if those have a „legal” situation, according to the internal right of the state, which can institute some restrictions of public order reasons. The right to leave any country – including own country – is yet recognised identically to any nationals of any state and to foreigners.

In art. 23 from the Romanian Constitution the freedom and safety of the individual is foreseen and covenant, and the search, detention or arrest of a person are allowed only in cases and procedures foreseen by law. These constitutional principles, which show the freedom of a person, are concreted in the Penal Procedure Code, in which the cases are stipulated and the procedural measures to dispose of freedom restrictions, and their guarantee is done through the unfair incriminating repressions.

In what regards to *the right of free movement*, in art. 25 from the Romanian Constitution it states that „the right to move freely in the country and abroad is guaranteed”; likewise, each citizen is ensured with the right to establish the residence or stay in any locality from the country, to immigrate, as well as to return in the country.

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<sup>3</sup> C. Bîrsan, *Convenția Europeană a Drepturilor Omului. Comentariu pe articole*, vol. I, *Drepturi și libertăți*, All Beck Publishing house, Bucharest, 2005, p. 277.

<sup>4</sup> Case *Lawless against Ireland* (no. 3), application no. 332/57, The Decision of 10 July 1961 of the European Court of Human Rights; James Edmund Sandford FAWCETT, *The Application of the European Convention on Human Rights*, 2-nd edition, Pearson Education Publishing house, Oxford, 2008, p. 222.

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As a guarantee in the defence of these rights is the incrimination of the act of lack of freedom of any person illegally (art. 189 Penal Code).

**d) The procedural rights.** The sole category of rights whose content does not make regard to a material freedom, but to *guarantees* from which a person dispose of in a rightful state to value the rights and freedoms consist in *procedural rights*, stipulated in numerous international conventions, which consist mainly: *to right to an equitable trial, right to an effective appeal, the principle of legal incriminations and punishments.*

*The right to an equitable trial* is proclaimed through art. 21 of the Romanian Constitution, where it shows that any person may initiate a trial in front of justice to defend legitimate rights, freedoms and interests, no law being able to restrict the practice of this right. Likewise, in art. 124 from the Constitution it shows that the justice is according to *law*, this being unique, impartial and equal for all, in art 126 shows that justice is done through court trials, competences and procedures foreseen by law, and in art. 127 shows that court hearings are public, beside the cases foreseen by law.

All procedural rights are guaranteed and through regulations attached to ordinary laws, as Penal Code and Procedural Penal Code – our country being permanently preoccupied to correlation of the provisions from the internal right with international regulations, in a distinctive way by the European Union.

**e) The right to respect private and family life.** Inspiring from the universal statement of human rights art. 17 from the International Treaty regarding to civil and political rights and art.8 from the European Convention of human rights<sup>5</sup> consecrate the protection of right to the respect of *private life* and *family life* against arbitrary interventions or illegal of public authorities.

*The right to respect private life* englobes *the personal private and social life.*

The respect for private life presumes the *right to a healthy environment* and ecologically equilibrated, which constitutes a natural right, as important as the right to property/to own and in tight connection with it<sup>6</sup>.

In Romania, the protection of private and family life has an important role, art. 26 from the Constitution guaranteeing the freedom of intimate life<sup>7</sup> and the right of persons to conclude a marriage. Likewise the Romanian state respects and protects the private life of anyone, with the condition not to harm the rights of other persons, public order or common sense.

The same rights are guaranteed through provisions consisted in ordinary laws, as the Civil Code, in which the marriage conclusion conditions are ruled, the spouses, parents and children links, rights and obligations of the family a.s.o. Likewise, in the Penal Code there are incriminations through which are sentenced the analysed right violations, as in illegal interception of an informational data transmission (art. 361) or the felony of family abandon (art. 378), according to which is punishable the violation of obligations of maintenance or relief provided by law for family members who are in need, etc.

The right of the person to a healthy environment is guaranteed through art. 35 from the Romanian Constitution and numerous ordinary laws.

**f) Freedom of thought.** Refer to: freedom of thinking, consciousness and religion; freedom to train and the right of parents to be respected in their beliefs regarding education of children; liberty to information and expression. These liberties/freedoms have an individual dimension (to have opinions and beliefs), as well as the social and political one (their manifestation).

In our country legislation the freedom of *thinking, consciousness and religion*, are foreseen insuring the manifesting means and the guarantees of their respect. Thus, in art. 29 from

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<sup>5</sup> R. Chiriță, *Convenția Europeană a Drepturilor Omului*, 2-nd edition, C.H. Beck Publishing house, Bucharest, 2008, pp. 416-417.

<sup>6</sup> M. Duțu, *Dreptul mediului*, 3-rd edition, C.H. Beck Publishing, Bucharest, 2010, 123; Dumitra POPESCU, *Probleme juridice privind protecția mediului uman și combaterea poluării lui*, Revista Română de Drept, nr. 7 / 1972, pp. 36-47; Daniela MARINESCU, *Tratat de dreptul mediului*, III-rd edition, revised and enlarged, Universul Juridic Publishing house, Bucharest, 2008, pp. 9 and fol.

<sup>7</sup> I. Ifrim, *Importanța distincției dintre viața socială și viața intimă a persoanei*, in „Dreptul românesc în contextul exigențelor Uniunii Europene”, Hamangiu Publishing house, Bucharest, 2009, p. 618.

the Constitution *freedom of thought and opinions, as well as religious beliefs* cannot be fenced in no circumstance. The parents or tutors have the right to insure, according to own beliefs, the *education* of minors of which responsibility is returned.

According to art. 30 p. 1-3 from the Constitution, the Romanian citizens are guaranteed with the freedom of expression of thoughts, opinions, beliefs or creations of any kind, the censorship being forbidden. Likewise, the freedom of press is guaranteed, implicitly the freedom to form new publications, by respecting current legislations.

These freedoms<sup>8</sup>, are guaranteed by ordinary laws, existing regulations to which one may be sanctioned if violates them, as incrimination of forbiddance for the religious practice freedom.

**g) Freedoms of social and political action.** To participate to a political and social life, each human needs to benefit from freedoms of meetings and associations, as well as freedom of choice.

According to art. 20 from the universal statement of human rights „Anyone has the right to meet and associate peacefully”, this double freedom being stated in art. 21 and 22 from the international treaty in regard to civil and political rights as well as in art. 11 of the European convention of human rights with the statement of some restrictions.

In our country the freedom of meeting is consecrated and guaranteed by provisions of art. 39 from the Constitution whereas shown that „Meetings and demonstrations, processions or any kind of meetings are free and can be organized and carried out peacefully, with no sort of weapons” and the right to association is proclaimed by art. 40 p. 1 and 2 from the constitution, in which the citizens can freely associate in politically parties, syndicates and other associative forms, also the organizations which militate against the political pluralism, of rightful state principle, of sovereignty, integrity or independence of Romania are forbidden.

**h) Right of ownership/of property.** Guaranteeing the property is done by a favourable framework of the free social relations organization, with the respect of equality, dignity and justice<sup>9</sup>.

The universal statement of human rights states in art. 17 that: „Any person has the right to own/property, both solely, as well as through associating with others” and „No one being alienated arbitrary by his/her property”, the European convention of human rights did not stipulated this right in the moment of adoption, yet after 2 years, through art. 1 from the additional protocol no. 1 the right to property is guaranteed, each individual being able to dispose of goods, stating that the state can adopt, in general interest and keeping a legal equilibrium, laws which have certain limitations justified to this right.

In Romania, art. 44 from constitution guarantees the right to private property showing, in cases that this right can be limited. Also stated that the property right and claims over the state are guaranteed, contents and limitation of these rights being established by law, and the private property legally protected by law, no matter the owner, this no one can be expropriated but only by a cause of public utility, established according to law, with rightful and previous compensation. As a guarantee in the respect of property right, the constitution also states that the income wealth licit cannot be confiscated, the licit character of the ownership presuming itself. The designated goods used or resulted from felonies or infractions can be confiscated only in conditions provided by law.

The guarantee of the respect for the right of property is achieved and by incrimination in the Penal Code of more acts through which this right is violated, as in: theft (art. 228-230), damaging (art. 253-255), and illegal management (art. 242) a.s.o.

## Conclusions

The elaborated study over the universal international conventions and European-regional, but also in regard to internal regulations which regards to the consecration and guarantee of

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<sup>8</sup> M. Udrouiu, O. Predescu, *Libertatea de exprimare, mass-media și prezumția de nevinovăție*, in Dreptul nr. 9/2008, pp. 238 and fol.

<sup>9</sup> Ch. Mouly, *La propriété*, in Cabrillac, M – A Frison – Roche, Th. Revet (Coord.), *Droits et libertés fondamentaux*, twelve edition, Dalloz Publishing house, Paris, 2006, p. 737.

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studied rights leads to the conclusion that in our country there is a special preoccupation to correlate internal normative with international ones as well as with ECHR practice, thus registering fewer violations of these rights in damaging of persons under the Romanian jurisdiction, inclusively regarding to the refugees.

Therewith, in Romania numerous situations are registered with regard to right violation of human rights concerning property respect, racial indiscrimination or other criteria, respect of private and family life, freedom of natural person, procedural rights, etc., part from which these acts being sanctioned by decisions of the European Court of Human Rights, or found by other international or national bodies, be it governmental or nongovernmental.

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