

## HUMAN DIGNITY AND SOCIO-ECONOMIC RIGHTS

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### Abstract

*In current society, where the gap between rich and poor is widening<sup>1</sup>, human dignity is invoked very frequently in relation to socio-economic rights. We analyze in this study the jurisprudence of the Romanian Constitutional Court and the recent jurisprudence of the European Court of Human Rights.*

**Keywords:** *human dignity, socio-economic rights.*

### Introduction

*Today, the poor are considered human beings who are in a position of vulnerability. Fighting against poverty and social exclusion that accompanies it is now a struggle for recognition of the poor as human beings and members of society as worthy as everyone else. To recognize the other as equal in dignity involves treating him with respect and being united with him. Every man therefore appears as “stems from a normative relationship with himself and all the other people at the same time” as far as dignity is accompanied by a “recognition order”<sup>2</sup>, an “obligation of action”<sup>3</sup> which engages the other. All human rights are universal, inseparable, interdependent and intimately related and must be treated in a fair and balanced manner, on an equal footing and giving them equal importance<sup>4</sup>. The Human Rights Council of the United Nations said in a recent resolution that “the ideal of free human beings, free from fear and poverty can only be achieved if conditions are created to enable everyone to enjoy the economic, social and cultural rights, as well as civil and political rights”<sup>5</sup>.*

### **Human Dignity and Extreme Poverty in the Jurisprudence of the Constitutional Court of Romania**

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<sup>1</sup> According to the Organization for Economic Cooperation and Development (O.E.C.D.) average incomes of the rich people 10% of the populations are now nine times higher than those of the poor, the difference increased by 10% since 1980. Studies are reported after a certain income, those who do not get are considered poor. O.E.C.D. set as reference the income in each state analyzed. Being a value changing is called “relative poverty.” To define the “absolute poverty” it is taken into account the average income in a given year that is determined as the border of poverty, as it is determined how many have come under this limit in the crisis.

<sup>2</sup> Pech T, *La dignité humaine. Du droit à l'éthique de la relation*, Éthique publique, volume 3, no. 2, 2001, p. 95.

<sup>3</sup> Pettiti L.E., *La dignité de la personne humaine*, in M.L. Pavia, Th. Revet, *La dignité de la personne humaine*, coll. Études juridiques, volume 7, Paris, Economica, 1999, p. 54.

<sup>4</sup> The United Nation Human Rights Council, A/CHR/RES/8/2 Resolution 8/2, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

<sup>5</sup> The United Nation Human Rights Council, A/CHR/RES/8/11 Resolution 8/11, Human rights and extreme poverty, June 18<sup>th</sup>, 2008.

The inclusion in the Constitution of the concept of human dignity as a supreme value determined from the Romanian state affirmative actions to promote and protect human dignity. Article 1 paragraph (3) of the Romanian Constitution provides that “Romania is state under the rule of law, democratic and social, in which human dignity, rights and freedoms, 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 are guaranteed”. Numerous Constitutions refer to “fundamental social opening”<sup>6</sup> of the human dignity: Italy, China, Slovakia, Belgium, and the list is much longer.

In the jurisprudence of the Romanian Constitutional Court, dignity was invoked in Decision no. 1576 of 7 December 2011<sup>7</sup> on the unconstitutionality of the law approving Government Emergency Ordinance no. 37/2008 on certain financial measures in the budget. In support of the plea of unconstitutionality, its authors argued that legal texts criticized infringe the Romanian Constitution which establishes human dignity and the free development of human personality as supreme values of the Romanian state as is suspends rights granted to persons under their outstanding contribution to the conduct of the Revolution of 1989. Subsequently, the authors of the objection of unconstitutionality have developed criticisms about the unconstitutionality of article 18 of the text of the legislation criticized, showing that a number of people who were ostracized during the Communist regime as the military in the royal army, war veterans, political prisoners and magistrates subject to political examination were recompensed or rewarded by the democratic state, which is possible thanks to the contribution of people who fought the Revolution of 1989, and depriving them of the rights provided by Law no. 341/2004<sup>8</sup> is likely to affect human dignity.

The decision is an important one since the Constitutional Court of Romania accepts that dignity can be used in the devotion of a positive obligation for the State to intervene in a sense of obligation to provide the resources necessary for life, to the extent that in their absence would reduce life to a level that may not be considered appropriate to any human being. In addition, the decision deserves attention because it gives the opportunity to the Constitutional Court of Romania to characterize human dignity as “an inalienable attribute of the human person, which requires to all members of society to respect and to protect the other individuals and prohibiting any humiliating or degrading attitudes to the man”; in other words, “each individual is bound to recognize and to respect to any other human the attributes and values that characterize the man”.

The Constitutional Court of Romania considers that human dignity is not and should not be construed as establishing a preferential treatment for certain people, regardless of contributions, qualities or their intake to society because human dignity is an intrinsic value that has the same meanings for any of the individuals. The Romanian Constitutional Court establishes that the gratitude and the respect due to persons with special contribution to development of the society, not to be reported to article 1 paragraph (3) of the Basic Law, but it holds to the moral obligation of the society to express gratitude to these people. Therefore, the moral basis to provide benefits that springs from a sense of gratitude to those who contributed to the fall of the communism and establishment of the democracy is undeniable, but not an obligation under the Constitution to regulate the state in this regard, and can't speak of a fundamental right to obtain compensation by virtue of wrestling which is

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<sup>6</sup> Mathieu B., *La dignité de la personne humaine: du bon (et du mauvais?) usage en droit positif français d'un principe universel*, in Seriaux A., *Le droit, la médecine et l'être humain: propos hétérodoxes sur quelques enjeux viraux du XXIème siècle*, P.U.A.M., 1996, p. 220.

<sup>7</sup> Published in the Official Gazette of Romania, no. 32 of January 16<sup>th</sup> 2012. See also Decision no.121 of March 5<sup>th</sup>, 2013 published in the Official Gazette of Romania, no. 358 of June 17<sup>th</sup> 2013.

<sup>8</sup> Law no. 341/2004 of gratitude to the heroes, martyrs and fighters who contributed to the Romanian Revolution of 1989, and to the people who sacrificed their lives or have suffered from anti-labor uprising in Brasov in November 1987 published in Official Gazette of Romania, no. 654 of July 20<sup>th</sup> 2004.

particularly remarkable in the Romanian Revolution of December 1989. We appreciate that the decision is correct. The human dignity means belonging equally to all human beings in the human community; it is refractory to all that distinguishes humans from each other. There are not degrees of dignity as human dignity belongs to every man simply because he was born a human being. Human dignity as the foundation of the rights and freedoms of the human person can only be the “equal dignity” of all people. Therefore, people who fought in the Revolution of 1989 may not claim the recognition of a more or less dignity than any others. Human dignity is “the essence of the human being” and can’t be a mark of distinction between groups of people, but it distinguishes the human being from animals or things. This does not mean, as correctly recognizes the Constitutional Court of Romania that can’t be granted special protection given the vulnerable position that requires to the lawmaker demands. Claiming a particular protection in this case allows us to aim for dignity. The aim is the universalism contained in the idea of dignity. Thus, postulating the universality, dignity requires overcoming the vulnerability that people are in a state of extreme poverty.

In support of the plea of unconstitutionality of the law approving Government Emergency Ordinance no. 111/2010 on parental leave and childcare monthly allowance<sup>9</sup> has argued that the text of the law is contrary to article 20 of the Constitution<sup>10</sup>, in relation to the provisions of article 1 of the Charter of Fundamental Rights of the European Union<sup>11</sup>. Court merely stated: “In terms of the provisions of the Charter of Fundamental Rights of the European Union, legal act as distinct from the other international treaty invoked, the Court finds that they are in principle applicable to the constitutional review insofar as it provides, guarantees and develops the constitutional provisions regarding basic rights, in other words, to the extent that their level of protection is at least at the level of constitutional norms regarding human rights”. The Romanian Constitutional Court finds that the provisions of the Charter are not affected, but it does not develop an argument showing which is the level of protection of rights whose violation is alleged in the exception of unconstitutionality in the jurisprudence of the Court of Justice of the European Union.

On the other hand, the Romanian Constitutional Court stated that the right to a decent standard of living is a right of a special nature. The Romanian Constitution contains no provisions on the concept of “standard of living” and neither regarding the means to achieve this objective. Consequently, the lawmaker established the set of measures for the State to ensure the protection and improvement of quality of life, by regulating certain fundamental rights such as the right to social security, right to work, right to a fair remuneration, the right to health protection and rights that do not have a constitutional devotion, but tend to achieve the same objective<sup>12</sup>. However, article 1 paragraph (3) of the Romanian Constitution foresees that Romania is “a State under the rule of law, (...) social” and article 135 paragraph (2) letter f) requires the State to create conditions for improving the quality of life. In addition, article 41 paragraph (2) and article 47 paragraph (2) of the Romanian Constitution foresees the right of the employees and of the citizens to welfare measures and social measures established by

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<sup>9</sup> Constitutional Court Decision no. 765/2011 published in Official Gazette of Romania, no. 476 of July 6<sup>th</sup> 2011. See also Constitutional Court Decision no. 417/2012 published in Official Gazette of Romania, no. 520 of July 26<sup>th</sup>, 2012.

<sup>10</sup> Article 20 of the Romanian Constitution provides: (1) “The constitutional provisions on the rights and liberties of citizens shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is part of”; (2) “If there is a conflict between the covenants and treaties on fundamental human rights to which Romania is a party, and internal laws, the international regulations shall prevail, unless the Constitution or laws comprise more favorable provisions”.

<sup>11</sup> The Charter of Fundamental Rights of the European Union provides the article 1 that “Human dignity is inviolable. It must be respected and protected”.

<sup>12</sup> Constitutional Court Decision no. 30/1994, published in Official Gazette of Romania no. 100 of April 18<sup>th</sup> 1994.

law, others than those expressly provided for in the constitutional text<sup>13</sup>. The Romanian Constitutional Court has consistently held that if citizens' rights that are not expressly provided for in the Constitution, lawmaker's freedom to choose, based on state policy, financial resources, priority of objectives and the need to comply with the other obligations of the State under the Fundamental Law, measures through which it will be given to citizens a decent living conditions and limits of their grant. It was also envisaged the modification or termination to provide social protection measures taken, without being subject to the provisions of article 53 of the Romanian Constitution which are applicable only to the rights devoted in the Constitution<sup>14</sup>.

In optical of the Constitutional Court of Romania, even if the lawmaker is free to choose the means to achieve social protection of citizens, the compliance of the obligation to ensure a decent standard of living must be considered independently, aiming not only how the State performs this obligation, but also how people manage to meet their living needs in a given time, depending on available resources to them. Currently, the Constitutional Court of Romania recognizes that establishing a standard of living that can be considered as decent must be assessed case by case, depending on a number of contextual factors, such as: the economic situation of the country, the State resources, the development of society, the degree of culture and civilization at a particular time and the organization of society. Therefore, these factors must be assessed in relation to the manner and extent to which the State shall carry the obligation to ensure a fair standard of living, appreciating that it is not possible to establish a fixed, immutable standard.

#### **The Jurisprudence of the European Court of Human Rights**

The European Convention on Human Rights contains only civil and political rights. The reason that social rights were not introduced in conventional text lies in the fact in 1950 there wasn't a political consensus in this regard.

A step forward was made in the Airey judgment of 9 October 1979<sup>15</sup>, when the Court recognized that it "can no longer ignore that the development of the economic and social rights greatly depends on the situation of the State and especially their financial resources. On the other hand, the Convention must be read in terms of life today (...), and its field of application, it tends to a concrete and real protection of the individual. Or, if it provides essentially civil and political rights, many of them have economic or social extensions. Together with the Commission, the Court considers therefore that it must not eliminate an interpretation or another, simply because it may take to break the sphere of the economic and social rights; no tight partition separates it from the Convention". However, since the 80s, we could say, paraphrasing Professor Frederic Sudre that the Convention is "permeable to social rights"<sup>16</sup>, in the sense that economic and social rights were protected by the European judge as

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<sup>13</sup> Article 41 paragraph (2) of the Romanian Constitution provides that "Employees are entitled to social protection measures. They refer to employee health and safety, working conditions for women and young people, establishing a minimum gross salary per economy, weekends, paid annual leave, work in special conditions, training, and other specific established by law". Article 47, paragraph (2) of the Fundamental Law stipulates that "Citizens have the right to pensions, paid maternity leave, medical care in public health centers, unemployment benefits and other forms of public or private insurance provided by law. Citizens have the right to social assistance, according to the law".

<sup>14</sup> According to article 53 of the Constitution, entitled "Restriction of certain rights or freedoms": "(1) "The exercise of rights or freedoms may only be restricted by law and only if necessary, as appropriate, for: the defense of national security, public order, health or morals, rights and freedoms of citizens, conduct criminal investigation, preventing the consequences of a natural calamity, disaster, or an extremely serious catastrophe"; (2) "Restrictions may be ordered only if necessary in a democratic society. The measure must be proportionate to the situation that caused it, to be applied without discrimination and without prejudice to the right or freedom".

<sup>15</sup> Case Airey versus Ireland, judgement of October 9<sup>th</sup>, 1979, Series A, volume 32, paragraph 26.

<sup>16</sup> F. Sudre, "La perméabilité de la Convention Européenne des droits de l'homme aux droits sociaux", Mélanges offerts à J. Mourgeon, Bruylant, 1998, p.6.

he decided in each case whether impairment of a right or freedom that is provided by the Convention.

One of the significant decisions of the European Court of Human Rights was in Case *Stec* on 6 July 2005. The Grand Chamber decided that the conventional notion of “good” could apply to all performances and social benefits, whether contributory or not. It is shown that: “many individuals for their lifetime or for a part of it can exist only because of security or welfare benefits. Many domestic legal systems recognize that these individuals need some security and provide automatic disbursement whether the conditions for granting those rights are met. When a State law recognizes an individual's right to an allowance, it makes sense to reflect the importance of this interest, judging article 1 of Protocol No. 1, as applicable”. However, expressly stated that article 1 of Protocol no. 1 does not create a right to acquire property, and States have complete freedom whether to apply or not some form of social security scheme, or to decide the type and amount of benefits provided under a certain scheme. If, however, the State law provides for the granting of such a right must be regarded as creating an interest in property that is part of the scope of article 1 of Protocol No. 1.

In the case *Van Volssem*, a Belgian woman gets custody of her children after divorce. She was unable to get a job because of psychological problems, living in alimony and welfare. She lived in a home for people with low incomes, but the power consumption was disproportionately high and could not afford to pay, so electricity was interrupted. The applicant complained under Article 3 of the European Convention on Human Rights because the electric company was a representative of the Belgian State, but the European Commission of Human Rights held that “suspending or threatening to suspend the supply of electricity, do not touch the level of humiliation or abasement required to be qualified as inhuman or degrading treatment”. This decision was heavily criticized in the literature. Thus, Professor Frederic Sudre, in an article entitled suggestively “La première décision quart-monde” de la Commission européenne des droits de l’homme, une “bavure” dans une jurisprudence dynamique<sup>17</sup> was firmly convinced that it is a wrong decision: “What we see in this case? Degrading and unsanitary living conditions (no light, no hot water, no heating in the middle of winter and a child) but also in a state of humiliation and emotional suffering (a reduction of electricity carried in December, the threat for further cuts, the permanent obligation for the applicant to seek understanding of the distribution company and seek to obtain a loan from banks)”.

In Case *Budina* in 2009, a woman aged 60 years, suffering from bone tuberculosis complained about the fact that the pension she received, was only sufficient for basic needs, food and hygiene, but was not sufficient for sanitary goods, cultural services and treatment in sanatorium. In the Court's view, a very insufficient amount of pension and social benefits may fall within the scope of article 3. The obligation on States under article 1 and article 3 may require states to take measures so that persons not are subjected to inhuman and degrading treatment. Court noted that it can be described as degrading and covered by article 3, the treatment that humiliates or debases an individual, showing a lack of respect or decreasing his human dignity, or generating the feelings of fear, anguish or inferiority capable to defeat physical or moral resistance and that is enough for the victim to be humiliated in front of its own eyes. In order to determine whether the treatment is degrading, in a general way, the European Court of Human Rights considered whether its purpose is to humiliate or debase the person or its consequences adversely affected her personality in a manner incompatible with article 3, and the absence of such a goal does not definitely exclude an infringement of the conventional text. As expressed in previous cases, she ruled that a state can be held liable “in situations where a person is totally dependent on State support and is facing official indifference when it is in a situation of serious deprivation or needs incompatible with human

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<sup>17</sup> *Revue Universelle des Droits de l’Homme*, no. 10/1990, p. 349.

dignity”.<sup>18</sup> In this case, the Court held no violation of article 3 of the conventional text because the applicant failed to justify that lack of funds translated into concrete suffering, the applicant showing that afford basic needs, food, hygiene items and was eligible for free medical treatment. Although the Court accepted that the applicant was in a difficult situation, especially during 2004-2007, it was considered that the applicant has not proved that the pension and social assistance are insufficient to protect her against damages to physical or mental health, against a situation of degradation, incompatible with human dignity. The European Court of Human Rights made a thorough analysis of each case. A special attention is given to access to medical care of the poor, who are viewed from two perspectives: that of ensuring human health, but also in terms of social equality and the fight against exclusion by the degradation of the body. Finally, the Court ruled that Bulgaria violated the article 2 of the European Convention of Human Rights in a recent case in which 15 children and young adults admitted to a home for children with severe mental disabilities died between December 15, 1996 and March 14, 1997, due to lack of food, heating and healthcare, and the authorities have not taken measures to prevent their death, although they had been informed of the real and imminent threat to the lives of the individuals concerned<sup>19</sup>.

### Conclusions

1. We note from the analysis of the jurisprudence of the European Court of Human Rights the prudence in deciding that such extreme poverty is covered by article 3 of the European Convention on Human Rights. In this regard, the Court's attitude is perfectly understandable because article 3 is absolute and it does not allow justification from the States, especially of budgetary nature.

2. In the recent jurisprudence, the Constitutional Court of Romania refers to the concept of human dignity in the context of socio-economic rights and it is accepted that the State must intervene to provide the resources necessary for life.

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<sup>18</sup> Case Antonina Dmitriyevna Budina versus Russia, judgment of June 18<sup>th</sup>, 2009.

<sup>19</sup> Case Nencheva and Others versus Bulgaria, judgment of June 18<sup>th</sup> 2013.