

The Human Rights and the Social Protection of Vulnerable Individuals

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Abstract: In the texts with binding juridical force, drafted and published by the Council of the European Union, we find no provisions regarding the juridical protection of the vulnerable persons (disabled persons, old people and mentally retarded), only planned measures regarding their social protection, that the E.U. States granted in the Social Charter (of 1961 and in the revised one of 1996), and, finally, in the additional Protocol from the year 1988. Given that to know these measures – that also remain compulsory for the signatory States or for the ones that ratified this Charter – is not possible without getting acquainted, at least in brief, with the human Rights provided by the E.U. legislation, within the pages of this study we referred explicitly to the text of the latter in order to evince the imperious necessity to draft a special legislation also regarding the juridical protection of vulnerable persons, not only a protection of a preeminently social nature.

Keywords: E.U. legislation; Social Charter; human rights; juridical protection

The European Convention of human rights provides that “the right to life for any person is protected by law” (Art. 2, al. 1).

In his commentary to this article of the European Convention, a Romanian jurist was remarking the fact that the right to life, “on which are engrafted all the other fundamental rights and liberties”, remains “uncertain as far as its content is concerned, since, although the international texts enunciate the right to life, they do not define the life” (Chiriță, 2008, pp. 50-51). However, we may say that the member States of the Council of Europe have taken a further step, since, in the year 2002, by the Protocol nr. 13 they have recognized – even though indirectly – that the life has a sacred character and, as such, no one can interrupt it, not even by the death punishment. Indeed, on May 3, 2002, the Protocol nr. 13 has been adopted at Vilnius at the Convention for the defense of fundamental rights and liberties concerning the abolishing of death punishment. In the Article 1, this Protocol - which has come into effect on July 1, 2003¹ -, provides that “the death punishment

¹ The Protocol was ratified in Romania by the Law nr. 7 of January 9, 2003, published in the Official Monitor nr. 27 of January 20, 2003.

is abolished. No one may be sentenced to such a punishment, neither may it be executed”.

Without doubt, by suppressing this kind of punishment there has been made obvious the obligatory character of respecting the human dignity which “constitutes the foundation of the fundamental rights...” (Renucci, 2009, p. 1). As a matter of fact, in the opinion of the European Court for Human Rights of Strasbourg, from the text of article 2 of the Convention for the defense of human rights (Rome, 1950) – which expressly provides that “the right to life of any person is protected by law...” – cannot be deduced at least “the right to die, either by the hand of a third person, or by being assisted by the public authority” (Renucci, 2009, p. 110-111). Indeed, the article 2, which consecrates the right to life, “cannot be interpreted without distorting its language, that it would confer a diametrically opposed right, the right to die respectively” (Renucci, 2009, pp. 110-111). As such, the individuals who have lost their autonomy must benefit, also, at least of this right not to die, even if – as it could have been found out – it seems to me that the European legislator has excluded them from the text of his legislation concerning the human rights.

The same member States of the Council of Europe have reasserted - by the Protocol nr. 12 adopted at Rome on November 4, 2000, and come into effect on April 1, 2005¹ - the juridical principle in conformity with which all the individuals are equal before the law and have the right to be protected by the law.

In striving to take new measures “in order to promote the equality of all the individuals by the collective warranty of generally prohibiting the discrimination, by the agency of Convention for the defense of human rights and of the fundamental liberties, signed at Rome on November 4, 1950” (The Council of Europe, Protocol nr. 12, Preamble) the respective States have provided that “no one may be the object of the discrimination by the public authority” for reason of “sex, race, color, language, religion, political opinions or any other opinions, national or social origin, the affiliation to a national minority, wealth, birth, or any other situation” (Art. 1).

As it could be found out, both the text of Convention and the text of the subsequent Protocols, make no reference to the right of the individuals who have lost their autonomy, but they do not prohibit either from exerting any right provided by the law on the reason that they are handicapped, mentally defective, or that they are individuals belonging to the forth age (over 75 years old).

It was said that the right to not undergo any discrimination - provided by the article 14 of the European Convention (Rome, 1950), and by article 1 of the Protocol nr. 12, come into effect on April 1, 2005, - is “a right with an autonomous character

¹ The Protocol nr. 12 at the Convention for the defense of human rights and fundamental liberties was ratified, also, in Romania and came into effect on November 1, 2006.

the observance of which is not related to the observance of the substantial right...” and that the two texts do not prohibit “any difference of treatment; they hardly prohibit the discrimination, that is, merely those differences of treatment which are not founded on an objective and reasonable justification” (Chiriță, 2008, pp. 609-610) But, in the case of the individuals who have lost their autonomy, we may say that both conditions which make distinguished the discrimination are accomplished, namely: “the existence of a difference of treatment and the lack of the objective and reasonable justification of this difference of treatment” (Chiriță, 2008, p. 610). This is why it is regrettable that not only the Convention and the Protocol nr. 12 have not made at least a small allusion at the existence of some inequalities of treatment vis-à-vis these individuals, who have lost their autonomy, but not even the jurisprudence of the European Court.

Among others, the Treaty for instituting the European Community has provided, also, the obligatory character of the member States to promote, also, “an adequate social protection,” in order for it to thus assert “the fundamental social rights enunciated in the European social Charta signed at Torino on October 18, 1961, and in the Community Charta of the fundamental social rights of the workers adopted in 1989...” (Art. 136, former Art. 117) (Apud *The European Code of work and social security. Annotated*, 2009, pp. 31-32). Yet, among those marginalized by society, who do not enjoy a juridical protection of their social rights are, also, the ones who have lost their autonomy, those on whom the Treaty for establishing the European Community does not make the least reference. In point of fact, this Treaty is content to just evasively provide that the member States of the European Community have the obligatory character to take concrete measures “against social marginalization” (Art. 137, j, former article 118) (*The European Code of work and social security. Annotated*, 2009, p. 132); This article was modified by the Treaty from Nice).

At its turn, the (consolidated) Treaty provides that the Union is established on the “principles...of respect for the human rights and of the fundamental liberties...” (Art. 6, former article F) (*The European Code of work and social security. Annotated*, 2009, p. 41), but without making more precise about which man is the matter; that is, is it only about the E.U. citizen or it is about any human being of the member States territory? Is it possible to have been neglected – unknowingly or for occult reasons – the individuals who have lost their autonomy by the “High Contracting Parties?!” (The (consolidated) Treaty concerning the European Union, Art. 1 (former Article A) apud *European Code of work and social security. Annotated*, 2009, p. 40).

The Treaty signed at Lisbon on December 13, 2007, concerning the modifying of the Treaty with regard to the European Union and of the Treaty for establishing the European Community provided only that “the Union was recognizing the rights, the liberties and the principles provided in the Fundamental Rights Charta of the

European Union of December 7, 2000, as it was adapted at Strasbourg on December 12, 2007, which has the same juridical value with the value of the treaties” (Art. 6). But not even this Charta – with a juridical value which is proper to the treaties – makes any allusion or a reference to the rights of the individuals who have lost their autonomy, and ipso facto, to their juridical protection.

As it was possible to be found out, the European Convention for human rights and the Treaties of the European Union do not refer – either tacitly or expressly – to the rights of the individuals who have lost their autonomy. As a matter of fact, these individuals rights have not at least been assimilated with the human rights (civil, political, economic and social) and they have not been considered as being part and parcel of the category of solidarity rights, either. Of course, “the extension of human rights is always possible, but – in conformity with the opinion of some recognized specialists in the human rights field – it is necessary that, in their case, to be paid attention – as the specialists make more precise – to the eventual negative effects which may make more fragile, in the last run, the fundamental rights” (Renucci, 2009, p. 843). Personally, I do not foresee the negative effects which could make more fragile the human rights and the fundamental liberties of the human being in case in which the rights of the individuals who have lost their autonomy would be provided and protected. On the contrary, in my opinion, they would make more obvious the preoccupation of the member States of the E.U. to assert and to protect these fundamental rights for every human being or person, without any discrimination.

But the social rights of the individuals who have lost their autonomy have not been provided by the social Charta (of 1961 and the revised one of 1996), neither by the additional Protocol of 1988, which consecrates the right of the aged individuals and of the handicapped ones to a special social protection, but not to one of a juridical nature.

In the year 1961 the signer Governments of the European social Charta¹, which were members of the Europe Council, were committed to favor “their economic and social progress...by the defense and development of the human rights and of the fundamental liberties,” that is, of “the civil and political rights” and of the “liberties” provided in the text of the “European Convention for the defense of fundamental rights and liberties, signed at Rome on November 4, 1950, and of the additional Protocol to this, signed at Paris on March 20, 1952...” (The European social Charta. Preamble, 2006, p. 441).

Among other things, the Charta was providing that “any individual has the right to appropriate means for professional orientation, with the view of supporting him to

¹ The European social Charta was adopted at Torino on October 18, 1961, and came into effect on February 26, 1965, (The Charta was signed, also, by Romania, but only in the year 1994).

choose a profession adequate to his interests and his professional aptitudes” (Part I, 9).

This orientation and professional formation right was guaranteed by the Charta for the individual physically or mentally affected (handicapped), also. Moreover, these individuals were guaranteed, also, the right to professional and social readjusting. Indeed, the social Charta of 1961 was providing that “any invalid individual has the right to professional formation and to professional and social readjusting regardless of the origin and the nature of its invalidity” (Pt. I, 15).

The revised European social Charta,¹ - which was adopted at Strasbourg on May 3, 1996 and which came into operation on July 1, 1999, - goes on in this regard, and consecrates the right of the handicapped individuals to autonomy, to social integration, and to effective participation in the life of community in which they live. Under the Charta’s terms, “any handicapped individual has the right to autonomy, to social integration and to participation in the life of the community” (*The European social Charta – revised*). Pt. I, 15, apud *The Handbook of the Europe’s Council*, p. 462).

In the text of the revised social Charta (1996) the social protection of the handicapped individuals is thus “more extended, since it is not exclusively applied to the formation and professional readjusting,” but, “it is equally a problem of autonomy, social integration and participation in the life of the community” (Renucci, 2009, pp. 614-615). As a matter of fact, the signer Governments of the revised European social Charta – members of the Europe’s Council – were committed “in view of guaranteeing the effective exertion by the handicapped individuals, regardless of age, of nature, and of the origin of their handicap, of their right to autonomy, to social integration and to participation in the life of community” (*The Social Charta*, Art. 15, in the *Handbook of the Europe’s Council*, p. 469) to act by three ways, namely:

1. To secure the handicapped individuals – by the measures they take – “an orientation, an education and a professional form within the frame of the general schemes as many times as it is possible or, if it is not possible, by the agency of the public or private specialized institution”;
2. “To favor the access to employment of these individuals, by any susceptible measure to encourage the patrons to hire and maintain in active employment the individuals who became handicapped in the usual environment of work and to adapt the working conditions to the needs of these individuals or, when because of the handicap this is not possible, by organizing or creating protected places of work, depending on the degree of

¹ Romania has signed Charta on May 15, 1997, and has ratified it on May 7, 1999, by the Law nr. 74 of May 4, 1999, published in the Official Monitor, nr. 193, of May 4, 1999.

invalidity. These measures – was making more precise the Charta – could justify, if necessary, the recourse to specialized and accompanied services”;

3. The Governments of the signer States “to favor their full integration and participation to the social life, especially by measures, technical helps included, which aims at overcoming their difficulties of communication and of mobility and which will allow them the access to the means of transportation, to a dwelling place, to cultural activities and to the spending of free time” (The revised European Social Charter, 2003). Art. 15, in The main international instruments regarding human rights that Romania is party to, Vol. II, pp. 661-662).

The E.U. States are thus obligated to adopt a unitary and coherent policy for the handicapped persons and to take concrete measures for implementing the provisions of the social Charta.

The article 4 from the additional Protocol of 1988, resumed by the article 23 from the social revised Charta, has sanctioned the right of aged persons to social protection. Indeed, in conformity with the provisions of Article 23 of the revised social Charta, the aged persons have the right to social protection and, as such, in view of the effective exertion of this right by them, the E. U. States, signer of the Charta, are obliged “to promote either directly or in cooperation with public or private organizations adequate measures,” namely:

1. “To allow the aged persons to remain full members of the society as long as possible by the agency: a) of some sufficient resources which are to allow them to make a decent living and to participate in the public, social and cultural life; b) of the spreading the information regarding the services and the available facilities for the aged persons and their possibilities to resort to them”;

2. “To allow the aged persons to choose freely their own life style and to have an independent existence in their usual environment as long as they desire and as long as this is possible, by: a) putting at their disposal of some dwelling places appropriate for their needs and for state of health or an adequate support in view of organizing the dwelling place; b) caring for their health and some services required by their state of health”;

3. “To guarantee for the aged individuals who reside in institutions an appropriate assistance concerning their private life and to participate in the decision for the living conditions in the institution” (The revised European Social Charter, 2003, Art. 23, in The main international instruments regarding human rights that Romania is party to, p. 666).

The Romanian Government, aware of the fact that it was lacking the normative frame for preventing and combating the discrimination, has issued two Ordinances, namely: the Urgency Ordinance nr. 102 of June 29, 1999, regarding the special protection and work employment of the handicapped individuals, (O.U.G. nr. 102/1999), and the Ordinance nr. 137/2000, regarding the preventing and the sanctioning of all the discrimination forms.

In the year 2002 there was established the Council for Combating the Discrimination, and by the Law nr. 612 of November 13, 2001, there was recognized by Romania the competence of the Committee for eliminating the race discrimination, in conformity with article 14 of the International Convention concerning the elimination of all forms of race discrimination, adopted by the General Assembly of the United Nations at New York on December 21, 1965.

By the Law nr. 48/2002 – which was approving the Ordinance nr. 137/2000 – it was reached the formation of a unitary legislation concerning the discrimination acts, their prevention and fighting against them, which “were recovered disconnectedly from different juridical regulations with more or less power of social assignation.” (Năstase, 2003, p. VII)

But during the same period have appeared other three special laws, the texts of which are preeminently concerning the social assistance, namely: a) Law nr. 17 of March 6, 2000, concerning the social assistance of the aged persons; b) Law nr. 76 of January 16, 2002, concerning the system for social insurances for unemployment and the stimulating of occupying the labor force; c) Law nr. 116 of March 15, 2002 concerning the preventing and combating of the social marginalization.

As far as the legislation is concerned, we may thus say that we have a legislative, normative frame in Romania, also, which concerns the social protection of the vulnerable individuals. We could recognize, also, that as far as the social politics, and the programs of social protection are concerned, the Romanian State has struggled to assert *grosso-modo* the principles enunciated by the main texts of the European Union’s legislation. But, unfortunately, in the daily practice, there remain a lot to be done in order for this social protection¹.

We could find out by succinctly reviewing the texts of the social Charta and of the additional Protocol that the individuals whose vulnerability may be brought about by different factors, among which the most telling are the “social and/or economic ones” (Renucci, 2009, p. 613), must enjoy a special protection which,

¹ Mr. Ioan Mărginean found out with bitterness that there still are many Romanian citizens who “beg in European countries..., and for those who commit infringements of the law, the Europe’s inhabitants want to build a prison in Romania; there are aged individuals whose pension, after a life of labor, does not place them above the threshold of poverty...” (*Politica socială /The Social Policy*, 2004, pp. 23-24).

unfortunately, is not materialized not even in the life of some States of the European Union. In point of fact, instead of Conclusions, we want to make more precise that, in the texts with an obligatory juridical power, elaborated and published by European Union's Council, there are no provisions concerning the juridical protection of the vulnerable individuals (handicapped, elderly, and mentally defective people) but only planned measures concerning their social protection, which have been guaranteed by the European Union in the Social Charta (of 1961 and in the revised one of 1996), and, finally, in the additional Protocol of the year 1988. Since to know these measures – which remain obligatory for the signer States or those which have ratified this Charta – is not possible without a familiarization – be it a succinct one – with the Human Rights provided by the E.U.'s legislation, in the pages of this study we have expressly referred exactly to its text in order for us to make more obvious the imperative necessity to elaborate a special legislation concerning the juridical protection of the vulnerable individuals, also, not only a protection of a preeminently social nature.

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