

International Covenant on Civil and Political Rights

Cătălina Mititelu¹, Mariana Radu (Mitra)²

Abstract: According to the Covenant on Civil and Political Rights adopted by the United Nations, in 1966, the human being who enjoy his civil and political rights, enjoy in fact that “humanitas dignitas” (human dignity), since these rights derive from this. That is why this Covenant stipulated that the States parties are obligated to assure both the recognitions of these rights and their exercise and juridical protection.

Keywords: political rights; human dignity; human rights; juridical protection

In 1966, the United Nations adopted the Covenant on Civil and Political Rights, ratified by Romania in 1974 under Decree no. 212/1974 (Offic. Bull. No. 146/2. 11. 1974). The Covenant was drafted “in Chinese, English, Russian and Spanish” (Art. 53).

Since its Preamble, the Covenant states that civil and political human rights “derive from the inherent dignity of the human person”, hence the recognition “of the inherent dignity and of the equal and inalienable rights of all members of the human family...”. That’s about “Dignitas Humana” which finds its legal basis both in “jus divinum” and “jus naturale”.

On 16 December 1966, the General Assembly of the United Nations declared that, “in conformity with the provisions of the Charter of the United Nations” and “Universal Declaration of Human Rights”, everyone may enjoy his “civil and political rights, as well as his economic, social and cultural rights”. It was also specified that “the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant” (Preamble).

¹ Lecturer, PhD, Ovidius University of Constanta, Romania, Address: 1 Aleea Universitatii, Constanta, 900470, Romania, Tel.: +40241694330, Fax: +40241670900, Corresponding author: ovidiustomis@yahoo.co.uk.

² Lecturer, PhD, Ovidius University of Constanta, Romania, Address: 1 Aleea Universitatii, Constanta, 900470, Romania, Tel.: +40241694330, Fax: +40241670900, Corresponding author: maryanaradu@yahoo.com.

Which are these rights contained in the International Covenant of 1966?

1. The first law enunciated by the Covenant concerns right of people to self-determination. By virtue of that right “all peoples have the right to self-determination”, they freely determine their political status and freely pursue their economic, social and cultural development” (Art. 1 & 1). Consequently, they “freely dispose of their natural wealth and resources” (Art 1 & 2).

However, it was said that the member states of the Council of Europe would have shown “hostility to such an article”, namely “to the rights of peoples to self-determination and of the right of peoples to freely dispose of their national wealth” (Voicu, 2001, p. 12). Moreover, according to the same jurists, in this article it is rather about “the right of a community and not about a human right *stricto sensu*” (Voicu, 2001, p. 12).

The same jurists believe that although the European Convention (1950) “settles down certain rights...”, however, “the Covenant is silent. Besides freely dispositions of the goods (Article 1 of Protocol No. 1.), it is, for example, about the right to instruction (article 2 of the same protocol) and the right for a citizen of a state not to be expelled off the territory of that state (Article 3 of protocol no. 6)” (Voicu, 2001, p. 16, n. 10).

2. The second fundamental right concerns each individual, hence the obligation of states to respect and to ensure to “all individuals within its territory and subject to its jurisdiction, the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2 & 1).

Stating the principle of equality of rights of all persons and the disposal of any kind of discrimination, the international law provided the juridical protection of the human rights too. Therefore, “... the law should prohibit any discrimination and guarantee to all persons an equal and effective protection against any kind of discrimination, especially - wrote Professor Ion Diaconu - of those based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Diaconu, 1993, p. 171). It has to be also mentioned, and retained the fact that each individual can dispose of the rights provided by article 2 (2) of the Covenant, without distinction of any kind, “concerns all individuals within its territory and subject to its jurisdiction t, no matter whether these individuals belong or not to a minority” (Article 4, General Comment no. 23 (50)) (Art. 27, 1994).

3. The right to use the legally appeals.

If any person whose civil and political rights and freedoms have been violated, the states “shall have an effective remedy, notwithstanding that the violation has been

committed by persons acting in an official capacity”, and “to develop the possibilities of jurisdictional remedy” (Art. 2).

4. The equal right of man and woman “to the enjoyment of all civil and political rights” (Art. 3).

5. The right of individuals to “take measures derogating from their obligations under the present Covenant” to the extent strictly required by the exigencies of the situation, provided that such measures “are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin” (Art. 4). It is also provided that “there shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant in the process of the enforcement of the law, the conventions, the regulations or the customs...” (Art. 5 & 2).

6. The right to life inherent to every human being.

“This right” - stated the Covenant - “must be protected by law. No one shall be arbitrarily deprived of his life” (Art. 6 & 1). Therefore in countries which did not abolish the death penalty, sentence of death may be imposed “only for the most serious crimes”, as the crime of genocide. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Covenant shall authorize any State Party to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. (Art. 6 & 3). But at the same time the Covenant provides that “anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases”. (Art. 6 & 4). Finally, in accordance with the provisions of the International Covenant, “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women” (Art. 6 & 5).

The Covenant stated also that no one should be subjected to “torture” or to “cruel, inhuman or degrading treatment or punishment”. No one should be subjected without his free consent “to medical or scientific experimentation” (Art. 7). Of course, such degrading punishments or inhuman treatments violate the inherent human right to life itself, hence their categorical interdiction by the text of the International Covenant, which - in this regard - reaffirmed the principles of the Universal Declaration of Human Rights (1948) and by the European Convention (1950) on human rights.

7. The right of every human being to a free, dignified life without servitude.

On 14 December 1960, the General Assembly of the United Nations adopted the Declaration on Granting the Independence to Colonial Countries and peoples, thus

ending slavery of some African peoples. The slavery - in whatever form it manifests itself - has also been categorically forbidden and condemned by the International Covenant.

Also in the spirit of defending the right to a free dignified life, it was also included the prohibition for a person to perform forced or compulsory labor, except for the following cases:

- a) when it was provided on the basis of a lawful decision or justice in the case of a detainee;
- b) military service;
- c) any national service required by law of conscientious objectors;
- d) any service exacted in cases of emergency or calamity threatening the life or well-being of the community.

8. The right to liberty and security

Under this law - provided by the Covenant - “no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law Anyone arrested or detained on a criminal charge ... shall be entitled to trial within a reasonable time or to be released.... Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. Anyone who has been the “victim of unlawful arrest or detention shall have an enforceable right to compensation” (Art. 9).

9. All persons deprived of their liberty shall be treated with “humanity and with respect for the inherent dignity of the human person” (Art. 10 & 1).

The same International Covenant stated that “the penitentiary system” shall comprise “treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation” (Art. 10 & 3).

No doubt, we can not speak of the legal protection of human rights without treating the person with humanity according to his human dignity. Therefore, the person deprived of liberty - for committing a criminal offense - is also entitled to a trial with an educational character, contributing to redress his behavior and, ipso facto, to reintegrate him into society, hence the obligation for the States to apply such a penitentiary system.

10. Everyone “lawfully within the territory of a State” shall, within that territory, “have the right to liberty of movement and freedom to choose his residence” (Art. 12 & 1), and to leave “freely any country, including his own” (Art. 12 & 2).

The above-mentioned rights, which shall not be subject to any restrictions except those which are provided by law, are “necessary to protect national security, public order, public health or morals or the rights and freedoms of others ...” (Art. 12 & 3). Therefore, citizens of a state - lawfully in the territory of a state - must comply among other things with “public morality” of the City or of the State, which legislators of EU countries are reluctant to even mention its reality within the law of their countries.

For those who study the sociology of law, Morals is “... a layered system of norms and values, some of which are getting closer or even overlap with legal regulations” (Voinea, 1994, p. 85). They recognize also that “morality has a broader regulatory context...” (Voinea, 1994, p. 86). However, the human rights fall within the broad scope of Morals, only if these are based on values shared by all humankind.

11. The right of every human being to have recognized “everywhere his juridical personality” (Art. 16). In others words, every human being be treated as a person before the law and the court of any country.

12. The right of every person “to the protection of the law” against any interference with their privacy.

In accordance with Article 17, “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation”.

13. The right to “freedom of thought, conscience and religion”.

In accordance with Article 18 of the International Covenant, this right shall include “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.

Regarding the freedom of the human person to manifest his religious faith through teaching, the International Covenant requires to the State parties to have respect for “the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions” (Dura, 2005, p. 19-35; 2008, p. 37-54; 2010, p. 279-290) (Art. 18 & 4).

14. The right to freedom of expression.

Article 19 & 1 of the International Covenant states that “everyone should have the right to hold opinions without interference”. Therefore, nobody has to be punishing for his own opinions.

This right to freedom of expression (Mititelu, 2006, p 339-356) “includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other

media of his choice” (Art. 19 & 2). The exercise of these rights carries with it special duties and responsibilities. It may therefore be subject to “certain restrictions, but these shall only be such as are provided by law”. The restriction of these freedoms is subject to mandatory “for respect of the rights or reputations of others” and “for the protection of national security or of public order, or of public health or morals” (Art. 19 & 3). Therefore, the exercise of this right to freedom of expression may be subject to limitations established by the law, for the common good.

If a publicist or a journalist, for example, convey information and ideas that violate the rights and reputation of others, or the defense of the national security, public order, health or public morality, it may therefore be subject to “limitations” that can restrict his freedom of expression. These “limitations”, which must be specifically set by law, should not be seen as an infringement of the right to freedom of expression, but rather as a form of protection of the rights and of the good reputation of our fellows, and hence, of order and public morality.

15. The right of peaceful assembly

“No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society...” (Art. 21). Any human being has therefore the right of peaceful assembly. The exercise of this right is subject only to the limitation stipulated by the law. And, as the Pact says, these “limitations” are necessary in any democratic society.

16. The right to “freedom of association with others, including the right to form and join trade unions for the protection of his interests” (Art. 22 & 1).

The Covenant provides that the exercise of this right by the members of the armed forces and of the police can be subject to “some legal restrictions” (Art. 22 & 2).

17. The right of the family to “protection from society and from the state”.

The Covenant recognizes the right of men and women “of marriageable age” to marry and to found a family. Also, the Covenant provides that “no marriage shall be entered into without the free and full consent of the intending spouses” (Art. 23 & 3).

As regards the juridical protection of the States, the Covenant specifies that these ones must take “the appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution” – the text of the present Covenant concludes –, “provision shall be made for the necessary protection of any children” (Art. 23).

18. The right of the child to “measures of protection” from behalf of “his family, society and the State”.

The text provides that “every child, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, ...” will enjoy this right (Art. 24 & 1).

The same text specifies that “every child has the right to acquire a nationality” (Art. 24 & 3).

19. The right of the citizen to take part in the conduct of public affairs, to have access to public service in his country, and to vote and be elected.

In the conduct of public affairs, the citizen will take part “directly or through freely chosen representatives” (Art. 25, a).

The citizen shall exercise his right to vote and to be elected “at periodic elections”, that the Covenant deems as “genuine, by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors” (Art. 25, b).

At last, the access to the citizen to public service should be made “on general terms of equality” (Art. 25, c).

20. Equality before law and the right of man to the equal protection of the law. Non-discrimination with regard to one’s rights.

In accordance with the provisions of Article 26 of the International Covenant, “all persons are equal before the law”, and the right “to the equal protection of the law” implies the prohibition of any discrimination. That is why the law should not only “prohibit any discrimination”, but guarantee “to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 26).

Equality before law, the right to an equal protection of the law and non-discrimination with regard to the rights conferred and with the obligations imposed by the states were considered “a distinct right”, which “governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not ...” (Art. 4, General Comment no. 23 (50) (Art. 27), 1994).

21. The right of “ethnic, religious and linguistic” minorities.

With regard to this right, the International Covenant on Civil and Political Rights of 1966 provides that in the states where there are “ethnic, religious or linguistic” minorities, “persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language” (Art. 27).

Therefore, from the text of this article we shall keep into our mind that there are three kinds of minorities: ethnic, religious and linguistic and that their right to have their own cultural life, to profess and practice their own religion, or to use their own language does not imply the right to think or to act against the unity, integrity and sovereignty of the respective state and, so much the less, the right to self-determination, as those ill-willed people state, who misinterpret the text of Article 27 state from the viewpoint of some nationalist-chauvinist or revanchist ideologies.

The text of Article 27 – of the International Covenant on Civil and Political Rights – has actually been subject to countless comments and interpretations. From among these, our attention was particularly drawn by the General Comment 23 (50) adopted by the U.N.O. Human Rights Committee on its 134-th meeting (the fiftieth sessions), of April 6, 1994.

Among others, the respective Comment specified that “... this article (27 n.n.) establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant” (Art. 1).

So, for this U.N. Committee (for human rights), the right conferred on the persons belonging to *minority groups* is “distinct and additional”.

The same Comment states that the right recognized in Article 27 should not be confused with “the right of peoples to self-determination proclaimed in article 1 of the Covenant” (Art.2), because “the Covenant draws a distinction between the right to self-determination and the rights protected under article 27” (Art. 3,1). Moreover, they specified that “Article 27 relates to rights conferred on individuals...”, that is to “personal rights conferred on individuals ...” (Art. 3,1). And, not to leave room for misinterpretations of the respective Article, the Comment added the specification that “the enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party” (Art. 3,2), and that “the terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language” (Art. 5,1). Indeed, Article 27 - which is about the protection of minorities - “considers the persons belonging to minorities as entitled to rights and not minorities in themselves” (Voicu, 2001, p. 17).

In the respective Comment they also mentioned that “a State party is required ... to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, ...”, that is the persons who belong to a minority, too, even if they are not “citizens of the State party”, as, for example, visitors, migrant workers etc. In this regard, the exception is however the rights expressly recognized to the citizen of the respective state as, for example,

“political rights under article 25. A State party may not, therefore” – the text of the respective Comment specified – “restrict the rights under article 27 to its citizens alone.” (Art. 5, 1). This is indeed the case of “migrant workers or even of the visitors in a state party”, who can also constitute “such minorities”, and who cannot be denied the exercise of this right. As any other individual on the territory of a state party, they would, for the same purpose, enjoy the general rights, such as, for example, “freedom of association, of assembly, and of expression” (Art. 5, 2).

Finally, the respective Comment mentions that “...positive measures ... may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group” (Art. 6, 2).

However, these legal, positive measures for the protection of minorities should not be a disadvantage regarding the treatment of the rest of the population. In other words, they should not privilege the minorities to the detriment of the majority of the population of the respective State, the more so as “the rights protected under article 27 are individual rights” and “they depend in turn on the ability of the minority group to maintain its culture, language or religion” (Art. 6, 2).

To sum up, we shall state that - in accordance with the statements of this Comment – these rights of minorities, that “should not be confused with other personal rights conferred on one and all under the Covenant”, remain “rights whose protection imposes specific obligations on States parties” (Art. 9).

With the purpose of protecting the human rights and liberties, the Covenant specifies some rights in negative terms, also foreseeing the cases when some restrictions to the provisions of international regulations can be applied.

Among these, we shall refer to the following:

1. An alien lawfully on the territory of a State Party may be expelled “only in pursuance of a decision reached in accordance with law” (Art. 13).

With regard to foreigners, in Romania some special laws appeared which provide the effective exercise of the foreigners` right to not be expelled from the territory of the Country (acc. to Law no. 123/2001 regarding the regime for foreigners in Romania; the Government Ordinance no. 194/2002, regarding the regime for foreigners in Romania, approved through Law no. 357/2003, etc.).

2. Equality before law and the right to be presumed innocent.

Given that “All persons shall be equal before the courts and tribunals”, “in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”, “in the determination of any criminal charge against him, or of his rights and obligations” (Art. 14 & 1). At

the same time, “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law” (Art. 14 & 2).

Finally, any person accused of committing a criminal offense has the right:

- a) to be informed of the nature and cause of the charge against him;
- b) to have adequate time and facilities for the preparation of his defense;
- c) to defend himself in person or through legal assistance;
- d) to obtain the examination, by a higher tribunal according to the law, of his conviction and sentence;
- e) when a conviction is the product of a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law;
- f) not to be tried or punished again for an offence for which he has already been finally acquitted or convicted (Art. 14 & 3).

3. Nobody can be held guilty on account of any act or omission which did not constitute a criminal offence ... at the time when it was committed. Also, no “heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed” (Art. 15).

4. “Any propaganda for war” shall be strictly prohibited, as well as “any advocacy of national, racial or religious hatred, ...”, of “hostility and violence” (Art. 20). In fact, for the International Covenant of 1966, such an *advocacy* constitutes an “incitement to discrimination”.

Commenting on this article, some jurists wanted to mention that “... the member states of the Council of Europe have shown their hostility towards such an article, given that the impreciseness of its terms can give birth to unfounded abuses and accusations, better said - professor Marin Voicu wrote - to impermissible pressure towards the media” (Voicu, 2001, p. 17). In fact, in reality, it is not the impreciseness of some terms in this article that can trigger groundless abuses and accusations, but the non-observance by states, groups of persons or individuals of this interdiction, which – as it is known – has culminated in the holocaust of Auschwitz, hence the stringent necessity to prohibit by law (of a national and international character) any advocacy of national, racial or religious hatred and, ipso facto, of war.

Although some articles in the International Covenant are formulated in negative terms, we should evince the fact that their text recognizes the existence of some rights which have to be observed. That is why the State parties are obliged to assure both the recognition of these rights and their exercise through taking some

positive legal measures of protection by means of their legislative, judiciary and administrative authorities.

References

- Comentariu General/General Comment nr. 23 (50) (Art. 27) (1994). Adoptat de Comitetul O.N.U. pentru Drepturile Omului, 6 aprilie/ Adopted by the Committee of the Human Rights of UN, April 6.
- Diaconu, I. (1993). *Drept international public/ The International Public Law*. Bucharest: Sansa.
- Dura, N. V. (2010). Proselytism and the Right to Change Religion: The Romanian Debate. *Law and Religion in the 21st Century. Relations between States and Religious Communities*, pp. 279-290. Ehgland: Ashgate Publishing Limited.
- Dura, N. V. (2008). The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania. *Dionysiana, Vol. II, No. 1*, pp. 37-54.
- Dura, N. V. (2005). Valorile religios-crestine Si "mostenirea culturala, religioasa Si umanista a Europei". "Laicitate" Si "libertate religioasa"/ The Christian Religious Values "the Cultural, Religious, and the Humanist Inheritance of Europe". "Secular" and "Religious Freedom". *Symposium "Modernity, postmodernity and religion"* pp. 19-35, Constanta, 2005, May. Iasi: Vasiliana '98.
- Mititelu, C. (2006). Norme si reglementari europene privind libertatea presei/European Rules and Regulations regarding the Freedom of Press. *Annals of "Ovidius" University, Series: Law and Administrative Sciences, Vol. IV, no. 1*, pp. 339-356.
- Voinea, M. (1994). *Sociologia dreptului/ The Sociology of Law*. Bucharest: Actami.
- Voicu, M. (2001). *Ultima speranta pentru o justitie deplina. Curtea europeana a drepturilor omului/ The Last Hope for a Complete Justice. The European Court of Human Rights, Ist ed.* Bucharest: Juridica.