

III. DOCUMENTAR JURIDIC

REPORT ON THE EVOLUTION OF HUMAN RIGHTS LEGISLATION IN THE EUROPEAN UNION AND IN ROMANIA – 2015*

The year 2015 was one of multiple challenges in the field of human rights, a year in which the protection of rights and fundamental freedoms was permanently topical and values of the European Union such as dignity, human rights, freedom, the rule of law, democracy, peace and solidarity must be respected and defended by the whole society, starting with each citizen and ending with institutions, organizations, national, European and international bodies.

To promote and protect these rights, the International Human Rights Day of 10 December 2015 was dedicated to the launch by the United Nations of a campaign commemorating the 50th anniversary of the adoption of two international agreements on human rights: the International Covenant on economic, social and cultural rights and the international Covenant on civil and political rights.

Also the year 2015 marked a decade since the signing of *the Treaty of Romania's Accession to the European Union*. The process of EU accession was the most important national goal in the last 25 years, along with NATO accession, and entailed irreversible transformations in terms of the modernization of Romanian society, by its full connection to the set of European and Euro-Atlantic values and principles.¹

In February 2015, the European Commission launched an invitation to persons and/or organizations in Romania which make lobby and/or representation at European level for entry in the **transparency register of European institutions**, in order to receive automatically alerts on public consultations or on the Commission's initiatives in areas of interest and on the participation in the European Parliament public meetings.

* Conducted in the Romanian Institute for Human Rights under the coordination of dr. Claudia Elena Marinică, scientific researcher.

¹ See the release of the Romanian Ministry of Foreign Affairs on the occasion of this event.

At the same time, the European Commission asked Romania, to inform on measures taken to ensure the full implementation of the directive on combating sexual abuse, exploitation of children and child pornography. From the Commission's findings, Romania along with other five Member States either did not communicate all measures for the implementation of the Directive, or has not yet adopted the necessary legislation.

In the Council of Foreign Affairs of July 2015, it was also assessed the status of implementation **of the EU Action Plan on human rights and democracy for the period 2015-2019** with the theme **"Keeping human rights at the center of the EU agenda"**².

According to the joint Communication to the European Parliament and the Council, human rights and democracy constitute the guiding principles of the EU, although globalization poses new challenges that increase the complexity of human rights protection. But in order "for citizens to trust peaceful means it is necessary for them to feel protected against arbitrary decisions and feel that their views can influence the political decision-making process. This can only be achieved in a democratic society based on respect for human rights and fundamental freedoms, in which the government is not corrupt and assumes its responsibilities, the parliament is able to reflect the diversity of opinions and interests of the population they represent, the civil society is dynamic, the media is free, and the judiciary is *focusing on human rights and women's rights* as independent objectives reflecting this goal.

Human rights and democracy must remain at the heart of EU external actions and the Union's role in promoting democracy, the rule of law, the universality and indivisibility of human rights and the principles of the United Nations Charter must be a significant one.

² <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52015JC0016>.

The Action Plan identifies *five strategic areas of action*:

- *Fostering active participation of local stakeholders*: human rights and democracy can not take root fully than in places where there is strong local participation. This chapter of the Action Plan focuses on actions and activities designed to improve the way we interact externally with all stakeholders, both with governmental ones as well as with the NGOs. Particular attention is given to the space for expression and action made available to civil society;

- *Addressing key challenges in the field of human rights*: This chapter focuses on the challenges with specific thematic in human rights, while maintaining at the same time, the necessary balance between, civil and political rights on the one hand, and economic, social and cultural rights on the other hand. The Action List complements and reinforces the objectives mentioned in the previous chapter;

- *Ensuring a comprehensive approach on human rights with regard to conflicts and crises*: in this chapter a series of actions is proposed to promote and support the development of tools and policies at national, regional and international levels in order to prevent human rights violations, to take action against these violations and to remedy them with a particular focus on the most serious infringements, which are of concern to the international community. Also, this chapter reflects a clear need for the EU to adapt the existing instruments to the changing nature of conflicts;

- *Promoting a greater coherence and consistency*: this chapter refers to the fact that it is necessary, along with the HR / VP, that the Commission should integrate to a greater extent the considerations on human rights in the external aspects of EU policies especially in policies on trade / investment, migration / refugees / asylum and development, as well as in those regarding combating terrorism in order to ensure greater consistency of these policies;

- *Enhancing efficiency and strengthening a results-oriented culture in the field of human rights and democracy*: in the context of increasing challenges and of limited resources, a better use of tools, activities and existing policies is the only

way to enhance the effects of EU action in the field human rights. This chapter proposes actions that will help the EU to develop a more strategic and targeted approach for achieving results to a greater extent.³

At EU level, effective 10 January 2015 were applied the provisions of *the (EU) 1215/2012 Regulation (the "Regulation") of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of decisions pronounced by the courts in civil and commercial matters, dated 12 December 2012⁴, governing the free movement of the decisions pronounced by the courts of an EU Member State in civil and commercial matters* and their recognition and enforcement in the other EU Member States, even where they are imposed on a person who does not reside in the respective Member State of the European Union.

This Regulation comes to improve access to justice, while the Union has to maintain and develop an area of freedom, security and justice, facilitating, among other things, access to justice through the above-mentioned principle; also the provisions of the Regulation respects the fundamental rights and principles recognized by the Charter of Fundamental Rights of the European Union, in particular the principle of the right to an effective remedy and to a fair trial guaranteed in Article 47 of the Charter.

The EU Council Directive 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and of abrogating the Decision 95/553 / EC⁵, which addresses to member states, comes to enforce, by its contents the values on which the Union is founded, values which include solidarity, nondiscrimination and respect for human rights. The Union should uphold its values and contribute to the protection of its citizens and thus the fundamental right to consular protection of unrepresented EU citizens under the same conditions as those of nationals, provided by

³ <http://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52015JC0016&from=RO> p.6-7

⁴ Published in OJ of the European Union nr. L 351 of 20 December 2012.

⁵ Published in OJ of the European Union series 106, of 24 April 2015.

art. 46 of the EU Charter of Fundamental Rights is an expression of European solidarity.

The aim of this Directive is to establish cooperation and coordination measures necessary to further facilitate consular protection for unrepresented citizens of the Union. Thus, it is desirable to facilitate the exercise of the right of EU citizens provided by art. 20 (2) c) of the Treaty on the Functioning of the European Union which stipulates that when someone reaches the territory of a third country in which the Member State to which the respective national pertains is not represented he or she should benefit of protection from the diplomatic and consular authorities of any Member State under the same conditions as nationals of that Member State, also taking into account the role and contribution of the Union delegations in the implementation of this right.

Of course, for an European Union that supports and protects the human rights, besides the economic development and social balance, cultural diversity is also a must. The protection of national minorities cannot be a justification for violence or the breach of international law, as otherwise the issue of migration and protection of migrants and, not least, the protection of refugees by each Member State can not assume their exclusion as a solution, but coherent integration policies are needed that should be harmonized with the standards of the community that hosts them.

Obviously, such problems as those mentioned above, have generated a complex reality, including the possibility of reopening discussions of the Schengen Agreement and the Schengen Convention with regard to how Member States could reintroduce temporary borders control and ban the entry of a person for security reasons.

Regarding **migration**, in 2015, the European Union has pursued acting *on four pillars*, namely: reducing irregular migration, saving lives and securing external borders, a strong policy on asylum and a new policy on legal migration.

On the background of illegal migration which is increasingly difficult to stop, it is normal that EU pays increased attention to the anti-terrorism strategy (given the recent events in France and in Turkey, although the latter is not an EU member state, but is a NATO member) and to the strategy on migration. Both are closely interlinked, leaving their mark on the free movement in the EU. Thus

increased attention should be given to the above mentioned strategies as well as to measures for strengthening border control.

After the attacks in France, according with the European Parliament Resolution of 11 February regarding measures for combating terrorism of 11 February 2015⁶, the European Parliament considered necessary the **adoption of a foreign EU strategy for combating international terrorism**, and requested the EU to promote an international partnership against terrorism and to closely cooperate with regional actors, such as the African Union, the Gulf Council of Cooperation and the Arab League, especially with neighbouring countries such as Syria and Irak and with those countries which were severely affected by the conflict, such as Jordan, Lebanon, Turkey, and to also cooperate with the UN and especially with the Committee for combating terrorism.

Following the events that took place on its territory, France has informed the Council of Europe that would suspend implementation regarding compliance with the European Convention of Human Rights under Article 15 of the European Convention on Human Rights, which mentions the possibility of an exceptional derogation on its application in case of war or other public emergency threatening the existence of a nation.

Thus, it becomes necessary for the EU, its Member States and partner countries to found their strategy for combating international terrorism on the rule of law and respect for fundamental rights. A comprehensive Union strategy on measures to combat terrorism must also make full use of its foreign and development policies to alleviate poverty, discrimination and marginalization, to fight corruption, promote good governance, prevent and resolve conflicts, all of these issues contributing to the marginalization of certain groups and sectors of society.

The EU Delegated Regulation No.2015 / 1973 of the Commission supplementing Regulation (EU) No. 514/2014 of the European Parliament and of the Council with specific provisions for reporting irregularities regarding the Fund for Asylum, migration and integration, and the

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0032+0+DOC+XML+V0//RO>.

*financial support tool for police cooperation, preventing and combating crime, and crisis management*⁷ aims to establish the irregularities which the Member States should report to the Commission. Under this Regulation, Member States shall inform consistently the Commission of the initiation, completion or abandonment of any procedure or any attempt to impose administrative measures, administrative penalties or criminal sanctions on irregularities reported or on the outcome of these proceedings or demarches. Regarding the use and processing of information, the Commission may use any information submitted by Member States to carry out a risk analysis, using to this purpose information and technology support and based on the information obtained, may produce reports and develop systems to serve a more effective risk identification.

The information provided fall within professional secrecy and are protected as they would be protected by national legislation of the Member State which provided them and by the provisions applicable to Union institutions. Member States and the Commission shall take all necessary precautions to guarantee that the information provided remains confidential. This information can not be used for any purpose other than the protection of the financial interest of the Union, unless the authorities that provided it have given express consent in this regard. The Regulation entered into force on November 11, 2015.

Also to be mentioned is *the EU Decision 2015/2071 of the authorizing Council of the Member States to ratify, in the interest of the European Union, the 2014 Protocol to the 1930 Convention on Forced Labor of the International Labor Organization in relation to Articles 1–4 of Protocol on matters concerning judicial cooperation in criminal matters*⁹, by which the Union promotes the ratification of international conventions on labor, classified by the international Labor Organization (ILO) as up to date in order to contribute to the Union's efforts to

⁷ http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=OJ:JOL_2015_293_R_0004.

⁸ Published in the Official Journal of the EU, Series L 293, of 10 November 2015.

⁹ Published in the Official Journal of the EU Series L 301, of 18 November 2015

promote human rights and decent work for all and to eradicate human trafficking, both within and outside the Union. The protection of fundamental principles and rights at the work place is one of the key aspects to these efforts.

Thus, according to the provisions of Article 1 and Article 2 Member States are authorized to ratify the 2014 Protocol to the 1930 Convention on Forced Labor of the International Labor Organization regarding the parts contained in Articles 1-4 of the Protocol, which fall within the jurisdiction conferred to the EU by Article 82 (2) of TFEU and should take measures to carry out the necessary steps to submit the instruments of ratification of the Protocol to the International Labor Organization Director General, as soon as possible preferably before December 31, 2016.

At national level there were adopted a series of laws whose regulations refer among others to the promotion and protection of human rights.

As regards the **electoral legislation**, it should be noted first that, in the Official Gazette of Romania, Part I, no. 408 of June 10, 2015 it was republished *the Political Parties Law no.14 / 2003*, which is one of the pillars of the national electoral legislation.

*Law No.3 / 2015 for approving Government Emergency Ordinance no.12 / 2014 amending the Law No.35 / 2008 for the election of the Chamber of Deputies and the Senate and for the amendment of Law No.67 / 2004 for the election of local authorities, the public administration Law No.215 / 2001 and Law no.393 / 2004 on the Statute of local elected officials*¹⁰, comes with some changes to eliminate problems emerged, aiming to ensure accessibility and predictability of the electoral legislation. Thus, rules have been established regarding the way of appointing winners of partial parliamentary elections, including the case of equality of votes between two or more candidates, the cases in which partial elections should be organized were established etc.

Law no. 288/2015 on voting by correspondence and amending and supplementing Law no. 208/2015 regarding the election of the Senate and Chamber of Deputies, and for the organization and functioning of the Permanent Electoral Authority, published in the Official Gazette of

¹⁰ Published in the Official Gazette No.18 of 9 January 2015.

Romania, Part I, no. 866 dated 19 November 2015 aims to clarify issues related to:

➤ *types of elections for which the vote by correspondence will be used*; This type of vote will be used in parliamentary elections, presidential elections and European Parliament elections.

➤ *The categories of voters who benefit of the opportunity to exercise their right to vote by correspondence* are represented only by the voters residing abroad according to the law.

➤ *The method of registration in the electoral records* establishes that the voter residing abroad who wishes to exercise his or her right to vote by correspondence for the elections of the Senate, Chamber of Deputies, presidential elections and elections for Romanian members in the EU Parliament can join the electoral register with the option to vote by mail, by written request via electronic form provided online by the Permanent electoral Authority, during the periods of electoral registration in the Register with the specific option to vote by correspondence.

➤ *The modalities of informing the voters abroad about the procedure of voting by mail* will be delivered by the Permanent Electoral Authority and by the Ministry of Foreign Affairs, and among the documents given to the voter there will be detailed instructions regarding voting by correspondence

➤ making and preparation of needed voting materials

➤ the procedure of providing the voters with the necessary voting materials.

➤ the procedure of expressing the voting option

➤ the modality of transmitting the voting option to the electoral offices in the country

➤ receiving, checking and counting the ballots and establishing the result of the vote by correspondence

➤ the attributions of electoral bodies and of institutions involved in organizing and holding the elections

*The Government's Emergency Ordinance No. 37/2015 amending and completing the Law of the Romanian citizenship No. 21/1991*¹¹, provides for better and less harsh conditions than the former existing ones of acquiring Romanian citizenship by foreign citizens or by persons without

citizenship who have significantly contributed to the promotion of Romanian culture, civilization and spirituality or who can contribute to promoting Romania's image through outstanding performance in sports.

Among the amendments to the normative act, there are also clarifications regarding the meaning of the provisions on who can apply for granting Romanian citizenship under Article 11 of the Law and on reducing the delays in the procedure for submitting the oath of allegiance to Romania etc.

*Law no. 295/2015 for the amendment and completion of Law no.119 / 1996 on civil status documents*¹², is supporting the protection of Romanian citizens' rights and states that, "*in duly justified cases, for the children of Romanian citizens abroad for whom a special protection measure was ordained, the heads of diplomatic missions and consular offices of Romania can register free of charge, their civil status documents issued by foreign authorities that concern them or in the Romanian civil records, at the request of the competent foreign authorities or, where appropriate at the request of the Romanian authorities responsible with the protection of children.*"

Concerning the rights of **persons with disabilities** it was adopted *Law no.193 / 2015 amending Law 448/2006 on the Protection and Promotion of the Rights of Persons with Disabilities, published in the Official Gazette of Romania, Part I, no. 518 dated 13 July 2015* the measures of which prevent avoidance of complex social situations by recovering the amounts that are not available to beneficiaries of social assistance rights and thus avoiding the risk of poverty and social exclusion.

Law no. 266/2015 regarding the approval of the Government Emergency Ordinance no.44 / 2014 on regulation of debt recovery measures for social assistance benefits, and to amend article 101 of Law No. 448/2006 on the protection and promotion of rights of persons with disabilities published in the Official Gazette of Romania, Part I, no. 836 dated 9 November 2015 states that the recovery of the amounts of damages / illegal payments from public funds, set forth by the competent control granted from the state budget

¹¹ Published in the Official Gazette I, No. 697 of 15 September 2015.

¹² Published in the Official Gazette No. 885 of 26 November 2015.

allocated to Ministry of Labor, Family, and Social Protection and supported by local budgets by way of social assistance benefits should be exempt from the provisions of art. 731 of Law No.500 / 2002 on public finances, as further amended and supplemented.

Law No. 194/2015 for amendment and completion of the Sports and Physical Education Law No. 69/2000,¹³ was adopted in view of ensuring respect for the principle of equal opportunities for athletes with disabilities in relation to other athletes and the avoidance of discriminatory treatment.

Thus, sport for people with special needs is considered as being a complex activity performed in specific conditions either individually, or in groups by persons with physical, sensory, mental or mixed disabilities. Under the *National Programme Sport for All*, there is a sub-program dedicated to sport for people with special needs, practicing sport systematically and in an organized manner in order to participate in competitions and obtain victory over a partner, which is a clear demonstration of the principle of non-discrimination, with equal prizes awards for athletes who achieved medals in competitions for athletes with disabilities and for those athletes who were awarded medals in Olympic games, in world championships and in European championships.

Regarding **the issue of domestic violence** and taking of measures to stop this phenomenon, which is certainly a human rights violation, in the Official Gazette of Romania, Part I, no. 78 dated January 29, 2015 it was published the Government Ordinance No.6 / 2015 on the amendment of Law No.217 / 2003 on preventing and combating domestic violence. The Ordinance was approved by Law no.160 / 2015 and is amending and supplementing Law No.217 / 2003 on preventing and combating domestic violence, published in the Official Gazette of Romania, part I, no. 449 dated June 23, 2015.

Thus, the attributions in this field were taken over by the Department for Equal Opportunities for Women and Men, a specialized body of central public administration, subordinated to the Ministry of Labor, Family, Social Protection and

Elderly Persons, through which programs of national interest will be developed aiming at preventing and combating domestic violence, protecting and supporting the family to enhance the quality of life. The programs will be conducted and financed from different funds, according to the law.

Another bill on the subject is also the Law No. 272 / 2015 on preventing and combating domestic violence, published in the Official Gazette of Romania, Part I, no. 842 dated 12 November 2015 which provides that a copy of the judgment ordering the application for the protection order be communicated within 5 hours of the final decision, to the Romanian Police in whose jurisdiction the home of the victim and / or perpetrator is located.

Also on violence in the Official Gazette of Romania, Part I, no. 979 dated December 30, 2015 the Law No. 351 / 2015 was published on the amendment of article 27 Para. (1) of Law No. 217/2003 on preventing and combating domestic violence.

By this enactment, the Department for Equal Opportunities for Women and Men, the main role of which is to promote equal opportunities and treatment between men and women, will have to exercise functions of strategy, regulatory representation and state authority in the field of domestic violence, to complete its duties in terms of strategies and government policies in the field of domestic violence, funding or co-funding related programs of national interest. At the same time, it is provided that the applications for the issue of a protection order are answered on an emergency basis and in any case, their resolution may not exceed a period of 72 hours after the submission of the application. Applications are judged in closed session in the Council chamber and the presence of the prosecutor is compulsory.

This regulation has occurred due to the long duration of proceedings in solving the issues of protection orders (the European Commission Report states that there was an increase in the prompt and effective implementation of such applications, since an efficient protection for the victims of domestic violence is needed).

The aim of this regulation is to streamline the handling of applications for protection orders, to better protect the victims of violence, by explicitly regulating the procedure mentioned above.

¹³ Published in the Official Gazette , I, No. 507 of 9 June 2015.

Domestic violence is a phenomenon with multiple facets, now widely present both in Romania as well as in Europe, so that in order to combat it and, not least, to support activities dedicated to human rights, it is ensured inter alia the compliance with the *Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011*, to which Romania acceded in 2014.

Regarding equal opportunities for women and men, *the Law nr.229 / 2015 was published* in the Official Gazette of Romania, Part I, No. 749, dated 4 October 2015. *This Law is amending the Law no.202 / 2002 on equal opportunities and equal treatment between women and men*, which regulates that the Romanian State, through its competent authorities, develops and implements policies and programs to achieve and ensure equality of opportunity and treatment between women and men and to eliminate all forms of discrimination on grounds of sex.

According to Art. 31 of the Law, equality of opportunity and treatment between women and men shall be in accordance with the following principles:

a) the principle of legality, according to which compliance with the Constitution and national legislation and the provisions of international agreements and other legal documents to which Romania is a party;

b) the principle of respect for human dignity, according to which every person is guaranteed the free and full development of his or her personality;

c) the principle of cooperation and partnership, under which the central and local public administration authorities collaborate with civil society and NGOs for the development, implementation, evaluation and monitoring of public policies and programs to eliminate all forms of discrimination on grounds of sex, and for achieving de facto equality of opportunity and treatment between women and men;

d) the principle of transparency, according to which the drafting, development, implementation and evaluation of policies and programs in the field are made known to the general public;

e) the transversality principle, according to which public policies and programs for protecting and guaranteeing equality of opportunity and treatment between men and women are achieved

by working institutions and authorities in these fields at all levels of public life.

The National Agency for Equal Opportunities for Women and Men is also established. It promotes equal opportunity and treatment between women and men in order to eliminate all forms of discrimination based on sex from all national policies and programs.

Thus, it is intended to eliminate all forms of gender discrimination for effectively achieving equality between women and men.

Another regulation in the field of protection of fundamental rights is *the Law No.217 / 2015 amending and supplementing the Government Emergency Ordinance no.31 / 2002 on the prohibition of organizations and symbols of fascist, racist or xenophobic nature and on the promotion of the cult of revealing those persons guilty of committing crimes against peace and humanity*¹⁴, regulating and prohibiting also the facts, and not just the organizations and symbols of fascist, racist or xenophobic nature, and the introduction of the definition of the Holocaust in Romania, adding new provisions on incriminating racist acts committed by a legal person etc.

Regarding **the asylum policy and the free movement of foreigners**, *the Law nr.331 / 2015 amending and supplementing certain enactments regarding foreigners*¹⁵, is considering amending and completing Law no.122 / 2006 on the definition of specific terms resulting from the need to implement the benchmark directives, thus referring to the payment of translation/interpretation services which is made according to the Law no.178 / 1997 *on authorization of payment for interpreters and translators offering their services to the Superior Council of Magistracy, the Ministry of Justice, the prosecution Office attached to the High Court of Cassation and Justice, the National Anticorruption Prosecutor's Office, to the prosecution, courts, offices of public notaries, lawyers and bailiffs*, as further amended and supplemented.

The Law also regulates the following: the situation of implicit withdrawal of an application for asylum, the situation of exemption from the

¹⁴ Published in the Official Gazette I, No. 558 of 27 July 2015.

¹⁵ Published in the Official Gazette I, No. 944 of 21 decembrie 2015.

accelerated procedure and the border procedure of asylum applications submitted by asylum seekers requiring special procedures (in the category of vulnerable persons), establishing the obligation to assign a personal identification number to all applicants for international protection, so that they can benefit from the reception conditions provided by Law no.122 / 2006 and regulating expressly the possibility for the Romanian Representative of the United Nations High Commissioner for Refugees (UNHCR) to have access to existing documents in the file of the foreigner applying for international protection.

Regarding the Law. 46/1991, in view of ensuring full rights of defending oneself measures are in place for the access to procedural information and to the related system, according to the law on public legal support in civil matters. Measures are in place also for the restriction of exercising certain rights for the asylum seekers requesting international protection.

Other measures relate to the possibility of limiting or of withdrawing the financial benefit and the living conditions put at disposal for the asylum seekers under certain objective circumstances and the regulation of the possibility that, in case the accommodation capacity is exceeded in areas managed by the General Inspectorate, the applicants may benefit of a sum of money, within the limit of available funds, for the purpose of renting a room etc.

Thus, transparency is ensured in terms of reception conditions, in the sense of the possibility of establishing the monitoring and evaluation of the asylum seekers' reception and living conditions by non-governmental organizations and by national and international bodies with responsibilities in the field of migration or human rights. Also, there is the possibility of referral to the Ombudsman Institution, which carries out its attributions established by law in the field of human rights protection.

Following the above, this legislative measure leads to the strengthening of the legal rights of the applicants for international protection, to their increasing integration into Romanian society and, not least, to the prevention of specific negative phenomena associated with illegal migration.

The right to education, permanently envisaged by normative acts suffering changes and additions, including during 2015, is reflected in the

amendments and additions made in 2015 to the *National Education Law no.1 / 2011*, which was amended by:

- *Law no.95 / 2015 amending article 96 of the National Education Law no.1 2011*, published in the Official Gazette, Part I, No.304 of 5 May 2015, governing the placing of point d) in paragraph (2) Article 96, by which it is stipulated that " *in the administration boards of schools, within the representaton share of parents a place is reserved for a representative of the pupils who turned 18 years old and has the right to vote*". Thus, it is attempted to ensure transparency of education and increasing social responsibility among high school students by involving them in the decisions of the school.

- *The Government Emergency Ordinance no. 41 / 2015 amending and supplementing certain normative acts and regulating certain fiscal measures*, published in the Official Gazette, Part I, No. 733 of 30 September 2015 was adopted to ensure the smooth functioning of the national education system.

Throughout 2015, laws were issued on establishing or declaring national Days observances, respectively:

- *Law no.22 / 2015 on the establishment of the 28th of July as the National Day of Romanian Ambulance*, in recognition of merits of ambulance services providers who ensure and maintain the health of Romanian citizens;

- *Law No.23 / 2015 declaring the 8th of May the Day of equality between women and men*, which comes in the support of the National Strategy 2014-2017 objectives such as promoting gender perspective in employment and payroll policies, mobility and migration of labor, equal participation in decision making, increase awareness of reconciling family and professional life, combating harassment and sexual harassment in the workplace, monitoring balanced participation of women and men in the decision-making process;

- *Law no.102 / 2015 on the establishment of the National Day of the traditional costume, Law no.103 / 2015 on declaring 10 May – a national holiday;*

- *Law no.273 / 2015 declaring October 1 the Day of fight against breast cancer;*

▪ *Law no.274 / 2015 on declaring February 4 Day of fight against cancer in the context of equal access to healthcare for all patients;*

▪ *Law no.279 / 2015 for the establishment of the Hungarian Language Day*, given that since 2001, UN celebrates official languages and Romania have adopted several laws which providing that certain days are the days of native languages for national minorities, thus recognizing their significant role (September 28th the day of the Czech Language, December 13th the day of Tatar language).

Given that the Romanian state grants certain rights to persons persecuted for political reasons by *Decree Law no.118 / 1990*, these must be constantly updated, and for this reason the adoption of the *Law no.69 / 2015* was needed for the amendment of the *Decree-Law no. 118/1990 on granting rights to persons persecuted for political reasons by the dictatorship with effect from 6 March 1945*, and those deported abroad or imprisoned, published in the Official Gazette of Romania, part I, no. 229 of 3 April 2015, meaning doubling the amount of allowances to persons persecuted for political reasons, in recognition of the efforts of these people who opposed the oppressive regime in their desire to exercise their fundamental rights.

Given that the Romanian state grants certain rights to persons persecuted for political reasons by *Decree Law no.118 / 1990*, these rights must be constantly updated, and this entailed the adoption of the *Law no.69 / 2015 for the amendment of the Decree-Law no. 118/1990 on granting rights to persons persecuted for political reasons by the dictatorship established on 6 March 1945*, and to those deported abroad or imprisoned, published in the Official Gazette of Romania, part I, no. 229 of 3 April 2015, The Decree-Law was issued with the aim of doubling the amount of allowances to persons persecuted for political reasons, in recognition of the merits of these people who opposed the oppressive regime in their desire to exercise their fundamental rights.

The National Council for Combating Discrimination in partnership with the Romanian Association for Health Promotion and the Academic Society of Romania, started for the period 1 March 2015-30 April 2016, the project

"Discrimination against immigrants in the field of Civil Rights – DIM" which aims to promote multicultural understanding, tolerance and combating discrimination of immigrants in Romania by conducting for the first time a research on the phenomenon of discrimination against foreigners in Romania with regard to their civil rights. This research aims to improve anti-discrimination measures and practices that will result in new recommendations for such policies and measures.

Another project undertaken by the National Council for Combating Discrimination in 2015 is entitled "Perceptions and attitudes of the Romanian population against the national strategy to prevent and combat discrimination initiated a survey according to which it was concluded that 87% of the interviewees, stated that they heard about the discrimination phenomenon in Romania and that this is a current problem often occurring in Romania.

The "School about discrimination for parents" aims to develop individual and group attitudes to prevent discrimination by informing and training adults, such as parents and teachers, who are around children, and are perceived by them as models.

Regarding the work of the Ombudsman Institution, as shown in press releases of the institution, in 2015 were granted audiences, petitions were solved, inquiries have been initiated on the right to health and to a decent standard of living, on the conditions of detention in prisons in Romania, on observing the provisions of *Law no. 254/2013*, the right to private property, the access to information right in prisons and public institutions, the protection of children and young people and protection of the disabled persons, the right to petition and the right of a person aggrieved or abused by a public authority, the freedom of conscience, the protection of children and of young people, the right to intimate, family and private life, the right to information and the refugee problem.

As an integral part of the activity of this institution, it should be recalled the promotion of an appeal on points of law for the establishment of the term "blind" regarding the interpretation and application of Article 59 of *Law no.263 / 2010* on the unitary public pension system and that of art. 47 (2) of the *Law no.19 / 2000* on public

pensions and other social insurance rights, with regard to determining the meaning of the word "blind". The Ombudsman considers that the abovementioned provisions are applicable to persons with serious degrees of disability, not just to those with severe visual disability degree, so that both groups can benefit from old-age pension under the law.

Also to be noted is the action of the Ombudsman Institution in the Rahova penitentiary on the mosaic cult prisoners' protest regarding the failure of the authorities of the penitentiary to provide proper food according to their religion. They refused to eat in sign of protest that one of their fundamental rights is violated. However, the National Penitentiaries Administration stated that there is no record of food refusal according to religious beliefs and that information about an alleged revolt is erroneous.

The initiative of this institution to sanction those responsible within C.A.S.M.B. (Bucharest National House for Health Insurances) who are to blame for not solving the requests within a reasonable time-limit and for not processing in due time requests for reimbursement of medical devices in the period 2011–2015, comes to complete the Ombudsman 2015 work plan.

Following an approach initiated by the Ministry of Justice and the Superior Council of Magistracy, in early 2015 the change of software programs in courts was proceeded so that it is possible to send e-mail to the parties in a process, but also to their legal representatives, at the end of the meeting in court or immediately following a court decision as soon as the minutes or the decisions are loaded into ECRIS. The Ministry of Justice believes that online communication is a modern alternative which means saving money and time for the courts and / or their lawyers, contributing to reducing the time length of trials and to efficiency improvement.

With regard to the situation of Romania at the European Court of Human Rights, although the number of cases is not satisfactory, there are cases in which Romania admitted breach of the Convention (155 cases), the Article most often confirmed to be breached in 2015 is Article 6 Para. (1) of the Convention, namely the right to a fair trial.

Law no. 146/2015 approving Government Emergency Ordinance no.93 / 2014 on the

implementation of commitments deriving from the decisions of the European Court of Human Rights *Moldovan and Others v Romania* no.1 of 5 July 2005 and *Moldovan and Others v Romania* No.2 of 12 July 2005 is one of the consequences of the ratification of the Convention for the Protection of human rights and fundamental freedoms, according to which the state must execute in good faith and expeditiously, all judgments and decisions pronounced by the European Court of human rights.

Given Romania's commitments following the decision of the European Court of Human Rights in the case of *Moldovan and Others v Romania* No.1 (5 July 2005), providing stimulating Roma participation in the economic, social, educational, cultural and political life of Hădăreni local community in Mureș County, by promoting mutual assistance and community development programs, to be noted is that, however some of the community development objectives in Hădăreni, Mureș County for 2006–2008 have not yet been carried out, or were not achieved .

Thus, it became necessary to invest to this purpose, and to have a local medical center building and another building to be used as a hall for manufacturing concrete products for construction purposes.

*By Law no.137 / 2015 for the acceptance of the compulsory jurisdiction of the International Court of Justice*¹⁶ the compulsory jurisdiction of the International Court of Justice is accepted based on Article 36 Para. (2) and (3) of the Statute of the International Court of Justice, an integral part of the United Nations Charter in relation to any dispute concerning the facts or circumstances occurring after the date of the statements, with certain exceptions:

➤ any dispute on which the parties concerned have agreed or will agree by resorting to another method for its solving by peaceful settlement, in order to obtain a final and binding decision

➤ any dispute with another State which has accepted the compulsory jurisdiction of the International Court of Justice in accordance with article 36 par. (2) of the Statute of the Court with less than 12 months before the filing of the proceedings before the Court or in case this

¹⁶ Published in the Official Gazette, I, No, 408 of 10 June 2015.

acceptance was made only in order to resolve a particular dispute;

➤ any dispute referring to environment protection

➤ any dispute relating to or in connection with hostilities, war, armed conflict, individual and collective action taken in self-defense or in the performance of duties in accordance with any decisions or recommendations of the UN deployment of armed forces abroad as well as other related decisions thereof;

➤ any dispute which relates to or is linked to the military use of Romanian territory, including its airspace and territorial sea or maritime areas, where Romania exercises sovereign rights and sovereign jurisdiction;

➤ any dispute concerning matters which according to international Law belong exclusively to Romania's national jurisdiction

➤ Thus the access to the Court's jurisdiction is facilitated and Romania's interest in protecting and promoting the rule of law is highlighted and, not in the least, the respect it gives to international law.

With regard to *international relations*, we can mention the *Law No.5 / 2015 for the ratification of the Understanding on Social Security between the Government of Romania and the Government of Quebec signed in Quebec on 19 November 2013*,¹⁷ which the Romanian legislation will apply in respect of sickness and maternity, old age pensions, invalidity, death, death grants and benefits in case of accidents at work and occupational diseases.

Equal treatment is a central pillar of this agreement envisaging the category of persons who are or have been subject to Romania's or Quebec's legislation, or who have acquired rights under that legislation. This agreement will come into effect beginning with the date of the last notification by which each Party notifies the other Party on the completion of the necessary internal procedure for the entry into force of the agreement, with the possibility of either party to terminate the validity of the agreement by notifying this to the other party.

Law no. 336/2015 ratifying the Agreement between Romania and the Republic of Albania on

¹⁷ Published in the Official Gazette I No, 29 of 1 January, 2015.

social security, signed on 27 February 2015, published in the Official Gazette of Romania, Part I, no. 953 dated 23 December 2015 which will be applied in Romania's legislation on compensation for temporary disability caused by common illnesses or accidents outside the work place; maternity allowance; old age pensions, disability and survivors of the deceased allowances; benefits in kind and in cash for sickness and maternity; benefits in kind and in cash in case of work accident and occupational diseases.

As far as the Republic of Albania is concerned, the agreement will be applied to legislation governing cash benefits for sickness of employees, cash benefits in case of maternity for employed and self-employed workers and for employers, cash benefits in the event of work accidents and occupational diseases for employees, old age pensions, disability and survivors' pensions for employees and self-employed workers and for employers and benefits in kind under the Compulsory Health Insurance Scheme.

The agreement is concluded for an indefinite period of time and shall enter into force on the first day of the month following the expiration of the three months period from the date of the last notification by which the Contracting Parties shall inform each other of the completion of the necessary domestic procedures for its coming into effect.

Law nr.349 / 2015 for ratifying the Treaty between Romania and the Republic of Kazakhstan on transfer of sentenced persons, signed in Bucharest on 14 November 2014, published in the Official Gazette of Romania, Part I, no. 978 dated 30 December 2015 appeared, as specified in the preamble of the treaty, due to the desire to promote effective cooperation between the two sides on the transfer of sentenced persons, in order to facilitate their rehabilitation and social reintegration, by regulating the central authorities, the transfer conditions, the notification of procedure documents, locating or identifying persons and objects, carrying rogatory commissions, temporary transfer of detained persons, execution of requests for search, seizure and confiscation, the transmission of documents, material evidence etc.

Active participation of European Union citizens and, implicitly, of Romania, in public life is the cornerstone of a democratic society and the rule of law should be a priority for all Member

States of the Union. A state of law in which human rights must be enjoyed with the proper respect, protected and promoted according to the regulatory measures contained in the domestic and international legislation adopted over the years.

Perhaps more than ever, following 2015, a year marked by multiple challenges, it is necessary to realize that the rights and fundamental freedoms must be protected, respected and promoted widely, with the active and permanent involvement

of the civil society representatives starting from each and every citizen.

Keeping the rapid evolution and the alignment with EU legislation and with other international and regional human rights bodies involves the future engagement of all decision-makers at domestic, communitarian and international level with a view to create a favorable climate for the promotion and respect for human rights.

JURISPRUNDENȚA CURȚII EUROPENE A DREPTURILOR OMULUI PRIVIND DREPTULUI LA RESPECTAREA VIEȚII PRIVATE ȘI DE FAMILIE

IOANA ANCA IANCU

Din punct de vedere istoric, noțiunea de „viață privată” este de dată recentă și este legată de existența societăților moderne. Înainte de sfârșitul secolului al XVIII – lea nu exista distincție între viața privată și viața publică. Apariția ideilor individualiste și a celor liberale legate de necesitatea asigurării confortului material, după secolul al XVIII – lea, au creat premisele apariției distincției dintre viața publică și cea privată. Chiar și după aceea, viața privată a fost protejată doar prin reguli morale și cutumiare. Prin intermediul acestui drept fundamental s-a trasat o frontieră solidă între viața publică și cea privată, confuzia lor putând avea ca efect deschiderea căii spre totalitarism.

Dreptul la viața intimă, familială și privată este reglementat în art. 8 din Convenția europeană pentru apărarea drepturilor omului și a libertăților fundamentale și prin art. 17 din Pactul internațional privind drepturile civile și politice. Constituția României îl reglementează în art. 26, ca un aspect al respectării și ocrotirii personalității omului, proclamată, în art. 1 din Constituție, ca valoare supremă.¹

În conținutul dreptului la respectarea vieții private și de familie, dispozițiile constituționale cuprind obligația autorităților publice de a respecta și ocroti viața intimă, privată și de familie, împotriva oricărui atentat din partea

oricărui subiect de drept. Ca urmare, nimeni nu se poate amesteca în viața intimă, familială sau privată a unei persoane, fără consimțământul exprimat explicit și liber al acesteia².

Dreptul la viața intimă, familială și privată, drept de generația a treia, a făcut obiectul unor decizii ale Curții Europene a Drepturilor Omului și prin care au fost facute importante interpretări referitoare la conținutul acestuia. În cele ce urmează vom analiza câteva decizii pronunțate de Curtea Europeană în legătură cu respectarea dreptului la viața intimă și familială.

Cauza Lupșa împotriva României³

Reclamantul, un cetățean sârbo-muntenegrean, s-a stabilit în România din 1989 și a rămas 14 ani aici, creând o societate comercială românească și întemeindu-și o familie cu o cetățeană română, din căsătoria lor rezultând un copil având dublă cetățenie, română și sârbo-muntenegreană. Acesta a fost declarat „persoană indezirabilă” în anul 2003 și i s-a interzis șederea în România pentru o perioadă de 10 ani, pe motiv că existau indicii temeinice, conform cărora el desfășura activități de natură să pună în pericol siguranța națională. Singurul termen de judecată în fața Curții de Apel București a avut loc la data de 18 august 2003. Reprezentanta Autorității pentru străini i-a înmănat

¹ A se vedea Gheroghe Iancu, *Drept constituțional și instituții politice*, Editura C.H. Beck, București, 2014, p. 243.

² Ibidem, p. 245.

³ Publicat în Monitorul Oficial, Partea I nr. 30 din 17 ianuarie 2007.