Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy
ISSN 1896-8333 nr 11(2)/2014

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"1 Decembre 1918" University of Alba Iulia, Rumunia

Human rights protection in Europe

SUMMARY

The European Convention on Human Rights, establishing The European Court of Human Rights, constitutes the key document relating to human rights protection. Romania ratified the Convention on 20th June, 1994. Human rights are basic rights and freedoms each individual is entailed to. They include the right to live and be free, the freedom of speech and the right to an equal treatment in terms of legislation. Generally, the situation relating to the human rights in Europe is considered to be good. Belorussia, classified by The Economist as an authoritarian country, appears to be a problematic case in that respect. The Convention also deals with children's rights, which it views as equal to human rights. The Constitutions of countries such as Poland, Romania or Brazil contain regulations relating to children's rights. In 2004, Romania ratified the act on the protection and promotion of children's rights, pointing out that children deserve special treatment and protection. A helpline for children's rights protection was set up, offering consultation on the protection of children and family. In many cities in Romania a helpline offering temporary assistance to children was also set up. Relevant social services are ready to intervene without delay following their notification by phone.

Key words: human rights, European Union, children's rights.

The **European Convention on Human Rights** (**ECHR**) (formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe[1] the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity[2].

The Convention established the European Court of Human Rights. Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors

[1] The Council of Europe should not be confused with the Council of the European Union or the European Council. The European Union is not a party to the Convention and has no role in the administration of the European Court of Human Rights.

[2] Resolution 1031 (1994) on the honoring of commitments entered into by member states when joining the Council of Europe

the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. State parties can also take cases against other state parties to the Court, although this power is rarely used.

The Convention has several protocols. For example, Protocol 13 prohibits the death penalty. The protocols accepted vary from State Party to State Party, though it is understood that state parties should be party to as many protocols as possible.

Romania ratified the European Convention on Human Rights on 20 June 1994. It paved the way individual petitions before the ECHR by Romanian natural and legal persons.

It is very important to us to answer to one question: What are human rights?

Human rights are the basic rights and freedoms to which all humans are considered entitled: the right to life, liberty, freedom of thought and expression, and equal treatment before the law, among others. These rights represent entitlements of the individual or groups vis-a-vis the government, as well as responsibilities of the individual and the government authorities[3].

Such rights are ascribed „naturally," which means that they are not earned and cannot be denied on the basis of race, creed, ethnicity or gender[4]. These rights are often advanced as legal rights and protected by the rule of law. However, they are distinct from and prior to law, and can be used as standards for formulating or criticizing both local and international law. It is typically thought that the conduct of governments and military forces must comply with these standards.

The current **human rights situation in Europe** on the whole is believed by many to be good. However, there are several human rights alleged problems ranging from the treatment of asylum seekers through police brutality to various infringements of the judicial rights and freedoms of businesspersons under bureaucratic regulatory sub-regimes. Individual European states are mentioned in the yearly Amnesty International Reports for different human rights violations[5]. One of the main culprits is Belarus,[6] which is the only country in Europe to be rated „authoritarian" by the Economist. All other countries are considered to have „some form of democratic government", having either the „full democracy", „flawed democracy", or „hybrid regime" ratings.

The history of human rights in Europe is marked by a contradictory combination of, on the one hand, legislative and intellectual progress, and, on the other hand, violations of fundamental human rights in both the colonies of Europe, and at home.

The **European Court of Human Rights** (French: *Cour européenne des droits de l'homme*) in Strasbourg is a supra-national court, established by the European Convention on Human Rights, which provides legal recourse of last resort for individuals who feel that their human rights have been violated by a contracting party to the Convention. Application before the court can also be brought by other contracting parties.

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[3] M. M a i e s e, *Human Rights Protection*, www.beyondintractability.org/essay/human_rights_protect/

[4] D. L i t t l e, *Universality of Human Rights*, http://www.usip.org/research/rehr/universality.html]

[5] Amnesty International

[6] http://www.csw.org.uk/countriesoffocus.htm

The Convention was adopted under the auspices of the Council of Europe, all 47 of whose member states are parties to the Convention.

The Court was instituted as a permanent entity with full-time judges on 1 November 1998, replacing the then existing enforcement mechanisms, which included the European Commission of Human Rights (created in 1954) and the European Court of Human Rights, which had been created in 1959.

The new format of the Court was the result of the ratification of Protocol 11, an amendment to the Convention that was ratified in November 1998. The new full-time judges were subsequently elected by the Parliamentary Assembly of the Council of Europe. The first President of the court was Luzius Wildhaber.[7]

By the time Protocol No. 11 entered into force on 1 November 1998 establishing a full-time Court and opening up direct access for 800 million Europeans, the Court had delivered 837 judgments. By the end of 2005 it had delivered 5,968 judgments.

All member states of the Council of Europe are required to sign and ratify the Convention. The Court consists of a number of judges equal to the number of Contracting Parties, which currently stand at 47. Each judge is elected in respect of a Contracting Party by the Parliamentary Assembly of the Council of Europe. Despite this correspondence, however, there are no nationality requirements for judges (e.g. a Swiss national may be elected in respect of Liechtenstein). Judges are assumed to be impartial arbiters, rather than representatives of any country. Judges are elected to six-year terms and may be re-elected.

The Court is divided into five «Sections», each of which consists of a geographic and gender-balanced selection of justices. The entire Court elects a President and five Section Presidents, two of whom also serve as Vice-Presidents; all terms last for three years. Each section selects a Chamber, which consists of the Section President and a rotating selection of six other justices. The Court also maintains a 17-member Grand Chamber, which consists of the President, Vice-Presidents, and Section Presidents, in addition to a rotating selection of justices from one of two balanced groups. The selection of judges alternates between the groups every nine months.

Between 2006 and 2010, Russia had been the only one of 47 participating states to refuse to ratify Protocol 14, which was intended to accelerate the court's work, partly by reducing the number of judges required to make important decisions. In 2010, Russia ended its opposition to the protocol, in exchange for a guarantee that Russian judges would be involved in reviewing complaints against Russia.[8]

Complaints of violations by member states are filed in Strasbourg, and assigned to a Section. Unmeritorious complaints are dismissed by a committee of three judges by a unanimous vote. Meritorious complaints are examined by a Chamber. Decisions of great importance may be appealed to the Grand Chamber. Any decision of the Court is binding on the member states and must be complied with,[9] except if it consists of an advisory opinion[10].

It is the role of the Committee of Ministers of the Council of Europe to supervise the execution of Court judgments. This body cannot force states to comply, and the ultimate sanction for non-compliance is expulsion from the Council of Europe.

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[7] http://en.wikipedia.org/wiki/European_Court_of_Human_Rights

[8] NY Times: Russia Ends Opposition to Rights Court

[9] Art. 46, European Convention of Human Rights

[10] Art. 47, European Convention of Human Rights

The court has 5 sections and the 47 judges are selected from the member states of the Council of Europe.

The Plenary Court elects the Registrar and one or more Deputy Registrars. The Registrar is the head of the Registry, which performs legal and administrative tasks and drafts decisions and judgments on behalf of the Court. The Registrar and Deputy Registrar as of 4 January 2007.

After these general informations, we would like to expose some specific issues, like: *CHILDREN'S RIGHTS, HUMAN RIGHTS – NOWADAYS AND PERSPECTIVES.*

The Convention emphases that children's rights are also human rights. This allegation may be perceived as an obvious fact, but in the praxis the children remained often unheard and their interest was seldom perceived in a distinct way. The idea transferred by the Convention is that " the children are not small citizens with small rights" but are equal citizens with a special protection status. Although there is still a lot to do, one must recognize that with the issue of the Convention the children's rights may not be anymore perceived as a favor or an optional feature. They produce obligations which must be fulfilled by all.

The Convention calls for transparency and an implementation of the public policies and the monitoring of their impact on the children. The national and local communities must develop clear strategies in this respect.[11]

Pursuant to the Convention the children are citizens and they have the right to express their opinions and these must be taken into account. All actions must be orientated to the highest interest of the children, to promote equity and to protect against discrimination. The children may not be anymore treated as small citizens and they cannot wait to attend the full age for their rights to be respected and to be heard. The Convention shows that each child is important. It is not suffice to reach satisfactory averages or high progress rates in a particular country. It is needed that children enjoy in each state the observance of their rights, not to be neglected or disfavored on various criterion. We must not forget that there still are areas on the earth where the birth of a female child is disdained or in which the ethnic origin may be an adverse factor. At the same time, the children born in very far areas, lacking of progress or very poor, still have much to endure due to these causes in spite of not being responsible for the state where they were born.

Many states have included the children's rights in their constitutions, as for example: Armenia, Byelorussia, Brazil, Bulgaria, Croatia, Latvia, Moldova, Nicaragua, Poland, Portugal, Romania, the Russian Federation, Senegal, the Slovak Republic, Slovenia, Span and South Africa.

Many signatory states have also implemented an important law reform process in order to ensure the compatibility with the provision of the Convention. In some countries as Brazil, Columbia, Chile, Costa Rica, Nicaragua, Guatemala, Paraguay, Uruguay, Panama Mexico, Mozambique, Burkina Faso, South Africa, Malaysia and East Timor there were adopted Child Rights Protection Codes, Statutes or Laws regarding the children's right. This often occurred in states suffering a decolonization or democratization process.

Often such law changes have been introduced in certain fields, for protection the children, including forced labor (in India, Pakistan or Portugal), sexual exploitation (including extra-territorial jurisdiction as in the case of Australia, Belgium, Sweden and Germany), within the under age child law (in Belgium, Sweden, Norway, Spain, the Ukraine, Costa Rica and

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[11] M. Ureche, *About Children's rights*, Alba Iulia, 2009.

Salvador) and the international adoption (including Spain, Portugal, Paraguay, Romania and the U.K.).

There have been taken actions to promote behavior changes and to interdict practices against the spirit and provisions of the Convention as for example children violence interdiction, including corporal punishment in schools and family (in Sweden, Austria, Finland, Norway, Denmark, Germany, Romania and Cyprus) and also the access to the labor market under the minimum legal age (as in Portugal and Romania).

These reforms are an inspiration for all and they confirm the potential of the Convention to promote a social changes process. But there is still a lot to do. But the normative frameworks of the Convention together with the national standards mean a solid base for the future way.

We must ensure that the children's rights are approached as a main, independent and distinct issue. Children's rights count in all decision and at all time. The previous decade marked the registration of the children's right on the map. This decade has a key role in reaching their real implementation into national strategies within the framework of specific and relevant public policies and the promotion of an active participation of the civil sector and generation of an efficient control of public opinion on the government's actions.

In this context is important to mention that in year 2004 Romania adopted a law regarding the protection and promotion children's rights (Law no. 272/2004) which came into force on the 1st of January 2005. This law defines the legal framework of the observance, promotion and warranty of the children's rights, being an extensive law which approaches the child as a unique and special human being which is entitled to special care and treatment. Furthermore, the Children's Rights Protection National Authority (CRPNA) supervised by the Ministry of Labor, Social Solidarity and Family plays the main role in the issues dealing with the children's rights, it has strategic, regulation, administrative, representation and monitoring functions. At the same time has been established the Romanian Adoption Office having the role to follow-up the children qualifying for adoption and the families wishing to adopt and qualify for an adoption, the evolution of the children internationally adopted and being entitled to take measures against the children smuggling. If in the recent past the international adoptions came in a circumspect way into discussion, nowadays everything related to international adoption is very carefully and well supervised.

As a principle, the agreements entered into at international level have been put across into a clear national and local strategy as far as the children's rights concerns, within the framework of the Convention and adapted to the reality specific to each country. Irrespective of the solution, the strategy regarding the children's rights has to be clearly indicated and contained in the general politic and development process at national level inclusive by allocation of the needed resources for reaching its goals. By inobservance of this requirement occurs the risk of an insufficient and fragmentized action for the children and the children's issues may be ignored within the major political, social and economic decisions.

The number of the children protected by alternative protection services, the development of local social workers involved in the identification, assessment and support of the poor families or under risk situations in order to prevent children's abandon has increased in Romania. There have been developed local maternal assistance networks in order to provide protection of the children in need, in each local community and also for the children with special needs. As a consequence of the new laws the integration of the local Departments for Child Protection into the Social Care Departments has been accomplished at county level. This is an obvious proof that the national and international engagements are integrated into

a local strategy which obviously sustains the principle of the highest interest of the child. Unfortunately, the whole system has to be further improved inclusive by highly skilled personnel taking into consideration the specific character of this area. It is not allowed to forget that in the latter time in the mass media has been presented the case of a maternal social worker of Bistrita who is trialed for murder against a person unable to defense herself an act punishable by imprisonment from 2 to 10 years and ill treatment punishable by imprisonment from 3 to 15 years. The court may merge these punishments if both infringements are taken into consideration, but for sure is that a 4 year old boy died as a consequence of her actions and that is not allowed for a person acting as maternal assistant. Should the system have been operated in good conditions and maternal assistant should have been properly supervised the chances of the child to be still alive should have been very high. The system needs to be further perfected.

Thus, the reality of the needs of children's right has to be assessed and understood in a correct, adequate and transparent way. This is the only way enabling to follow-up of the impact of public policies on the capacity of the children to exercise their rights, their exposure to changes, to deploy support and to sustain changes. An educational campaign regarding the children's rights is implemented in Romania under the financial support of the EU. The foal of the project is to train vocational groups in the field of the new laws regarding child protection, the UN Convention on the right of the child and the EU Convention on the human rights to facilitate a better understanding of children's rights in Romania. [12]

The progress achieved in the field of children's rights has to be periodically analyzed by a public participative process in which the main players involved and also the children must be involved. We must promote a concrete involvement of the children and adolescents both as recognition of their citizenship and as a contribution to the consolidation of the democratic institution and good government. At the same time with the start of the public information campaign for prevention of child's abandon and institutionalization " Children's home is not at home" a hot line (0800-8-200-200) has been lunched in Romania in month November 2001. The hot line for children's protection is a free information and consulting service by phone specialized in child and family protection. The calls of the potential beneficiaries are taken by the qualified personnel of the hot line, consisting of psychologists, social workers and legal experts. The most calls came from potential beneficiaries requiring support for growing up children or judicial information and advice regarding maternal assistance or national adoption. All cases recorded by the hot line are monthly reported to the Children's Rights National Protection Authority and to the General Departments for Social Care and Child Protection where they are recorded, checked and solved by duly authorized persons form the specialized services.

In many counties of Romania are also in use emergency free hot lines for child protection. When a call is received a mobile team of the Social Care and Child Protection Department rapidly moves to the given place and performs an analysis of the state of facts on order to find an adequate solution for that child. At the same time the General Departments for Social Care and Child Protection do have monitoring services which are responsible for following-up the state of each child under their jurisdiction. The coming years are of crucial importance for making children's rights a reality for the children from all over the world. The legal instruments are already adopted and only the political will of all states is needed.

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[12] M. Ureche, *About Children…*

We have also to point out that the text of the Convention expressly recognizes that the parents hold the most important role in children's education. The text encourages the parents to approach with their children the children's rights subject „in a manner according to the continuously improving capacity of the child " (Art. 5).Those parents intuitively knowing the development level of the child will do this in a natural way. But we must not forget that the social nowadays facts of life are major and complex and that is why all members of the society must become aware of the importance of the observance the children's rights in the family, society, at national and international level.

STRESZCZENIE

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Ochrona praw człowieka w Europie

Kluczowym dokumentem dotyczącym ochrony praw człowieka w Europie jest Europejska Konwencja Praw Człowieka, powołująca Europejski Trybunał Praw Człowieka. Rumunia ratyfikowała Konwencję 20 czerwca 1994 r. Prawa człowieka są podstawowymi prawami i wolnościami, które przysługują wszystkim jednostkom, stanowiąc prawo do życia, wolności, wolność słowa, równego traktowania w obliczu prawa. Ogólnie ocenia się, że sytuacja dotycząca praw człowieka w Europie jest dobra. Problematyczna w tym kontekście wydaje się być Białoruś, klasyfikowana przez „The Economist" jako kraj autorytarny. Konwencja zajmuje się także prawami dzieci, stawiając je na równi z prawami człowieka. Wiele krajów zawarło ochronę praw dzieci w swoich konstytucjach, w tym m.in. Polska, Rumunia, Brazylia i inne. W 2004 r. Rumunia przyjęła ustawę odnoszącą się do ochrony i promocji praw dziecka, wskazując m.in., że dziecko zasługuje na szczególnego rodzaju ochronę i traktowanie. Uruchomiono m.in. linię telefoniczną służąca ochronie praw dziecka, oferującą bezpłatne informacje z zakresu ochrony dzieci i rodziny. Na terenie Rumunii w wielu miejscach uruchomiono również linie telefoniczne służące doraźnej ochronie dzieci. Stosowne służby ds. socjalnych są zdolne – po wpłynięciu zgłoszenia telefonicznego – do niezwłocznego podjęcia stosownej interwencji.

Słowa kluczowe: prawa człowieka, Unia Europejska, prawa dzieci.