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STRAIGHTENING THE HUMAN RIGHT TO DEVELOPMENT: THE ROLE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Progressive development, as a comprehensive economic, social, cultural and political process which aims at promotion of people's prosperity and well-being, is the main function of each state. We are talking about development, that is fair, sustainable, participatory and occurs in accordance with the full range of human rights and fundamental freedoms.

Being the very subjects of development, millions of people still live in dire need and do not fulfil their entitlement to a life of dignity, freedom and equal opportunity. Such situation directly affects the realization of a wide range of human rights. That is why today it is quite frequently expressed idea that the right to development (RTD) should guide states' activities in the field of the achievement and maintenance of the progressive development. RTD – it is a human right, by virtue of which every individual is entitled to a process of economic, social, cultural and political development in which all human rights and fundamental freedoms can be realized. It puts people at the centre of the development process.

Proclaimed by the UN «Declaration on the Right to Development» in 1986 [1], the RTD exists objectively and is completely shaped as one of the fundamental human rights. Today the RTD, like all human rights, belongs to everyone.

However, despite widespread recognition, mainly for political reasons RTD is not defined and guaranteed as a separate right in the «hard law» human rights international instruments. The only exception is the African Charter on Human and Peoples' Rights (1981) (African Charter), which provides a new conceptual ground in human rights law by exemplification of group rights, such as the right to development, the right to peace, and the right to a general satisfactory environment. The African Charter is viewed as a truly revolutionary re-articulation of rights discourse and as document that gave impulse to a holistic reading of human rights theory and practice [2, p. 43-44]. Demonstrative in this respect is the African Commission's on Human and Peoples' Rights

Decision in *Endorois case*, which affirmed the violation of the Endorois' rights and ordered the Kenyan government to restore the Endorois community's access to their land with compensation. The ruling read that as indigenous people under the African Charter, the Endorois' rights have been violated in relation to, *inter alia*, the right to development [3].

Unfortunately, bodies, created in order to protect human rights within Council of Europe's and Organization of American States' systems, cannot boast about the similar practices, as neither the European Convention on Human Rights (1950) (European Convention), nor American Convention on Human Rights (1969) protect the RTD as such. Thus, the only effective mean to ensure the protection of the RTD in states other than states-parties to African Charter is to protect the enjoyment of all «unquestionable» human rights, especially the socio-economic rights as crucial elements of the RTD.

In view of the above, it may seem that the European Court of Human Rights (ECHR or the Court) has nothing to do with the RTD. European Convention is primarily devoted to the procedural guarantees of fair hearing and equal treatment. Promotion of «social progress and better standards of life» [4, p. 1] and the protection of «freedom from want» [5] and, thus, protection of the RTD, are not the ECHR's functions. Moreover, the European Convention does not explicitly protect socio-economic rights (the few exceptions are the protection of property and the right to education – Articles 1 and 2 of the Protocol No.1).

However, the case-law of the ECHR shows that the Court, through a dynamic interpretation of the different articles of the European Convention, has gradually recognized substantive rights which may fall under the notion of socio-economic rights in a broad sense. Slowly but surely the Court is introducing a socio-economic dimension in the scope of European Convention [6, p. 172]. As far back as 1979 in case of *Airey v. Ireland* the Court held that: «Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention» [7].

Accordingly, RTD potentially could be protected through the ECHR as, in practice, socio-economic rights fall within the scope of European Convention.

Authors, who have analysed the practice of the ECHR in the field of socio-economic rights' protection (among others, E. Palmer, T. Usher, L. Clements, A. Simmons, C. O'Conneide, E. Brems, D. Barak-Erez, A. Gross, O. De Shutter, J. Lannotte, J. Sarkin, T. De Pelsmaeker, P. Auweraert), express different degrees of optimism and draw various perspectives of ECHR's potential to protect socio-economic rights.

The present article provides a set of core ECHR jurisprudence in the context of socio-economic rights. It illustrates Court's approaches in the specific areas related to the socio-economic rights. The purpose of this article is to analyze practices, trends and challenges in the field of protection of the fundamental socio-economic rights, as crucial elements of the RTD, through the ECHR.

The described below Court's case-law, which is dealing with socio-economic rights, primarily covers issues in the field of states' welfare policy (namely, the access to health and social care, financial support and other welfare needs). Although the ECHR does not always rule in favor of socio-economic rights, the key principles established in Court's case-law provide a basis for future litigations and developments.

The provisions of the European Convention mostly often invoked in relation to socio-economic rights are: Article 2 (right to life), Article 3 (prohibition of torture), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 1 Protocol No.1 (protection of property). This paper will refer to the most important cases in the selected areas.

Article 2 (right to life). Article 2 is one of the most important articles of the European Convention as it imposes on states the duty to take appropriate steps to safeguard the lives of those within its jurisdiction [8]. In its judgements the Court has confirmed that in cases where failure to protect had not resulted in death there still may be a violation of the Article 2 (e.g., *Keenan v. United Kingdom* (2002) [9] and that the application of Article 2 is possible in relation to environmental issues (e.g., *Oneryildiz v. Turkey* (2004) [10]. There were cases where Article 2 has been invoked in the event of acts and omissions of the authorities in the field of health-care or welfare policy. For example, in *Cyprus v. Turkey* (2001) the Court said that «with respect to the scope of the State's positive obligations in the provision of health care, the Court has stated that an issue may arise under Article 2 where it is shown that the authorities of a Contracting State put an individual's life at risk

through the denial of health care which they have undertaken to make available to the population generally». It noted in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction [11].

However, despite above-mentioned examples, interpreting Article 2 the Court, as a rule, adheres to the orthodox conception of «life protection» aimed at protecting individuals against unlawful killings in the traditional contexts of national security and policing. Therefore, in complaints of state's failure to protect individual health and welfare interests, though recognising that Article 2 is engaged, the Court has preferred to decide cases on the basis of Article 3 or 8 [12, p. 409].

Article 3 (prohibition of torture and inhuman or degrading treatment). Violations of Article 3 have increasingly been recognized in the complaints of state failure to provide conditions of existence that satisfy the fundamental right of all humans to be treated with dignity in relation to their basic needs [12, p. 410]. As it was in the case of *Larioshina v. Russia* (2002), the Court initiated a new approach to the protection of social rights by asserting that «a complaint about a wholly insufficient amount of social benefits may, in principle, raise an issue under Article 3 of the Convention, which prohibits inhuman or degrading treatment» [13] (the case has been found inadmissible, given *inter alia*, that the total amount of the applicant's pension and other social benefits, albeit very small, has not been demonstrated to raise issues under the Convention). In a similar case of *Budina v. Russia* (2009), the Court reiterated that it has not excluded «the possibility that the responsibility of the State may be engaged [under Article 3] in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity» [14]. Moreover, in its judgment in the case of *Moldovan and Others v. Romania* (No. 2) (2005), the Court held that the living conditions of a group of evicted Roma were so horrible that amount to degrading treatment and a breach of Article 3 [15].

Article 6 (right to a fair trial). In cited above case of *Airey v. Ireland* (1979) ECHR for the first time emphasised on the right to free legal assistance as a «social» dimension of the right to a fair trial (the Court decided that although Article 6 (3) only made explicit reference to legal aid in criminal matters, a right to legal aid in civil matters could be inferred from the right to a fair trial) [7]. According to Ana Gómez

Here, the provisions of Article 6 have been applied in disputes about socio-economic rights as a result of the ECHR's interpreting the concept of «civil rights and obligations» in a dynamic and constructive way [16, p. 9]. In the cases concerning social-security benefits and payment of social contributions the Court has assessed the public-law and private-law aspects of the rights in question to determine whether they were of a civil nature. In subsequent cases the question as to whether disputes about social-security benefits and social contributions fell within the scope of Article 6 has ceased to be asked (e.g., *Burdov v. Russia* (2002), *Perhirin and 29 others v. France* (2002), *Zednik v. the Czech Republic* (2005), *M.B. v. France* (2005), *Diaz Ochoa v. Spain* (2006) [16, p. 10-22].

Article 8 (right to respect for private and family life). Article 8, being the only article that refers to the economic well-being of the country, has been associated primarily with the socio-economic right to housing. However, in order to comply with Article 8, states may be required to protect the individuals with regard to a wider range of social needs. In the cases of vulnerable individuals, in addition to the negative obligation not to interfere in the private and family life and home, state may be required to take positive steps to provide them with the conditions that would facilitate the implementation of their socio-economic rights. The extent to which Article 8 gives rise to the positive state obligations to make social provisions for vulnerable individuals was, *inter alia*, considered by ECHR in the cases of *Botta v. Italy* (1998), *Zehnalová and Zehnal v. the Czech Republic* (2002), *Sentges v. the Netherlands* (2003) [12, p. 414-415].

Article 14 (prohibition of discrimination). Article 14 constitutes one particular ingredient, namely, non-discrimination, of each of the rights safeguarded by the European Convention (*Marckx v. Belgium* (1979) [17]. The case-law of the ECHR's evidences that Article 14 also became quite an effective tool against discrimination in the accessibility and enjoyment of socio-economic rights (as examples, *Michael Matthews v. the United Kingdom* (2000), *Willis v. the United Kingdom* (2002), *Koua Poirrez v. France* (2003), *Stec and others v. the United Kingdom* (2006), etc.) [16, p. 31-37].

Thus, the analysis of the ECHR case-law has shown that, although on a small scale, the Court for many years interweaves socio-economic rights with the existing provisions of the Conventions. The ECHR's practice lays the foundations for the social and economic rights protection through Court's own interpretation of the traditional canons of civil

and political rights and the development of positive state obligations in Articles 3, 6, 8 and 14 of the European Convention. Given the difficulties associated with the justiciability of the RTD, the ECHR practice makes an important contribution to the strengthening of the right to development not only in Europe, but worldwide.

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Анотація

Якубовська Н.О. Зміцнюючи право на розвиток: роль Європейського суду з прав людини – Стаття.

Статтю присвячено розгляду практики ЄСПЛ, пов'язаної із захистом соціально-економічних прав людини як елементів, що складають право на розвиток. Аналіз низки справ, розглянутих ЄСПЛ, показав, що в деяких випадках Суд інтерпретує статті 3, 6, 8 і 14 Європейської Конвенції про захист прав людини та основних свобод як такі, що покладають на держави позитивні зобов'язання з забезпечення ефективної реалізації індивідами їх соціально-економічних прав. Враховуючи труднощі, пов'язані з судовим захистом права на розвиток, розглянута практика ЄСПЛ вносить важливий внесок у зміцнення права на розвиток.

Ключові слова: права людини, право на розвиток, соціально-економічні права, Європейський суд з прав людини, Європейська Конвенція про захист прав людини і основних свобод.

Аннотация

Якубовская Н.А. Укрепляя право на развитие: роль Европейского суда по правам человека – Статья.

Статья посвящена рассмотрению практики ЕСПЧ, связанной с защитой социально-экономических прав человека как элементов, составляющих право на развитие. Анализ ряда дел, рассмотренных ЕСПЧ, показал, что в некоторых случаях Суд интерпретирует статьи 3, 6, 8 и 14 Европейской Конвенции о защите прав человека и основных свобод как возлагающие на государства позитивные обязательства по обеспечению эффективной реализации индивидами их социально-экономических прав. Учитывая трудности, связанные с судебной защитой права на развитие, рассмотренная практика ЕСПЧ вносит важный вклад в укрепление права на развитие.

Ключевые слова: права человека, право на развитие, социально-экономические права, Европейский суд по правам человека, Европейская Конвенция о защите прав человека и основных свобод.

Summary

Yakubovska N.O. Strengthening the right to development: the role of the European Court of Human Rights – Article.

The article studies the ECHR practice related to the protection of socio-economic rights as the elements of the right to development. Analysis of the number of ECHR cases has shown that sometimes Court interprets Articles 3, 6, 8 and 14

of the European Convention for the Protection of Human Rights and Fundamental Freedoms as imposing on states positive obligations to secure the effective enjoyment by individuals of their socio-economic rights. Given the difficulties associated with the judicial protection of the right to development, the ECHR practice is as an important contribution to the strengthening of the right to development.

Keywords: human rights, the right to development, socio-economic rights, the

European Court of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms.