University of Seville

Faculty of Law

Doctoral Program in International Law

PROTECTION OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN EUROPE IN THE 21ST CENTURY

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A thesis submitted for the degree of

DOCTOR IURIS (DOCTORADO DE DERECHO)

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2023

DEDICATION

The Doctoral thesis is dedicated to the bright memory of
my dear grandparents:

Valiullin Akhnaf Khanifovich and Valiullina Anuza Khabibovna

Kadyrova Yanifa Salim'yanovna and Kadyrov Nyk Ramazanovich

The Doctoral thesis is also dedicated to the bright memory of
my dear great grandparents:

-Valiullina Khanif Valiullovich;
- Valiullina Khajar Abdullovna;

- Gabidullina Maftukha Bayazitovna and Gabidullin Khabib Gabidullovich;

- Davletbakov Salimyan Suleymanovich and Davletbakova Gainiyamal;

-Kadyrov Ramazan Abdrakhmanovich, and his sons: Kadyrov Brilliant Ramazanovich, and Kadyrov Magnit Ramazanovich;

- Kadyrova Nakia Sharifullovna.

Content of Doctoral thesis

Introduction of the Doctoral thesis

Importance of the Doctoral thesis. The Vienna Declaration and Program of Action of 1993 states that: "All human rights are universal, indivisible, interdependent and interrelated[1]". Economic, social, and cultural rights are one of the most important rights of our time, attracting constant attention. They concern maintenance and normative fixing of social and economic conditions of life of the individual, define a position of the person in the sphere of work and life, employment, welfare, social security for the purpose of creation of conditions at which people can be free from fear and need. Their size and degree of security depend largely on the state of the economy and resources, and therefore their guarantees are less developed than civil and political rights.

There is the state's clear failure to comply with its international obligations and constitutional norms to ensure a decent life for everyone is particularly evident in the economic, social cultural sphere:

- ✓ the lack of security of the right to work and its favourable conditions,
- ✓ the fair and timely payment of wages,
- ✓ the violation of the right to a decent standard of living, including adequate food, clothing, housing, health care, social assistance, and other necessary benefits. The trend of increasing the number of violations of these rights and freedoms continues today, which leads to an increase in social tension and loss of public confidence in all structures of state power. Moreover, new problems, namely, worsening climate change, coronavirus infection (COVID-19), require an adequate from international organizations at the universal and regional levels and, of course, states.

The 20th Summit of the Heads of State of the Shanghai Cooperation Organization was held in Dushanbe on September 17, 2021, following which the leaders of the countries adopted a joint declaration. The SCO member States affirmed:

- "the universality, indivisibility, interdependence and interconnectedness of all human rights, as well as their obligations to respect human rights and fundamental freedoms;
- non-application of double standards in human rights issues and interference in the internal affairs of other States under the pretext of their protection;
- to create favorable conditions for the development of trade and investment activities and to increase cooperation in the trade and economic sphere;
- to take measures to deepen cooperation in the field of music, theater and fine arts, literature, cinematography, as well as archival, museum, library affairs[2]".

The importance of the Doctoral thesis can be presented in **three perspectives**:

1. *In theoretical and methodological terms*, there is a need to analyze and study existing international and regional legal documents and academic publications on this issue in order to

[1] UN (Distr. General), 'Vienna Declaration and Program of Action' A/CONF.157/23 (12 July 1993).

[2] 'Shanghai Cooperation Organization countries adopted a joint declaration' <https://tass.ru/mezhdunarodnaya-panorama/12433753> accessed 5 May 2023.

clarify the international and regional legal regulation of economic, social and cultural rights. No less important is the problem of interdisciplinary interrelation of the legal basis for studying the protection of second-generation rights with other approaches in international law.

2. *In scientific and instrumental terms*, there is a need to study the historical features of the formation and ways of further development of economic, social and cultural rights. This will expand the understanding of the formation of the institute for the protection of these rights not only from legal positions, but also from the point of view of other disciplines.

3. *In applied terms*, the relevance of the topic of the doctoral thesis is related to understanding the nature of the rights of the first and second generation, which should be based on international and regional experience. This will make it possible to develop optimal tasks for States and eliminate possible negative effects of this process. As S. Greer stated in the journal article 'Balancing and the European Court of Human Rights: A Contribution to the Hebermas - Alexy Debate' that on the one hand 'the balance between the general interest of the community and the protection of the individual's fundamental rights raises deep problems debated by some of the world's leading legal, political and social theorists[3]" and explained it by contrasting two theories: 'hostile' and 'sympathetic', and, on the other hand, it "reduces all debate about the relationship between rights[4]".

The purpose of the Doctoral research is to create the author's concept of international legal and national protection of economic, social, and cultural rights in Europe in the 21st century.

The objectives of **the Doctoral research** are aimed at analysing:

- The contribution of the universal level to economic, social, and cultural rights' protection (Chapter 1).
- The contribution of the Inter-American and African regional level in featuring economic, social, and cultural rights (Chapter 2).
- The role of the Council of Europe in protection of economic, social, and cultural rights (Chapter 3).
- The role of the European union in protection of economic, social, and cultural rights (Chapter 4).
- External and internal challenges facing economic, social, and cultural rights (Chapter 5).

The degree of academic development of the Doctoral thesis. The research problem has determined the need to appeal to various branches of knowledge, beside international law, European union law, and comparative law, including works in the field of philosophy of law, political science, sociology, theory of state and law, history of state and law, and other branches of legal sciences.

[3] Greer S, 'Balancing and the European Court of Human Rights: A Contribution to the Hebermas-Alexy Debate' in *The Cambridge Law Journal* (Vol. 63, № 2 (July 2004)) P.413.

[4] Ibid, P.414.

The foundations of the modern concept of human rights and freedoms, as well as their constitutional guarantees, were laid in the works of outstanding foreign scientists of the past: Aristotle, M. Cicero, A.I. Dovatur, L. Duhaime, H. Grotius, G.V.F. Hegel, V.F. Humbolt, I. Kant J. Locke, K. Marx, G. Ellinek, Montesquieu, T. Paine, S. Pufendorf, Zh-J. Rousseau, A. Schweitzer, Tullius and others. I. Kant's theoretical and philosophical developments played an important role in the development of the concept of human and civil rights his substantiation of the concepts of 'freedom' and 'equality' not just as conditions of bourgeois economic and political relations, but primarily as the most important elements of human dignity.

This Doctoral thesis is based on the generalisation and critical analysis of works of many authors in the following chapters:

- Chapter I 'The contribution of the universal level to economic, social, and cultural rights' protection' relies on works of: Y. Abdulqawi, A. Allardt, Aristotle, R. Balakrishnan, L. Y. Baranova, N. Bernaz, W. T. Blackstone, G. Bovt, P. Brander, D. Brinkley, G. Brown, E. Butler, A. Byrnes, R. Cassin, J. L. Cernic, A. Chapman, M. Cicero, R. I. Conot, M. Cranston, M. Craven, J. Donelly, R.S. Downie, A. Eide, F. Engels, J. E. Falkowski, D. Felix, M. Freeman, S. Friedman, D. J. Galligan, R. Gavison, V.G. Gig, M.A. Glendon, M. Dennis, M. Dowell – Jones, R. S. Downie, L. Duhaime, G.V. F. Hegel, K.N. Hevener, V.G. Hoof, T. Hopes, D. Horowitz, V.F. Humbolt, J. P. Humphrey, V. D. Ignatov, G. Jellinek, A. Jennifer, F. Jhabvala, G. Johnson, H. Kabir, S. S. Kantha, G. Kevin, Y. Khushalani, E. Kolodner, K. Kont-Kontson, A.I. Levin, S. Liebenberg, J. Locke, S. Lukes, L. J. Macfarlane, T.R. Machan, C. Mahon, V. L. Malkov, D. Maras, D. Marcus, J. Maritain, K. Marx, D. McGoldrick, R. P. Mckeon, A. Menger, V. D. Mordachev, J. Morsink, A. Mowbray, A. Muller, C. Murphy, B. Mussolini, R. Nozick, J. Oloka-Onyang, G.S. Ostapenko, T. Payne, P. Pereira, R. Plant, A. Potyara, J. E. Powell, S. V. Puntambekar, G. Quinn, J. Rawls, R. Robertson, A. Rosas, S. A. Rosenbaum, S. Rubin, S. Russel, W.A. Schabas, J. Schultz, C. Scott, H. Shue, M. C. Sepulveda, K. Shields, B. L. Sohn, D. J. Stampford, H. Steiner, D. Stewart, A. I. Subetta, A. Tarazarian, B. Toebes, C. Tomuchat, Tullius, R. Unger, E.W. Vierdag, S. Waltz, C. Wellman, D. Whelan, G. Winter, A. Wolfe, and G. Young,

- Chapter 2 'The contribution of the Inter-American and African regional level in featuring economic, social, and cultural rights' is based on works of: A. K. Abashidze, V. Abramovich, S.C. Agbakwa, A. J. Ali, M. Aliverti, P. Alston, A. A. An-na'im, A. Barak, S.T. Bulto, S. K. Burma, M. Cepeda, M. K. Davtyan, O. Dejo, K. Drzewicki, B. Ebow, M. Evans, H.P. Faga, L. Fishbayan, R. Gittleman, D. A. Gonzalez – Salzberg, S. Grossman, M. Hansungule, R. Hanski, A. Ispolinov, M. Langford, S. Liebenberg, M. Linde, L. Louw, E. A. Lukasheva, M. Makau, A. A. Mazrui, O. Mba, J. M. Mbaku, T. Melish, G.W. Mugwanya, R. Murray, M. Mutua, A. M. Nikolaev, O. B. Obinna, C.A. Odinkali, O.C. Okafor, K. O' Regan, F. Ouguergouz, K. C-J. Nkongolo, C. Nwobike, O. Parra, J. M. Pasqualucci, Pierre De Vos, E. Posner, J. Rossi, O.A. Ruchka, M. Scheinin, M. Ssenyonjo, A. M. Solntsev, M. Souxie, P. Tarre, N.J. Udomnina, F. Viljoen, S. Wiles. S. A. Yeshanev, and J. Yoo.

- Chapter 3 'The role of the Council of Europe in protection of economic, social, and cultural rights' contains works of: A. K. Abashidze, J. Akandji – Kombe, M. Aeyal, P. Alston, M. Bakunin, R. Beddard, R. Birk, C. Blacke, A.F. Boyd, R. Brillat, E. Cannizzaro, R. B. Churchill, H. Cullen, J. Darcy, A. U. De Torres, C. Droge, A. Eide, D.B. Erez, E. Fedotov, A. Fisher, J. R. Gillingm, D. Gomien, T. V. Gracheva, S. Greer, S. B. Eremenko, I. Koch, D.

Harris, K. Hausler, F. H. Heller, M. D. Hill, D. A. Iagofarov, O.A. Ishakova, N. V. Kalashnikova, U. Khaliq, K. Kont – Kontson, P. Lea, R. Lines, I. Liora, K. Lochner, E. A. Lukasheva, H. Macmillian, N. T. Matiusheva, P. F. Markham, J. G. Merrils, M. Mikkola, E. P. Nikolas, M. Novitz, M. Novak, C. O'Cinneide, P. Patrick, E. Palmer, J. Polakiewicz, G. Raimondi, L. A. Rezvanova, O. Ruchka, O.D. Schutter, K. Shields, V. Shiva, V. I. Shkatulla, P. M. Stirk, K. Taylor, C. Tomuchat, P. Uroc, M. M. Utyashev, L. M. Utyasheva, V. P. Viljanen, E.D. Vittor, E.D. Volokhova, C. Walbrick, L. Wildhaber, T. V. Zhukova, and L. Zwaak.

- Chapter 4 'The role of the European union in protection of economic, social, and cultural rights' includes works of: M. M. Biryukov, R. Bereijo, K. Boyle, J. L. Cernic, L. Charpentier, C. Coppel, S. Garben, Y. Dogan, S. Douglas -Scott, A.S. Ispolinov, S. Y. Kashkin, G. S. Katrougalos, K. Kont – Kontson, M. Kudryavtsev, N. Lockhart, F. Mancini, P. Margules, A. Mowbray, A. O'Neill, A. Peters, M. Pitkanen, H. Rasmussen, O. D. Schutter, N. Shishkova, R. Stamer, S. Sunstein, K. M. Tabarintseva – Romanova, M. Taylor, A. Tryfonidou, M. Uhry, J. H. Weler, and S. White.

- Chapter 5 'External and internal challenges facing economic, social, and cultural rights' mentions works of such authors as: S. Abdelnaser, S. Ali, A. P. Bandurin, K. Bennoune, S. A. Buchakov, K. Dzehtsiarov, A. Fedorako, S. I. Glushkova, E. S. Krasinets, E. Khoroltseva, E.S. Kubishin, J. May, B. Mayer, F. Meehan, N.I. Oreshina, C. Panzera, R. Perrouchou, E. Pobjie, C. Pring, G. Pring, A. Quinton, L. P. Ryazanova, T. B. Smashnikova, V. V. Sobolnikov, A. M. Solntsev, A. Spadaro, M. A. Stalnova, O. Startceva, E. V. Tyutyukanova, M. N. Utyatsky, G.S. Vitkovskaya, and E.D. Wit.

The legal framework of the Doctoral thesis is based on international treaties such as Universal Declaration of Human Rights of 1948, International Convention on the Elimination of All Forms of Racial Discrimination of 1965, International Covenant on Economic, Social and Cultural rights of 1966, International Covenant on Civil and Political Rights of 1966, Convention on the Elimination of Discrimination against Women of 1979, Convention on the Rights of the Child of 1989, Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, Convention on the Rights of Persons with Disabilities of 2006, and other documents. Among regional treaties it is important to mention: European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. It is a treaty, in which rights and freedoms are mainly (99%) civil and political. States have binding obligations only if they accepted them. However, this document is a 'binding instrument' to be read according to up-today circumstances to make 'effective protection to economic, social, and cultural rights' by those civil and political rights. Progressively the European Court of Human Rights has considered the economic and social dimension of civil and political rights in the Convention. Moreover, the legal framework includes the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1952, European Social Charter of 1961 and European Social Charter (Revised) of 1996, American Convention on Human Rights of 1969, Additional Protocol to the American Convention on Human Rights of 1988 (San Salvador Protocol), the African Charter on Human and People's Rights of 1981, the African Charter on the Rights and Welfare of the Child of 1990, Protocol to the African Charter on Human and People's rights concerning the rights of women in Africa of 2003 and other documents.

The empirical basis of the Doctoral thesis were the case-law of the African Commission and Court of Human and Peoples' Rights, the Court of Justice of the European Union, the European Committee of Social Rights, the European Commission and Court of Human Rights, and the Inter-American Commission and Court of Human Rights.

The subject of the Doctoral thesis is the issues of conceptualization, protection, and recognition of economic, social, and cultural rights in Europe in the 21 century and making recommendations with an emphasis on the organization and activities on protection of these rights in the Council of Europe, the European Union, and other regional organizations.

The structure of the Doctoral thesis. It consists of two parts:

- Part 1. Philosophical and ideological perspectives in economic, social, and cultural rights conceptualization, protection and recognition at the universal level and its features at the Inter-American and African regional levels.

- Part 2. The features of economic, social, and cultural rights' protection at the European level.

These parts include the following Chapters:

- Chapter 1. The contribution of the universal level to economic, social, and cultural rights' protection.
- Chapter 2. The contribution of the Inter-American and African regional level in featuring economic, social, and cultural rights.
- Chapter 3. The role of the Council of Europe in protection of economic, social, and cultural rights.
- Chapter 4. The role of the European union in protection of economic, social, and cultural rights.
- Chapter 5. External and internal challenges facing economic, social, and cultural rights.

Economic, social, and cultural rights which are fundamental, and essential for the dignity and well-being of individuals and communities, are recognized by international law and are protected at both the universal and regional levels. Previously, in **Part I** "Philosophical and ideological perspectives in economic, social and cultural rights conceptualization, protection and recognition at the universal level and its features at the Inter-American and African regional levels", **Chapter 1** was devoted to the protection of economic, social, and cultural rights at the universal level. Among a variety of documents adopted at the universal level, Peace treaties, the Universal Declaration on Human Rights, and the International Covenant on Economic, Social and Cultural Rights contributed to the protection of abovementioned human rights. Analysis of nature of the rights of the second generation is based on types of State obligations (specifically, the following types: positive and negative; cost free and expensive obligations; progressive and immediate obligations; vague and precise; justiciable and non-justiciable; derogable and non-derogable; thin and thick). As a result, second-generation rights are also characterised by the obligations which were originally imposed to implement rights of the first generation. Considering development of state obligations, two methods, namely, a method centring upon obligations of conduct and result, and a method centring upon obligations to respect, protect and

fulfil, are important and used by the courts. In examining state obligation on the issue of economic, social, and cultural rights' realization, the emphasis is usually placed on the International Covenant on Economic, Social and Cultural Rights 1966, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966.

In the **Chapter 2** of Part I "The contribution of the Inter-American and African regional level in featuring economic, social, and cultural rights", legal regulation of both regions on the issue of state obligations for second-generation rights protection and case-law of the African Commission and Court on Human and People's Rights, and the Inter-American Commission and Court on Human Rights. Regional protection at analysed levels ensures that economic, social, and cultural rights are tailored to the specific needs and circumstances of both regions. Their protection in these regions reduces poverty and helps individuals to have access to necessities and participation in the economic and social life of own communities; promotes gender equality and addresses gender-based discrimination and ensures that women have equal access to education, employment, and healthcare; promotes, and preserves cultural diversity. The protection of these rights in the Inter-American and African regions can help individuals and communities to maintain and celebrate their cultural traditions and practices, participate in and contribute to the economic, social, and cultural progress of their societies. These rights are recognized and protected at both the universal and regional levels, and their protection is essential for the well-being and prosperity of individuals and communities.

The **Part II** is devoted to economic, social, and cultural rights in the Council of Europe and the European Union. It is well known that rights of the second generation apply to all people, regardless of their nationality, ethnicity, gender, or any other status. Their recognition ensures that all individuals have access to basic needs such as food, shelter, education, and healthcare. The Council of Europe and the European Union are two separate international organizations with different mandates and areas of focus. While both organizations promote human rights, including economic, social, and cultural rights, there are some differences in how these rights are protected.

The **Chapter 3**, which is called 'The role of the Council of Europe[5] in protection of economic, social, and cultural rights', consists of 4 paragraphs. The Chapter begins with two subparagraphs, including the reasons of why the Council of Europe and its role is important in ESCR protection, lists the ways of strengthening economic, social, and cultural rights, and describes possibilities for additional protocols to the (Revised) European Social Charter. This Chapter discusses creation, history, origin of the European Social Charter 1961[6] and provides

[5] The Council of Europe is primarily focused on promoting human rights, democracy, and the rule of law across its 46 member states. It has adopted several conventions and resolutions that promote economic, social, and cultural rights, including the European Social Charter, which sets out a comprehensive range of ESCR. The Council of Europe's monitoring mechanisms, such as the European Committee of Social Rights, are tasked with assessing member states' compliance with ESCR and promoting their effective implementation.

[6] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

answers for the following questions: 1) What was the purpose of the adoption of the European Social Charter 1961? 2) Was the adoption of the two instruments, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the European Social Charter 1961, a copy of the actions of Member States at the universal level? 3). What was the attitude of countries towards second-generation rights at the regional level after the Second World War? It also compares the European Social Charter 1961 with the Revised European Social Charter 1996, analyses states' obligations under these both Charters and its difference from the obligations set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The features of collective complaint procedure, its advantages, disadvantages, and comparison with the procedure provided by the Optional Protocol of the ICESCR, and selected case-law of the European Committee of Social Rights and the European Court of Human Rights are presented in the Chapter 2.

In the **Chapter 4** the role of the European Union in protection of economic, social, and cultural rights is considered. It is crucial for the further analysis for several reasons: 1. The rights of the second generation are essential for upholding human dignity and ensuring that everyone can live a life of basic human decency. 2. These rights are necessary for achieving social justice and reducing inequality. By guaranteeing access to basic services like healthcare, education, and housing, the European Union helps to level the playing field and reduce disparities between different social groups. 3. An access to basic resources and opportunities can contribute to sustainable economic growth. When people can participate fully in the economy, they can contribute to its growth and development. 4. By ensuring that everyone has equal access to political and economic opportunities, the EU helps to promote civic engagement and participation. 5. The EU has committed to protecting these rights through various international treaties and agreements, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights 1966. Fulfilling these obligations is essential for maintaining the EU's credibility on the international stage. The Chapter 4 consists of 5 paragraphs, which include: Development of the EU legislation on economic, social, and cultural rights (4.1); the comparative analysis of the Charter of Fundamental Rights of the European Union 2000 (4.2); selected case-law of the Court of Justice of the European Union with the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (4.3); establishing balance between economic and social rights (4.4); selected case-law of the Court of Justice of the European Union on state obligations aimed at economic, social, and cultural rights protection (4.5).

In the **Chapter 5** External and internal challenges facing economic, social, and cultural rights are considered. Main attention is paid to COVID-19, climate change and illegal immigration. How do they affect the rights of the second generation? What actions are being taken by states and how this differs from the impact on the rights of the first generation?

Methodological basis of the Doctoral thesis. Methodology of the Doctoral thesis is sociological positivism (analysing of norms in historical and sociological contexts). This Doctoral thesis is conducted under two methodological tools:

- inductive approach (from practical to general), including case-law, specific norms, and

- deductive approach (from the general to the particular), including doctrinal references.

In order to achieve the goal of the Doctoral thesis modern methods of cognition of phenomena and processes of legal reality is used. During conducting the research for the Doctoral thesis. both general scientific (historical, dialectical, system) and private (formal-legal, comparative-legal) and other research methods are used. A comparative analysis of the domestic experience and experience of foreign countries in the legal support of the constitutional rights of citizens allows us to develop models for the optimal use of foreign experience in modern conditions.

The practical significance of the Doctoral thesis lies in the fact that the conclusions and proposals formulated in it can be used to improve international and regional legislation on economic, social, cultural rights and their constitutional and legal support, as well as in practical activities for the protection of rights and freedoms. The results of the research will contribute to the development of academic ideas about the legal nature of economic, social, and cultural rights, the mechanism of implementation of the European social standards.

The main provisions and conclusions of the Doctoral thesis were discussed at:

-International Scientific and Practical Conference ‘Traditions and innovations in the system of modern law’ (May 1, 2023, Ufa);

-Forum on Language and the Law – Legal Interpretation (16th of April 2022, S.J. Quinney College of Law, Utah, the United States of America);

-International Conference "Legal Forum 2021’ (November 11-13, 2021, Moscow);

-XLII International Scientific and Practical Conference ‘Russian Science in the modern world’ (November 30, 2021, Moscow);

-International Conference ‘Legal Reality in the context of intercultural strategic dialogue’ (December 2, 2021, Pyatigorsk);

-International Scientific and Practical Conference ‘The role of science and education in the modernization of modern society’ (December 10, 2021, Kaluga);

-I All-Russian Scientific and Practical conference 'Karbyshev readings’ (with international participation) (December 15-17, 2021, Tyumen);

-II International Student Scientific and Practical Conference "Linguistics in the era of digitalization: actual problems and prospects of development", April 20-21, 2022, Pyatigorsk;

- IV International Scientific and Practical Conference ‘Information Technologies in the Digital Economy’ (Yekaterinburg, April 22, 2020);

-International Scientific and Practical Conference ‘Socio-cultural, ethnic and linguistic processes in the Eurasian space’ (Ufa, December 13-14, 2019);

- Joint Meeting of the round tables ‘Legal Source studies in research and educational practices: theoretical, methodological, and methodological problems’ and ‘Soviet Constitutionalism of 1917-1925: doctrine, legislation, and representations’ (Yekaterinburg, November 30, 2019);

- Sixth Summer School ‘70 years of Universal Declarations of Human Rights: Heritage and challenges of modernity’ (Yekaterinburg, July 2-6, 2018).

For fulfilling the requirement of EURODOC, some of the materials underlying the Doctoral thesis were collected during several **research stays**:

-University of Stockholm (Stockholm, Sweden, May 2021 – September 2021),

-University 'La Sapienza' of Rome (Rome, Italy, November 2018 – June 2019),

-Ural State Law University (Yekaterinburg, Russia, October 2017 – March 2021),

-Queens University Belfast (Belfast, Northern Ireland, UK, March – April 2017).

The structure of the Doctoral thesis. It consists of an introduction, five chapters, tables of the selected case-law, a conclusion, and bibliography.

Introducción de la tesis Doctoral

Importancia de la tesis Doctoral. La Declaración y Programa de Acción de Viena de 1993 establece que: "Todos los derechos humanos son universales, indivisibles, interdependientes e interrelacionados[7]". Los derechos económicos, sociales y culturales son uno de los derechos más importantes de nuestro tiempo y atraen una atención constante. Se refieren al mantenimiento y la fijación normativa de las condiciones sociales y económicas de vida del individuo, definen una posición de la persona en la esfera del trabajo y la vida, el empleo, el bienestar, la seguridad social con el fin de crear condiciones en las que las personas puedan liberarse del miedo y la necesidad. Su tamaño y grado de seguridad dependen en gran medida del estado de la economía y los recursos, y por lo tanto sus garantías están menos desarrolladas que los derechos civiles y políticos.

Existe un claro incumplimiento por parte del Estado de sus obligaciones internacionales y normas constitucionales para garantizar una vida digna para todos, que es particularmente evidente en el ámbito económico, social y cultural:

- ✓ denunciar la falta de seguridad del derecho al trabajo y sus condiciones favorables,
- ✓ velar por el pago justo y oportuno de los salarios,
- ✓ la violación del derecho a un nivel de vida digno, que incluya alimentación, vestido, vivienda, atención médica, asistencia social y otros beneficios necesarios. La tendencia de aumentar el número de violaciones de estos derechos y libertades continúa hoy, lo que conduce a un aumento de la tensión social y la pérdida de la confianza pública en todas las estructuras del poder estatal. Además, los nuevos problemas, a saber, el empeoramiento del cambio climático, la infección por coronavirus (COVID-19), requieren una adecuada de las organizaciones internacionales a nivel universal y regional y, por supuesto, de los Estados.

La XX Cumbre de Jefes de Estado de la Organización de Cooperación de Shanghai se celebró en Dushanbe el 17 de septiembre de 2021, tras lo cual los líderes de los países adoptaron una declaración conjunta. Los Estados miembros de la OCS afirmaron:

-"la universalidad, indivisibilidad, interdependencia e interconexión de todos los derechos humanos, así como sus obligaciones de respetar los derechos humanos y las libertades fundamentales;

- la no aplicación de dobles raseros en cuestiones de derechos humanos y la injerencia en los asuntos internos de otros Estados con el pretexto de su protección;

- crear condiciones favorables para el desarrollo de actividades comerciales y de inversión y aumentar la cooperación en el ámbito comercial y económico;

- tomar medidas para profundizar la cooperación en el campo de la música, el teatro y las bellas artes, la literatura, la cinematografía, así como los asuntos de archivos, museos y bibliotecas[8]".

[7] UN (Distr. General), 'Vienna Declaration and Program of Action' A/CONF.157/23 (12 July 1993).

[8] 'Shanghai Cooperation Organization countries adopted a joint declaration' <https://tass.ru/mezhdunarodnaya-panorama/12433753> accessed 5 May 2023.

La importancia de la tesis Doctoral se puede presentar en **tres perspectivas**:

1. *En términos teóricos y metodológicos,* es necesario analizar y estudiar los documentos jurídicos y publicaciones académicas internacionales y regionales existentes sobre este tema para aclarar la regulación jurídica internacional y regional de los derechos económicos, sociales y culturales. No menos importante es el problema de la interrelación interdisciplinaria de la base jurídica para estudiar la protección de los derechos de segunda generación con otros enfoques del derecho internacional.

2. *En términos científicos e instrumentales,* es necesario estudiar las características históricas de la formación y las formas de mayor desarrollo de los derechos económicos, sociales y culturales. Esto ampliará la comprensión de la formación del instituto para la protección de estos derechos no solo desde posiciones legales, sino también desde el punto de vista de otras disciplinas.

3. *En términos aplicados,* la relevancia del tema de la tesis doctoral está relacionada con la comprensión de la naturaleza de los derechos de la primera y segunda generación, que debe basarse en la experiencia internacional y regional. Esto permitirá desarrollar tareas óptimas para los Estados y eliminar posibles efectos negativos de este proceso. Como S. Greer afirmó en el artículo de revista 'Balancing and the European Court of Human Rights: A Contribution to the Hebermas-Alexy Debate' que, por un lado, "el equilibrio entre el interés general de la comunidad y la protección de los derechos fundamentales del individuo plantea profundos problemas debatidos por algunos de los principales teóricos jurídicos, políticos y sociales del mundo[9]" y lo explicó contrastando dos teorías: 'hostil; y 'comprensiva', y, por otro lado, "reduce todo debate sobre la relación entre los derechos[10]".

El propósito de la tesis Doctoral es crear el concepto del autor de protección legal y nacional internacional de los derechos económicos, sociales y culturales en Europa en el siglo XXI.

Los objetivos de la tesis Doctoral están orientados a analizar:

- La contribución del nivel universal a la protección de los derechos económicos, sociales y culturales (Capítulo 1).
- La contribución del nivel regional interamericano y africano en la presentación de los derechos económicos, sociales y culturales (Capítulo 2).
- El papel del Consejo de Europa en la protección de los derechos económicos, sociales y culturales (Capítulo 3).
- El papel de la Unión Europea en la protección de los derechos económicos, sociales y culturales (Capítulo 4).
- Desafíos externos e internos que enfrentan los derechos económicos, sociales y culturales (Capítulo 5).

[9] Greer S, 'Balancing and the European Court of Human Rights: A Contribution to the Hebermas-Alexy Debate' in *The Cambridge Law Journal* (Vol. 63, № 2 (July 2004)) P.413.

[10] Greer S, 'Balancing and the European Court of Human Rights: A Contribution to the Hebermas-Alexy Debate' in *The Cambridge Law Journal* (Vol. 63, № 2 (July 2004)) P.414.

El grado de desarrollo académico de la tesis Doctoral. El problema de la investigación ha determinado la necesidad de apelar a diversas ramas del conocimiento, además del derecho internacional, el derecho de la Unión Europea y el derecho comparado, incluidos trabajos en el campo de la filosofía del derecho, la ciencia política, la sociología, la teoría del Estado y el derecho, la historia del Estado y el derecho y otras ramas de las ciencias jurídicas.

Los fundamentos del concepto moderno de derechos humanos y libertades, así como sus garantías constitucionales, se establecieron en los trabajos de destacados científicos extranjeros del pasado: Aristóteles, M. Cicerón, A. I. Dovatur, L. Duhaime, H. Grotius, G. V. F. Hegel, V. F. Humbolt, I. Kant J. Locke, K. Marx, G. Ellinek, Montesquieu, T. Paine, S. Pufendorf, Zh-J. Rousseau, A. Schweitzer, Tulius y otros. I. Los desarrollos teóricos y filosóficos de Kant desempeñaron un papel importante en el desarrollo del concepto de derechos humanos y civiles, su fundamentación de los conceptos de "libertad" e "igualdad" no solo como condiciones de las relaciones económicas y políticas burguesas, sino principalmente como los elementos más importantes de la dignidad humana.

Esta tesis doctoral se basa en la generalización y el análisis crítico de trabajos de muchos autores en los siguientes capítulos:

- El Capítulo I 'La contribución del nivel universal a la protección de los derechos económicos, sociales y culturales' se basa en las obras de: Y. Abdulqawi, A. Allardt, Aristóteles, R. Balakrishnan, L. Y. Baranova, N. Bernaz, W. T. Blackstone, G. Bovt, P. Brander, D. Brinkley, G. Brown, E. Butler, A. Byrnes, R. Cassin, J. L. Cernic, A. Chapman, M. Cicero, R. I. Conot, M. Cranston, M. Craven, J. Donelly, R. S. Downie, A. Eide, F. Engels, J. E. Falkowski, D. Felix, M. Freeman, S. Friedman, D. J. Galligan, R. Gavison, V. G. Gig, M. A. Glendon, M. Dennis, M. Dowell – Jones, R. S. Downie, L. Duhaime, G. V. F. Hegel, K. N. Hevener, V. G. Hoof, T. Hopes, D. Horowitz, V. F. Humbolt, J. P. Humphrey, V. D. Ignatov, G. Jellinek, A. Jennifer, F. Jhabvala, G. Johnson, H. Kabir, S. S. Kantha, G. Kevin, Y. Khushalani, E. Kolodner, K. Kont-Kontson, A. I. Levin, S. Liebenberg, J. Locke, S. Lukes, L. J. Macfarlane, T. R. Machan, C. Mahon, V. L. Malkov, D. Maras, D. Marcus, J. Maritain, K. Marx, D. McGoldrick, R. P. Mckeon, A. Menger, V. D. Mordachev, J. Morsink, A. Mowbray, A. Muller, C. Murphy, B. Mussolini, R. Nozick, J. Oloka-Onyang, G. S. Ostapenko, T. Payne, P. Pereira, R. Plant, A. Potyara, J. E. Powell, S. V. Puntambekar, G. Quinn, J. Rawls, R. Robertson, A. Rosas, S.A. Rosenbaum, S. Rubin, S. Russel, W. A. Schabas, J. Schultz, C. Scott, H. Shue, M. C. Sepulveda, K. Shields, B. L. Sohn, D. J. Stampford, H. Steiner, D. Stewart, A. I. Subetta, A. Tarazarian, B. Toebes, C. Tomuchat, Tullius, R. Unger, E. W. Vierdag, S. Waltz, C. Wellman, D. Whelan, G. Winter, A. Wolfe y G. Young.

- El capítulo 2 'La contribución de los niveles regionales interamericano y africano en la promoción de los derechos económicos, sociales y culturales' se basa en los trabajos de: A. K. Abashidze, V. Abramovich, S. C. Agbakwa, A. J. Ali, M. Aliverti, P. Alston, A. A. An-na'im, A. Barak, S. T. Bulto, S. K. Birmania, M. Cepeda, M. K. Davtyan, O. Dejo, K. Drzewicki, B. Ebow, M. Evans, H. P. Faga, L. Fishbayan, R. Gittleman, D. A. Gonzalez-Salzberg, S. Grossman, M. Hansungule, R. Hanski, A. Ispolinov, M. Langford, S. Liebenberg, M. Linde, L. Louw, E. A. Lukasheva, M. Makau, A. A. Mazrui, O. Mba, J. M. Mbaku, T. Melish, G. W. Mugwanya, R. Murray, M. Mutua, A. M. Nikolaev, O. B. Obinna, C. A. Odinkali, O. C. Okafor, K. O' Regan, F. Ouguergouz, K. C-J. Nkongolo, C. Nwobike, O. Parra, J. M. Pasqualucci, Pierre

De Vos, E. Posner, J. Rossi, O. A. Ruchka, M. Scheinin, M. Ssenyonjo, A. M. Solntsev, M. Souxie, P. Tarre, N. J. Udomnina, F. Viljoen, S. Wiles. S.A. Yeshanev, y J. Yoo.

- El Capítulo 3 'El papel del Consejo de Europa en la protección de los derechos económicos, sociales y culturales' contiene obras de: A. K. Abashidze, J. Akandji – Kombe, M. Aeyal, P. Alston, M. Bakunin, R. Beddard, R. Birk, C. Blacke, A. F. Boyd, R. Brillat, E. Cannizzaro, R. B. Churchill, H. Cullen, J. Darcy, A. U. De Torres, C. Droge, A. Eide, D. B. Erez, E. Fedotov, A. Fisher, J. R. Gillingm, D. Gomien, T. V. Gracheva, S. Greer, S. B. Eremenko, I. Koch, D. Harris, K. Hausler, F. H. Heller, M. D. Hill, D. A. Iagofarov, O. A. Ishakova, N. V. Kalashnikova, U. Khaliq, K. Kont – Kontson, P. Lea, R. Lines, I. Liora, K. Lochner, E. A. Lukasheva, H. Macmillian, N. T. Matiusheva, P. F. Markham, J. G. Merrils, M. Mikkola, E. P. Nikolas, M. Novitz, M. Novak, C. O'Cinneide, P. Patrick, E. Palmer, J. Polakiewicz, G. Raimondi, L. A. Rezvanova, O. Ruchka, O. D. Schutter, K. Shields, V. Shiva, V. I. Shkatulla, P. M. Stirk, K. Taylor, C. Tomuchat, P. Uroc, M. M. Utyashev, L. M. Utyasheva, V. P. Viljanen, E. D. Vittor, E. D. Volokhova, C. Walbrick, L. Wildhaber, T. V. Zhukova y L. Zwaak.

- El Capítulo 4 'El papel de la Unión Europea en la protección de los derechos económicos, sociales y culturales' incluye obras de: M. M. Biryukov, R. Bereijo, K. Boyle, J. L. Cernic, L. Charpentier, C. Coppel, S. Garben, Y. Dogan, S. Douglas-Scott, A. S. Ispolinov, S. Y. Kashkin, G. S. Katrougalos, K. Kont – Kontson, M. Kudryavtsev, N. Lockhart, F. Mancini, P. Margules, A. Mowbray, A. O'Neill, A. Peters, M. Pitkanen, H. Rasmussen, O. D. Schutter, N. Shishkova, R. Stamer, S. Sunstein, K. M. Tabarintseva-Romanova, M. Taylor, A. Tryfonidou, M. Uhry, J. H. Weler y S. White.

- El Capítulo 5 'Desafíos externos e internos que enfrentan los derechos económicos, sociales y culturales' menciona obras de autores como: S. Abdelnaser, S. Ali, A. P. Bandurin, K. Bennoune, S.A. Buchakov, K. Dzehtsiarov, A. Fedorako, S. I. Glushkova, E. S. Krasinets, E. Khoroltseva, E. S. Kubishin, J. May, B. Mayer, F. Meehan, N. I. Oreshina, C. Panzera, R. Perrouchou, E. Pobjie, C. Pring, G. Pring, A. Quinton, L. P. Ryazanova, T. B. Smashnikova, V. V. Sobolnikov, A. M. Solntsev, A. Spadaro, M. A. Stalnova, O. Startceva, E. V. Tyutyukanova, M. N. Utyatsky, G. S. Vitkovskaya, y E. D. Wit.

El marco jurídico de la tesis Doctoral se basa en tratados internacionales como la Declaración Universal de Derechos Humanos de 1948, la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial de 1965, el Pacto Internacional de derechos Económicos, Sociales y Culturales de 1966, el Pacto Internacional de Derechos Civiles y Políticos de 1966, la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer de 1979, la Convención sobre los Derechos del Niño de 1989, la Convención sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares de 1990, Convención sobre los Derechos de las Personas con Discapacidad de 2006, y otros documentos. Entre los tratados regionales es importante mencionar: Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950. Es un tratado, en el que los derechos y libertades son principalmente (99%) civiles y políticos. Los Estados tienen obligaciones vinculantes solo si las aceptan. Sin embargo, este documento es un 'instrumento vinculante' que debe leerse de acuerdo con las circunstancias actuales para hacer una 'protección efectiva de los derechos económicos, sociales y culturales'

por parte de esos derechos civiles y políticos. Progresivamente, el Tribunal Europeo de Derechos Humanos ha considerado la dimensión económica y social de los derechos civiles y políticos en la Convención. Además, el marco jurídico incluye el Primer Protocolo del Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1952, la Carta Social Europea de 1961 y la Carta Social Europea (Revisada) de 1996, la Convención Americana sobre Derechos Humanos de 1969, el Protocolo Adicional a la Convención Americana sobre Derechos Humanos de 1988 (Protocolo de San Salvador), la Carta Africana de Derechos Humanos y de los Pueblos de 1981, la Carta Africana sobre los Derechos y el Bienestar del Niño de 1990, Protocolo de la Carta Africana de Derechos Humanos y de los Pueblos relativo a los derechos de la mujer en África de 2003 y otros documentos.

La base empírica de la tesis Doctoral fue la jurisprudencia de la Comisión y Corte Africana de Derechos Humanos y de los Pueblos, el Tribunal de Justicia de la Unión Europea, el Comité Europeo de Derechos Sociales, la Comisión y Corte Europea de Derechos Humanos y la Comisión y Corte Interamericana de Derechos Humanos.

El tema de la tesis doctoral es la conceptualización, protección y reconocimiento de los derechos económicos, sociales y culturales en Europa en el siglo XXI y la formulación de recomendaciones con énfasis en la organización y las actividades de protección de estos derechos en el Consejo de Europa, la Unión Europea y otras organizaciones regionales.

La estructura de la tesis doctoral. Consta de dos partes:

- Parte 1. Perspectivas filosóficas e ideológicas en la conceptualización, protección y reconocimiento de los derechos económicos, sociales y culturales a nivel universal y sus características a nivel regional interamericano y africano.
- Parte 2. Las características de la protección de los derechos económicos, sociales y culturales a nivel europeo.

Estas partes incluyen los siguientes capítulos:

- Capítulo 1. La contribución del nivel universal a la protección de los derechos económicos, sociales y culturales.
- Capítulo 2. La contribución del nivel regional interamericano y africano en la presentación de los derechos económicos, sociales y culturales.
- Capítulo 3. El papel del Consejo de Europa en la protección de los derechos económicos, sociales y culturales.
- Capítulo 4. El papel de la Unión Europea en la protección de los derechos económicos, sociales y culturales.
- Capítulo 5. Desafíos externos e internos que enfrentan los derechos económicos, sociales y culturales.

Los derechos económicos, sociales y culturales, que son fundamentales y esenciales para la dignidad y el bienestar de las personas y las comunidades, están reconocidos por el derecho internacional y protegidos tanto a nivel universal como regional. Anteriormente, en **la Parte I "Perspectivas filosóficas e ideológicas en la conceptualización, protección y reconocimiento de los derechos económicos, sociales y culturales a nivel universal y sus**

características a nivel regional interamericano y africano", el Capítulo 1 se dedicó a la protección de los derechos económicos, sociales y culturales a nivel universal. Entre una variedad de documentos adoptados a nivel universal, los tratados de paz, la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Económicos, Sociales y Culturales contribuyeron a la protección de los derechos humanos mencionados anteriormente. El análisis de la naturaleza de los derechos de la segunda generación se basa en tipos de obligaciones estatales (específicamente, los siguientes tipos: positivas y negativas; obligaciones sin costo y costosas; obligaciones progresivas e inmediatas; vagas y precisas; justiciables y no justiciables; derogables e irrenunciables; delgadas y gruesas). En consecuencia, los derechos de segunda generación también se caracterizan por las obligaciones que se impusieron originalmente para aplicar los derechos de la primera generación. Considerando el desarrollo de las obligaciones del Estado, dos métodos, a saber, un método centrado en las obligaciones de conducta y resultado, y un método centrado en las obligaciones de respetar, proteger y cumplir, son importantes y utilizados por los tribunales. Al examinar las obligaciones de los Estados en relación con la realización de los derechos económicos, sociales y culturales, se suele hacer hincapié en el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966 y el Protocolo Facultativo del Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966.

En **el Capítulo 2 de la Parte I 'La contribución del nivel regional Interamericano y africano en la presentación de los derechos económicos, sociales y culturales'**, la regulación legal de ambas regiones sobre el tema de las obligaciones estatales para la protección de derechos de segunda generación y la jurisprudencia de la Comisión y Corte Africana de Derechos Humanos y de los Pueblos, y la Comisión y Corte Interamericanas de Derechos Humanos. La protección regional a niveles analizados garantiza que los derechos económicos, sociales y culturales se adapten a las necesidades y circunstancias específicas de ambas regiones. Su protección en estas regiones reduce la pobreza y ayuda a las personas a tener acceso a las necesidades y la participación en la vida económica y social de sus propias comunidades; promueve la igualdad de género y aborda la discriminación por motivos de género y garantiza que las mujeres tengan igualdad de acceso a la educación, el empleo y la atención médica; promueve y preserva la diversidad cultural. La protección de estos derechos en las regiones interamericana y africana puede ayudar a las personas y comunidades a mantener y celebrar sus tradiciones y prácticas culturales, participar y contribuir al progreso económico, social y cultural de sus sociedades. Estos derechos son reconocidos y protegidos tanto a nivel universal como regional, y su protección es esencial para el bienestar y la prosperidad de las personas y las comunidades.

La Parte II está dedicada a los derechos económicos, sociales y culturales en el Consejo de Europa y la Unión Europea. Es bien sabido que los derechos de la segunda generación se aplican a todas las personas, independientemente de su nacionalidad, etnia, género o cualquier otra condición. Su reconocimiento garantiza que todas las personas tengan acceso a necesidades básicas como alimentos, vivienda, educación y atención médica. El Consejo de Europa y la Unión Europea son dos organizaciones internacionales separadas con diferentes mandatos y áreas de enfoque. Si bien ambas organizaciones promueven los derechos humanos, incluidos

los derechos económicos, sociales y culturales, existen algunas diferencias en la forma en que se protegen estos derechos.

El Capítulo 3, titulado 'El papel del Consejo de Europa en la protección de los derechos económicos, sociales y culturales', consta de 4 párrafos. El capítulo comienza con dos subpárrafos, que incluyen las razones por las cuales el Consejo de Europa y su papel son importantes en la protección de los DESC, enumera las formas de fortalecer los derechos económicos, sociales y culturales, y describe las posibilidades de protocolos adicionales a la Carta Social Europea (Revisada). Este capítulo analiza la creación, la historia y el origen de la Carta Social Europea de 1961 y proporciona respuestas a las siguientes preguntas: 1) ¿Cuál fue el propósito de la adopción de la Carta Social Europea de 1961? 2) ¿Fue la adopción de los dos instrumentos, el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950 y la Carta Social Europea de 1961, una copia de las acciones de los Estados miembros a nivel universal? 3). ¿Cuál fue la actitud de los países hacia los derechos de segunda generación a nivel regional después de la Segunda Guerra Mundial? También compara la Carta Social Europea de 1961 con la Carta Social Europea Revisada de 1996, analiza las obligaciones de los Estados en virtud de ambas Cartas y su diferencia con las obligaciones establecidas en el Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950. En el capítulo 2 se presentan las características del procedimiento de denuncia colectiva, sus ventajas, desventajas y comparación con el procedimiento previsto en el Protocolo Facultativo del PIDESC, así como jurisprudencia seleccionada del Comité Europeo de Derechos Sociales y del Tribunal Europeo de Derechos Humanos.

En **el Capítulo 4** se considera el papel de la Unión Europea en la protección de los derechos económicos, sociales y culturales. Es crucial para el análisis posterior por varias razones: 1. Los derechos de la segunda generación son esenciales para defender la dignidad humana y garantizar que todos puedan vivir una vida de decencia humana básica. 2. Estos derechos son necesarios para lograr la justicia social y reducir la desigualdad. Al garantizar el acceso a servicios básicos como la salud, la educación y la vivienda, la Unión Europea ayuda a nivelar el campo de juego y reducir las disparidades entre los diferentes grupos sociales. 3. El acceso a recursos y oportunidades básicos puede contribuir al crecimiento económico sostenible. Cuando las personas pueden participar plenamente en la economía, pueden contribuir a su crecimiento y desarrollo. 4. Al garantizar que todos tengan el mismo acceso a las oportunidades políticas y económicas, la UE ayuda a promover el compromiso y la participación cívicos. 5. La UE se ha comprometido a proteger estos derechos a través de varios tratados y acuerdos internacionales, incluida la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966. El cumplimiento de estas obligaciones es esencial para mantener la credibilidad de la UE en la escena internacional. El capítulo 4 consta de 5 párrafos, que incluyen: Desarrollo de la legislación de la UE sobre derechos económicos, sociales y culturales (4.1); el análisis comparativo de la Carta de los Derechos Fundamentales de la Unión Europea de 2000 (4.2); jurisprudencia seleccionada del Tribunal de Justicia de la Unión Europea con referencia al Convenio Europeo para la Protección de los Derechos Humanos y las Libertades

Fundamentales de 1950 (4.3); establecimiento del equilibrio entre los derechos económicos y sociales (4.4); jurisprudencia seleccionada del Tribunal de Justicia de la Unión Europea sobre obligaciones estatales destinadas a la protección de los derechos económicos, sociales y culturales (4.5).

En **el Capítulo 5** se consideran los desafíos externos e internos que enfrentan los derechos económicos, sociales y culturales. Se presta especial atención al COVID-19, el cambio climático y la inmigración ilegal. ¿Cómo afectan a los derechos de la segunda generación? ¿Qué acciones están tomando los Estados y en qué se diferencia del impacto en los derechos de la primera generación?

Bases metodológicas de la tesis Doctoral. La metodología de la tesis doctoral es el positivismo sociológico (análisis de normas en contextos históricos y sociológicos). Esta tesis doctoral se desarrolla bajo dos herramientas metodológicas:

- enfoque inductivo (de práctico a general), incluyendo jurisprudencia, normas específicas, y
- enfoque deductivo (de lo general a lo particular), incluyendo referencias doctrinales.

Para lograr el objetivo de la tesis doctoral se utilizan métodos modernos de cognición de fenómenos y procesos de la realidad jurídica. Durante la realización de la investigación para la tesis doctoral. se utilizan métodos de investigación tanto científicos generales (históricos, dialécticos, sistémicos) como privados (jurídico-formales, jurídico-comparativos) y otros. Un análisis comparativo de la experiencia nacional y la experiencia de países extranjeros en el apoyo legal de los derechos constitucionales de los ciudadanos nos permite desarrollar modelos para el uso óptimo de la experiencia extranjera en condiciones modernas.

La importancia práctica de la tesis Doctoral radica en el hecho de que las conclusiones y propuestas formuladas en ella pueden utilizarse para mejorar la legislación internacional y regional sobre derechos económicos, sociales, culturales y su apoyo constitucional y legal, así como en actividades prácticas para la protección de derechos y libertades. Los resultados de la investigación contribuirán al desarrollo de ideas académicas sobre la naturaleza jurídica de los derechos económicos, sociales y culturales, el mecanismo de implementación de los estándares sociales europeos.

Las principales disposiciones y conclusiones de la tesis Doctoral se discutieron en:

- Conferencia Científica y Práctica Internacional ‘Tradiciones e innovaciones en el sistema del derecho moderno’ (1 de mayo de 2023, Ufa);
- Foro sobre Lenguaje y Derecho-Interpretación Legal (16 de abril de 2022, S. J. Quinney College of Law, Utah, Estados Unidos de América);
- Conferencia Internacional ‘Foro Jurídico 2021’ (11-13 de noviembre de 2021, Moscú);
- XLII Conferencia Internacional Científica y Práctica ‘La Ciencia Rusa en el mundo moderno’ (30 de noviembre de 2021, Moscú);
- Conferencia Internacional ‘La realidad jurídica en el contexto del diálogo estratégico intercultural’ (2 de diciembre de 2021, Pyatigorsk);

- Conferencia Científica y Práctica Internacional 'El papel de la ciencia y la educación en la modernización de la sociedad moderna' (10 de diciembre de 2021, Kaluga);

-I Conferencia Científica y Práctica de toda Rusia 'Lecturas de Karbyshev' (con participación internacional) (15-17 de diciembre de 2021, Tyumen);

- II Conferencia Científica y Práctica Internacional para Estudiantes 'Lingüística en la era de la digitalización: problemas reales y perspectivas de desarrollo' (20-21 de abril de 2022, Pyatigorsk);

- IV Conferencia Científica y Práctica Internacional 'Tecnologías de la Información en la Economía Digital' (Ekaterimburgo, 22 de abril de 2020);

- Conferencia Científica y Práctica Internacional 'Procesos socioculturales, étnicos y lingüísticos en el espacio euroasiático' (Ufa, 13-14 de diciembre de 2019);

- Reunión conjunta de las mesas redondas 'Estudios de fuentes jurídicas en investigación y prácticas educativas: problemas teóricos, metodológicos y metodológicos' y 'Constitucionalismo soviético de 1917-1925: doctrina, legislación y representaciones' (Ekaterimburgo, 30 de noviembre de 2019);

- Sexta Escuela de Verano '70 años de Declaraciones Universales de Derechos Humanos: Patrimonio y desafíos de la modernidad' (Ekaterimburgo, 2-6 de julio de 2018).

Para cumplir con el requisito de EURODOC, algunos de los materiales subyacentes a la tesis doctoral se recopilaron durante varias estancias de investigación:

- Universidad de Estocolmo (Estocolmo, Suecia, mayo de 2021-septiembre de 2021),

- Universidad 'La Sapienza' de Roma (Roma, Italia, noviembre de 2018-junio de 2019),

- Universidad Estatal de Derecho de los Urales (Ekaterimburgo, Rusia, octubre de 2017-marzo de 2021),

- Queens Universidad de Belfast (Belfast, Irlanda del Norte, Reino Unido, marzo – abril de 2017).

La estructura de la tesis doctoral. Consta de una introducción, cinco capítulos, tablas de la jurisprudencia seleccionada, una conclusión y bibliografía.

Part 1. Philosophical and ideological perspectives[11] in economic, social, and cultural rights conceptualization, protection and recognition at the universal level and its features at the Inter-American and African regional levels

Introduction of Chapter 1

The Part 1 is aimed to describe the process of conceptualization, protection, and recognition of economic, social, and cultural rights at universal and regional levels (including the Inter-American and African) in order to show the political and ideological struggle between the West and the East regarding these rights. As it is well known, each side defended the primacy of only one category of rights (for the United States - civil and political rights, for the Soviet Union – economic, social, and cultural rights). Before the Second World War rights of the second generation were included in some documents in the next chronological order:

- the Declaration of Independence, adopted July 4, 1776, which asserted that "all men are created equal" and have the right to "life, liberty, and the pursuit of happiness"[12],

- the Universal Declaration of the Rights of Man and Citizen of 1789[13], adopted during the French Revolution, declared the right to work, education, and property.

- the Peace Treaties of 1919.

- the Weimar Constitution of Germany of 1919[14], which included the right to work, the right to social security, and the right to cultural development.

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[11]For a defence of these rights from a philosophical perspective see, for example, Sampford D.J, Galligan D.J, 'Law, rights and the welfare state'(London/Sydney/Wolfeboro, New Hampshire 1986); Plant R, 'A defence of welfare rights' in *Economic, social, and cultural rights: progress and achievement* (Macmillan, London, 1992) P. 22-46; Wellman C, 'An approach to rights: studies in the philosophy of law and morals' (Kluwer Academic Publishers, Dordrecht 1997).

[12] Declaration of Independence (adopted 4 July 1776) <https://history.state.gov/milestones/1776-1783/declaration#:~:text=By%20issuing%20the%20Declaration%20of,colonists%27%20motivations%20for%20seeking%20independence> accessed 25 May 2023.

[13] Universal Declaration of the Rights of Man and Citizen of 1789 <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen#:~:text=History-,The%20Declaration%20of%20the%20Rights%20of%20Man%20and%20of%20the,with%20a%20declaration%20of%20principles> accessed 25 May 2023.

[14] Weimar Constitution of Germany of 1919 <https://www.history.com/this-day-in-history/weimar-constitution-adopted-in-germany> accessed 24 May 2023.

- the Constitution of the Republic of Turkey of 1924[15].

The efforts of countries after the Second World War were aimed at the development and adoption of new human rights instruments. In particular, at the universal level there were several treaties: the Universal Declaration on Human Rights 1948[16], both International Covenants: the International Covenant on Economic, Social and Cultural Rights 1966[17], the International Covenant on Civil and Political Rights 1966[18], and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008[19].Accordingly, at the regional level the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[20], the European Social Charter 1961[21],the American Convention on Human Rights 1969[22], the African Charter on Human and Peoples' Rights 1981[23], and the Arab Charter on Human Rights 2004[24] were adopted. The analysis of most of these documents in this Chapter is aimed at protecting economic, social, and cultural rights, reflecting their common nature with civil and political rights.

[15] Constitution of the Republic of Turkey of 1924 <https://www.worldstatesmen.org/Turkeyconstitution1924.pdf> accessed 25 May 2023.

[16] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[17] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023, Art.12.

[18] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[19] Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (10 December 2008) <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-economic-social-and> accessed 25 May 2023.

[20] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[21] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023; European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[22] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[23] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

[24] Arab Charter on Human Rights (adopted on 15 September 1994) <https://digitallibrary.un.org/record/551368?ln=en> accessed 23 May 2023.

The method of comparing two levels: the universal and regional, is intended to show and to contrast the efforts and measures taken by countries to protect the rights of the second generation. In particular, to show the difference in the obligations of states with respect to each category of rights. Moreover, this part forms the reader's understanding of the balance between rights, their unified nature and implementation.

The structure of the Part 1 is the following: there are two chapters, each of them is devoted to a certain (the universal or the regional) level of economic, social, and cultural rights protection, which is based of analysis of the main documents, specific case-law, outlining the seven types of State obligations.

Introducción del Capítulo 1

La Parte 1 tiene por objeto describir el proceso de conceptualización, protección y reconocimiento de los derechos económicos, sociales y culturales a escala universal y regional (incluida la interamericana y la africana) con el fin de mostrar la lucha política e ideológica entre Occidente y Oriente en relación con estos derechos. Como es bien sabido, cada bando defendía la primacía de una sola categoría de derechos (para Estados Unidos, los derechos civiles y políticos; para la Unión Soviética, los derechos económicos, sociales y culturales). Antes de la Segunda Guerra Mundial los derechos de la segunda generación se incluyeron en algunos documentos en el siguiente orden cronológico:

- la Declaración de Independencia, adoptada el 4 de julio de 1776, que afirmaba que "todos los hombres son creados iguales" y tienen derecho a "la vida, la libertad y la búsqueda de la felicidad"[25].

- la Declaración Universal de los Derechos del Hombre y del Ciudadano de 1789[26], adoptada durante la Revolución Francesa, declaraba el derecho al trabajo, a la educación y a la propiedad.

- los Tratados de Paz de 1919.

- la Constitución de Weimar de Alemania de 1919[27], que incluía el derecho al trabajo, el derecho a la seguridad social y el derecho al desarrollo cultural.

- la Constitución de la República de Turquía de 1924[28].

Los esfuerzos de los países tras la Segunda Guerra Mundial se dirigieron a la elaboración y adopción de nuevos instrumentos de derechos humanos. En particular, en el ámbito universal

[25] Declaration of Independence (adopted 4 July 1776) <https://history.state.gov/milestones/1776-1783/declaration#:~:text=By%20issuing%20the%20Declaration%20of,colonists%27%20motivations%20for%20seeking%20independence> accessed 25 May 2023.

[26]Universal Declaration of the Rights of Man and Citizen of 1789 <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen#:~:text=History-,The%20Declaration%20of%20the%20Rights%20of%20Man%20and%20of%20the,with%20a%20declaration%20of%20principles> accessed 25 May 2023.

[27]Weimar Constitution of Germany of 1919 <https://www.history.com/this-day-in-history/weimar-constitution-adopted-in-germany> accessed 24 May 2023.

[28]Constitution of the Republic of Turkey of 1924 <https://www.worldstatesmen.org/Turkeyconstitution1924.pdf> accessed 25 May 2023.

hubo varios tratados: la Declaración Universal de Derechos Humanos de 1948[29], los dos Pactos Internacionales: el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966[30], el Pacto Internacional de Derechos Civiles y Políticos de 1966[31], y el Protocolo Facultativo del Pacto Internacional de Derechos Económicos, Sociales y Culturales de 2008[32]. Asimismo, a nivel regional se adoptaron el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950[33], la Carta Social Europea de 1961[34], la Convención Americana sobre Derechos Humanos de 1969[35], la Carta Africana de Derechos Humanos y de los Pueblos de 1981[36] y la Carta Árabe de Derechos Humanos de 2004. El análisis de la mayoría de estos documentos en este capítulo está dirigido a proteger los derechos económicos, sociales y culturales, reflejando su naturaleza común con los derechos civiles y políticos.

El método de comparar dos niveles: el universal y el regional, pretende mostrar y contrastar los esfuerzos y las medidas adoptadas por los países para proteger los derechos de segunda generación. En particular, mostrar la diferencia en las obligaciones de los Estados con respecto a cada categoría de derechos. Además, esta parte forma la comprensión del lector sobre el equilibrio entre los derechos, su naturaleza unificada y su aplicación.

La estructura de la Parte 1 es la siguiente: hay dos capítulos, cada uno de ellos dedicado a un determinado nivel (el universal o el regional) de protección de los derechos económicos,

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[29] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[30] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023, Art.12.

[31] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[32] Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (10 December 2008) <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-economic-social-and> accessed 25 May 2023.

[33] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[34] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023; European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[35] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[36] Arab Charter on Human Rights (adopted on 15 September 1994) <https://digitallibrary.un.org/record/551368?ln=en> accessed 23 May 2023.

sociales y culturales, que se basa en el análisis de los principales documentos, la jurisprudencia específica, que esboza los siete tipos de obligaciones de los Estados.

Chapter 1. The contribution of the universal level to economic, social, and cultural rights' protection

1.1. Philosophical prerequisites of economic, social, and cultural rights

From the earliest centuries, great thinkers and philosophers have tried to understand the nature of human rights. Ancient people had no idea about the difference between the right to an action and the right to a thing, it follows that the obligations and property relations did not differ. Ideas about human rights, the care of every citizen about the welfare of the policy were originally formed in the mainstream of ideas proclaiming the high value of law and legality (Plato, Socrates, Aristotle). It is interesting to illustrate Aristotle's reasoning[37] on economic rights and social rights. Speaking about economic rights, he explained that: "Property should be common only in a relative sense, but in general – private; after all, when the care of it will be divided between different people, mutual complaints among them will disappear; on the contrary, it will be a great benefit, because everyone will be diligent to treat what belongs to him; thanks to virtue[38]".

In the treatise "Politics" "slavery was natural, since it was also perceived as a form of ownership"[39], but "the early established prohibition of slavery, which goes back to the international anti-slavery movement[40]", "demonstrates close links to the right to (freely chosen and accepted) work[41]".While social rights are manifested in Aristotle's organization of land ownership that: "provides with food and at the same time the opportunity to provide friendly use of property to other citizens[42]".Moreover, Aristotle distinguished "social justice on two types: distributive and balancing[43]". "All people, wrote Aristotle (Ethics, V, 6) – agree that distributing justice must be guided by virtue, but a measure of dignity not all see the same, as

[37] Hegel G.V.F, 'Philosophy of history' (Writings V. 8. 1936), P.98 – 99.

[38] Aristotle, 'Politics' (Works: 4, Vol. 3, Thought, 1983), P.409-411.

[39] Aristotle, 'Policy' (2002) P.46; Dovatur A.I, 'Politics' (Compositions, № 4), P. 38-52.

[40] Kevin G, 'Die Menschenrechte udn die Staatliche Abschaffung der Sklaverei, 1885-1965' (Hofmann, Stefan-Ludwig (ed.): Moralpolitik. Die Geschichte der Menschenrechte im 20. Jahrhundert, Göttingen: Wallstein Verlag, 2010) P. 199 - 225.

[41] Krennerich M, 'Economic, social, and cultural rights - from hesitant recognition to extraterritorial applicability' P.2 <https://menschenrechte.org/wp-content/uploads/2013/11/Article-by-Michael-Krenneric h.pdf> accessed 22 May 2023.

[42] Aristotle, 'Policy' (2002) P.46; Dovatur A.I, 'Politics' (Compositions, № 4), P. 38-52.

[43] Mordachev V.D, 'Theory of labour exchange: History. Ethics. Psychology' (Ekaterinburg: Openwork, №1, 2006) P.73.

citizens of democracy see it in freedom, oligarchs' wealth, and aristocrats' virtue[44]". In De Legubus, Book II (also known as On the Laws or The Laws), Cicero defered that: "Social rights must be in a society where a firm persuasion obtains the immediate intervention of the immortal gods, both as witnesses and judges of our actions? Such is the preamble of the law[45]".

In addition to the above, great thinkers the following theories:

1.The natural-legal concept of the common good (Aquinas, Aristotle, Cicero, Democritus, Grotius, Plato, Seneca), in which the "common good" is an expression of natural-legal justice. The general sociality and reasonableness of people presupposes the freedom and equality of people as members of a given social whole. The question is whether this concept claims anything positive about a decent existence of people antique.

2. The concept of the rule of law (, D. Adams, G. Hegel, I. Kant, T. Jefferson, J. Locke, J. Madison, L. Montesquieu). These authors relied on the idea of social responsibility of the state (T.Payne)[46]. Within this approach, two main positions were formed: the desire to ensure the worthy existence of each and every state of the common good (state eudemonism) and its philosophical criticism, first of all, by I. Kant and V. V. Humboldt[47] from the standpoint of a formal legal state. The state of the common good, according to I. Kant, inevitably leads to despotism, suppression of the individual by the state, while the right to a decent existence is the maximum of free individual action, an ethical duty of virtue.

3. The concept of social rule of law (A. Menger[48]), which reveals the concept of human protection by law, the right to work and the right to exist. A. Menger turned the problem into a legal plane and identified three economic rights of workers: to the full result of labour, to existence and to work. He wrote that: "In the socialist sense the right to work involves a special duty of a property nature, not based on charity on the part of the state… by virtue of the right to work, every able to work a citizen of the state, who does not find work with a private

[44] Aristotle, 'Compositions' (Moscow 1983) P. 151.

[45] 'Duhaime L, Cicero M, Tullius (106-43BC)'< http://www.duhaime.org/LawMuseum/LawArticle-289/106-43-BC--Cicero-Marcus-Tullius.aspx> accessed 21 May 2023.

[46] Payne T, 'Selected works' (Moscow: Publishing house of the USSR, 1959)

[47] Humbolt V. F, 'The Experience of establishing the limits of state activity'(SPb.1908).

[48] Menger A, 'New doctrine of the state' (SPb. 1905); Menger A, 'The conquest of his rights by the workers. The right to the full product of labor in historical terms' (SPb. 1906) P.7.

entrepreneur, may require the state or state unions (district, community), that he was given ordinary daily work for a fee equal to the usual remuneration for the working day[49]".

4. The concept of subjective-public rights of G. Jellinek. For example, the nature of the right to a decent human existence is public and personal. "A decent human existence is directly dependent on the rightful and right-bound power of both the individual and the state[50]".

5. The concept of socio-economic and cultural human rights with M. Cranston, JI.A. Gordon, I. Elster) is another variation of the state-eudemonistic approach developed in XX century.

6. The concept of social welfare state, in which the idea of the right to a decent human existence has acquired the value of 'quality of life' (E. Allard[51], A. I. Subetto[52], J. Van Gig[53]), the desire for growth which comes to the fore in the declared objectives of public policy and social work of developed countries.

It is well known that there is no exact date of the appearance of the first legal norms, however, after studying the sources of ancient civilizations, we can highlight the words of one of the ancient Egyptian pharaohs (about 2000 BC), who instructed his subordinates: "When a petitioner comes from the Upper or Lower Nile, make sure that everything happens in accordance with the law, that custom was observed and human rights were respected[54]". The Charter of Cyrus (circa 570 BC) was drawn up by the king of Persia for the people of his Kingdom and recognized some social and economic rights[55].

The most direct ancestor of the actual language in the Universal Declaration is the Magna Carta, a covenant imposed by barons upon the English king in 1215. It protected a person from the illegal levies, protects his property: "A free person will be fined for a minor offense only according to the nature of the offense and for a major offense not only in proportion to the

[49] Menger A, 'The conquest of his rights by the workers. The right to the full product of labor in historical terms' (SPb. 1906) P.7.

[50] Jellinek G, 'System der subjetiven offentlichen Rechte' (2 Fufl,1905).

[51] Allardt E, 'Having, Loving, Being: An Alternative to the Swedish Model of Welfare Research *in The Quality of Life* < https://academic.oup.com/book/9949/chapter/157298031> accessed 21 May 2023.

[52] Subeta A.I, 'Management of quality of life and survival of the person' (St and K, № 1, 1994).

[53] Gig V.G, 'Applied General theory of systems' (Moscow, Publishing house 'Mir'1981).

[54] Brander P, Gomez R, Kim E. 'Compass. Understanding human rights' (Moscow: The Council of Europe, 2002) P.5.

[55] Brander P, Gomez R, Kim E. 'Compass. Understanding human rights' (Moscow: The Council of Europe, 2002) P.5.

importance of the offense;... when it should remain inviolable his main property[56]" (art. 20).The document remained relevant provisions to the present day: "No free person shall be ... dispossessed" (Article 39)[57].The Magna Carta contained economic institutions and reaffirms the broader principle of guaranteeing property rights – and protection through common law, due process and a limited government that is sustainable. Some authors consider "this document as a Charter of economic rights, not constitutional, and that is why it has always been and remains a living political force[58]".Also this document launched an increasingly robust legal tradition that manifested itself in such texts as the Habeas Corpus Acts and the Bill of Rights 1688[59], in which J. Locke's and L. Montesquieu's ideas were consolidated. In the seventeenth century, religious and political refugees brought this law with them to the United States where, as part of the War of Independence, the norms became entrenched in the Constitution. Translated into French and exported by Thomas Jefferson and the Marquis de Lafayette, the language of human rights and the rule of law surfaced in revolutionary Paris. "Over the next 150 years, the proclamations of the Americans and the French provided models for many others who associated statehood and independence with an entitlement of individuals to certain fundamental rights[60]". It is worth emphasizing that most of the economic, social and cultural rights cannot be found in the influential civil rights documents of the latter part of the 18th century, but, for example, although it is considered to be a 'classical freedom' from the outset and is generally attributed to the civil rights, the right to own property can, from a content point of view, be classed as an economic right.

Starting from the ancient times till nowadays there are some questions arisen among philosophers and scholars: "Are human rights distinguishable from other rights, and on what

[56] 'English translation of Magna Carta' <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation> accessed 21 May 2023.

[57] 'English translation of Magna Carta' <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation> accessed 21 May 2023.

[58]Butler E, 'A Magna Carta' <https://static1.squarespace.com/static/5981ac45914e6b54d9312eab/t/599c35916b8f5b71dd4813ab/1503409557031/Magna+Carta+-+A+Primer.pdf> accessed 20 May 2023.

[59] For example, J. Locke listed three rights: to life, property, and freedom in 'Two Treatises of Government' (1689). A person cannot only have these rights from birth, but also judge for their violation. In turn, L. Montesquieu determines that human rights are independent of the law of the sovereign, they are natural. Their ideas were consolidated: in the Bill of Rights (England, 1689), the Declaration of Virginia in 1776 and the Declaration of Independence of the USA in 1776, in which the right to life, liberty, and the pursuit of happiness was included in the number of inalienable rights in the Bill of Rights (1791), the Declaration of the Rights of Man and of the Citizen (France, 1789). However, Marx's own views on rights is to be found in 'On the Jewish Question' (1843) , in which he denies the claim of the French and American Revolutions to have established the universal, rational, equal, inalienable rights of man" Marx K, 'On the Jewish Question' (The Marx-Engels Reader, New York, W.W. Norton, 2nd Edition, 1843) P.40-46.

[60] Schabas W.A, 'Universal Declaration of Human Rights' (Cambridge University Press; 3rd ed. edition (18 April 2013) <https://documents.law.yale.edu/sites/default/files/UDHR2013FullText.pdf > accessed 20 May 2023.

criteria?[61]". Are economic, social and cultural rights to count as human rights? To resolve this issue, the same criteria must be used as a common frame-of-reference for distinguishing between human rights and other sorts of rights. M. Cranston devised three tests for determining the authenticity of a human right:

- its implementation must be practicable;

- of paramount importance;

- the right should be universal.

M. Cranston explains that these criteria purportedly offer a way of making the desired distinction, such that civil and political rights are considered to be human rights, whereas the other 'rights' are not included, at least not in the same sense. He concludes that: "Social and economic rights do not pass these tests[62]". Alan S. Rosenbaum writes that Cranston's tests and his application of them to human rights have been much discussed and criticized, and it is doubtful "if they can be regarded as convincing in the form, he proposed[63]". W.T. Blackstone and D. Watson[64] do not agree with Cranston's position. In D. Watson's view, one cannot use the tests to deny status to only one set of rights without a proscribing the other set. "Both sets of rights should be included as human rights[65]".

Analogical view was expressed by M. Rader. He writes that human beings must have the 'instruments' with which to make free choices and these instruments as the basic socioeconomic rights satisfy the needs for food, clothing, shelter, health, education, among others. "Civil rights cannot be guaranteed if socioeconomic rights are lacking[66]'. G. Winter holds that: "the meaning of cultural and socioeconomic rights[67]" are constrained by current conditions but, nevertheless,

[61] Schabas W.A, 'Universal Declaration of Human Rights' (Cambridge University Press, 3rd ed. Edition, 18 April 2013) P.7 <https://documents.law.yale.edu/sites/default/files/UDHR2013FullText.pdf > accessed 20 May 2023.

[62] Rosenbaum S.A, 'The philosophy of human rights' in *International perspectives* (Westport: Greenwood Press, 1980) P. 30.

[63] Downie R.S, 'Social equality' in 'The Philosophy of Human Rights', in *International Perspectives* (edited by Alan S. Rosenbaum) (Westport: Greenwood Press, 1980) P.133.

[64] Blackstone W.T, 'The Equality and Human Rights' in *The Monist 52* (№ 4, October 1968) P.636-38; Watson D, 'Welfare Rights and Human Rights' in *Journal of Social Policy* (6, pt.1, 1977) P. 31- 46.

[65] Rosenbaum A.S, 'The philosophy of human rights' In International perspectives (Praeger Publishers Inc (29 Dec. 1980) P.30.

[66] Rosenbaum A.S, 'The philosophy of human rights' In International perspectives (Praeger Publishers Inc (29 Dec. 1980) P.31.

[67] Such as those described in Article 22 to 27, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

have instrumental priority over political rights. "Firstly, cultural and socioeconomic rights provide the means by which other rights can be realized, and, secondly, that the absence of cultural and socioeconomic rights renders the other rights ineffectual[68]".

J. Donelly offered another way to approach the question of the status of economic, social, and cultural rights. It is to ask what a life with only civil and political rights would look like. "Without certain minimum economic and social guarantees, a life of dignity is clearly impossible, at least in modern market economies[69]".

The debates about the priority one group of rights has over another is long-lasting. Some scholars, such as M. Cranston, R.S. Downie, and Machan "will include socio-economic rights in the list of human right along with civil and political rights[70]". The famous dictum of the Singaporean leader Lee Kuan Yew that economic and social rights must take precedence over civil and political rights is still well-remembered. A similar statement was made by the Chinese Vice-Foreign Minister at Vienna World Conference on Human Rights. Nevertheless, some agree[71] that only civil and political rights must be counted as human rights. J. Enoch Powell argues "against including social and economic rights in the list of human rights[72]", and he asserts "the next seven points:

(1) Rights presuppose the existence of society;

(2) Rights entail the exercise of compulsion against those other than the right -holders;

(3) Compulsion can be either arbitrary or lawful;

(4) No compulsion can be lawful unless it can be uniformly applied, and uniform applicability requires unambiguous statements;

(5) Article 5 (1) of the Universal Declaration of Human Rights cannot be so stated;

(6) To claim rights to benefits mentioned in Article 25(1) is therefore to endorse arbitrary compulsion;

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[68] Winter G, 'Being Free: Reflections on America's Cultural Revolution' (New York: Macmillan and Co., 1970).

[69] Donelly J, 'Theories of Human Rights' in *International Human Rights* (1993) P.28.

[70] Cranston M, 'Human Rights, Real and Supposed' in *Political theory and the Rights of Man* (Bloomingston, Indiana University Press 1967) P.47; Downie R.S, 'Roles and Values' (London: Methuen 1971) P.49; Machan T.R, 'Human Rights and Human Liberties: A Radical Reconsideration of the American Political Tradition' (Nelson-Hall, Inc; First Edition, 1 Jan. 1940) P.40-41.

[71] M. Cranston, R.S. Downie, and Machan, think that civil and political rights are human rights.

[72] Powell J.E, 'Human Rights' in *Journal of Medical Ethics* (№ 4 1977) P.160-162.

(7) In the case of Article 25(1) the claim is such that benefits cannot be achieved within a given society; it is therefore a threat to carry out unlimited global compulsion. In addition, he also underlines that judging from the relative scarcity of human rights discussion in contemporary philosophical literature, the value of human rights has yet to be fully recognized [73]".

It seems there is an explicit contradiction in his argument due to the fact that he disparages the value of economic, social and cultural rights and at the same time he claims about absence of full human rights recognition.

To sum up, the origins of the rights of the second generation originate from ancient centuries, laid in written sources, doctrines, theories. As we see in ancient times, in the sayings of philosophers, these rights (the rights of the second generation) were inextricably linked with the rights of the first generation. The idea that was laid down in the Universal Declaration dates back much earlier. Nowadays these rights are reflected in many documents, including constitutions and declarations. There are many different approaches in the literature to determine the value of these human rights that either recognize these human rights or belittle them. However, despite the consolidation of equality of these rights, in science disputes about the dominance of one of the categories of rights do not cease. In order to dispel myths about the rule of civil and political rights, we will turn to the process of adoption and development of documents and the work of Commissions in following pages.

1.2 Peace treaties and the role of the International Labour Organization

Peace treaties can be considered as agreements between countries that aim to end conflicts and establish a state of peace between the parties involved. Such agreements often address issues such as border disputes, resource allocation, and reparations for damages caused by the conflict, and other issues. The development and the balance of economic, social, and cultural rights refer to the idea that individuals and groups should have access to the same opportunities and resources to live fulfilling and dignified lives. It includes access to education, healthcare, housing, and employment, as well as the freedom to participate in cultural activities and express oneself freely. Establishing the balance between civil and political rights and economic, social, and cultural rights can be an important part of peacebuilding efforts. Considering several efforts at the universal level to protect economic, social, and cultural rights, it is important to underline one of the main international instruments for the protection of these rights: the International Covenant on Economic, Social and Cultural Rights, which was adopted by the United Nations General Assembly in 1966 and sets out the economic, social, and cultural rights that are recognized as being fundamental to the dignity and well-being of individuals and outlines the steps that governments must take to ensure that these rights are realized. In addition to the ICESCR, there are other international and regional human rights treaties and agreements that address economic, social, and cultural rights, including the Convention on the Rights of the

[73] Powell J.E, 'Human Rights' in *Journal of Medical Ethics* (№ 4 1977) P.160-162.

Child, the Convention on the Rights of Persons with Disabilities, and the European Social Charter. There are also several United Nations agencies and other international organizations.

In this chapter the special attention will be paid to State obligations to protect economic, social, and cultural rights under international human rights law. These obligations are set out in the International Covenant on Economic, Social, and Cultural Rights of 1966. Under this Covenant, states have an obligation to respect, protect, and fulfill economic, social, and cultural rights. The obligation to respect means that states must refrain from interfering with the enjoyment of these rights. The obligation to protect requires states to take measures to prevent third parties from interfering with the enjoyment of these rights. The obligation to fulfill means that states must take positive action to enable individuals and groups to enjoy their economic, social, and cultural rights. Moreover, states have a particular obligation to take steps to progressively realize economic, social, and cultural rights to the maximum extent of their available resources. This means that states should take steps to improve the enjoyment of these rights over time, even if they are not able to fully realize these rights immediately.

The reasons for analysing state obligations on protection of economic, social and cultural rights are: 1) the enjoyment of these rights is essential for individuals and groups to lead fulfilling and dignified lives; 2) the protection of these rights can help to reduce poverty and inequality, which are major causes of social and political instability; 3) the protection of these rights can contribute to the overall development and prosperity of a society.

At the universal level, two organizations served as the main force for the development of economic, social, and cultural rights, namely the League of Nations and the International Labor Organization. Starting from the first organization, it is worth noting that the international labour movement in countries has become the main driving force for the development of human rights. The workers lived in very difficult conditions, received very small salaries, had long working days and had no right to association. After the World War I, representatives of the United States, the British Empire, France, Italy, and Japan, on the one hand, and defeated Germany - on the other signed the Treaty of Versailles 1919. The Part XIII of the Treaty of Versailles contained provisions on international legal regulation of labour, namely:

- International labour conference.
- International labour organization as a structural unit of the League of Nations.

This organization began to develop some worker's rights. Convention[74] limiting the hours of work in industrial undertakings established the eight in the day and forty-eight in the Week. There are eight fundamental International Labour Organisation Conventions including:

- ✓ the freedom of association,
- ✓ "the right to organize convention[75]",

[74] Came into force: 13 Jun 1921.

[75]ILO Convention № 87: Freedom of Association and Protection of the Right to Organise Convention of 1948.

✓ "the right to organize, bargain collectively[76]",

✓ "suppression of the use of forced or compulsory labour in all its forms within the shortest possible period[77]",

✓ "a minimum age for admission to employment or work[78]",

✓ "comprise the worst forms of child labour[79]",

✓ "determine rates of remuneration[80] as well as with a variety of technical issues concerning working conditions and workplace safety[81]".

The International Labour Organisation concurred that "the ratification of International Labour Conventions represents a suitable means for harmonising national practices in social matters[82]". Participating in the International Labour Organisation, the USSR and other socialist countries supported the working class of the capitalist countries, which is fighting for the improvement of the working people and striving to use international organizations, along with other means, in this struggle. The Soviet Union was giving all possible support to International Labour Organisation activities aimed at developing international cooperation that will help to improve the situation of workers and strengthen peace between peoples.

It is impossible not to mention the words of Mr. Norton (Ireland) who underlined that the International Labour Office[83] had been dealing with the question of social security for many years and it had dealt with the problem on a world or global basis. He "paid tribute to this organization for its magnificent work in that filed. Its achievements, despite difficulties and despite obstacles, represent an enduring monument to the zeal and tenacity which it has brought

[76]ILO Convention № 98: Right to Organise and Collective Bargaining Convention of 1949 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098> accessed 21 May 2023.

[77] ILO Convention № 29: Forced Labour Convention of 1930 < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029> accessed 19 May 2023; ILO Convention № 105: Abolition of Forced Labour Convention of 1957 <https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105> accessed 20 May 2023.

[78]ILO Convention № 138: Minimum Age Convention of 1973<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138> accessed 21 May 2023.

[79]ILO Convention № 182: Worst Forms of Child Labour Convention of 1999 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182> accessed 22 May 2023.

[80]ILO Convention № 100: Equal Remuneration Convention of 1951 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> accessed 23 May 2023.

[81] Donelly J, 'Multilateral Politics of Human Rights' in *International Human Rights* (2018) P.67.

[82] Consultative Assembly of the Council of Europe, 'Official report for the Fifth Ordinary Session, twenty-first sitting' Doc. 23 (23rd September 1953); Council of Europe, 'Common Policy of Member States in Social Matters (Debate on the Report of the Committee on Social Questions) Doc.188 (1953-1954).

[83] The author meant the International Labour Organization (1919).

to bear on the question of establishing a code of social security throughout the world[84]". However, the International Labour Organization was opposed to the inclusion of economic, social, and cultural rights "presumably because they felt that this would impinge on their jurisdiction but realising that their inclusion was now [1951] probably inevitable, they wanted the articles to be as general and as weak as possible[85]". The dual nature of the activities of the organization. On the one hand, it advocates the protection of labor rights, on the other hand, against the inclusion and protection of these rights.

Besides the Treaty of Versailles, there also were peace treaties with the defeated countries: Saint-Germain Peace Treaty of 1919 with Austria, the Neuilly Peace Treaty of 1919 with Bulgaria, Trianon Peace Treaty of 1920 with Hungary, the Treaty of Sevres in 1920 with Turkey. At the same time as the peace treaties, the Allied and allied powers concluded separate treaties with the States created again or significantly expanded their territories because of the World war I: with Poland (Versailles, 1919), the Serbo-Croatian-Slovenian state (Saint-Germain-Le, 1919), Czechoslovakia (Saint-Germain-Le, 1919), Greece (Sevres, 1920), Romania (Paris, 1919). For example, there were some second generation's rights in the Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles, June 28, 1919[86]:

- "No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings. Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the courts (Article 7)[87]";

- "Polish nationals who belong to racial, religious, or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. They shall have an equal right to establish, manage and control at their own expense charitable, religious, and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein (Article 8)[88]";

[84] Consultative Assembly of the Council of Europe, 'Official report for the Fifth Ordinary Session, twenty-first sitting' Doc. 23 (23rd September 1953); Council of Europe, 'Common Policy of Member States in Social Matters (Debate on the Report of the Committee on Social Questions) Doc.188 (1953-1954).

[85] Humphrey J. P, 'Human Rights and the United Nations: A Great Adventure' (Transnational Publishers 1984) P. 29.

[86] Treaty between the Principal Allied and Associated Powers and Poland (signed at Versailles, 28 June 1919) <https://history.state.gov/historicaldocuments/frus1919Parisv13/ch29> accessed 19 May 2023.

[87] Article 7, Treaty of Peace Between the Allied and Associated Powers and Hungary and Protocol and Declaration (signed at Trianon 4 June 1920) <https://wwi.lib.byu.edu/index.php/Treaty_of_Trianon> accessed 19 May 2023.

[88] Article8, Treaty of Peace Between the Allied and Associated Powers and Hungary and Protocol and Declaration (signed at Trianon 4 June 1920) <https://wwi.lib.byu.edu/index.php/Treaty_of_Trianon> accessed 19 May 2023.

- “Poland further agrees on condition of reciprocity, to recognise and protect all rights in any industrial, literary or artistic property belonging to the nationals of the Allied and Associated States in force, or which but for the war would have been in force, in any part of her territories before transfer to Poland (Article 19)[89]”. “Economic interests and economic clauses were more detailed in the Treaty of Peace Between the Allied and Associated Powers and Hungary and Protocol and Declaration, Signed at Trianon June 4, 1920[90]”.Thus, the rights protected included the right to use the mother tongue in private or in trade, as well as in matters of religion, the press or all kinds of publications, the right to education in the mother tongue and other rights.

1.3. The Universal Declaration of Human Rights: ideological biases

There is still debate in science about the dominance of civil and political rights and the low value of economic, social and cultural rights. In order to dispel this world in this paragraph the process of drafting the Universal Declaration of Human Rights 1948: the reason for its adoption, the philosophical concepts (Western liberalism, Marxist socialism, the third world approach - self-determination) underlying this document is analysed.

Before the World War II, the issue of human rights rarely appeared on international political agendas. Most states violated human rights systematically. Racial discrimination pervaded the United States. The Soviet Union was a totalitarian secret-police state. Britain, France, the Netherlands, Portugal, Belgium, and Spain maintained colonial empires in Africa, Asia, and the Caribbean. The political history of most Central and South American countries was largely a succession of military dictatorships and civilian oligarchies. Although such phenomena troubled many people in other countries, they were not considered a legitimate subject for international action. Rather, “human rights were viewed as an entirely internal (domestic) political matter, an internationally protected exercise of the sovereign prerogative of states[91]”. The horrors of the Second World War as one of the reasons for establishment of the Universal Declaration on Human Rights 1948 led to the strengthening of international action for the protection of human rights. On 26 June 1945, countries came up with the idea of an International Bill of Human Rights.

The States faced the challenge to make the “framework within which the various philosophical, religious and even economic, social and political theories can be considered and

[89]Article 19, Treaty of Peace Between the Allied and Associated Powers and Hungary and Protocol and Declaration (signed at Trianon 4 June 1920) <https://wwi.lib.byu.edu/index.php/Treaty_of_Trianon> accessed 19 May 2023.

[90] Articles 29,31, 39, 72,83, 92, 95, 101, Treaty of Peace Between the Allied and Associated Powers and Hungary and Protocol and Declaration (signed at Trianon 4 June 1920) <https://wwi.lib.byu.edu/index.php/Treaty_of_Trian on> accessed 19 May 2023.

[91] Donelly J, ‘Human Rights as an Issue in World Politics’ in a book *International Human Rights* (2018) P.5.

developed[92]" "sufficiently defined to have real meaning both as inspiration and as a guide to practice" but "sufficiently general and flexible to apply to all people and be capable of modification to satisfy people at different stages of social and political development[9394]".

In order to identify key theoretical issues in framing a charter of rights for all people and all nations as a part of the preliminary work of drafting the Declaration under the auspices of UNESCO in 1946 "Jacques Maritain assembled a Philosopher's Committee[95]".According to the Report of the UNESCO Committee on the Philosophical Principles of the Rights of Man to the Commission on Human Rights of the United Nations "The Grounds of an International Declaration of Human Rights"(31st of July, 1947) : "The history of the philosophical discussion of human rights is long: it extends beyond the narrow limits of western tradition and its beginnings in the West as well as in the East coincide with the beginnings of philosophy… but the differences of philosophies have led to varied and even opposed interpretations of fundamental rights and the practical import of philosophies has become more marked. Perhaps the greatest problem involved in the basic ideas which underlie a declaration of human right is found in the found in the conflict of ideas which have been used to relate the social responsibilities entailed in the material and social developments of the nineteenth century to the civil and political rights earlier enunciated. In like fashion, the problem of implementation of human rights, new and old, depends on the tacit and explicit resolution of basic philosophical problems, for rights involve assumptions concerning the relations not only of men to governments, but also of the relations of groups of men to the state, and of states to one another, and in the complex[96]".

Members of the Committee considered various philosophical directions. For example, John P. Humphrey wrote that: "[Peng-Chun] Chang [China] had offered me ... to study Chinese philosophy ...it was his way of saying that Western influence could be too great ... He had already stressed to the Commission the importance of a historical perspective[97]". Confucian

[92] Mckeon R.P, 'The Philosophic bases and material circumstances of the rights of man' in *Human Rights* (1973) P. 35.

[93] UNESCO, 'Memorandum and Questionnaire on the Theoretical bases of the Rights of man' in *Human Rights* UNESCO PHS/3(rev) (25 July 1948) P.255.

[94] Glendon M.A, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights' (New York: Random House 2001) P.78.

[95] Brown G, 'The Universal Declaration of Human Rights in the 21st Century. A living document in a changing world'P.29 <https://www.equalrightstrust.org/ertdocumentbank/Brown-Universal-Declaration-Human-Rights-21 C.pdf> accessed 18 May 2023.

[96] UNESCO, 'The Grounds of an international declaration of human rights', 'Report of the UNESCO Committee on the Philosophical Principles of the Rights of Man to the Commission on Human Rights of the United Nations' Phil.10 (31 July 1947) < https://unesdoc.unesco.org/ark:/48223/pf0000124350> accessed 19 May 2023.

[97] Humphrey J.P, 'Human Rights and the United Nations: A Great Adventure' (N.Y.: Transnational 1984) P. 29.

philosopher Chung-Shu Lo stated that: "The Chinese never claimed human rights or enjoyed the basic rights of man[98]", and he explained: "[T]he problem of human rights was seldom discussed by Chinese thinkers of the past, at least in the same way as it was in the West. There was no open declaration of human rights in China, either by individual thinkers or by political constitutions, until this concept was introduced from the West… [However], the idea of human rights developed very early in China, and the right of the people to revolt against oppressive rulers was very early established… A great Confucianist, Mencius (372-289 B.C.), strongly maintained that a government should work for the will of the people. He said: "People are of primary importance. The State is of less importance. The sovereign is of least importance[99]". It is impossible not to agree with the words of the last Chinese philosopher. Today and always the state should serve the people and create favourable conditions for its existence.

The same point of view was expressed by Indian political scientist S. V. Puntambekar. He wrote that great Hindi thinkers had " propounded a code, as it were, of ten essential human freedoms and controls or virtues necessary for good life": five social freedoms ("freedom from violence, freedom from want, freedom from exploitation, freedom from violation and dishonour and freedom from early death and disease") and five individual virtues ("absence of intolerance, compassion or fellow-feeling, knowledge, freedom of thought and conscience, and freedom from fear, frustration or despair)[100]".

The boundaries of the created document were announced by H. Kabir[101]. He said that: "[t]he first and most significant consideration in framing any chapter of human rights … is that it must be on a global scale… Days of closed systems of divergent civilizations and, therefore, of divergent conceptions of human rights are gone for good[102]". Indeed, the applicability of the document to countries and its geographical "boundaries" cannot be narrowed by just a couple of countries. Since 1945, countries had come to the conclusion of a single, universal human rights instrument at the international level.

The work of the Philosophers' Committee then moved to the UN Commission on Human Rights. At its first session in January 1947, the Commission authorized its members to formulate what it termed "a preliminary draft international bill of human rights". Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight states. The Commission on Human Rights comprised 18 members from various political, cultural, and religious backgrounds. Eleanor Roosevelt, the widow of President Franklin D.

[98] Maritain J, 'Human Rights: Comments and Interpretations' (London: Wingate,1949) P. 186.

[99] Maritain J, 'Human Rights: Comments and Interpretations' (London: Wingate,1949) P. 186.

[100] Puntambekar S.V, 'The Hindi Concept of Human Rights', in *Human Rights* (1973) P.193,195.

[101] The Bengali Muslim poet and philosopher.

[102] Kabir H, 'Human Rights: The Islamic tradition and the problems of the World Today' in *Human Rights* (1990) P.191.

Roosevelt, chaired the Commission. It also included René Cassin of France, who composed the first draft of the declaration; Commission Rapporteur Charles Malik of Lebanon; Vice-Chairman Peng Chung Chang of China[103] and John Humphrey of Canada, Director of the UN's Human Rights Division[104].

In the process of drafting the Universal Declaration of Human Rights 1948, the Commission encountered at least with three main matrices of the human rights concept: each corresponding to one of three major political camps:

- ✓ Western liberalism or the 'Western' (First World) approach;
- ✓ Socialism[105], or 'Socialist' (Second World);
- ✓ Third World 'self- determination'[106], or the 'Third World approach'.

Firstly, socialism[107]. Karl Marx (1818-1883)[108] was the main ideologist and exponent of the ideas of socialism. He[109] and F. Engels made a significant contribution to the development

[103] A. An-Na'im has pointed out that: "Only representatives of non-Western countries in that Committee were Chang-Peng-Chung of China and Charles Habib Malik of Lebanon. Both have been educated in American Universities, and both reflected their "westernization" in the positions they took during their debates" Clapman A, 'Human Rights, a very short Introduction' (Oxford University Press 28 Jun. 2007)).

[104] Brown G, 'The Universal Declaration of Human Rights in the 21st Century. A living document in a changing world' P.29 <https://www.equalrightstrust.org/ertdocumentbank/Brown-Universal-Declaration-Human-Rights-21C.pdf> accessed 18 May 2023.

[105] The main theoretical provisions of Marxist socialism are set out by Marx and Engels in their joint works 'The Holy family' (1845), 'German ideology' (1845-1846), in the works of Engels 'The Position of the working class in England' (1845), 'The Development of socialism from utopia to science' (1880). The first policy document of the Communist movement was the 'Manifesto of the Communist party' (Marx, Engels), published in 1848.

[106] Rosenbaum S.A, 'The philosophy of human rights' in *International perspectives* (Westport: Greenwood Press, 1980) P.5.

[107] J. Donelly wrote that: "Marxism explains moral beliefs and doctrines in terms of class structure and struggle, which are determined by the means and mode of production. Radical behaviorists see human personality as the result of conditioning. In both cases, 'human nature' is the result of historical processes that shape human beings into socially prescribed molds, rather than the reflection of an inherent essence or potential. For adherents of either theory, it is pointless to speak of equal and inalienable rights held by all people simply because they are human" (Donelly J, 'Theories of Human Rights' in International Human Rights (1993) P.28).

[108] "His father's father and brother were successively chief rabbi in the former bishopric of Trier in the Rhineland, the Marx birthplace. Indeed, the family had provided Trier with rabbis since the seventeenth century. His mother, too, descended from a line of rabbis. Marx's personal leadership was very much in the style of a Hasidic rabbi, adjusting private lives as much as interpreting the dogma" Felix D, 'Meaningful Marx and Marxology. Critical Review' in *A Journal of Books and Ideas* (Vol. 2, № 4, Fall 1988) P. 83.

[109] "His father's father and brother were successively chief rabbi in the former bishopric of Trier in the Rhineland, the Marx birthplace. Indeed, the family had provided Trier with rabbis since the seventeenth century. His mother, too, descended from a line of rabbis. Marx's personal leadership was very much in the style of a Hasidic rabbi,

and recognition rights of the second generation such as the right to work, to favorable conditions of work, in particular, the right to fair wages and equal remuneration of equal value, working conditions that meet safety and hygiene rules, the right to rest, the right to form trade unions. These rights were recognized by Soviet Union Constitutions[110][111]. S. Lukes published an article 'Can a Marxist believe in human rights?', in which "he notes Marx advocated for certain specific rights of man during his life[112]".

Socialism is a doctrine that emerged within the framework of European civilization as its continuation and development and includes scientific, socio-economic and historical justification of human rights. According to this doctrine, the Soviet Union represented the future of mankind, where the path lay through the dictatorship of the proletariat and the destruction of world imperialism. It was the society where there was no private property, exploitative classes, national contradictions, where public interests and collectivism were put above personal aspirations, the state completely controlled all spheres of public life. The socialists singled out brotherhood and equality (economic and social). Equality should apply to all, regardless of income and ability. The only way to embody such notions of equality is to allow the state to regulate economic relations in society. The state should provide citizens according to their needs, but not what they can get for themselves. Only through a fair state distribution of public goods will citizens be able to realize their potential. The peculiarities of the system dictated the

adjusting private lives as much as interpreting the dogma" Felix D, 'Meaningful Marx and Marxology. Critical Review' in *A Journal of Books and Ideas* (Vol. 2, № 4, Fall 1988) P. 83.

[110]Constitution of USSR 1936 (adopted 5 December 1936) <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> accessed 9 May 2023.

[111] The Constitution of the USSR in 1977 differed by diversity and completeness of socio-economic rights, which it to be classified as follows: 1. Economic rights and obligations, ensuring the material welfare of the Soviet people and their participation in production management: the right to work (Article 40) and the obligation to work in good faith, strictly abide by the labour discipline (Article 60); the right to individual labour activity based on the personal labour of citizens and their families (Article 17); the right to participate in the management of production and affairs of labour collectives (Article 8 and 48); the obligation to protect and strengthen socialist property (Article 61), not to use it for personal gain and other selfish purposes (part IV Article 10); the right of personal property in the public interest (part III of Article 13); the right to housing(part II of Article 44); the right to material security in old age, in case of illness, full or partial disability, as well as the loss of the breadwinner (Article 43); the right to state assistance to the family (Article 53). 2. Social and cultural rights, freedoms and duties that contribute to the spiritual satisfaction of Soviet citizens: the right to education (Article 45), the obligation for young people to receive secondary education (Article 45); the right to use achievements of culture (Article 46); the duty to take care of the preservation of historical monuments and other cultural values (Article 68); freedom of scientific, technical and artistic creativity (Article 47); 3. Social rights and obligations contributing to the physical development of Soviet citizens: the right to rest (Article 41); the right to health protection (Article 42); the right to a healthy environment (Article 18); the duty to protect nature, protect its wealth (Article 67). Constitution of USSR 1977 <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf> accessed 18 May 2023.

[112] Lukes S, 'Can a Marxist believe in human rights?' (Praxis International, № 1(4), 1982) P.344; Lukes S, 'Marxism and Morality' (Oxford: Clarendon Press 1985) P.70.

invariable Soviet priorities in the field of international protection of human rights: the rights of "masses", people, classes, nations, groups, social and economic rights[113]. For K. Marx's "state is always an instrument of class domination to the extent that the struggle within and over the state contributes to the destruction of the state itself[114]".

For clarity, this theory in two aspects: philosophical and historical is considered below.

The philosophically Marxist concept of rights is based on collectivism and warns against what it considers alienating and divisive individualism, which is a fruit of Western liberalism. Access to the economy and well-being is seen as a necessary condition for the effective exercise of civil and political rights, which is the reverse priority of Western liberalism. In addition, Marxists believe that human rights can be considered only within the needs and rights of society. For them, human rights could exist only if the rights of the state were guaranteed, since it was the States that ensured human rights themselves. Marxists also believe that the state, as a representative of society as a whole, has a special responsibility to ensure human rights and economic well-being, which is contrary to the classical liberal idea that it is an interference that harms freedom. "People will be able to incorporate the cultural and moral values that are available to everyone and to realize their full potential and potential only in a society of economic and social well-being, free from concern for survival[115]".The people, once emancipated as "species beings" - and not just as a politically emancipated subjects, as indicated by Marx in "the Jewish question" (1969)[116] , or even as ordinary citizens, identified with the formal freedom that is compatible with the inequality, cultivated liberal ideology, would be free from wage labor carried out under duress; therefore, they could enjoy the free exercise of their labor (discussed in its specific modality) of his own humanity. Moreover, "only then will people be able to create their own history and make their transition from the kingdom of need to the Kingdom of freedom[117][118]".

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[113] Ostapenko G.S, 'Borba SSSR v. OON za sotsialno- ekonomicheskie prava cheloveka. 1945–1977' (Moscow, 1981).

[114] L. J. Macfarlane stated that: "Marxist teaching about the nature of the class struggle is not only theoretically alien to the concept of universal human rights, but its implementation by Marxist revolutionaries in the circumstances expected to prevail is likely to require the denial of such rights to ever-widening sections of the society". Macfarlane L.J, 'Marxist theory and Human Rights' in *Government and Opposition* (Vol.17, № 4, Autumn 1982) P.414.

[115] Marx K, Engels F, 'Manifesto do partido comunista. Tradução de Marco Aurélio Nogueira e Leandro Konder'. (Petropólis Vozes, 2000).

[116] Marx K, 'On the Jewish Question' (The Marx-Engels Reader, New York, W.W. Norton, 2nd Edition, 1843) P.40-46.

[117] Engels F, 'Del socialismo utopico al socialismo científico' in Marx K, Engels F 'Obras escojidas' (Versión de Editorial Progreso, Cubierta de César Bobis, Tomo II. Madrid: Editorial Ayuso1975).

[118] Potyara A, Pereira P, 'The Concept of Equality and Well-being in Marx' http://www.scielo.br/scielo.php?pid=

Historically, "Marxist countries have claimed that they have achieved a level of equality in access to economic resources that does not exist in Western capitalist societies, and this is a source of pride for them. However, the representatives of Western Europe, the United States of America and Latin America indicated that the denial of civil and political rights in those countries was contrary to their proposals for the universal Declaration of human rights (1948)[119]".

In my point of view advantages of socialism[120] were following features:

- The rights so called the "rights of the second generation's rights were recognized by Soviet Union Constitutions[121][122]". For example, the Constitution of USSR 1936 placed "the right to work", enshrined in Article 118, in the first place among the fundamental rights of citizens[123]. The Constitution of the USSR (Stalinist) of 1936 anticipated and predetermined the vector of development of international law and cooperation in this field. The dignity of this

S1414-49802013000100005&script=sci_arttext&tlng=en> accessed 18 May 2023.

[119] Johnson G, 'Development of the Universal Declaration of Human Rights' (1946-1948) <http://rl-online.ru/articles/4-03/224.html> accessed 17 May 2023.

[120] In addition, for being informed about socialism I have interviewed my great grandmother. She is a person who had worked as a kitchener in a collective farm.

[121] Constitution of USSR 1977 <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf> accessed 18 May 2023.

[122] The Constitution of the USSR in 1977 differed by diversity and completeness of socio-economic rights, which it to be classified as follows: 1. Economic rights and obligations, ensuring the material welfare of the Soviet people and their participation in production management: the right to work (Article 40) and the obligation to work in good faith, strictly abide by the labour discipline (Article 60); the right to individual labour activity based on the personal labour of citizens and their families (Article 17); the right to participate in the management of production and affairs of labour collectives (Article 8 and 48); the obligation to protect and strengthen socialist property (Article 61), not to use it for personal gain and other selfish purposes (part IV Article 10); the right of personal property in the public interest (part III of Article 13); the right to housing(part II of Article 44); the right to material security in old age, in case of illness, full or partial disability, as well as the loss of the breadwinner (Article 43); the right to state assistance to the family (Article 53). 2. Social and cultural rights, freedoms and duties that contribute to the spiritual satisfaction of Soviet citizens: the right to education (Article 45), the obligation for young people to receive secondary education (Article 45); the right to use achievements of culture (Article 46); the duty to take care of the preservation of historical monuments and other cultural values (art.68); freedom of scientific, technical and artistic creativity (Article 47); 3. Social rights and obligations contributing to the physical development of Soviet citizens: the right to rest (Article 41); the right to health protection (Article 42); the right to a healthy environment (Article 18); the duty to protect nature, protect its wealth (Article 67). Constitution of USSR 1977 <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf> accessed 18 May 2023.

[123] Constitution of USSR 1936 (adopted 5 December 1936) <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> accessed 9 May 2023.

Constitution was Chapter 8, which widely, fully proclaimed the fundamental rights and freedoms of man[124].

The Constitution of the USSR in 1977 differed by diversity and completeness of socio-economic rights, which it to be classified as follows: 1. Economic rights and obligations, ensuring the material welfare of the Soviet people and their participation in production management: the right to work (Article 40) and the obligation to work in good faith, strictly abide by the labour discipline (Article 60); the right to individual labour activity based on the personal labour of citizens and their families (Article 17); the right to participate in the management of production and affairs of labour collectives (Articles 8 and 48); the obligation to protect and strengthen socialist property (Article 61), not to use it for personal gain and other selfish purposes (Part IV Article 10); the right of personal property in the public interest (Part III of Article 13); the right to housing (Part II of Article 44); the right to material security in old age, in case of illness, full or partial disability, as well as the loss of the breadwinner (Article 43); the right to state assistance to the family (Article 53). 2. Social and cultural rights, freedoms and duties that contribute to the spiritual satisfaction of Soviet citizens: the right to education (Article 45), the obligation for young people to receive secondary education (Article 45); the right to use achievements of culture (Article 46); the duty to take care of the preservation of historical monuments and other cultural values (Article 68); freedom of scientific, technical and artistic creativity (Article 47); 3. Social rights and obligations contributing to the physical development of Soviet citizens: the right to rest (Article 41); the right to health protection (Article 42); the right to a healthy environment (Article 18); the duty to protect nature, protect its wealth (Article 67)[125].

This fact allowed to speak about the progressive democratic nature of this document, which influenced the constitutional development of the socialist countries and spread the idea of a positivist concept in a significant geopolitical space. The Constitution laid down the legal and ideological foundations for the formation of a universal system of human rights, prepared the world community of States to recognize and recognize the value of human rights and, most importantly, the need to create a system of conditions, guarantees, mechanisms for their implementation and protection by the state:

- everyone should be taken care of the equal distribution of goods,

- it focused on the well-being and benefits of society,

- education at school, universities, health and social services were free. It is worth to note that education given within the Soviet Union was considered as the best in the whole world,

[124] The Constitution of USSR 1936 placed 'the right to work', enshrined in Article 118 (link is external), in the first place among the 'fundamental rights of citizens'. Constitution of USSR 1936 (adopted 5 December 1936) <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> accessed 9 May 2023.

[125] Constitution of USSR 1977 <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf> accessed 18 May 2023.

- reconstructed material and technical base of the national economy,

- the USSR became a powerful industrial power (according to various estimates, it occupied the 2nd or 3rd place in the world in terms of industrial production): achieved economic independence of the country; new industries have been created; achieved economic independence of the country,

- eliminated unemployment.

Unlike the advantages, disadvantages of socialism were followings:

✓ The government became corrupted. For example, economist Milton Friedman argued that "we all justly complain about the waste, fraud, and inefficiency of the military. Why? Because it is a socialist activity – one that there seems no feasible way to privatize. By extending socialism far beyond the area where it is unavoidable, we have ended up performing essential government functions far less well than is not only possible than was attained earlier. In a poorer and less socialist era, we produced a nationwide network of roads and bridges and subway systems that were the envy of the world. Today we are unable even to maintain them[126]";

✓ the government controlled all spheres of life and all government bodies, including police, courts, schools;

✓ the government decided what an individual needed and forced she/he to accept it;

✓ the government responded by overwhelming power;

✓ the government did not leave to the individual the determination of what constitutes the pursuit of happiness;

✓ equality eroded away at individual diversities; For example, Peter Self criticizes the traditional socialist planned economy and argues against pursuing "extreme equality because he believes it requires "strong coercion" and does not allow for "reasonable recognition [for] different individual needs, tastes (for work or leisure) and talents[127]';

✓ all people became slaves of the government leadership, while the latter lived in luxury, the people lived in poverty;

✓ there was not incentive for the people to be productive as they expected the government to supply everything for their survival;

✓ political leaders abused authority to their own advantage;

✓ the government did not allow people to go abroad, except the political top;

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[126] Kantha S.S, 'On Milton Friedman, MGR & Annaism' <https://www.sangam.org/taraki/articles/2006/11-25_Friedman_MGR.php?uid=2075> accessed 17 May 2023.

[127] "Extreme equality overlooks the diversity of individual talents, tastes and needs, and save in a utopian society of unselfish individuals would entail strong coercion; but even short of this goal, there is the problem of giving reasonable recognition to different individual needs, tastes (for work or leisure) and talents. It is true therefore that beyond some point the pursuit of equality runs into controversial or contradictory criteria of need or merit" Goodin R.E, Pettit P, 'A Companion to Contemporary Political Philosophy' (Blackwell Publishing 1995) P. 339.

✓ the government equalized the property and income of people by "dispossession of kulaks"[128](for example, my great grandfather from father's side was dispossessed due to having certain number of animals in his farm);

✓ collective farm workers were deprived their ID (passport). It was aimed to establish limitations of travel (for example, my grandparents could not go out their countryside, in addition, they could not change the job or a place of living);

✓ the concept of "intensified class struggle as socialism is completed" was introduced[129]. The ruling party-state elite began to intensively cultivate and plant the institution of denunciation. A powerful propaganda apparatus drugged people with the poison of mutual suspicion, a flood of articles in newspapers, books, plays, movies about pest control, saboteurs, spies. Began mass recruitment of informants by the GPU. An Act of "instruction on the staging of information and information work of district departments" was developed, it details the organization of mass awareness. The objects of the agent of service was: "the workers, the socialist sector division of farmers in the stratum, private sector (excluding kulaks), the kulaks and kulak existing towns, national minorities, the intelligentsia of the city and the village, employees (across all devices), the unemployed, the collective apparatus of the Soviet apparatus, administrative and judicial investigation unit, cooperation, military objects". Mass denunciation was directly encouraged by the authorities. The 58th Article of the Criminal Code SSSR on state crimes, adopted in 1926, had several paragraphs that provided for criminal punishment "for failure to report[130]". Cassin R. charged that it had led to crimes against human rights. Fear has become an excellent breeding ground for political denunciation. Denunciations were written both voluntarily and involuntarily, under the pressure of the investigation. Flourished Mercantile-domestic whistleblowing, when a person wrote a denunciation of a neighbor in the communal apartment, hoping in the event of his arrest to occupy the vacated dwelling. Some managed, to put it in modern language, "to do business": Artemov family, consisting of spouses and 5 children, reported a family contract[131]".

Despite the above shortcomings, including economic, social, and cultural rights into the soviet Constitutions allows to speak about the progressive democratic nature of these documents, which influenced the constitutional development of the socialist countries and

[128] Forcibly depriving wealthy peasants using wage labour of all means of production, land and evicting them within the region (province, Republic) or beyond, depending on the category.

[129] It included The Great Purge or the Great Terror and the system of massive deflation.

[130] UNGA, '183rd Plenary Meeting' (10 December 1948) < https://www.unmultimedia.org/avlibrary/asset/2057/2057239/> accessed 16 May 2023.

[131] Ignatov V.D, 'Scammers in the history of Russia and the Soviet Union' <http://www.e-reading.by/bookreader.php/1031408/Ignatov_-_Donoschiki_v_istorii_Rossii_i_SSSR.html> accessed 12 May 2023; Golovanov Y, 'Forger father 'Katyusha' <http://epizodsspace.airbase.ru/bibl/ogonek/1988/ljeotets.html> accessed 13 May 2023; 'The fate of child informers' <http://back-in-ussr.com/2014/11/sudby-detey-donoschikov.html> accessed 14 May 2023;Druzhnikov Y, 'Informer 001'<http://lib.ru/PROZA/DRUZHNIKOV/morozow.txt> accessed 15 May 2023; Kerber L, 'Tupolev sharaga' <http://lib.ru/MEMUARY/KERBER/tupolewskaya_sharaga.txt> accessed 16 May 2023.

spread the idea of a positivist concept in a significant geopolitical space. The Constitution of USSR 1936[132] laid down the legal and ideological foundations for the formation of a universal system of human rights, prepared the world community of States to recognize and recognize the value of human rights and, most importantly, the need to create a system of conditions, guarantees, mechanisms for their implementation and protection by the state. Moreover, the confidence in the future, the absence of unemployment and the provision of universal employment in social production, is one of the main social advantages of socialism[133]. The Soviet Union made a significant contribution to the development and promotion of economic, social and cultural rights.

However, Western liberalism supporters foresaw in the socialism a strong threat. According to Frank E. Holman: "we are dealing chiefly with a missionary spirit on the part of economic and social reforms to establish throughout the world their social and economic ideas and in the process, we are risking - definitely risking[134]". E. Roosevelt stated: "The doctrine that shall dominate the weak is the doctrine of our enemies -and we reject it[135]". B. Hepple states that: "The collectivist, social welfare ideology of the immediate post-war period in which the UDHR was drafted, has increasingly been replaced by a revival of 19th century liberal ideology[136]". The last statement is controversial because, at the time of drafting the Universal Declaration on Human rights 1948, there was a confrontation between the East and West doctrines, but not the predominance of one of them, Western liberalism.

It is well known that the life standards of workers in Western countries is very high. This fact can be explained by followings: it is also very important that socio-economic rights which in XIX-XX centuries were defended by Marxists, found their real implementation and a high level of security in countries that we have always called capitalist. There is a paradox situation: the country which swore fidelity to Leninism, appeared in deep economic crisis while other countries rejecting this concept, in practice realized the right to work, to social security, fixed in the international documents at the insistence of USSR. In addition, it should be borne in mind that the requirements for workers' right protection are still programmatic for many developing countries. In Western countries, the problems of unemployment, fair wages for women and other social problems have not seen fully resolved.

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[132] Constitution of USSR 1936 (adopted 5 December 1936) <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> accessed 9 May 2023.

[133] Baranova L.Y, Levin A.I, 'Polnaya zanyatost 'in *Ekonomicheskiy slovar-spravochnik* (Moscow 1987) P.75.

[134] Baranova L.Y, Levin A.I, 'Polnaya zanyatost 'in *Ekonomicheskiy slovar-spravochnik* (Moscow 1987) P.75.

[135] Hoopes T, Brinkley D, 'FDR and the Creation of the U.N.'(New Haven: Yale University Press 1997) P.108.

[136] Hepple B, 'Achieving Social Rights Through the Principle of Equality' (10 December 2014) P.13 <https://www.equalrightstrust.org/ertdocumentbank/hepple.pdf> accessed 12 May 2023.

The opposite of socialism is liberalism, the leading ideological influence in Western thought. It "places the individual and his or her interests at the center of social, political and legal theory[137]". Americans, leaders of the North Atlantic community, defended the "free world", "democracy, liberal bourgeois values, private property, and individualism in the messianic-imperial spirit[138]"."Liberalism presupposes certain ideas about the origin of social life, in literature these ideas are contractual: every man is sovereign in his natural state; everyone agrees in advance with the terms of the social contract; in the formation of a political society, natural rights to freedom, life and property are exchanged for civil rights; the purpose of government is to secure and advance these civil rights[139]".

Critics of liberalism were socialists who accused liberalism of inhumanity to the workers. They argued that promises of human rights and universal equality for workers had not been kept. Liberal values will be an empty illusion if workers are deprived of the essentials. Marx believed that if the development of society is determined by the rights of the individual, rather than common goals, it inevitably leads to the power of the strongest. He considered bourgeois "natural rights" to be an expression of the interests of the privileged class – the capitalists. It was important for Marx to show the limited value of so-called universal human rights. Even if the struggle for natural rights had once served to take away privileges from the aristocracy, those rights were now being used to protect capital and property. As K. Marx wrote, "the theory of natural law is an integral part of bourgeois ideology[140]".

Though "human rights were central to a communist plan to destroy the American way of life[141]", however, in the U.S. government's proposal in 1948 to the Commission on Human Rights, regarding what should be included in the Universal Declaration, was written: "Among the categories of right which, the United States suggests should be considered are the following:

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[137] Two works of Professor R. Unger provide a general summary and critique of the principles of Liberalism. Unger R, 'Knowledge and Politics' (New York, the Free Press 1975); Unger R, 'Law in modern society' (Simon and Schuster 1977). Although they take divergent positions on fundamental issues, the works of J. Rawls and R. Nozick are in liberal, individualist traditions. Nozick R, 'Anarchy, state and utopia' (Blackwell 1974); Rawls J, 'A theory of Justice' (Harvard University Press, Belknap Press 1971); Murphy C, 'Modern Legal Philosophy: The Tension Between Experiential and Abstract Thought' (1978) Chapter 4, 241p.

[138] Malkov V.L, 'Put k imperstvu. Amerika v pervoy polovine XX veka' (Moscow, 2004; Sogrin V.V, 'SShA v XX–XXI vekah. Liberalizm. Demokratiya. Imperiya' (Moscow, 2015).

[139] Locke J, 'Second Treasure on Government'(1960; Hackett Publishing Company, Indianapolis and Cambridge, 1980); Barker E, 'Social Contract: Essay by Locke, Hume and Rousseau' (Oxford University Press, 1 Jun. 1997).

[140] Young G, 'Marx on Bourgeois law' (Vol.2, 1979) <https://legalform.files.wordpress.com/2019/05/young-1979.pdf> accessed 11 May 2023.

[141] Hevener K.N, 'Human Rights Treaties, and the Senate: A History of Opposition' (Chapel Hill, University of North Carolina Press 1990) P.16.

(a) Personal rights, such as freedom of speech, information, religion, and the rights of property;

(b) Procedural rights, such as safeguards for persons accused of crime;

(c) Social rights such as the right to employment and social security and the right to enjoy minimum standards of economic, social, and cultural well-being;

(d) Political rights, such as the right to citizenship and the right of citizens to participate in their government[142]".

As we can see, "it was not against providing economic and social services to citizens[143][144]". In addition, Jack Donnelly presenting a liberal interpretation of John Locke's philosophy argues that there is space for social and economic rights within liberalism. He states that "The related argument that liberalism does recognize only civil and political rights is clearly without basis; the right to private property is manifestly an economic or social, not a civil or political, right[145]". By conceptualizing liberalism more broadly, this view "avoids the inherent contradiction between market capitalism and social and economic rights[146]". In addition, the realization, particularly in the West, that the political upheavals and the emergence of totalitarian regimes in the period between the two world wars ad been due to widespread unemployment and poverty had contributed to a genuine interest in securing economic and social rights, not only for their own sake but also for the preservation of individual freedom and democracy. This view was based on a conviction that, even in periods of recession, "it is necessary to ensure that basic economic and social rights are enjoyed by all[147]".

It is worth noticing that the final draft, the Universal Declaration of Human Rights 1948 included such liberal principles as:

- ✓ freedom and equality of the individual (Article 1,2,3,12,13,16),

[142] Sohn B.L, 'U. S. Proposals to the United Nations as to an International Bill of Rights' in *American Bar Association Journal* (Vol. 33, 1948) P. 283.

[143] Tomuchat C*,* 'Generations of Human Rights' in *Human Rights, between Idealism and Realism* (2014) P.29.

[144] Freeman M, 'Human Rights: Asia and West', in *Human Rights and International Relations in the Asia Pacific* (London and New York, Pinter, 1995) P.13,14.

[145] Donelly J, 'Human Rights as an Issue in World Politics' in a book International Human Rights (2018) P.5.

[146]'On Social and Economic Rights' in *Human Rights Dialogue* (Series 1, Number, fall 1995) https://www.carnegiecouncil.org/publications/archive/dialogue/1_02/articles/511> accessed 12 May 2023.

[147] A review of US positions on economic and social rights, including the policies during the Second World War, is found in: Alston P, 'U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an entirely New Strategy' in *American Journal of International Law* (Vol. 84 (1990)) P. 365-393.

- ✓ the right to property (Article 17);
- ✓ equality before the law (Article 7-11);
- ✓ freedom of conscience and belief (Article 18 and 19);
- ✓ freedom of peaceful assembly and association (Article 20) and many other principles.

Many of these principles were already contained in the constitutions of Western democracies: England - the Petition of rights of 1628[148] and the Bill of Rights 1689[149]; in the USA - the Declaration of Rights of Virginia 1776[150] and the Declaration of Independence 1776[151], the Bill of Rights 1791[152]; in France-Declaration of the Rights of man and of the citizen 1789[153], the Constitution of the USSR 1936[154] (Articles 124 and 125[155]).

The question is what Western liberalism today represents? Whether it is the liberalism that existed during the development of the Universal Declaration? What values are inherent in it? And what is his future? Recently Vladimir Putin, the President of the Russian Federation, on the eve of the opening of the G20 summit in an interview with the Financial Times said that the liberals tried to impose their will on the world, which led to a series of tragic consequences. The modern liberal idea, the very ideology that became the basis of Western civilization after the Second World War "has outlived its usefulness and entered conflict with the interests of most of the population. Our Western partners have admitted that some of its elements are simply unrealistic[156]".

[148] Petition of rights [1628] <https://www.constitution.org/eng/petright.htm> accessed 13 May 2023.

[149]Bill of Rights [1688] <http://www.legislation.gov.uk/aep/WillandMarSess2/1/2#commentary-c2144673> accessed 12 May 2023.

[150] Virginia Declaration of Rights (May 1776) <http://www.loc.gov/exhibits/treasures/tr00.html#obj6> accessed 11 May 2023.

[151] Declaration of Independence 1776 <http://www.digitalhistory.uh.edu/active_learning/explorations/revolution/declaration_of_independence.cfm> accessed 10 May 2023.

[152] Bill of Rights (1791) < https://www.history.com/topics/united-states-constitution/bill-of-rights> accessed 9 May 2023.

[153] Declaration of the rights of man and of citizen (published 26 August 1789) <https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/cst2.pdf> accessed 9 May 2023.

[154] Constitution of USSR 1936 (adopted 5 December 1936) <http://www.hist.msu.ru/ER/Etext/cnst1936.htm> accessed 9 May 2023.

[155] Refers to such liberal values as freedom of conscience, freedom of speech; freedom of press; freedom of assembly; freedom of street processions and demonstrations.

[156] Putin V, 'Modern liberalism is completely outdated' <https://www.vestifinance.ru/articles/121431> accessed 7 May 2023.

"It seems to me that there have never been purely liberal ideas or purely traditional ones. There were, probably, in the history of mankind, but it all very quickly comes to a standstill when there is no diversity. It all starts to come down to some extremes. It is necessary to give the opportunity to exist and to express themselves to different ideas and different opinions, but never forget about the interests of the general population[157]". Donald Tusk, the head of the European Council, responded to Putin's statement: "Those who say that liberal democracy is outdated also claim that freedoms are outdated, the rule of law is outdated, and human rights are outdated"[158]. Most likely, this interview aimed not so much to debunk liberalism as a philosophy in the broad sense, putting the interests of man and his rights above the interests of the state machine, as to show his skepticism towards several leaders of the Western world, who tried to teach Russia democracy, and then teach it sanctions.

Whether it is the liberalism that existed during the development of the universal Declaration? What values are inherent in it? And what is his future? There are several points of view in the academic literature:

Firstly, the coexistence of the two doctrines. For example, Cassin R. said, "coexistence of States which have different economic conceptions and different regimes is possible and that is not necessary for one conception to triumph another conception[159]". Instead of fighting both could complete each other in the sphere of economic, social, and cultural rights. Socialist states and Western states had to make some concessions. As C. Tomuschat states that: "This compromise solution would much less damaging for the Western side than for socialist states. By accepting freedom of speech and non-discrimination on political grounds, the East undermined the bases of the communist dictatorship. For the West, the ensuring burden was much lighter[160][161]". The idea of harmonization was presented by J. S. Mill and L.T. Hobhouse who are classic formulators of how these differing political traditions (western theories of liberalism and democracy). They think that these doctrines must harmonize to benefit community well-being.

[157] Bovt G, 'Who is buried under the name of liberalism' <http:// https://vm.ru/news/669434.html> accessed 8 May 2023.

[158] CESCR, 'Statement of D. Tusk', E/C.12/1990/SR.21 (1990) para.7.

[159] CHR, 'Verbatim Record of the Drafting Committee Meeting' (17 June 1947).

[160] Tomuchat C, 'Generations of Human Rights' in *Human Rights, between Idealism and Realism* (2014) P.29.

[161] Freeman M, 'Human Rights: Asia and West', in *Human Rights and International Relations in the Asia Pacific* (London and New York, Pinter, 1995) P.13,14.

Secondly, non-coexistence of two doctrines. As an example, Alan Wolfe[162]'s study shows us "the ultimate incompatibility of these conflicting traditions[163]". Moreover, he, drawing inspiration and insight from original works such as John Locke's 'Second treatise on government', Adam Smith's 'Theory of moral feelings', Kant's essay 'What is enlightenment?' and 'Mill on women's freedom and subjugation' analyses and welcomes liberalism's capacious concept of human nature, belief that people outweigh ideology, passion for social justice, faith in reason and intellectual openness, and respect for individualism. A. Wolfe also makes it clear that before liberalism can be successfully applied to today's problems, it must be restored, understood, and accepted - not just by Americans, but by all modern people - as the most profitable way to live in our complex modern world. "The future of liberalism is an important, enlightening and extremely useful step in this direction[164]".

In my opinion, seeing the opposition among two main doctrines as socialism and western liberalism and notwithstanding their disadvantages, it is worse to underline that both included space for economic, social and cultural rights and could coexist without establishing the dominance.

Lastly, the "Third World"[165] approach emphasizes self-determination and economic development. "Most theorists assert that self-determination was not considered a legal right until after the Second World War[166]". This view emanated in part from the International Committee of Jurists' study established in 1920,[167] which examined "the question of whether

[162]One of the American leading scholars and one of the last and most devoted sons of liberalism.

[163]Wolfe A, 'The Limits of Legitimacy' (Macmillan USA, 1 Oct. 1980) P.1-10.

[164]Wolfe A, 'The future of liberalism' (2009) P.2.<https://www.goodreads.com/en/book/show/4918115> accessed 6 May 2023.

[165] Y. Abdulqawi A. stated that: "The origin of the expression lies in the French phrase 'Tiers Monde', coined in 1952 by A. Sauvy as a play on the French revolutionary term 'Tiers Etat,' or the 'Third Estate'. In using this phrase to describe the world of the 1950's, Sauvy compared the Cold War confrontation between the West and the Communist world to the fight in pre-revolutionary France pitting the clergy against the nobility. According to Sauvy, what mattered to both groups of States, each fighting for the domination of the planet, was to conquer the Third World, or at least have the Third World on its side. The challenge, therefore, was how to deal with this Third World, which, like the 'Tiers Etat' in pre-revolutionary France, was slighted, exploited and despised by the other powers but simultaneously sought out as an ally. In order to do this, they had to understand what it was exactly that this Third World, this 'Tiers Etat', wanted. During that period, that is, in the immediate aftermath of the Second World War, this Third World wanted to regain its human dignity and to enjoy the 'human rights' which were long denied it" Abdulqawi A. Y, 'Title: Human rights: a Third World perspective' EUI AEL (2013) <https://cadmus.eui.eu/bitstream/handle/1814/28097/AEL_2013_01.pdf?sequence=1&isAllowed=y> accessed 5 May 2023.

[166] Tarazarian A, 'Nagorno-Karabagh Right's to Political Independence Under International Law: An Application of the Principle of Self- Determination' in 24 Sw. U. L. REV (1994) P.183, 193 -195.

[167] ICJ, 'Report in the Aaland Island Question' 0. J. Spec. Supp. 3 (1920) P.5.

the people of the Aaland islands had a right to conduct a plebiscite on the issue of the territory's potential separation from Finland and amalgamation with Sweden[168]" the Committee's view was that "although self-determination was important in modem political thought,[169]" it was not incorporated into the Covenant of the League of Nations, and, therefore, was not a part of the positive rule of the Law of Nations.

"Third world" approach "states campaigned for economic, social, and cultural rights, but linked them with the collective right of self- determination, with criticism of an incredibly unjust world economic order, and with international demands for access to economic development resources[170]". Although absent from the Universal Declaration of Human Rights 1948[171], several statements in the preamble can be taken to constitute "a reference to an underlying belief in the exercise of the right to self-determination[172]". In fact, J. Falkowski thinks that Article 21, which concerns the right to take part in government, "is an implicit recognition of "the natural law principal upon which self-determination is based[173]".Being conceptually fixated with political self-determination, J. Falkowski typically overlooks Article 22, which states, in part, that everyone is "entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality[174]". Together, these two articles are the progenitors of the right of self-determination in international human rights law, with Article 22 providing "the basis for

[168]Tamzarian A, 'Nagorno-Karabakh's Right to Political Independence under International Law: An Application of the Principle of Self-Determination' in *50 SUL Rev 183* (1994) P. 193.

[169] Kolodner E, 'The Future of the Right to Self-determination' in *10 CONN. J. INT'L L* (1994) P.154.

[170]Whelan D, '*Indivisible Human Rights: A History,* Pennsylvania Studies in Human Rights' (University of Pennsylvania Press 2010) P.144.

[171] Oloka-Onyang J, 'Heretical Reflections on the Right to Self- Determination: Prospects and Problems for a Democratic Global Future in the New Millennium' in *American University International Law Review* (Volume 15, Issue 1, 1999) P.170.

[172] Oloka-Onyang J, 'Heretical Reflections on the Right to Self- Determination: Prospects and Problems for a Democratic Global Future in the New Millennium' in *American University International Law Review* (Volume 15, Issue 1, 1999) P.170.

[173] Falkowski J.E, 'Secession Self-Determination: A Jeffersonian Perspective 'in *9 B.U. INT'L L.J. 209*, P.228.

[174] Article 23, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

economic self- determination[175]" given this background, it is worth analyzing more deeply how economic self-determination has fared at the United Nations.

A little-known fact is also that "especially the Latin American submissions had significantly influenced the introduction of the economic, social and cultural rights into the Universal Declaration of Human Rights[176]". "The Latin American and communist states pressed the right to food, clothing, medical care, and shelter, were strongly supported by the Asian and Arab delegations[177]". Recognition of the right to clothing was granted on the direct initiative of the Philippines and China. S. Kayaly proposed the inclusion of "social justice", as embodied in the Islamic welfare system of Zakat, in the draft text. "The measure failed, but it indicated his support for redistributive social security - and his attempt to find a meaningful cross-cultural equivalent for European and American mechanisms[178]". The Iranian delegate, G. Ghani, openly advocated any prioritization of social development ahead of civil and political rights. In one of the first meetings of the commission, on February 4, 1947, he argued that education, sponsored by the UN, was a prerequisite for freedoms of opinion and expression, as "freedom of expression and of opinion were possible only in countries where the standard of education was high enough to allow the masses to form a sound opinion, and so he wished the United Nations to take steps first of all to eliminate illiteracy and promote education, by such means as granting financial assistance to backward countries[179]". Indeed, the Latin American States really played a leading role in the introduction of these rights into the Universal Declaration of Human Rights[180]undertaking to bridge the gap between civil, political, economic, social, and cultural rights, all of which were already contained in the "American Declaration of the Rights and Duties of Man" of 1948[181].

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[175] Oloka-Onyang J, 'Heretical Reflections on the Right to Self- Determination: Prospects and Problems for a Democratic Global Future in the New Millennium' in *American University International Law Review* (Volume 15, Issue 1, 1999) P.171.

[176] Morsink J, 'Universal Declaration of Human Rights: Origins, Drafting, and Intent' (University of Pennsylvania Press 1999) P.204-207.

[177] Waltz S, 'Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights' in *Third World Quarterly* (№ 3, 2002) P.444.

[178] Morsink J, 'Universal Declaration of Human Rights: Origins, Drafting, and Intent' (University of Pennsylvania Press 1999) P.204-207; Glendon M.A, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights' (New York: Random House 2001) P.157.

[179] HRC, 'Summary Record of the 14th meeting' E/CN.4/SR.14, 4 (4 February 1947).

[180] Jennifer A,'Unterstützen und Unterlaufen. Die Sowjetunion und die Allgemeine Erklärung der Menschenrechte, 1948-1958' in *Hoffmann, Stefan-Ludwig (Hrsg.): Moralpolitik. Die Geschichte der Menschenrechte im 20. Jahrhundert, Göttingen* (Wallstein Verlag 2010) P.142-168.

[181] American Declaration of the Rights and Duties of Man (adopted by the Ninth International Conference of American States) OEA/Ser L V/II.82 Doc 6 Rev 1 (1948) at 17.

It is also worth paying attention to the doctrine of fascism and Nazism. What is it? Benito Mussolini said that: "fascism was a «spiritual force» that takes over all the forms of the moral and intellectual life of man, … saturates the will as well the intelligence, … pierces into the depths and makes its home in the heart of the man of action as well as of the thinker, of the artist as well of scientist[182]". "The fascist conception [of the] state … [was] for the individual [only] in so far as he coincided with the State, which is the conscience and universal will of man in his historical existence… [Whereas] Liberalism denied the State in the interests of the particular individual; [F]ascism is for liberty…[a]nd for the only liberty which can be the real thing, the liberty of the State and of the individual within the State … and [consequently] nothing human or spiritual exists, much less has value, outside the State[183]". Philosopher Giovanni Gentile "interpreted this as the state was «one with the personality of the citizen[184]". "As the French prosecutor of leading Nazis at the Nuremberg trial put it, the monstrous doctrine [of National Socialism] is that of racism… The individual has no value in himself and is important only as an element of the race… Anyone whose opinions differ from the official doctrine is asocial or unhealthy… National Socialism ends in the absorption of the personality of the citizen into that of the state, and in the denial of any intrinsic value of the human person[185]".

In drafting the Universal Declaration of Human rights 1948, Mr. Malik, the representative from Lebanon, said that this document "was inspired by opposition to the barbarous doctrines of Nazism and fascism[186]". As J. Morsink underlines «the war and the ideology of National Socialism as practiced by Adolf Hitler were in themselves enough to convince them of the truth of the rights of the Declaration. They did not need a philosophical argument in addition to the experience of the Holocaust. That experience itself gave them "the confidence and certainly to believe in the truths they enshrined[187]" in the Declaration, namely that "all human beings are born free and equal in dignity and rights[188]".

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[182] Mussolini B, 'The Doctrine of Fascism' in *Political Ideologies* (New York: MacMillan Publishing Co., 1973) P.105.

[183] Mussolini B, 'The Doctrine of Fascism' in *Political Ideologies* (New York: MacMillan Publishing Co., 1973) P.105.

[184] Mussolini B, 'The Doctrine of Fascism' in *Political Ideologies* (New York: MacMillan Publishing Co., 1973) P.104.

[185] Conot R.E, 'Justice at Nuremberg' (New York: Harper and Row Publishers 1983) P. 284-85.

[186] UNGA, 'Summary Report UN Docs. A/C.3/SR.181-183 (1948) at 857.

[187] Morsink J, 'World War Two and the Universal Declaration' in *Human Rights Quarterly* (Vol. 15, № 2, May of 1993) P. 358.

[188] Article 1, Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

Meanwhile, in June 1948, "during the Commission's final drafting of the relevant Universal Declaration of Human Rights articles, progress was stalled for several days while states debated these issues, which the French negotiator Rene Cassin later recalled as among "the most emotionally charged in the [the Commission's] work[189]". "States ultimately settled on Cassin's proposal to establish a framework "chapeau" or umbrella provision (ultimately adopted as Article 22) to introduce the provisions on economic and social rights. Representatives of Western liberal democracies were concerned not to dampen private initiative or to give too much power to the state, while the Soviet-bloc representatives maintained that these rights were meaningless without a strong state in charge of health, education, and welfare[190]". Cassin urged that: "The Commission "should follow the example to be found in all constitutions adopted in recent years and should treat those rights separately from the rights of the individual[191]". As adopted, the article provided that "[e]veryone … is entitled to realization of the economic, social, and cultural rights enumerated below, in accordance with the organization and resources of each state, through national effort and international cooperation[192]". "The General Assembly later adopted the provision without major change[193]".

In considering Article 22, both the Commission on Human Rights and the General Assembly rejected proposals by the Soviet Union to emphasize the state's duty to "take all necessary steps, including legislation, to ensure" the implementation of all rights set forth in the Universal Declaration of Human Rights[194]". The Soviet representative maintained that its amendment "contained not only the idea that the State and society must ensure to the individual the realization of social, economic and cultural rights, but also the idea that they must give him

[189] Cassin R, 'La Pensee et l'action' in *Human Rights* (1972) P.111.

[190] Cassin R, 'La Pensee et l'action' in Human Rights (1972) P.187.

[191] ECOSOS, 'Summary Report on the seventy-second meeting' 'Statement of Cassin R, Representative of France) UN Doc. E/CN.4/SR.72 (1948) P.4.

[192] The proposal, as amended, was adopted by a vote of 12-0, with 5 abstentions (ECOSOS, 'Summary Report on the seventy-second meeting' UN Doc. E/CN.4/SR.72 (1948) P. 10). Cassin's initial proposal stated that: "Everyone as a member of society has the economic, social and cultural rights enumerated below, whose fulfilment should be made possible in every State separately or by international collaboration" (ECOSOS, 'Summary Report on the sixty-seventh meetings' Doc. E /CN.4/SR.67(1948) P.2) Egypt (Loutfli O.) suggested adding the phrase "in accordance with the economic and social possibilities" of each state, while Mrs. Roosevelt proposed "in accordance with the social and economic system and political organization" (ECOSOS, 'Summary Report on the seventy-first meeting' UN Doc. E/CN.4/SR.71 (1948) P.3).

[193] UNGA, 'International Children's Emergency Fund'UN Doc. A/C./SR.138 (1948) P.512-514.

[194] The USSR amendment is contained in (ECOSOS, 'Report on the third session' UN Doc. E/800 (1948) P.43). It was rejected by votes of 11-4 and 10-4 (with 1 abstention) in the Commission (ECOSOS, 'Summary Report on the seventy-second meeting' UN Doc. E/CN.4/SR.72 (1948) P. 9-10) and by 27-8, with 8 abstentions, in the Third Committee (UNGA, 'International Children's Emergency Fund', 'Statement of Roosevelt E, Representative of the United States) UN Doc. A/C./SR.138 (1948) P.512).

a real opportunity to enjoy all of the other rights set forth in the declaration[195]". Eleanor Roosevelt, in opposing the amendment, stressed that the formulation contained in Article 22 was a "compromise between the views of certain Governments, which were anxious that the State should give special recognition to the economic, social and cultural rights of the individual and the views of Governments, such as the United States Government, which considered that the obligation of each State should not be specified[196]". She emphasized that for the United States, "the essential elements of Article [22] were the two phrases 'through national effort and international co-operation' and "in accordance with the organization and resources of each State[197]". Thus, the Universal Declaration of Human Rights of 1948 includes economic, social, and cultural rights in Articles 22 to 27 that refer to what ought to be done for people.

To sum up, the process of preparing the Universal Declaration on Human Rights has not been easy. The philosophical doctrines underlying this document have been advocated by the countries concerned. Preparation of the Universal Declaration of Human Rights 1948 is the struggle of East and West, the struggle of Western liberalism and Marxism, the struggle for world domination. The question arises why countries have established a sign of universality, indivisibility of rights only formally? Can we assert confidently that the drafters of the Universal Declaration on Human Rights were not "blinded by their own ambitions? As C. Tomuschat says that "They did not realize that the existing cultural differences between the many nations and other ethnic as well as linguistic communities of this globe[198]". Y. Khushalani thinks that "evidently, there cannot be universal understanding of human rights"[199]. Mrs Eleanor Roosevelt, the United States representative to the General Assembly and Chairman of the United Nations Commission on Human Rights during the drafting of the Universal Declaration on Human Rights, noted that this document "is not, and does not purport to be a statement of law or of legal obligation" but "a common standard of achievement for all peoples of all nations[200]". However, this document serves as a normative basis for constitutions because many provisions of the Universal Declaration on Human Rights are included in modern constitutions. Some scholars[201] note that it is a basis for assess the legal systems, policies and practices of all

[195] UNGA, 'Draft international declaration of human rights (E/800) continued' 'Statement of Pavlov A, representative of the United States' UN Doc. A./C.3/SR.137 (1948), P. 498-99.

[196] UNGA, 'International Children's Emergency Fund', 'Statement of Roosevelt E, Representative of the United States) UN Doc. A/C./SR.138 (1948) P.501.

[197] UNGA, 'International Children's Emergency Fund', 'Statement of Roosevelt E, Representative of the United States) UN Doc. A/C./SR.138 (1948) P.501.

[198] Tomuchat C, 'Human rights in a World-Wide Framework Some Current Issues'< https://www.zaoerv.de/45_ 1985/45_1985_3_k_547_584.pdfP.548> accessed 4 May 2023.

[199] Khushalani Y, 'Human Rights in Asia and Africa' in *4 HRLJ* (1983) P.405.

[200]19 US Department of State Bulletin 751 (1948).

[201]OHCHR, 'Human Rights and Constitution making' HR/PUB/17/5 (New York and Geneva, 2018) <https://www..ohchr.org/Documents/Publications/ConstitutionMaking_RU.pdf> accessed 1 April 2023.

States under the universal periodic reviews. Three doctrines as western liberalism, socialism, third world approach contributed the inclusion of economic, social and cultural rights in the Universal Declaration on Human Rights 1948. The combination of ideas of three doctrines has made it possible to consolidate in the Universal Declaration on Human rights 1948 the maximum possible list of human rights and freedoms, becoming a universal standard for States with different political systems, adhering to different ideological, religious, cultural directions in their development. The work of the Soviet Union and Latin American countries in implementing second-generation rights was significant. The debate between the West and the East about the supremacy of a particular category of rights is still being discussed in the scientific literature. The question arises why, after the establishment of equality of rights and their unified nature, the debate does not subside? Does this mean that is it still valid this distinction? Why are civil and political rights better protected? Can we still maintain that states' obligations are different as regards both sets of rights? In order to answer some of these questions let us move to an epigraph devoted to the International Covenant on Economic, Social and Cultural Rights and describe reasons of its adoption, obligations.

1.4. The International Covenant on Economic, Social, and Cultural Rights: reasons for adoption

This paragraph analyses the reasons for the adoption of the two acts, as well as the reasons that make it clear to us that the nature of the two categories of rights is the same, and again it is time to return to the issue of the unreasonableness of the adoption of the two Covenants of 1966. Unreasonableness is to maintain the distinction, but it has a reason (political and ideological) by the time of its redaction. The work of the Commission and its methods are examined. It is important to consider the general characteristics of Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966, namely the obligations of States and its comparison with a similar article of the International Covenant on Civil and Political Rights of 1966. The difference in obligations arising from the two covenants leads to unequal protection of the two categories of rights. Today the rights of the first generation are better protected than the rights of the second generation.

To transform the provisions of the Universal Declaration on Human Rights into legally binding obligations, the United Nations adopted two separate covenants. In 1950, by Resolution of 421 E(V) of December 4, 1950, the United Nations General Assembly "decided (35 voted to 9, with 7 abstentions) to include economic, social, and cultural rights into the single

international covenant[202][203]". At the Fifth session the Assembly specially directed the Commission to "include in the draft Covenant a clear expression of economic, social and cultural rights[204]". Under the pressure from the Western - dominated Commission, the United Nations General Assembly decided that there should be two separate covenants (by 27 votes to 20, with 3 abstentions)[205] dealing with the two categories of rights, but they should contain "as many similar provisions as possible and be approved and opened for signature simultaneously, in order to emphasise the unity of purpose[206]" .This limited view of the nature of human rights and duties "might be justified by political, ideological and economic circumstances in our present circumstances[207]". However, M. Sepulveda Carmona writes that: "in retrospect we may argue that the majority of the Covenants' drafters were mistaken in their belief that the two clusters of rights and the obligations that they impose were different in nature[208]". The argument of M. Sepulveda seems to be true because if we turn to the preamble of the Universal Declaration of Human Rights of 1948, we will see that countries have declared the indivisibility, universality, equality, and inalienability of human rights.

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[202] UNGA, 'Draft International Covenant on Human Rights and measures of implementation: future work of Commission on Human Rights' 421(V) (4 December 1950); Robertson R, 'Measuring State Compliance with the obligation to Devote the Maximum Available Resources to Realizing Economic, Social and Cultural Rights' in *Human Rights Quarterly* (1994) P.16.

[203] UNGA, 'Draft International Covenants on Human Rights and measures of implementation: future work for the Commission on Human Rights' UN Doc. A/PV.317(1950) P.564, para.162.

[204] UNGA, 'Draft International Covenants on Human Rights and measures of implementation: future work for the Commission on Human Rights' A/Res. 421 E(V), 1950 U.N.Y.B. 529-31 (4 December 1950).

[205] UNGA, 'Preparation of two Draft International Covenants on Human Rights' A/RES.543(VI) (5 February 1952) P.36.

[206] UNGA, 'Draft International Covenants on Human Rights: annotation' UN Doc. A/2929 (1 July1955) para.7.

[207] Sepulveda M.C. explains that: "The Post-War period, the Cold War and the existence of a social block influenced the drafting of the Covenants. While today the economic and political context is totally different, there are new obstacles to the enjoyment of these rights, such as those arising from globalization, structural adjustment programs, the foreign debt of developing countries and the enormous inequalities in the distribution of wealth' Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.115-116; OHCHR,'The realization of economic, social and cultural rights: final report / submitted by Türk D, Special Rapporteur' E/CN.4/Sub.2/1992/16 (3 July 1992) para.38-138; ECOSOS, 'The realization of economic, social and cultural rights; The relationship between the enjoyment of human rights, in particular economic, social, and cultural rights, and income distribution' in 'Final report prepared by Mr Bengoa J, Special Rapporteur) 1/E/CN.4/Sub.2/1997/9 (30 June 1997).

[208] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.115.

It seems interesting to present the reasons formulated by C. Scott, for which two international covenants were adopted, and analyze them:

1) Implementation – based reasons. For example, Western delegations maintained that judicial or juridical implementation of economic, social, and cultural rights was both inappropriate and impracticable. Judging from the discussions that have taken place in the United Nations, several Western Governments were not willing to sign the United Nations Covenant because it included rights the implementation of which could not be expected on a world-wide basis. In fact, this argument is the continued disregard by the West of the value of economic, social, and cultural rights. Since the development of the Universal Declaration of Human Rights of 1948, the West has denied these rights and the possibility of their protection.

2) Ideological or political reasons. According to the Committee, "the Cold War […] situated much of the general human rights debate in a context of ideological controversy; this affected economic, social, and cultural rights since these were often portrayed falseyas being solely the concern of either the Communist countries or a handful of developing countries[209]". Soviet-bloc states continued to insist that the state was bound to "guarantee" economic, social, and cultural rights to its citizens "unequivocally"[210]. They charged those Western proposals "consisted of empty declarations of principle which would have no binding force on signatory governments[211]". However, M. Sorensen, the Danish representative, asserted that "[n]ot all governments were partisans of the socialist solution, and it was essential to recognize that each must be free to select the policy appropriate to its own national requirements and conditions[212]". D.J. Whelan and J. Donelly wrote that: "In fact, the understanding of economic and social rights as directive rather than justiciable was shared by all states [at the time of drafting the International Covenant on Economic, Social, and Cultural Rights]. "No state, Western or non-western, seriously proposed – in the sense of being willing to adopt as a matter of enforceable

[209] CESCR, 'General Comment № 5' in 'Persons with Disabilities' E/1995/22E./1995/22, Annex V (9 December 1994) para.7.

[210] Dennis M, Stewart D, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be a International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?' in *98 American Journal of International Law*, (2004) P.218.

[211] ECOSOS, 'Summary Record of the two hundred and sixth meeting' (Statement of Morozov P, Representative of USSR) UN Doc. E./CN.4/SR.206 (30 April 1951) at 5.

[212]ECOSOS, 'Summary Record of the two hundred and seventh meeting' (Statement of Sorensen M, Representative of Denmark) UN Doc. E/CN.4/SR.207 (2 May1951) at 10-11; ECOSOS, 'Summary Record of the 236th meeting (Roosevelt E, Statement) UN Doc. E/CN.4/SR.236 (10 May 1951) at 5; ECOSOS, 'Summary Record of the two hundred and sixth meeting'(Statement of Whitlam H.F, Representative of Australia, Statement) UN Doc. E./CN.4/SR.206 (30 April 1951) at 22.

national law – treating economic, social, and cultural rights as matters of immediate rather than progressive realization[213]".

It seems that the approach of D. J Whelan and J. Donelly is wrong because, since economic, social, and cultural rights were not only upheld by the Soviet Union, but also by Latin American countries. The Latin American and communist states "pressed the right to food, clothing, medical care, and shelter, were strongly supported by the Asian and Arab delegations[214]". Recognition of the right to clothing was granted on the direct initiative of the Philippines and China. Kayaly proposed the inclusion of "social justice" as embodied in the Islamic welfare system of Zakat, in the draft text. The measure failed, but "it indicated his support for redistributive social security- and his attempt to find a meaningful cross-cultural equivalent for European and American mechanisms[215]". The Iranian delegate, G. Ghani, openly advocated any prioritization of social development ahead of civil and political rights.

3) Pragmatic reasons[216], "including:

(i) The concern that the world community was expecting quick results and that devoting the requisite attention to economic rights would produce too great a delay,

(ii) the related concern that the articles on economic rights drafted to that point needed considerable reworking, whereas political were, for the most part, already expressed satisfactorily,

(iii) the reminder that any covenant had to be generally accepted to most of the United Nations members, so it could be ratified and enter into force,

(iv) the concern that the work of specialised agencies, notably the International Labour Organization, might be overlapped and duplicated if economic rights were included, and

[213] Whelan D.J, Donelly J, 'The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight' in *Human Rights Quarterly* (Vol.29, 2007) P.908.

[214] Waltz S, 'Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights' in *Third World Quarterly* (№ 3, 2002) P.444.

[215] Morsink J, 'Universal Declaration of Human Rights: Origins, Drafting, and Intent'(University of Pennsylvania Press 1999) P.204-207; Glendon M.A, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights' (New York: Random House 2001) P.157.

[216] Scott C, 'The interdependence and permeability of human rights norms: towards a partial fusion of the International Covenants on Human Rights' in *Osgoode Hall Law Journal* (Ottawa, Canada, Vol.27, 1989) P.794-795.

(v) the view that two instruments were desirable because virtually all states would be willing to sign at least one[217]".

In this case, I do agree with M. C. Sepulveda who notes that: "many of underlined reasons were incorrect assessments or merely based on short-term political consideration[218]".

As C. Scott notes that: "Although the three categories of reasons are not water light and were often invoked at the same time, after the Cold War, the so-called "political and ideological" reasons are no longer valid and "pragmatic reasons" can also be factored out because, for the most part, those reasons were subordinated to the "implementation" arguments and were coloured by politics[219]". M.C. Sepulveda states that: "The drafters generally saw economic, social, and cultural rights as requiring merely positive State actions they assumed that they are dependent on socio-economic conditions and therefore that their implementation was necessarily gradual[220]". As Jhabvala mentions, "for while the implementation of civil and political rights was considered as having been accomplished once they had been established on paper, a very different standard – real enjoyment- was set up for evaluation of the implementation of economic, social and cultural rights"[221]. It seems that the drafters of the two international covenants did not consider the universal, uniform nature of these rights, but supported the Western countries.

1.5. Unified nature of two categories of human rights under seven criteria

This paragraph aims to expose the myth that two generations of rights are different by introducing the following criteria. There are several questions for this paragraph to answer: Do negative obligations arise from the rights of the second generation? Are second generation rights accurate? Do all second-generation rights require a lot of resources? Why cannot second-generation rights be implemented immediately? Why do many authors believe that due to the lack of characteristics inherent in the rights of the first generation, the rights of the second

[217] Scott C, 'The interdependence and permeability of human rights norms: towards a partial fusion of the International Covenants on Human Rights' in *Osgoode Hall Law Journal* (Ottawa, Canada, Vol.27, 1989) P.795-796.

[218] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.118; CHR, 'Report of the thirty-fourth Session' E./1978/38(1978)

[219] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.117.

[220] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P. 120.

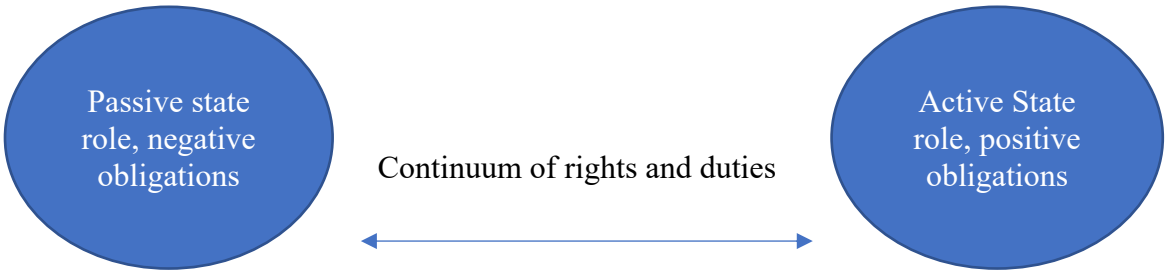
[221] Jhabvala F, 'On human rights and the socio-economic context', in *Human Rights Quarterly* (Vol. 7, № 4, 1985) P.163.

generation cannot be protected in court? Do civil and political rights have the characteristics of second-generation rights?

The debate over the nature of two groups of human rights (civil and political rights; economic, social, and cultural rights) has been going on for a long time. This thesis holds the view of a group of authors who believe that both groups of human rights have a unified nature. As evidence, there are a focus on the following seven criteria of state obligations:

i. Positive and negative state obligations

It was firstly considered that civil, political rights and economic, social, and cultural rights require negative and positive obligations respectively. M.C. Sepulveda used to show the variety of duties in the following Figure[222]:



As S. Rubin puts it, "when one discusses civil and political rights, one is generally talking about restraints on governmental action, not prescriptions for such action … [it] is easier to tell governments that they shall not throw persons in jail without a fair trial than they shall guarantee even a minimal but sufficient standard of living[223]". The implementation of rights contained in the International Covenant on Civil and Political Rights of 1966, for instance, Article 14, 25, 23(2) require the gradual removal of obstacles to their full implementation. However, some civil and political rights directly require positive actions on the part of the duty-holder (for instance, Article 9(2), 14(3) of the International Covenant on Civil and Political Rights) and some economic, social, and cultural rights directly impose a negative obligation (duty of non-interference). For example, "the right to food includes the right for everyone to procure their own food supply without interference[224]","the right to housing implies the right for an

[222] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.156.

[223] Rubin S, 'Economic and Social Rights and the New International Economic Order, Address Before the American Society of International Law' in Schwarz H, 'Do Economic and Social Rights Belong in a Constitution?' in *American University Journal of International Law and Policy* (1995) P. 10, 1233, 1233.

[224] Eide A, 'The right to an adequate standard of living including the right to food' in *Economic, social, and Cultural rights: a textbook* (Martinus Nijhoff Publishers, 1st edition, Dordrecht,1995).

individual not to be a victim of forced eviction (Article 10 of the International Covenant on Economic, Social and Cultural rights); the right on trade union freedoms (Article 8 of the International Covenant on Economic, Social and Cultural rights); the right to work covers the individual's right to choose his/her own work and also requires the State to abstain from measures that would increase unemployment and the right to adequate health implies the obligation to avoid interference with the provision of health care[225]".

As several commentators note, "the right to education implies the freedom to establish educational, academic institutions[226]". The academic literature shows that: "Positive and negative duties are a part of normative requirement of both sorts of rights[227]". As H. Shue notes, attempting to clarify every right as either fatly negative or positive, is an "artificial, simplistic and arid exercise[228]".

The Human Rights Committee affirmed that: "When interpreting Article 2 of the International Covenant on Civil and Political Rights the legal obligation under this Covenant is both positive and negative in nature[229]".Equally, the Committee on Economic, Social and Cultural Rights explicitly stated in its Concluding Observations and General Comments that: "Economic, Social, and Cultural rights carry negative obligations[230]".A positive/negative distinction between two sorts of rights cannot be made and the difference in nature between them needs to be reappraised. Moreover, "courts have generally found the state action/inaction dichotomy extremely problematic, in part because most examples of 'inaction' can be recast as examples of action[231]".

Agreeing that economic, social, and cultural rights also require negative obligations, there is the following problem to face. Developing negative obligations arising from socio-economic rights can create a barrier for the most affected people from losing their existing ability to meet

[225] Toebes B, 'The right to health as a human right in international law 'in *Intersentia* (Antwerp 1998) P. 312-319.

[226] OHCHR, 'Report of Mr. Mehedi) EGN.4. Sub.2/199O10 (8 July 1999) para. 61-73.

[227] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in Intersentia (2003) P. 124.

[228]Shue H, 'Basic Rights: Substance, affluence and US Foreign Policy' (Princeton University Press, New Jersey 1996) P.84.

[229] HRC, 'General Comment № 31' in 'The nature of the general legal obligation imposed on States Parties to the Covenant' CCPR/C/21/Rev.1/Add.13 (26 May 2004) para 6.

[230] CESCR, General comment № 7' in 'The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions' E/1998/22 (20 May 1997) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en> accessed 30 March 2023.

[231] *Vriend v. Alberta* [1998] 1 S.C.R. 493 (Supreme Court of Canada) para. 53.

their own needs. To confirm this judgment, let us turn to the following cases on the example of the right to housing in South Africa.

The South African Constitution expressly provided in § 26 (3) that: "no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions[232]". The Court used this provision and the relevant legislation that has been passed to allow evictions only after a court order has been given, "only after negotiation or meaningful engagement between the parties has taken place[233]" and, largely, "only when some form of alternative accommodation is made available for the people concerned[234]". The court also was prepared to create procedural protections for borrowers who default from their loans in the case *of Jaftha v. Schoeman*[235], for instance, which dealt with a small debt of around USD 80. When the borrower was unable to pay the debt, the lender sought to execute against the home of the borrower to recoup his loan. The Constitutional Court found that: "There was a negative content to the right to have access to housing" and "any measure which permits a person to be deprived of existing access to adequate housing, limits the rights protected in section 26(1)[236]".

ii. Cost free and expensive state obligations

Because civil and political rights to impose merely negative obligations upon States, it was secondly concluded that their implementation did not require any resources, or more precisely, only a relatively small amount. As D. McGoldrick noted that: "The Human Rights Committee seems not to accept the lack of resources as an excuse for non-compliance with the obligations imposed by the International Covenant on Civil and Political Rights of 1966, even if such an obligation may require significant resource levels for its implementation[237]". A clear example of how civil and political rights are not cost-free and may require many resources is

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[232] *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008) (Constitutional Court of South Africa).

[233] *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008) (Constitutional Court of South Africa).

[234] City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) (Constitutional Court of South Africa) P.96.

[235] *Jaftha v. Schoeman, Van Rooyen v.* Stoltz [2005] 1 BCLR 78 (October 8, 2004) (Constitutional Court of South Africa).

[236] *Jaftha v. Schoeman, Van Rooyen v.* Stoltz [2005] 1 BCLR 78 (October 8, 2004) (Constitutional Court of South Africa).

[237] Mcgoldrick D, 'The Human Rights Committee' (Clarendon Press, Oxford 1994) P.273-274.

provided by P. Hunt who "analysed the expenditure of the Government of New Zealand on the domestic realization of civil and political rights[238]". Also, E.W. Vierdag recognised some of the rights contained in the International Covenant on Civil and Political Rights require considerable expenditure as well[239]".

So many civil and political rights are not cost-free: "the establishment and maintenance of a court system that provides the fundamental procedural guarantees provided for in the International Covenant on Civil and Political Rights is a commonly cited example[240]". In contrast, as economic, social, and cultural rights were said to require positive actions, they were viewed as very costly. Unfortunately, country tend to circumvent the economic and financial aspects of enforcing these rights. In particular, the question arises: how much will the realization of these rights cost and what are the potential trade-offs in determining the priorities of economic, social, and cultural rights in their implementation? In the article 'Achieving economic and social rights: The challenge of assessing compliance' published by the Overseas Development Institute "the social science methods can take this debate further in a more empirical way[241]".

However, expensive obligations of economic, social, and cultural rights can be disproved by following examples of economic, social, and cultural rights: the right to equality (Article 3 of the International Covenant on Economic, Social, and Cultural Rights of 1966), the obligation to protect children from exploitation (Article 10(3) of the International Covenant on Economic, Social, and Cultural Rights of 1966), and the right to equal remuneration for work of equal value (Article 7 (a) the International Covenant on Economic, Social, and Cultural Rights of 1966) require little or no government expenditure.

While the realization of different obligations may well require different level of resources, in practice such difference in the resources required may exist independently of whether the obligations originate in one cluster of rights or the other. All human rights impose a plurality of duties and each of those duties potentially requires different degrees of State involvement as well as different level of resources. The differences are not with regard to the rights but rather

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[238] UNGA, 'Draft International Covenants on Human Rights: annotation' UN Doc. A/2929 (1 July1955); UNGA, 'Draft International Covenants on Human Rights' UN Doc. A/5655 (10 December 1963); UNCHR (Hunt P), 'Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' UN Doc. E/CN.4/2004/49/Add.1(2004).

[239] Vierdag E.W, The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights' in *9 NETH. Y.B. INT'L L* (Cambridge University Press, 1978) P.82.

[240] Byrnes A*,* 'Second class rights yet again? Economic, social, and cultural rights in the report of the national human rights consultation' in *UNSW Law Journal Volume* (33(1) 2010) P.200.

[241]'Achieving economic and social rights: The challenge of assessing compliance' (Overseas Development Institute) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-flies/2340.pdf > accessed 5 April 2023.

with regard to the duties that they impose. In sum, the point here is that depending on whether a given duty is placed near either the negative or the positive end of the spectrum, the level of resources required for its implementation will vary. If it falls closer to the negative end of the spectrum, less resources will be required, while closer to the positive end of the spectrum signifies that a higher level of resources will be required for its implementation.

On the other hand, even many of the positive obligations with respect to social and economic rights may, in the longer term, cost nothing at all or may save the state considerable expenditure. This is not a distinction between rights, but, rather, "one between the different duties that each right may impose [242]". A. Nolan, B. Porter, M. Langford considered that: "Even many of the positive obligations with respect to social and economic rights may, in the longer term, cost nothing at all or may save the state considerable expenditure. For instance, ensuring the provision of adequate education and training or eliminating obstacles to access to land, housing or employment may significantly reduce state expenditures related to social security, unemployment, or homelessness[243]".

iii. Progressive and immediate state obligations

It was thirdly considered that civil and political rights require immediate obligations, while economic, social, and cultural rights – progressive obligations. The obligation on economic, social, and cultural rights includes an obligation to develop a plan to progressively realise economic, social, and cultural rights. Moreover, there is recognition that there are certain elements that are to be applied immediately and that enforcement of all rights has progressive elements.

It is interesting to note that the Committee on Economic, Social, and Cultural Rights has often emphasized that "while the International Covenant on Economic, Social, and Cultural Rights of 1966 provides for progressive realization and acknowledges the constrains due to the limits of available resources, it also imposes various obligations which are of immediate effect[244]. These immediate obligations were described in the following comments (General Comments №9 - para.10, № 4 - para.8, № 11- para.11, №12- para.16, №14- para.30, №15 - para.17). The Committee on Economic, Social, and Cultural Rights rights also specified which provisions are of immediate effect:

"[…] there are several other provisions in the Covenant, including Articles 3,7 (a) (i), 8,10(3), 13(2)(a), (3) and (4) and 15(3) which would seem to be capable of immediate

[242] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.128.

[243] Langford M, Nolan A, Porter B, 'The Justiciability of Social and Economic Rights: An Updated Appraisal' in *CHRGJ Working Paper* (№ 15,2009) <http://ssrn.com/abstract=1434944> accessed 8 May 2023.

[244] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) UN Doc. E/1991/23 (1991) para.1.

application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain[245]".

Moreover, the Committee on Economic, Social, and Cultural Rights has stated that the following obligations have "immediate effect:

- ✓ negative obligations that require non-intervention of states (abstention from);
- ✓ availability of judicial measures – i.e., right to fair trial;
- ✓ application of non-discrimination principle and equal protection of men and women, including but not only equal remuneration;
- ✓ special protection of vulnerable people (e.g., protection of young children and young persons (against economic exploitation);
- ✓ effective monitoring;
- ✓ obligation to take steps (Article 2(1)), these steps must be deliberate, concrete, and targeted towards the full realization of the right in question);
- ✓ seek international cooperation in accordance with Articles 11, 22 and 23 of the Covenant (E/1996/22, Annex VII, para.10[246]);
- ✓ obligation to adopt plan of action;
- ✓ obligation to improve health and social conditions in prisons;
- ✓ duty to protect cultural rights of minorities;
- ✓ obligation to protect rights and obligations recognized by other international treaties in relation to economic and social rights[247]".

There are some examples. The first right is the right for housing.The duty was elaborated upon by the Committee on Economic, Social, and Cultural Rights in the context of housing in its General Comment № 4 is the following: "While the most appropriate means of achieving the full realisation of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party takes whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which…'defines the objectives for the development of shelter conditions,

[245] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) UN Doc. E/1991/23 (1991) para.5.

[246] CESCR, 'Report on the twelfth and thirteenth sessions' (Habitat II) E/1996/22, Annex VII (1996) para.10.

[247] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) UN Doc. E/1991/23 (1991); CESCR, 'General Comment № 9' in 'The Domestic Application of the Covenant' (Nineteenth Session) U.N. Doc. E/C.12/1998/24 (1998); CESCR, 'General Comment № 12' in 'The Right to Adequate Food (Art. 11)' (adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights) E/C.12/1999/5 (12 May 1999); CESCR, 'General Comment № 13' in 'The Right to Education (Art. 13)' (adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights) E/C.12/1999/10 (8 December 1999); CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000); Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.174-184.

identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures[248]".“Regardless of a State party's economic development or resource limitation, it has an immediate obligation to provide adequate housing[249]". State parties are to "take immediate measures aimed at conferring legal security of tenure"[250] and "provide legal protection against forced evictions[251]". Moreover, State parties are to "take immediate measures to promote the right to housing and where necessary seek international co-operation, in accordance with Articles 11, 22 and 23 of the Committee on Economic, Social, and Cultural Rights[252]". The Committee on Economic, Social, and Cultural Rights has established that "states must immediately take steps towards realization of the right to education to the maximum of its available resources[253]".

Another right is the right to education. The Committee on Economic, Social, and Cultural Rights further stressed that: "The obligation to provide compulsory primary education free of charge (Articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights) imposes an immediate duty upon State parties with the necessary means to implement it[254]".

Next right is the right to health. In addition, the Committee on Economic, Social, and Cultural Rights stated that the International Covenant on Economic, Social, and Cultural Rights imposes immediate obligations on State parties in relation to the right to health (Article 12 of the International Covenant on Economic, Social, and Cultural Rights) such as the guarantee that

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[248] Schultz J, 'Economic and Social Rights in the United States: An Overview of the Domestic Legal Framework 'in *Human Rights Brief* (Vol. 11, Issue 1, 2003) <http://www.wcl.american.edu/hrbrief/11/1shultz.cfm> accessed 3 May 2023.

[249]Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P. 176.

[250] CESCR, 'General Comment № 4' in 'The Right to Adequate Housing (Art. 11 (1) of the Covenant) (adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights) E/1992/23 (13 December 1991) para.8(a).

[251] CESCR, General comment № 7' in 'The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions' E/1998/22 (20 May 1997) para.9 <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en> accessed 30 March 2023.

[252] CESCR, 'Report on the twelfth and thirteenth sessions' (Habitat II) E/1996/22, Annex VII (1996) para.10.

[253] Ibid.

[254] CESCR, 'General Comment № 13' in 'The Right to Education (Art. 13)' (adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights) E/C.12/1999/10 (8 December 1999) para. 51.

"the right to health will be exercised without discrimination of any kind (Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights); this non-discriminatory norm seems a pre-eminent candidate for inclusion within MCOs attached to the right to health because it reflects a background right of non-discrimination (Art. 2(2) of the Covenant) which, like civil and political rights generally, imposes obligations of 'immediate effect[255]".It imposes the obligation to take steps (Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights) towards the full realization of Article 12[256]".Such 'steps' "must be deliberate, targeted and specific towards the full realization of the right to health[257]".

It is important to note that the Inter-American Commission on Human Rights notes: "If the principle that economic, social and cultural rights are to be achieved progressively does not mean that the governments do not have the immediate obligation to make efforts to attain to full realization of these rights[258]".In addition, in accordance with paragraph 19 of the Report of the United Nations High Commissioner for Human Rights (Geneva, 2-27 July 2007[259]) "the immediate obligation to take steps and move as expeditiously as possible towards the full realization of rights implies a strong presumption of impermissibility of deliberate retrogressive measures, that is, measures which result in the deterioration of a right's current level of fulfilment[260]". According to the Committee on Economic, Social, and Cultural Rights, a 'deliberately retrogressive measure' can be defined as "any measure implying a step back in protection levels accorded to economic, social, and cultural rights because of a Member State's intentional decision[261]". "By way of example, the introduction of user fees in secondary

[255] CEDAW, 'General Recommendation № 24' in 'Article 12 of the Convention (Women and Health)' (adopted at the Twentieth Session of the Committee on the Elimination of Discrimination against Women' A/54/38/Rev.1, chap. I (1999).

[256] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) para.30.

[257] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) para.30.

[258] Inter-American Commission on Human Rights, 'Annual Report', OEA' Ser. L. V.ii 05 (1 February 1993).

[259] OHCHR, 'The Report' E/2007/82 (2-27 July 2007) <https://www.ohchr.org/Documents/Issues/ESCR/E_2007_82_en.pdf> accessed 2 May 2023.

[260] CESCR, 'General Comment № 13' in 'The Right to Education (Art. 13)' (adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights) E/C.12/1999/10 (8 December 1999) para. 45; CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) UN Doc. E/1991/23 (1991) para.9; CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights) E/C.12/2000/4 (11 August 2000) para.32.

[261] CESCR, 'General Comment No 4' in 'The Right to Adequate Housing (Art 11 (1)) (1991) UN Doc E/1992/23, para 11; CESCR, 'General Comment № 13' in 'The Right to Education (Art. 13)' (adopted at the Twenty-first

education which had formerly been free of charge would constitute a deliberate retrogressive measure; to justify such retrogressive measures, a state party would have to demonstrate that they have only been adopted after "the most careful consideration of all the alternatives" and can be "justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources[262]". The Committee on Economic, Social, and Cultural Rights has noted that, "to assess whether a retrogressive measure follows the obligations the International Covenant on Economic, Social, and Cultural Rights imposes, it would look at whether:

- there was reasonable justification for the action;
- there was genuine participation of affected groups in examining the proposed measures and alternatives;
- the measures were directly or indirectly discriminatory;
- the measures would have a sustained impact on the realization of rights, an unreasonable impact on acquired rights, or whether an individual or group would be deprived of access to the minimum essential level of economic, social, and cultural rights;
- whether there was a national-level independent review of the measures[263]".

According to the Committee, "if a state uses 'resource constraints' to justify a retrogressive measure, it will assess the situation considering, inter alia, the country's development level; the alleged breach's severity, in particular whether it impinges upon 'the minimum core content of the Covenant'; the country's current economic situation and whether it was experiencing a recession; the existence of other serious claims on the State Party's limited resources; whether the State Party had sought to identify low-cost options; and whether the State Party had sought international cooperation and assistance or rejected offers of resources without sufficient reason[264]".

Session of the Committee on Economic, Social and Cultural Rights) E/C.12/1999/10 (8 December 1999) para. 45; CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) para.32.

[262] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) UN Doc. E/1991/23 (1991) para.9.

[263] CESCR, 'General Comment № 19', in 'The right to social security (Article 9)' (Thirty-ninth session) UN Doc E/C.12/GC/19 (2008) para 42.

[264] CESCR, 'An evaluation of the obligation to take steps to the 'maximum of available resources' under an Optional Protocol to the Covenant [on Economic, Social and Cultural Rights]' E/C.12/2007/1 (21 September 2007) para.10; HRC, 'Report of the Independent Expert on poverty, Magdalena Sepúlveda Carmona' UN Doc A/HRC/17/34 (2011); HRC, 'Report of the Special Rapporteur on poverty, Magdalena Sepúlveda Carmona' UN Doc A/HRC/26/28 (2014); UNGA, 'Report of the Special Rapporteur on water and sanitation, Catarina de Albuquerque' UN Doc A/66/255 (2011) para 13; UNGA, 'Report of the Special Rapporteur on health, Anand Grover' UN Doc A/69/299 (2014); HRC, 'Report of the Independent Expert on foreign debt, Juan Pablo Bohoslavsky' (2016) UN Doc A/HRC/31/60 (2016) para 66.

Moreover, it is worth stressing that the dichotomy between both categories of rights in terms of immediate and progressive obligations stems from confusion between 'rights' and 'goals'. The equation of economic, social, and cultural rights with their related goals is more than just harmless confusion. The equation makes the achievement of respect for the rights seem unrealistic, a pious hope rather than something that can be accomplished. "Equation of rights with goals ends up undermining efforts to respect the rights[265]".

According to the Committee on Economic, Social, and Cultural Rights, "the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time[266]". Sepulveda M.C. states that: "This would be true of the realization of both categories of rights, because [the latter] demand as immediate and progressive obligations which seems not to be completely dependent on the level of resources for the realization of such rights[267]".

Thus, state obligations are concluded in the following Table[268]:

Obligation		**Immediate**	**Progressive**
Respect		-Prohibition to adopt laws or policies incompatible with the social security standards set forth. - The duty to avoid depriving individuals of the possibility to pay social insurance contributions based on their work and family situation. - The duty to abstain from depriving individuals of the means of subsistence. - The duty to abstain from interfering with the private social security systems when they follow the rules set forth by the state and international norms.	-Universal coverage of all nine social security branches. -Obligation to review periodically adopted legislation, make necessary amendments. -Periodic review of social security benefits. -Periodic review of state budget and increased revision

[265] Maras D, 'Economic, social and cultural rights and the role of lawyers: North American Perspectives' in *I. C. J. Review* (№ 55, 1985) P.125-126.

[266] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) para.9.

[267] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P. 129, 131-184.

[268] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.94-95.

		- Obligation to adopt legislation for the creation of social security system: 1.selection of social security branches. 2.selection of coverage. 3.selection of financing system. 4.regulation of the administration and control. -Adoption of non-discrimination legislation as well as abstaining from discriminatory practices as a state policy in relation to social security. -Adoption of immediate measures towards full enjoyment of rights.	of allocation for social security.
Protect		-Ensure, that private parties do not interfere into persons savings and payment of social security contribution. -regarding private or combined schemes, control and review the activities of the actors, provide participation of protected persons in controlling private social security associations. - creation of appeals system for claimants of the benefits. - obligation to uphold the principle of non-discrimination in legislation or to take other measures ensuring equal access to the enjoyment of rights – prevent any direct or indirect discrimination in relation to enjoyment of rights.	-to protect vulnerable and marginalized groups in the society. -adopt specific programs for the support of the most vulnerable groups.

Fulfil	Facilitate	-keep adequate statistics for calculation of social security benefits. - keep adequate population registration database, statistic on labour force as well as on receivers of benefits.	-create labour policies enabling people to re-enter the labour market. -guarantee stable financing of the social security system. -aim for economy with marginal unofficial labour market.
	Provide	-in the cases where social security system requires, provide social security benefits also to people who, for reasons beyond their control, have not fulfilled qualifying requirements (i.e., pensions, minimum health care benefits). - guarantee provisions of benefits on the agreed level.	-support social security measures with social assistance. -meet individual's specific needs for entering her into the labour market.
	Promote		-disseminate information on social security benefits widely with special attention on marginalized groups and disadvantaged regions.

iv. Vague and precise state obligations

Civil and political rights were described in precise terms, while economic, social, and cultural rights – in general terms. At the time of drafting two Covenants there were two schools of thought: first one suggested to write rights in general terms, the second school recommended to write them with the greatest possible precision. The result was that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights included rights written in general terms and some were more specifically.

Nowadays economic, social, and cultural rights suffer an enormous disadvantage. The vagueness of many of these rights is a consequence of the lack of attention. For example, the 'right to health' or the 'right to housing' have "no clear meaning, and that they offer no obvious

standard by which one can determine whether an act or omission conforms to the right or diverges from it, i.e., whether an act or omission fulfils the right, or violates it[269]".

In academic discussions, Langford M. thought that: "The claim of vagueness has emphasized the brevity of the articulation of the rights and their programmatic nature[270]". Another author, S. Liebenberg has pointed that: "The fact that the content of many social and cultural rights is less well defined than civil and political rights is more a reflection of their exclusion from the processes of adjudication than of their inherent nature[271]". Indeed, civil, and political rights "have received far more attention than economic, social, and cultural rights[272]".

It is often claimed that economic, social, and cultural rights are imprecise with regards to the timeline given for state compliance. "The progressive realization requirement imposed by Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966 contributes to the vagueness of economic, social, and cultural rights since states can never know for certain what their obligations are at any time[273]". "For a court to adjudicate on a matter it must be aware of the necessary obligations that the State is required to meet, without a clear demarcation of the content and nature of economic, social, and cultural rights a court will be incapable of rendering a decision[274]". Succeeding this is the argument that "the absence of an individual complaint mechanism under of the International Covenant on Economic, Social and Cultural Rights of 1966 has hindered its clarification process as it is well known that the individual complaints procedures under the International Covenant on Civil and Political Rights

[269] 'Court and legal enforcement of economic, social, and cultural rights. Comparative analysis of justiciability' in *Human Rights and Rule of Law Series № 2* (2008) P.15 < https://www.refworld.org/pdfid/4a7840562.pdf> accessed 19 March 2023.

[270] Langford M, 'Closing Gaps? An introduction to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (Noddisk Tidsskrift for Menneskerettigheter 2009) P.10.

[271] Liebenberg S, 'Social and Economic Rights' in *Constitutional Law of South Africa* (Cape Town1996) P. 41-11.

[272] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.176.

[273] Marcus D, 'The Normative Development of Socioeconomic Rights Through Supranational Adjudication' in 42 *Stanford Journal of International Law* (2006) P. 53- 61.

[274] Ibid.

[275] and European Convention for the Protection of Human Rights and Fundamental Freedoms[276] contribute significantly to the clarification of the scope of their obligations[277]".

It is well known that the rights require precision because "they fail to outline the nature and extent of obligations imposed on the State[278]". For instance, with the right to health, "a state is obliged to improve all aspects of environmental and industrial hygiene, treatment and control of epidemic, endemic, occupational, and other diseases, yet nowhere in the International Covenant on Economic, Social, and Cultural Rights of 1966 does it outline the programs or laws that will oversee such implementation[279]". Moreover, the Committee on Economic, Social, and Cultural Rights in the General Comment № 14 named 'The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966)' stated that: "The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party: (a) Availability. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level[280]". Another rights, the right to education, specifically refers to the requirement that primary education be compulsory and free.

Thus, by answering on the question: "Is the lack of accuracy grounds for the recognition of the rights of the second generation are not subject to judicial protection?" Based on the experience of civil and political rights, it can be argued that the sign of inaccuracy of the rights of the second generation cannot serve as a basis for non-consideration in court. Furthermore, Committee on Economic, Social, and Cultural Rights [281] have taken tangible steps to establish the precision and exactness of socio-economic rights and begun to issue series of General

[275] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[276] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) 1950.

[277] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.132.

[278] Jheelan N, 'The Enforceability of Socio-Economic Rights 'in 2 *European Human Rights Law Review* (2007) P. 147.

[279]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023, Art.12.

[280] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) at 12 and 12(a).

[281] Committee on Economic, Social and Cultural Rights.

Comments which elucidate the scope and content of the rights contained in the International Covenant on Economic, Social and Cultural Rights of 1966[282]".

v. Justiciable and non-justiciable state obligations

What is justiciability? The word "justiciability" refers to several meanings:

- "an ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur,
- an access to mechanisms that guarantee recognized rights,
- a legal course of action to enforce them[283]".

The debate about justiciability of social and economic rights is an old and well-worn one. Some countries framed their opinion in next terms: "the main question is not whether economic, social and cultural rights were justiciable, but whether an international human rights committee was the appropriate body to adjudicate upon these rights or if their interpretation should be left to adjudication at the national level[284]". Back to past, the National Human Rights Concern Centre did not support the inclusion of economic, social, and cultural rights in the Universal Declaration of Human Rights of 1948, and recommended that if they were to be included, they not be made "justiciable". It important to state that denying judicial protection to economic, social, and cultural rights does not simply exclude one category of rights. It excludes a critical dimension of all human rights and has vast implications for the extent to which civil and political rights, such as the right to equality, will be protected by the courts, particularly for the most disadvantaged groups in society.

Moreover, concerns about the justiciability of social and economic rights have been based on general assumptions or propositions:

i) "that social and economic rights are inherently different from civil and political rights. "Elements of certain economic, social, and cultural rights are less easy to adjudicate[285]";

ii) that it is not legitimate or appropriate for courts to intrude into the sphere of social and economic policy;

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[282] CESCR, 'General Comments'< http://www2.ohchr.org/english/bodies/cescr/comments.htm> accessed 7 May 2023.

[283] 'Court and legal enforcement of economic, social, and cultural rights. Comparative analysis of justiciability' in *Human Rights and Rule of Law Series № 2* (2008) P.6 < https://www.refworld.org/pdfid/4a7840562.pdf> accessed 19 March 2023.

[284] Personal communication from representative of a State active in opposing the Protocol at the time, April 2001.

[285] 'Court and legal enforcement of economic, social, and cultural rights. Comparative analysis of justiciability' in *Human Rights and Rule of Law Series № 2* (2008) P.11 < https://www.refworld.org/pdfid/4a7840562.pdf> accessed 19 March 2023.

iii) that courts or other decision-making bodies lack the capacity to properly adjudicate and enforce social and economic rights;

iv) that the courts lack the information required to deal with social and economic rights;

v) that the judiciary lacks the necessary expertise, qualification, or experience to deal with social and economic rights issues; "judges may lack the experience and skill to interpret and process specialised information of a financial or policy nature and are, therefore, incapable of adjudicating social and economic rights claims competently[286]"'

vi) that the courts are incapable of dealing successfully with 'polycentric' tasks, such as those entailed by adjudication involving social and economic rights;

vii) that the courts lack the necessary tools and remedies to deal effectively with social and economic rights;

viii) the curial process is poorly designed, and which is pre-eminently a question for the democratically elected legislature to determine[287]". "All these assumptions are highly questionable[288]".

The most common argument against the justiciability of economic, social, and cultural rights is an allusion to the text of Article 2 of the International Covenant on Economic, Social, and Cultural Rights of 1966. The Committee on Economic, Social, and Cultural Rights regrettably noted that: "In relation to civil and political rights, other rights – economic, social, and cultural rights are generally taken for granted that judicial remedies are necessary; this discrepancy is needless either by the nature of the rights or by the relevant Covenant provisions[289]". However, in its General Comment № 9 the Committee on Economic, Social, and Cultural Rights overtly affirms that: "The espousal of a rigid classification of economic, social, and cultural rights which positions them, by definition, beyond the reach of courts, would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent[290]". It would also radically restrain the competence of the courts to protect the rights of the "most vulnerable and disadvantaged groups in society[291]".

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[286] Horowitz D, 'The Courts and Social Policy' (Washington DC: The Brookings Institute, 1977) P. 25-32.

[287] Byrnes A, 'Second class rights yet again? Economic, social and cultural rights in the report of the national human rights consultation' in *UNSW Law Journal Volume* (33(1) 2010) P.200.

[288] Langford M, Nolan A, Porter B, 'The Justiciability of Social and Economic Rights: An Updated Appraisal' in *CHRGJ Working Paper* (№ 15,2009) <http://ssrn.com/abstract=1434944> accessed 8 May 2023.

[289] CESCR, 'General Comment № 9' in 'The Domestic Application of the Covenant' (Nineteenth Session) U.N. Doc. E/C.12/1998/24 (1998) para.10.

[290] CESCR, 'General Comment № 9' in 'The Domestic Application of the Covenant' (Nineteenth Session) U.N. Doc. E/C.12/1998/24 (1998) para. 10.

[291] CESCR, 'General Comment № 9' in 'The Domestic Application of the Covenant' (Nineteenth Session) U.N. Doc. E/C.12/1998/24 (1998) para. 10.

The Committee on Economic, Social, and Cultural Rights has argued that: "The provision of remedies for alleged violations of the International Covenant on Economic, Social, and Cultural Rights is a corollary of States Parties' obligation to provide effective protection of the rights – and that judicial remedies may sometimes be a necessary or appropriate measure (in addition to other forms of remedy)[292]". "The provision of judicial remedies, of course, depends on the rights in question being capable of enforcement by a court (directly applicable) and the Committee on Economic, Social, and Cultural Rights has consistently maintained that aspects of all the rights in the International Covenant on Economic, Social, and Cultural Rights are in fact capable of judicial enforcement[293]". It explained that: "Among the measures which might be considered appropriate in addition to legislation is the provision of judicial remedies with respect to rights which may in accordance with the national legal system be considered justiciable[294]".

Existing trend has been to pronounce that the debate is over and that: "economic, social, and cultural rights have been proven to be justiciable[295]". For example, the United Nations Committee on Economic, Social and Cultural Rights has made it clear that: "Economic, social, and cultural rights must be subject to effective remedies[296]". A Working Group established to consider the Optional Protocol heard from several experts that "social and economic rights must now be agreed to be justiciable[297]".It was considered that economic, social and cultural rights are justiciable for some reasons:

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[292] Human Rights Act 1998 (HRA 1998) c 42; Human Rights Act 2004 (HRA 2004); Charter of Human Rights and Responsibilities Act 2006.

[293] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) where the CESCR had argued that 'the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies' and that there are other provisions of the ICESCR – including arts 3, 7(a)(i), 8, 10(3), 13(2)(a), (3) and (4) and 15(3) – 'which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain'.

[294] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991).

[295] Langford M*,* Nolan A, Porter B, 'The Justiciability of Social and Economic Rights: An Updated Appraisal' in *CHRGJ Working Paper* (№ 15,2009) <http://ssrn.com/abstract=1434944> accessed 8 May 2023.

[296] CESCR, 'General Comment № 9' in 'The Domestic Application of the Covenant' (Nineteenth Session) U.N. Doc. E/C.12/1998/24 (1998) para. 2.

[297] ECOSOS, 'Report of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its first session', U.N. Doc E/CN.4/2004/44 (Geneva, 23 February-5 March 2004) < https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/120/29/PDF/G0412029.pdf?OpenElement> accessed 5 April 2023; ECOSOS, 'Report from the Second Session of the Open-Ended Working Group to consider options for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights E/CN.4/2005/52 (2005).

1) it is not genuine rights, but public goals.

2) it involves the adoption of complex political decisions regarding budgetary and resource allocations.

3) the judiciary does not have the necessary detailed understanding of government spending, so it cannot make decisions to protect this category of rights.

Moreover, as Mary Dowell-Jones points out, "much of the academic discussion in the human rights literature and among activists has been dominated by legal analysis of the International Covenant on Economic, Social and Cultural Rights of 1966 obligations and directed to establishing that "economic, social, and cultural rights are real rights and that they are in certain respects capable of judicial enforcement[298]".“The result has been a skewed emphasis on the legal measures necessary or appropriate for their implementation with a resulting neglect of the many other policies and strategies necessary to ensure the enjoyment of the rights guaranteed[299]".

vi. Derogable and non- derogable state obligations

It is crucial to note that there are no clauses in the United Nations Conventions guaranteeing economic and social rights (the International Covenant on Economic, Social, and Cultural Rights, Convention on the Elimination of all Forms of Discrimination Against Women and other documents) allowing for derogation in a state of emergency. For example, considering the Convention on the Elimination of all Forms of Discrimination Against Women. States with an adherence to Sharia law that have made significant reservations to this convention have not always made similar reservations to the International Covenant on Economic, Social, and Cultural Rights and must be considered bound by the latter, including its requirement of non-discrimination in the application of Covenant rights. States have made relatively few reservations to the Convention on the Elimination of all Forms of Discrimination Against Women articles relating to economic and social rights[300]".

The question is whether states can derogate from the International Covenant on Economic, Social and Cultural Rights 1966 in time of armed conflict, war, or natural disasters? The travaux preparatoires of the International Covenant on Economic, Social and Cultural Rights of 1966 "do not reveal any specific discussion on the issue of whether a derogation

[298] Dowell-Jones M, 'Contextualizing the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit' (Martinus Nijhoff, 2004) P.4.

[299]Dowell-Jones M, 'Contextualizing the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit' (Martinus Nijhoff, 2004) P.4.

[300]Chinkin C, The protection of economic, social and cultural rights post-conflict <https://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf > accessed 8 May 2023.

clause was considered necessary, or even appropriate[301]". This may be explained by the general obligation in Article 2(1), general limitations of Article 4 of the of the International Covenant on Economic, Social and Cultural Rights of 1966[302] and the nature of rights protected in this Covenant. Although derogation is provided for under the Revised European Social Charter of 1996 in Article F. According to this article: "In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law[303]".

The Committee of Economic, Social and Cultural Rights in its various Comments stated the following:

1) In the General Comment № 15 'The right to water', "During armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which State Parties are bound under international humanitarian law (para.40)[304]".

2) In the General Comment № 14 'Highest attainable standard of health' it is stated that "A state party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations which are non-derogable (para.47)[305]". J. Tasioulas notes that "non-derogability of the minimum core obligations of the right to health was apparently reaffirmed more recently in a report of the Special Rapporteur on the right to health[306]" but concludes that "it is difficult to draw conclusions in relation to derogability[307]".

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[301] Alston P, Quinn G, 'The Nature and Scope of State Parties' obligations under the International Covenant on Economic, Social and Cultural Rights' *in Human Rights Quaterly 9* (№ 2, 1987), P.217.

[302] It provides that "the State Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

[303] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[304] CESCR, 'General Comment № 15' in 'The Right to Water' E/C.12/2002/11 (20 January 2003) para.22.

[305] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) para.47.

[306] "Even if an obligation of immediate effect depends on resources, a State may not rely on the lack of resources as a defense or excuse for not fulfilling the obligation" UNGA, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health', UNGA, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' UN GAOR 69th session Supp No A UN Doc. A/69/150 (2014).

[307] Ibid.

3) In the General Comment № 3, 'The nature of State obligations' it is concluded that: "A minimum core obligation to ensure the satisfaction of, at very least, minimum essential levels of each of the rights is incumbent upon every State party. For example, a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'etre[308]".

4) "Core obligations are non-derogable, they continue to exist in situations of conflict, emergency, and natural disaster[309]". To sum up, nevertheless absence of derogations the Covenant used to be applied.

In relationship to civil and political rights, there are some derogations in Article 4(1) of the International Covenant on Civil and Political Rights of 1966, Article 15 of the European Convention on Human Rights 1950, and Article 27 of the American Convention on Human Rights. For example, in the International Covenant on Civil and Political Rights of 1966 following rights are non-derogable:

1) the right to life (Article 6).
2) the prohibition of torture, inhuman and degrading treatment (Article 7).
3) the prohibition of slavery and servitude (Article 8, paragraph 1 and 2).
4) the prohibition of detention for debt (Article 11).
5) the prohibition of retroactive criminal laws (Article 15).
6) the recognition of legal personality (Article 16).
7) the freedom of thought, conscience, religion, and belief (Article 18).

To sum up, nevertheless absence of derogations the Covenant used to be applied.

vii. Thin and thick state rights

The distinction between 'thin' and 'thick' readings of rights is also equally applicable to all human rights, and the distinction between civil and political rights, and economic, social, and cultural rights does not affect its applicability. A good example within civil and political rights is freedom of religion. A law forcing a person to convert is accepted by most to be a violation of this right. A reading of the right that precludes such a law is a 'thin' one. However, the limits of religious teaching may be drawn in different ways in different societies, or in the same society at different times. Balancing the rights of religious freedom and freedom from

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[308] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) at 10.

[309] CESCR, 'Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights' UN Doc. E/C.12/2001/10 (4 May 2001) para.18.

religion is usually relegated to the political decision of the societies in question. An example from within economic, social, and cultural rights is the human right to free public education. It is a right recognized by the International Covenant on Economic, Social, and Cultural Rights of 1966. Some countries grant a right to free education up to the level of college, while others grant only elementary education. All these countries "meet their obligations under the convention, but the former states recognize a broader right to education than the latter ones[310]". Thus, it supports their unity, as deriving both from the same ideal of human dignity.

In the past, there has been a tendency to speak of economic, social, and cultural rights as if they were fundamentally different from civil and political rights. While the Universal Declaration of Human Rights of 1948 made no distinction between rights, the distinction appeared in the context of the deepening cold war tensions between East and West[311]. Based on the analysis of the seven grounds, I conclude that the two categories of rights are of the same nature and their differentiation into two international covenants was unreasonable. The analysis shows that the rights of the second generation contain similar features belonging to the rights of the first generation. This means that two groups of rights are subject to judicial protection at the same level. With its elements such as the right to free speech and solidarity, political rights emerge as a primary instrument to claim social and economic rights. On the other hand, without economic and social rights the exercise of civil and political rights can be undefined. Especially, the right to education prepares a proper foundation to understand and practice civil and political rights. Therefore, advocating civil and political rights and blaming social and economic rights for downgrading the importance of human rights would be unfair and may lead to miss the foundational logic of these rights. Because of all these basic reasons and the indivisible connection, rights should not be concern superior to each other. The question arises, then, why do these rights, having the same nature, impose different obligations on States? To study this question, let us turn to the next paragraph.

1.6. Two methods for state obligations' development

i. Method centring upon obligations of conduct and result

To study the obligations of States, it is time to turn to the work of the Commission on Economic, Social, and Cultural Rights which was engaged in their development and used two methods. There were two methods: one centring upon obligations of conduct and result, the other upon obligations to respect, protect and fulfil. The first method was described in the Report of the International Law Commission (1977). Article 2(1) of the International Covenant on Economic, Social and Cultural Rights of 1966 was interpreted as "imposing "obligations of

[310] Gavison R, 'On the relationships between civil and political rights, and social and economic rights' (United Nations University 2003) P.32-33.

[311] OHCHR, 'Fact Sheet № 33'<https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/FAQ_on_ESCR-en.pdf> accessed 7 May 2023.

result" rather than "obligations of conduct" upon the State parties[312].As the Commission on Economic, Social, and Cultural Rights has noted that: "this article incorporates a mixture of the two types of obligation[313]". They are:

- "An 'obligation of conduct' is where an organ of the State is obliged to undertake a specific course of conduct (active or passive), whether through act or omission, which represents a goal, and it requires "action reasonably calculated to realise the enjoyment of a particular right. In other words, this obligation requires state to take or refrain from taking certain legislative, executive, or judicial measures[314]".

- "An 'obligation of result' requires a State to achieve a particular result through a course of conduct, the form of which is left to deprive the State's discretion[315]". "Economic rights are usually seen as including the obligation to result – achievement of full realization of rights, whereas civil and political rights are traditionally seen as an obligation to conduct[316]".

For instance, Article 6 is an example of both types of obligations. In cases of obligations of conduct, "there will be often an objective toward which that conduct is aimed[317]". Similarly, "obligations of result will invariably require a specific form of action[318]". Some commentators claim that international human rights law traditionally places only obligations of conduct on the states, not obligations of result. However, "the views of the Committee of Economic, Social, and Cultural Rights and scholarship on immediate obligations of result challenge such an assumption[319]". M. Craven states that: "The distinction between obligations is complicated by

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[312] ILC, 'Yearbook of the International Law Commission' (Vol.2, 1977) para.8.

[313] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) at 83; 40) CESCR, 'Turk', E/C.12/1990/SR.21 (1990) para.7.

[314] ILC, 'Report on the work of its fifty-third session' in 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001), Art.20.

[315] Ibid.II-30.

[316] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.32.

[317] ILC, 'Report on the work of its fifty-third session' in 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001), P.13

[318] ILC, 'Report on the work of its fifty-third session' in 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001), P.13.

[319] Alston P, Quinn G, 'The Nature and Scope of State Parties' obligations under the International Covenant on Economic, Social and Cultural Rights' *in Human Rights Quaterly 9* (№ 2, 1987), P.156, 185.

the fact that some of the specified "steps" may also be seen to be independent norms imposing separate obligations of result[320]".

ii. Method centring upon obligations to respect, protect and fulfil

The second method demonstrates three forms of State obligations: the obligation to respect, protect and fulfil[321]. Here, "The State [plays an important role as] the bearer of human rights obligations[322]". J.L. Cernic considers that: "this tripartite typology of human rights obligations normally refers, under traditional human rights doctrines, to state obligations[323]". In more recent studies, A. Eide has modified his approach by adding the obligation to facilitate on the fourth level. In theory, "all human rights entail four types of state obligations: obligation to respect, obligation to protect, obligation to fulfil, obligation to promote[324]". There are several proposals among authors for typologies of obligations under human rights instruments:

Proposal	**Duties**				
Shue[325]	Avoid depriving	Protect from deprivation: 1) by enforcing by duty. 2) by designing institutions that avoid the creation of strong incentives to violate duty;	Aid deprived: 1) who are one's special responsibility? 2) who are victims of social failures in the performance of duties? 3) who are victims of natural disasters?		
Eide	Respect	Protect	Facilitate	Fulfil	

[320] Craven M, 'The International Covenant on Economic, Social and Cultural Rights", in An Introduction to the International Protection of Human Rights: A Textbook' (Abo Akademi University, 1999) P. 108.

[321] The tripartite typology of obligations is to be found in Mr. Eide's presentation on the rights to Food at the Committee's General Discussion at its Third Session. CESCR, 'Summary record' E/C.12/1989/SR.20 (20 February 1989); Eide A., 'Right to Adequate Food as a Human Right' (1989).

[322] Rosas A, Scheini M, 'Categories and Beneficiaries of Human Rights' in *An Introduction to the international protection of human rights* (1999) P. 57–58.

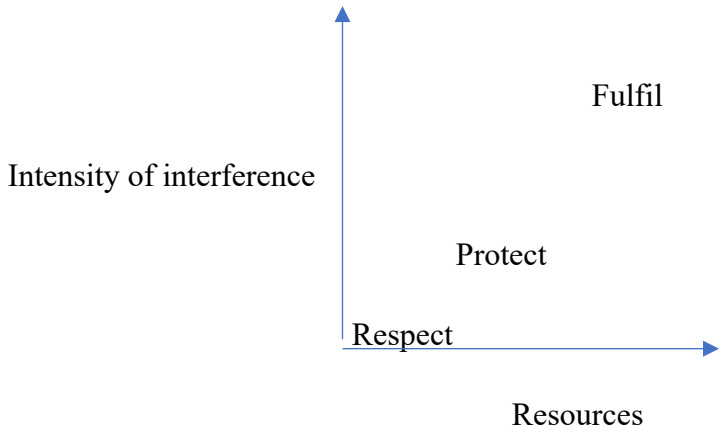
[323] Cernic J. L, 'State Obligations Concerning Indigenous Peoples' Rights to their Ancestral Lands: Lex Imperfecta?' in *28 AM. U. INT'L L. REV.* (2013) P.1129, 1148.

[324] CESCR, 'Fact Sheet' (Rev.1) № 16 (Rev.1) (1 July 1991).

[325] Shue H, 'Basic Rights: Substance, affluence and US Foreign Policy' (Princeton University Press, New Jersey 1996) P.55-61, 89-91, 153-173.

Van Hoof[326]	Respect	Protect	Ensure	Promote
Steiner and Alston	Respect the rights of others	Protect rights/ prevent violations	Create institutional machinery	Promote: - rights. - goods and services to satisfy rights.

Obligations from the Table[327] form the hierarchy when discussing justiciability. K. Kont-Kontson shows the hierarchy of obligations in relation to resources and interference.



States have an obligation at each level:

✓ At primary level – "an obligation to respect resources owned by individuals, his or her right to find a job and the freedom to take necessary action and use the necessary resources to satisfy his or her own needs[328]".

✓ At secondary level – "an obligation to protect the freedom of action and the use of resources against other more assertive or aggressive subjects[329]".

✓ At last level – "an obligation to fulfil the rights of everyone under economic, social, and cultural rights by way of facilitation or direct provision[330]".

[326] Hoof V.G, 'Legal nature of economic, social and cultural rights: A Rebuttal of some traditional views' in *The right to food* (1984) P.106-108.

[327] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.25-26.

[328] Eide A, 'Economic, social, and cultural rights as Human Rights' (Martinus Nijhoff Publishers, 2001) P.22-25.

[329] Eide A, 'Economic, social, and cultural rights as Human Rights' (Martinus Nijhoff Publishers, 2001) P.22-25.

[330] Eide A, 'Economic, social, and cultural rights as Human Rights' (Martinus Nijhoff Publishers, 2001) P.22-25.

The Committee on Economic, Social and Economic Rights in its General Comment № 16 (2005), devoted to the equal right of men and women to the enjoyment of all economic, social, and cultural rights, explained the different levels of obligation:

✓ The obligation to respect requires State parties to "refrain from intervening with a citizen's right, from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women to their enjoyment of economic, social, and cultural rights[331]". "Respecting the right obliges States parties not to adopt, and to repeal laws and rescind, policies, administrative measures and programs that do not conform with the right protected by article 3[332]". For example, it is incumbent upon States parties "to take into account the effect of apparently gender-neutral laws, policies and programs and to consider whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality (para 18)[333]".

Moreover, the Committee on Economic, Social and Economic Rights in its General Comment № 14 called "The right to health" clarified that: "State parties must respect the enjoyment of the right health in other countries and to prevent third parties from violating the right in other countries if they are able to influence these third parties by way of legal or political means[334]".

In the issue of obligations of corporations to respect, in the Guiding Principles on Business and Human Rights' in 'Implementing the United Nations: Protect, Respect and Remedy' it is noted in Paragraph 11 that corporations "should respect human rights [,] … mean [ing] that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved[335]".The Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development include provisions that: "Both states and enterprises that lend to sovereign states "should" respect human rights "within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate[336]". In addition,

[331] Friedman S, 'Human Rights transformed: Positive rights and Positive duties' (Oxford, Oxford University Press, 2008) P. 69.

[332] Friedman S, 'Human Rights transformed: Positive rights and Positive duties' (Oxford, Oxford University Press, 2008) P. 69.

[333] CESCR, 'General Comment № 16' in 'The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)' E/C.12/2005/4 (11 August 2005) <https://www.refworld.org/docid/43f3067ae.html> accessed 5 May 2023.

[334] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) at 39.

[335] HRC, 'Guiding Principles on Business and Human Rights' in 'Implementing the United Nations: Protect, Respect and Remedy' U.N. Doc. A/HRC/17/31 (March 21, 2011) P.13.

[336] Cernic J.L, 'The 2011 Update of the OECD Guidelines for Multinational Enterprises'<http://www.asil.org/insi

J.L. Cernic considered that corporations must not only "undertake due diligence to ensure not only what they comply with human rights obligations…, but also they do everything possible to avoid causing harm[337]", and they are also obliged "to prevent and investigate violations, address complaints brought by victims, and potentially provide reparations for harm and injuries caused[338]".

✓ The obligation to protect requires that: "States take measures to prevent third parties from interfering with the enjoyment of human rights[339]", to take steps aimed directly at the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women. States parties' obligation to protect under Article 3 of the International Covenant on Economic, Social, and Cultural Rights includes, inter alia, the respect and adoption of constitutional and legislative provisions on the equal right of men and women to enjoy all human rights and the prohibition of discrimination of any kind; the adoption of legislation to eliminate discrimination and to prevent third parties from interfering directly or indirectly with the enjoyment of this right; the adoption of administrative measures and programs, as well as the establishment of public institutions, agencies and programs to protect women against discrimination(para.19)[340]".

According to N. Bernaz's opinion, "A state's obligation to protect is a duty of conduct and requires the states to adopt protective measures that help prevent human rights violations by its corporations overseas[341]". In addition, J.L. Černič added that: "The obligation to protect includes employing its expertise and resources; corporations have a duty to supervise their supply chains to ensure that their suppliers, distributers, and other business partners also comply with socioeconomic rights[342]".

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ghts/volume/16/issue/4/2011-update-oecd-guidelines-multinational-enterprise> accessed 7 May 2023.

[337] Cernic J. L, 'State Obligations Concerning Indigenous Peoples' Rights to their Ancestral Lands: Lex Imperfecta?' in *28 AM. U. INT'L L. REV.* (2013) P.1152.

[338] Cernic J.L*,* 'Sovereign Financing and Corporate Responsibility for Economic and Social Rights' in *Making Sovereign Financing and Human Rights Work,* (Oxford; Portland, Oregon: Hart Publishing, 2014) P.152.

[339] Chapman A, Russell S, 'Core Obligations: Building a framework for Economic, Social and Cultural rights' (Antwerp, Intersentia, 2002) P. 12.

[340] CESCR, 'General Comment № 16' in 'The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)' E/C.12/2005/4 (11 August 2005) <https://www.refworld.org/docid/43f3067ae.html> accessed 5 May 2023.

[341] Bernaz N, 'Enhancing Corporate Accountability for Human Rights Violations: Is Extraterritoriality the Magic Potion?' in *117 J. OF BUS. ETHICS* (2012) P. 493, 494.

[342] HRC, 'Guiding Principles on Business and Human Rights' in 'Implementing the United Nations: Protect, Respect and Remedy' U.N. Doc. A/HRC/17/31 (March 21, 2011) P.13.

✓ The obligation to fulfil entails states taking positive measures to ensure rights[343]. This obligation is called as a positive obligation. The obligation to fulfil may be further disintegrated into obligations to facilitate, promote, and provide. To comply with these obligations' states must adopt and implement comprehensive and integrated plans and strategies to ensure realization of civil and political rights, and economic, social, and cultural rights. Such steps should "include:

− To make available and accessible appropriate remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, declarations, public apologies, educational programs, and prevention programs;

− To establish appropriate venues for redress such as courts and tribunals or administrative mechanisms that are accessible to all based on equality, including the poorest and most disadvantaged and marginalized men and women;

− To develop monitoring mechanisms to ensure that the implementation of laws and policies aimed at promoting the equal enjoyment of economic, social, and cultural rights by men and women do not have unintended adverse effects on disadvantaged or marginalized individuals or groups, particularly women and girls;

− To design and implement policies and programmes to give long-term effect to the economic, social, and cultural rights of both men and women based on equality. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits, and gender-specific allocation of resources;

− To conduct human rights education and training programmes for judges and public officials;

− To conduct awareness-raising and training programmes on equality for workers involved in the realization of economic, social, and cultural rights at the grassroots level;

− To integrate, in formal and non-formal education, the principle of the equal right of men and women to the enjoyment of economic, social, and cultural rights, and to promote equal participation of men and women, boys and girls, in schools and other education programmes;

− To promote equal representation of men and women in public office and decision-making bodies;

− To promote equal participation of men and women in development planning, decision-making and in the benefits of development and all programmes related to the realization of economic, social, and cultural rights[344]".

In relation of corporations, "they must take [] active measures to ensure the availability, accessibility [,] and affordability of [human] rights, work towards abolition of obstacles for the enjoyment of human rights; a corporation such as Royal Dutch Shell in Ogoniland, may become the primary holder of an obligation to fulfil economic rights in the context of a failed state where there is no governmental control or no efficient authority to protect [human] rights and

[343] Ibid, P.12.

[344] CESCR, 'General Comment № 16' in 'The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)' E/C.12/2005/4 (11 August 2005) <https://www.refworld.org/docid/43f3067ae.html> accessed 5 May 2023.

where corporations were asked to provide public functions on behalf of the state[345]". A corporation "may assume some of these obligations where the state is not present and can no longer guarantee human rights, provided that the corporation has stepped in the role of the state[346]".

The tripartite system of obligations is concluded in the following Table[347]:

Obligation to	***State Obligation***	
Respect		-traditional negative duty of non-interference, -obligation not to take any measures that result in denying or limiting access to the enjoyment of human rights, - application of non-discrimination principle and equality. **Phrases used: avoid, respect, refrain from, abstain, not to take measures**.
Protect		-protection against third parties, -adoption of non-discrimination laws, control application, - creation of complaint procedures. **Phrased used: protect, take measures to ensure, adopt law, control, prevent.**
Fulfil	Facilitate	-to take positive measures that enable and assist individuals to enjoy the rights **Phrases used: ensure, pro-actively engage in, assist, adopt policy, plan of actions, measures, to give sufficient recognition, provide for, assist access to.**
	Provide	-Recognition of human rights in legal systems,

[345] Cernic J.L, 'Sovereign Financing and Corporate Responsibility for Economic and Social Rights' in *Making Sovereign Financing and Human Rights Work,* (Oxford; Portland, Oregon: Hart Publishing, 2014) P.155-156.

[346] 'Corporate liability in a new setting: Shell & The changing legal landscape for the multinational oil industry in the Niger Delta' (2012) < https://www.business-humanrights.org/en/latest-news/pdf-corporate-liability-in-a-new-setting-shell-the-changing-legal-landscape-for-the-multinational-oil-industry-in-the-niger-delta/> accessed 6 May 2023.

[347] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.30.

		-provide a specific right when individuals are unable by reasons beyond their control to realise rights themselves by means at their disposal. **Phrased used: provide directly, to take steps to ensure, ensure, adopt, recognize, provide aid.**
	Promote	-make researches, -provide information on human rights, - provide training. **Phrases provided: research, train, ensure dissemination of information, give due to attention, take steps to ensure.**

From the analysis of typology of obligations and from the perspective of justiciability, obligations of states can be seen as described in following Table[348]:

Table 'Relationship between justiciability and tripartite obligations system'

Obligation to		**Immediate**	**Progressive**
Respect		Justiciable	
Protect		Some elements might be justiciable	
Fulfil	Facilitate	Some elements might be justiciable	Usually, non-justiciable
	Provide	Some elements might be justiciable	Usually, non-justiciable
	Promote	Non-justiciable	Non-justiciable

To sum up, the advantage of analysis based on types of State duties imposed by human rights is that "it serves to illustrate the significance and interdependence of human rights and all duties, the equal nature of all human rights and the scope of obligations[349]".

[348] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P. 30.

[349] Sepulveda M.C, 'The Nature of obligations under the International Covenant on Economic, Social and Cultural Rights' in *Intersentia* (2003) P.169-173.

1.7. State obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights: general outlines

In 1966, two International Covenants were adopted for two groups of rights which established obligations in respect of these rights. The International Covenant on Economic, Social and Cultural Rights of 1966 obliges States to guarantee that economic, social, and cultural rights will be exercised without discrimination of any kind and to ensure the equal right of men and women to enjoy these rights. M. Sennyonjo calls the International Covenant on Economic, Social and Cultural Rights of 1966 as the most comprehensive human rights treaty for economic, social, and cultural rights. According to Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966[350]:

"1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures[351]".

M. Ssenyonio distinguishes four key human rights obligations arise from Article 2(1) of the International Covenant on Economic, Social and Cultural Rights of 1966[352] namely:

(i) the obligation to "take steps … by all appropriate means",
(ii) "achieving progressively the full realization" of economic, social, and cultural rights,
(iii) the obligation to utilize "maximum available resources",
(iv) the obligation to seek (or provide) international assistance and co-operation[353].

[350]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[351] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[352]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[353] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *The International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

In addition, J.L. Černič considers that: "this provision includes the most common characteristics of economic and social rights, including that their full realization is to be achieved progressively depending on the state's available financial resources[354]".

Next two part of Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966[355] are the following:

"2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status[356]".

"3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals[357]".

M. Ssenyonio arises several questions regarding these rights:

1). What are the real human rights obligations of states parties to the International Covenant on Economic, Social and Cultural Rights of 1966[358]?
2). Are such obligations territorially limited or is there scope for extra-territorial obligations?
3). Are states permitted to derogate from (some) economic, social, and cultural rights during emergencies even though the International Covenant on Economic, Social and Cultural

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[354] Cernic J.L, 'Placing Human Rights at the Centre of Sovereign Financing' in *Making Sovereign financing and human rights work* (2014) P.155-56.

[355]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[356] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[357] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[358]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

Rights of 1966[359] does not contain a derogation clause either permitting or prohibiting derogations?

4). Was it necessary to adopt in 2008 the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to provide for the competence of the committee monitoring the obligations of states parties under the International Covenant on Economic, Social and Cultural Rights of 1966[360], the Committee on Economic, Social and Cultural Rights, to receive and consider communications alleging violations of any of the rights protected by the International Covenant on Economic, Social and Cultural Rights of 1966[361]? Should states parties to the International Covenant on Economic, Social and Cultural Rights of 1966[362] sign and ratify this Optional Protocol without delay?[363]".

i. Minimum core obligations: definition, doctrine, and approaches

Minimum core obligations are identified as a sub-set of obligations associated with economic, social, and cultural rights that must be fulfilled immediately and in full, by all states. The doctrine of 'minimum core' was introduced by the Committee on Economic, Social, and Cultural Rights with the aim of ensuring "the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party[364]". It has used the doctrine "to identify a sub-set of demands within the total body of requirements imposed by economic, social, and cultural rights in General Comment issued by the Committee on Economic, Social, and Cultural Rights[365]".

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[359]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[360]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[361]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[362]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[363] Ibid.

[364] Muller A, 'An Analysis of Health-Related Issues in Non-International Armed Conflicts' in Michael O'Flaherty and David Harris (eds) *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law* (Nottingham Studies on Human Rights 2013).

[365] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session), U.N. Doc. E/1991/23 (1991) at annex III, 86; CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable

Nowadays the doctrine is under-developed and often misunderstood because its content might be different:

- Alston and Scott's approach seeks to identify a framework that make minimum core obligations workable. They propose it through universal and state specific standards ('two minimum cores'). "The universal standard evidences the absolute floor of obligations, and this terminology is used in relation to social security policy at the international and national levels[366]". "The state-specific obligations element was a key to early developments" at the Committee on Economic, Social, and Cultural Rights[367].

- Takioullah's approach focuses on the nature and implications of minimum core obligations [368]. He considered the four key associated features of minimum core obligations to be: immediacy, special content, non-derogability, and justiciability. The doctrine of 'minimum core' should provide direction for development policy makers practitioners to establish priority needs in resource - constrained contexts and it may help place some limits on the excessive deployment of 'progressive realizations' to excuse poor performance on economic, social, and cultural rights realization or defend inadequate or inappropriate resource allocation with respect to economic, social, and cultural rights[369]". According to some accounts, the "minimum core doctrine aims to set a quantitative and qualitative floor of economic, social, and cultural rights that must be immediately realized by the state as a matter of priority[370]".

- Young's approach addresses what makes minimum core obligations represent terms of "normative value". The author explained that different bodies sought to establish that minimum

Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000).

[366] CESCR, 'Social protection floors: an essential element of the right to social security and of the sustainable development goals' UN Doc. (E/C.12/2015/1 (15 April 2015) para. 7-8.

[367]CESCR, 'Social protection floors: an essential element of the right to social security and of the sustainable development goals' UN Doc. (E/C.12/2015/1 (15 April 2015) para. 7-8.

[368] Shields K, 'The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education' (University of Edinburgh 2017) P.16.

[369] Shields K, 'The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education' (University of Edinburgh 2017) P.16.

[370] Craven M, 'Assessment of the progress on adjudication of economic, social and cultural rights' in J. Squires, M. Langford, M., B. and Thiele (eds.) *The road to a remedy: Current issues in the litigation of economic, social and cultural rights* (Australian Human Rights Centre and Centre on Housing Rights and Evictions 2005) P. 39.

core obligations should be representative of either the essence of the rights or "needs' at issue[371]", "the consensus around the right[372]", or "the level of obligations around the right[373]".

Among different approaches, it is important to analyse key associated features of minimum core obligations. They were developed in General Comments (№ 3,13,14 and 22) of the Committee on Economic, Social, and Cultural Rights. The International Commission of Jurists, the creator of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights of 1997 would state that: "The minimum core obligations referred in General Comment № 3 "apply irrespective of the availability of resources of the country concerned or any other factors and difficulties (para. 9)[374]". This however is not an accurate reading of the Committee's own position. Although it is true that: "Resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights (para.10)[375]", it does facilitate the burden of the State asked to justify why it has failed to satisfy the minimum obligations prescribed.

In accordance with a view of K. Shields, key associated features of minimum core obligations are:

a)"Immediacy. It must be fully satisfied with 'immediate effect' by all states, as opposed to belonging to that aspect of a right's content which may in principle permissibly be fully complied with in the longer-term in accordance with the doctrine of 'progressive realization[376]",

b)"Special value. Its justification or content bears some peculiarly intimate relationship to an underlying, high-priority value, such as human dignity or basic needs required for survival[377]",

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[371] Inter - American Commission on Human Rights, 'Annual Report 1979-1980' OEA/Ser.L/V/II.50, doc. 13 rev. 1, at 2 (1980) <http://www.iachr.org/annualrep/79.80eng/chap.6.htm> accessed 5 April 2023.

[372] For example, this approach is employed by Maastricht Guidelines on Violations of Economic, Social and Cultural Rights 1997.

[373] This is the approach developed by Tasioulas in his commissioned research.

[374] International Commission of Jurists, 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (26 January 1997) <http://www.refworld.org/docid/48abd5730.html> accessed 21 March 2023.

[375] International Commission of Jurists, 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (26 January 1997) <http://www.refworld.org/docid/48abd5730.html> accessed 21 March 2023.

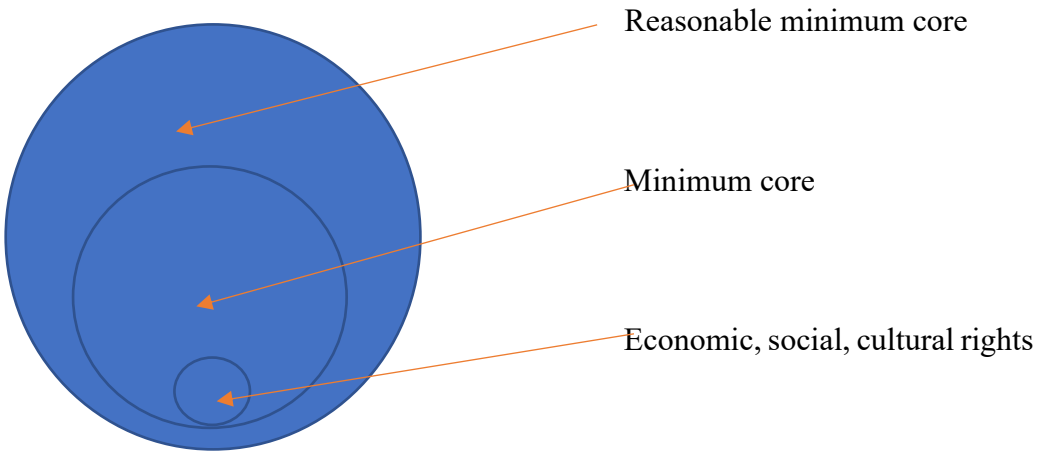
[376] Shields K, 'The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education' (University of Edinburgh 2017) P.16.

[377] Shields K, 'The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education' (University of Edinburgh 2017) P.16.

c) “Non-derogability. It is non-derogable as a matter of normative force, in that it no compering considerations can ever justify non-compliance with a human rights demand that belongs to the “minimum core”, even in an emergency[378]”,

d) “Justiciability. It is or should be justiciable, i.e., enforceable (presumably by the right-holder, at least in the first instance) through domestic or supranational courts[379]”.

In addition, there is a table with the concept of reasonable minimum core of economic, social, and cultural rights.



S.A. Yeshanew found the non -transparent state policy as a minus of this approach. “A policy could be deemed as a reasonable by the state and reverse the burden of proof, which would cause difficulties in showing that the state policy was in fact unreasonable in an international tribunal[380]”. Moreover, the author observed that: “The minimum core model concentrates on the content of the rights to identify minimum obligations, while the reasonableness text “focuses on the obligations of states or measures to realize rights[381]”. “The two-tiered approach can effectively address deficiencies of both approaches, and courts and

[378] Shields K, ‘The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education’ (University of Edinburgh 2017) P.16.

[379] Shields K, ‘The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education’ (University of Edinburgh 2017) P.16.

[380] Yeshanew S.A, ‘The justiciability of economic, social and cultural rights in the African Regional Human Rights system’ in *Theory, Practice and Prospect* (2013) P. 289-290.

[381] Yeshanew S.A, ‘The justiciability of economic, social and cultural rights in the African Regional Human Rights system’ in *Theory, Practice and Prospect* (2013) P. 289-290.

human rights bodies can apply such an approach toward negative and positive obligations under social and economic rights[382]".

ii. Obligation to take steps by all appropriate means

The first question to ask, "What steps"? It has noted that steps should be "deliberate, concrete and targeted" towards full rights realization[383]. Also, they could be legislative, administrative, judicial, social, educational, and other measures. However, two types of steps are required, namely:

- legislative, and

- non-legislative steps to respect, protect and fulfil economic, social, and cultural rights.

The first type of steps is legislative. Legislative measures are "the most normal and appropriate measures for achieving the purposes of the Covenant[384]". Moreover, there is no doubt that: "legislative measures are indispensable in the protection of all human rights[385]". Legislative foundation provides a firm basis to protect such rights (in the fields of housing employment, and education) and to enforce them in the case of violations. "States are obliged to enact a comprehensive anti-discrimination law, guaranteeing protection against discrimination in the enjoyment of economic, social, and cultural rights, as stipulated in the Article 2(2) of the International Covenant on Economic, Social and Cultural Rights of 1966[386][387]". "Anti-discrimination law legislation must cover not only discrimination in the

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[382] Cernic J.L, 'Placing Human Rights at the Centre of Sovereign Financing' in *Making Sovereign financing and human rights work* (2014) P.1,4.

[383] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) annex III, 86, para. 2.

[384] ILC, 'Yearbook of the International Law Commission' (Vol.2, 1977) para.8.

[385]CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) annex III, 86, para.3; CESCR, General Comment 14, para.56.

[386]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[387]Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *The International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

public sector, but also discrimination by non-state actors[388]".When the state adopts some legislation, the Committee on Economic, Social, and Cultural Rights "considers it important to see whether there exist case-law concerning the economic and social rights and whether these rights are cited in judgements[389]" and focuses "on the practical implementation of legislation[390]".

The next question is what the appropriate means are. Some of them include the adoption and implementation of strategies, policies, and plan of action to guarantee the effective enjoyment of economic, social, and cultural rights. For example, the Committee on Economic, Social, and Cultural Rights has noted that an obligation to "work out and adapt a detailed plan of action for the progressive implementation" of each right contained in the Covenant is clearly implied by this obligation[391].The other appropriate means include the provision of judicial or other effective remedies (for example, compensation, reparation, rehabilitation, guarantees of non-repetition and public apologies), administrative, financial, educational, or informational campaigns and social measures. The Committee on Economic, Social, and Cultural Rights has noted that one such means, through which important steps could be taken, is "the work of national institutions for the promotion and protection of human rights[392]".

Besides, the obligation to take steps "largely depends on the political will of the executive and the legislature to take the necessary steps such as enacting legislation to protect economic, social, and cultural rights[393]". When States submit their reports, they should "indicate not only the measures that were taken but also the bases on which these measures were the most appropriate means under the circumstances[394]".

iii. Obligation to achieve progressively full realization

[388] CERD, 'Communication' in '*Ylimaz Dogman v. the Netherlands*' № 1/1984 (29 September 1988).

[389] CESCR, 'Concluding observation on Jordan' E/C.12/1/Add.46 (1 September 2000) para.13, 24.

[390] CESCR, 'Concluding observation on Kenya' E/C.12/1993/6 (3 June 1993) para.10; CESCR, 'Conclusion on Canada' E/C.12/1993/5 (10 June 1993) para.25; CESCR, 'Concluding observation on Iceland' E/C.12/1993/15 (4 January 1994) para.10-13.

[391] CESCR, 'General Comment № 1' in 'Reporting by States Parties' E/1989/22 (27 July 1981) para.4.

[392] CESCR, 'General Comment № 10' in 'The role of national human rights institutions in the protection of economic, social and cultural rights' E/C.12/1998/25 (10 December 1998).

[393] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *The International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[394] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) annex III, 86, para. 4.

Based on scientific literature, and the case-law, State parties are obliged to improve continuously the condition of economic, social, cultural rights and generally to abstain from taking regressive measures. As a corollary of the obligation of progressive realisation, the Committee on Economic, Social, and Cultural Rights noted that: [A]ny deliberately retrogressive measures … would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources[395]". The notion of progressive realization of economic, social, and cultural rights over a period "constitutes a recognition of the fact that full realization of all economic, social, and cultural rights will generally not be able to be achieved in a short period of time … reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of [economic, social, and cultural rights][396]".

For example, Article 11 of the International Covenant on Economic, Social and Cultural Rights of 1966 recognizes the right of everyone to an adequate food, clothing, and housing, and to the continuous improvement of living conditions[397]. In contrast with progressive obligation on economic, social, and cultural rights' protection, some rights under the International Covenant on Economic, Social and Cultural Rights of 1966 give rise to obligations of immediate effect. For example, it is part 2 of Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966. The Committee on Economic, Social, and Cultural Rights stated: "The prohibition against discrimination enshrined in Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights of 1966 is subject neither progressive realization not the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination[398]". Furthermore, the Committee on Economic, Social, and Cultural Rights has explained that: Article 2 "imposes an obligation to move as expeditiously and effectively as possible' towards the Covenant's goal of full realization of the substantive rights under the

[395] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) annex III, 86, para. 9.

[396] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) annex III, 86, para. 9.

[397] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[398] CESCR, 'General Comment № 13' in 'The Right to Education (Art. 13)' (adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights) E/C.12/1999/10 (8 December 1999) para.31.

Covenant[399]".States "are required to monitor realization[400] of economic, social and cultural rights and to devise appropriate strategies and clearly defined programmes (including indicators -carefully, chosen yardsticks for measuring elements of the right – and national benchmarks – or targets – for each indicator) for their implementation[401]". However, some scholars do not notice the immediate obligations in the International Covenant on Economic, Social and Cultural Rights of 1966. Probably, the immediate realization of the core of economic and social rights in every situation "may impose unjustified burdens on states that have been facing systematic and long- term public resource shortages[402]". For instance, "some states can provide free elementary education, whereas others … must charge for attending primary school simply due to a lack of available public financial resources[403]".

Similarly, Article 2 of the International Covenant on Civil and Political Rights of 1966 includes the immediate obligation. However, P. Alston and G. Quinn stated that "the reality is the full realization of civil and political rights is [also] heavily dependent both on the availability of resources and the development of the necessary societal structures"[404]. To sum up, rights of the second generation require expensive obligations, and states should "to take positive measures for the realization of civil and political rights[405]".

Overall, the Committee on Economic, Social, and Cultural Rights "lacks concrete standards for evaluating the performance of governments and their compliance with the Covenant", "it should come as no surprise that the Committee itself does not use progressive

[399] CESCR, 'General Comment № 3' in 'The nature of States parties' obligations' (Fifth session) U.N. Doc. E/1991/23 (1991) annex III, 86, para. 9.

[400] It helps in identifying what steps have been most effective. Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *The International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[401] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000) para.57-8.

[402] Cernic J.L, 'Placing Human Rights at the Centre of Sovereign Financing' in *Making Sovereign financing and human rights work* (2014) P.142.

[403] Cernic J.L, 'Placing Human Rights at the Centre of Sovereign Financing' in *Making Sovereign financing and human rights work* (2014) P.142.

[404] Alston P, Quinn G, 'The Nature and Scope of State Parties' obligations under the International Covenant on Economic, Social and Cultural Rights' *in Human Rights Quaterly 9* (№ 2, 1987), P.156, 172.

[405] Mowbray A, 'The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights' (Oxford: Hart Publishing, 2004).

realization as the standard by which it reviews the performance of states parties[406]". Courts and human rights bodies may easily employ the minimum core model to identify minimum levels of obligations[407]".

iv. Obligation to utilize maximum of available resourses

Before moving to practical difficulties, it is better to underline that the Committee on Economic, Social, and Cultural Rights and the Committee on the Rights of the Child often provided a narrow interpretation of the concept (namely, an obligation to utilize maximum of available resourses), "assuming that available resources have seen fixed by previous policy choices and that the government's main duty lies in efficient administration of these resources[408]". As the practice shows, human rights monitoring bodies "have tended to limit analysis to budget expenditure and international assistance, while overlooking other determinants of the full set of resources available to realise human rights – including monetary policy, financial sector policy and deficit financing[409]". Resources they name as relevant to human rights realization included "natural, human, technological, organizational, informational, and administrative[410]". This broad interpretation is even in line with the International Covenant of Economic, Social, and Cultural Rights' drafting history.

During the drafting process, the Lebanese representative noted "it must be clear that the reference [to resources] was to the real resources of the country and not to budgetary appropriations[411]".In the line with the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights of 1966 which indicate that: "States have an obligation to develop societal resources, human rights monitoring bodies have

[406] Chapman A.R, 'A Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights' in *18 HUM. RTS* (1996) P.22, 32.

[407] Liebenberg S, 'Socio-Economic Rights: Revisiting the Reasonableness Review/Minimum Core Debate' in *Constitutional Conversations,* (2008) P. 303, 309.

[408] Balakrishnan R, 'Maximum Available Resources & Human Rights: Analytical Report' (Center for Women's Global Leadership,2011) P.2.

[409] Balakrishnan R, 'Maximum Available Resources & Human Rights: Analytical Report' (Center for Women's Global Leadership,2011) P.2.

[410] UNCRC, 'Recommendation: Day of general discussion on "resources for the rights of the child – responsibility of states'46th session (21 September 2007) para.24–25. Nolan A, 'Economic and Social Rights, Budgets and the Convention on the Rights of the Child' in *International Journal of Children's Rights* (21(2), 2013) P.248.

[411] UNCHR, 'Summary Records of the 271st meeting' UN Doc E/CN.4/SR.271 (1952) P. 5.

also suggested that states' investment in employment, education, training and healthcare should be increased fore resource mobilization[412]".

There are two practical difficulties in applying this requirement to measure state compliance with the full use of maximum available resources. The first is in determining what resources are "available" to a particular state to give effect to the substantive rights under the Covenant. The second difficulty is to determine whether a state has used such available resources to the "maximum". It has been suggested that the word "available" leaves too much "wiggle room for the state[413]". "The availability of resources refers not only to those which are controlled or filtered through the state and other public bodies, but also to the social resources which can be mobilized by the widest possible participation in development, as necessary for the realization by every human being of economic, social and cultural rights[414]". Several measures were suggested:

1) "to adopt strong, efficient, and time-framed measures to promote good governance and combat corruption that negatively impacts on the availability of resources[415]",

2) "to make appropriate choices in the allocation of the available resources in ways which ensure that the most vulnerable are given priority[416]".

To fulfil this type of obligation the Committee on Economic, Social, and Cultural Rights developed indicators. For example, one indicator is "to consider the percentage of the national budget allocated to specific rights under the Covenant (such as health, education, housing, and social security) relative to areas outside the Covenant (such as military expenditure [417] or debt-servicing (para.23))[418]". Many resource problems revolve around the misallocation

[412] CESCR, 'Concluding Observations, Democratic Republic of the Congo' E/C.12/COD/ CO/4 (16 December 2009) para.16-17.

[413] Robertson R, 'Measuring State Compliance with the obligation to devote the "Maximum Available resources" to Realizing Economic, Social and Cultural Rights' in *Human Rights Quaterly* 16 (№ 4, 1994) P.694.

[414] Eide A, 'Economic and Social Rights' in *Human Rights: Concepts. Declaration on the Right to Development,* (GAR 41/128, 4 December 1986).

[415] CESCR, 'Concluding Observations, Nigeria' UN Doc. E/1999/22 (1999) para.97 and 119; CESCR, 'Concluding Observations, Cambodia' UN Doc. (22 May 2009) para.14; CESCR, 'Concluding Observations, Democratic Republic of Congo' UN Doc. E/C.12/COD/CO/4 (20 November 2009) para.11; CESCR, 'Concluding Observations, Madagascar' UN Doc. E/C.12/MDG/CO/2/ (20 November 2009) para.11.

[416] Eide A, 'The use of Indicators in the Practice of the Committee on Economic, Social and Cultural Rights' in *Economic, Social and Cultural Rights: A Textbook* (Dordrecht: Martinus Nijhoff Publishers 2001) P.549.

[417] The Committee noted with regret that more is spent by the state party on the military and on serving its debt than on basic social services. CESCR, 'Concluding Observations: Senegal' UN Doc. E/C/12/1/Add.62 (24 September 2001) para.23.

[418] CESCR, 'Concluding Observations: Philippines' UN Doc. E/C.12/1995/7 (7 June 1995) para.23.

of available resources (for example, to purchase expensive weapon systems rather than to invest in primary education or primary or preventive health services (para.21)[419].

v. Obligation to seek international assistance and co-operation

Following the interpretation, the Committee on Economic, Social, and Cultural Rights provides that: "international assistance and cooperation obligations are not the same for all states[420]". Moreover, the obligation to provide "international assistance and cooperation, especially economic and technical" is "different for developing and developed states ("those in a position to assist")[421]". States Parties to the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities that lack the necessary resources for economic, social, and cultural rights realisation are obliged to "actively seek assistance' to ensure economic, social, and cultural rights assertion on the part of everyone under their jurisdictions (para.271)[422]".

It should not be understood as encompassing only financial and technical assistance, because "it also includes a responsibility to work actively towards equitable multilateral trading, investment and financial systems that are conducive to the realization of human rights and the elimination of poverty (para.28)[423]". Moreover, in the General Comment of the Committee on Economic, Social, and Cultural Rights № 15 'The right to water', "the international cooperation requires State parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the rights to water in other countries[424]". M. Craven states that "although there is clearly an obligation to cooperate internationally, it is not clear whether this means that wealthy States Parties are obliged to provide aid to assist in the realization of the rights in other

[419] CESCR, 'Concluding Observations: Philippines' UN Doc. E/C.12/1995/7 (7 June 1995) para.21.

[420] Sepulveda C.M, 'The obligations of 'international assistance and cooperation' under the International Covenant on Economic, Social and Cultural Rights. A possible entry point to a human rights-based approach to Millennium Development Goal' in *International Journal on Human Rights* (Vol.9, Issue 1, 2009) P. 86.

[421] CESCR, 'General Comment № 14' in 'The Right to the Highest Attainable Standard of Health (Art. 12) (adopted at the twenty-second Session of the Committee on Economic, Social and Cultural Rights E/C.12/2000/4 (11 August 2000), para 45; CESCR, 'General Comment № 15' in 'Right to water' U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003) para 38; CESCR, 'Statement on substantive issues arising in the implementation of the international covenant on economic, social and cultural rights: poverty and the International Covenant on Economic, Social and Cultural Rights' E/C.12/2001/10 (2010) para. 15–18.

[422] CESCR, 'Concluding Observations Ukraine' E/1996/22 (1996); CESCR, 'Concluding observations on the combined second to fourth periodic reports of Guyana' E/C.12/ GUY/CO/2-4 (28 October 2015); CESCR, 'Concluding observations on the initial report of Uganda' E/C.12/UGA/CO/1 (8 July 2015).

[423] UNCHR (Hunt P), 'Report The right of everyone to the enjoyment of the highest attainable standard of physical and mental health' UN Doc. E/CN.4/2004/49/Add.1(2004).

[424] CESCR, 'General Comment № 15' in 'The Right to Water' E/C.12/2002/11 (20 January 2003) P.31.

countries[425]". The criteria for doing so "are not yet clearly drawn and seem to be difficult to justify[426]". Donor states have "a responsibility not to withdraw critical aid without first giving the recipient state reasonable notice and opportunity to make alternative arrangements (para.113)[427]". States providing aid "must refrain from attaching conditions to such aid which are reasonably foreseeable to result in the violation of international human rights law in other states[428]".

vi. Extraterritorial scope of state obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights

The extraterritorial application of the International Covenant on Economic, Social and Cultural Rights is reflected in several General Comments of the Committee on Economic, Social, and Cultural Rights. General Comment № 1 of the Committee on Economic, Social, and Cultural Rights indicates that: "State parties to the International Covenant on Economic, Social and Cultural Rights of 1966 have to monitor the actual situation with respect to each of the rights on a regular basis and thus be aware of the extent to which the various rights are, or are not, being enjoyed by "all individuals within its territory or under its jurisdiction(para.3)[429]". In its Concluding Observations of 1998 on Israel, the Committee on Economic, Social, and Cultural Rights confirmed that: "The State's obligation under the Covenant apply to all territories and populations under its effective control (para.15, 31)[430]". In addition, the International Court of Justice has acknowledged some space for the extraterritorial application of the International Covenant on Economic, Social and Cultural Rights of 1966. In its Advisory Opinion of 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice concluded that: "The International Covenant on Economic, Social and Cultural Rights of 1966 contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over

[425] Craven M, 'The International Covenant on Economic, Social and Cultural Rights", in An Introduction to the International Protection of Human Rights: A Textbook' (Abo Akademi University, 1999) P. 101-23.

[426] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *The International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[427] UNCHR, 'Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' A/HRC/7/11/Add.2 2006) (5 March 2008).

[428] UNGA, 'Rainbow Warrior (New Zealand v. France) (1990) 82 ILR 449.

[429] CESCR, 'General Comment № 1' in 'Reporting by State Parties' (Third Session) UN Doc. E/1989/22, annex III at 87 (1989).

[430] CESCR, 'Concluding Observations. Israel' UN Doc. E/C.12/1/Add.90 (23 May 1998).

which a state party has sovereignty and to those over which that state exercise territorial jurisdiction. Thus, Article 14 makes provision for transitional measure in the case of any state which "at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge (para.112)[431]".

Moreover, on 28 September 2011 the Maastricht Principles on Extraterritorial Obligations of States in Economic, Social and Cultural Rights were issued by 40 international law experts from all regions of the world, including members of international human rights treaty bodies, regional human rights bodies, as well as Special Rapporteurs of the United Nations Human Rights Council. In General Principles it stated that states "have obligations to respect, protect and fulfil human rights, including cultural, economic, rights, within their territories and extraterritorially as well as civil and political rights[432]". These obligations are identical with obligations established at universal level. "[A]ll States must take action, separately, and jointly through international cooperation, to fulfil economic, social [,] and cultural rights of persons within their territories and extraterritorially[433]". "Such obligations apply under the qualifying condition to fulfil economic, social [,] and cultural rights in its territory to the maximum of its ability[434]". This addition confirms the positive nature of economic, social, and cultural rights. In paragraph 23 of the Maastricht Principles states that: "States must desist from acts omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially[435]". It is an example of negative obligations of states.

It is important to provide different academic views of the extraterritorial scope of state obligations. For example, M. Ssenyonjo notes that: "Although the International Covenant on Economic, Social and Cultural Rights of 1966 refers to international assistance and co-operation, but it does not make any explicit reference to territory or jurisdiction, it contrasts to

[431] ICJ, 'Report' in 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' (2004) P.4.

[432] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (adopted 28 September 2011 by Maastricht University and the International Commission of Jurists, a group of experts) P.6 < https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf> accessed 1 May 2023.

[433] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (adopted 28 September 2011 by Maastricht University and the International Commission of Jurists, a group of experts) P.8 < https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf> accessed 1 May 2023.

[434] Cernic J.L*,* 'Sovereign Financing and Corporate Responsibility for Economic and Social Rights' in *Making Sovereign Financing and Human Rights Work,* (Oxford; Portland, Oregon: Hart Publishing, 2014) P.155-156.

[435] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (adopted 28 September 2011 by Maastricht University and the International Commission of Jurists, a group of experts) P.7< https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf> accessed 1 May 2023.

Article 2 (1)[436] the International Covenant on Civil and Political Rights 1966[437]".Another author, H. Craven, expressed the position as follows: "Article 2(1) itself is somewhat confused and unsatisfactory provision; the combination of convoluted phraseology and numerous qualifying sub-clauses seems to defy any real sense of obligation. Indeed, it has been read by some as "giving states an almost total freedom of choice and action as to how the rights should be implemented[438]". Compared to this article, Article 2 of the International Covenant on Civil and Political Rights 1966[439] requires a State Member "to undertake to respect and to ensure[440]". Article 2 of the International Covenant on Economic, Social and Cultural Rights "is weak with respect to implementation[441]". This difference reflects the different implementation methods. However, the Committee on Economic, Social and Cultural Rights denied any sharp distinction between Article 2(1) of each Covenant, and noted: "While the great emphasis has sometimes been placing on the difference between the formulation used in this provision [Article 2 of the International Covenant on Economic, Social and Cultural Rights] and that contained in the equivalent Article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. While the Covenant provides for a progressive realization and acknowledges that the contrasts due to the limits of available resources, it also imposes various obligations which are immediate effect (para.1)[442]".Thus, extraterritorial protection of economic, social, and cultural rights "offers an important means to strengthen the protection and enforcement of economic, social, and cultural rights specially

[436]"Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right recognized in the present Covenant", International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[437] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *International Journal of Human Rights* (15(6), 2011) P. 969-1012 <https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[438] Craven M, 'The Justiciability of Economic, Social and Cultural Rights', in Economic, Social and Cultural Rights: Their Implementation in United Kingdom Law'(Nottingham: University of Nottingham Human Rights Law Centre, 1999) P. 5.

[439] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[440] Ibid.

[441] Alston P, Steiner H, 'International Human Rights in Context: Law, Politics, Morals – Text and Materials' (2nd ed., Oxford: OUP, 2000) P.275.

[442] CESCR, 'General Comment № 3' in 'The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)' UN Doc. E/1991/23 (14 December 1990).

where host states lack the ability to effectively regulate non-state actors and monitor their compliance, yet home states are able to do so[443]".

1.8. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966

Human rights are a universal category, which represents the opportunities arising from the very nature of man to enjoy elementary, most important benefits in conditions of a safe, free existence of the individual in society. Human rights are one of the fundamental values of modern world civilization a complex and multifaceted concept. It is difficult to give them a single definition and an unambiguous interpretation, because this category is not only legal, but also philosophical, political, and moral. Human rights are emerging at the moment of birth, a person has not only as integral conditions of existence, which human nature requires for his survival, and essential development opportunities, but also as a means and goal of life, regardless of whether they are realized or not. Economic, social, and cultural rights are essential for individuals to lead fulfilling and dignified lives and are recognized as being fundamental human rights under international human rights law. They need the same protection as civil and political rights have in the International Covenant on Civil and Political Rights.

The drafting process of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966 shows efforts of counties economic, social, and cultural rights development and protection. There are some exhaustive oversight debates in the 1950s and 1960s in the United Nations. In 1968, the International Conference on Human Rights urged Governments of all countries to focus "on developing and perfecting legal procedures for prevention of violations and defence of economic, social, and cultural rights (para.6)[444]".The United Nations Secretary-General in a follow-up study noted the right to an effective remedy by the competent national tribunals applied "of course, also to economic, social and cultural rights[445]". It went on to note that many of rights were capable of being protected at the national level "by the ordinary courts" and that "it was already the case in some states"[446].Some statements made by some states at the first session of the Working Group concluded that: "A complaint mechanism for economic, social, and cultural rights was specifically rejected, and

[443]Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[444] UN, 'Final Act of the International Conference on Human Rights' Sales № E.68.SIV.2 Resolution XXI (1968).

[445] Ibid, para. 157.

[446] Ibid, para. 159.

there was markedly little support for parallel oversight and supervisory provisions between the two prospective covenants; they would have the international community overlook the reasons for those decisions and, in effect, rewrite the relevant provisions of the International Covenant on Economic, Social, and Cultural Rights[447]".

The Committee on Economic, Social, and Cultural Rights worked on an Optional Protocol to enable complaint procedures under the International Covenant on Economic, Social, and Cultural Rights. The first formal discussion of an Optional Protocol was initiated by the Committee on Economic, Social, and Cultural Rights in 1990[448]. At the Fifth Session (26.11.1990 -14.12.1990) of the Committee on Economic, Social, and Cultural Rights, the Committee stated that there was a "need for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966 providing a complaint/communication procedure for individuals and groups seeking redress in instances where they consider their human rights guaranteed under the Covenant to have been violated (para.2; para.25)[449].In December 1992, Committee on Economic, Social, and Cultural Rights adopted an "analytical paper" that examined the various modalities of such [an Optional] protocol, inter alia, the possibility of the collective and individual complaints (Annex I, para.18 and Annex II)[450]. It was encouraged in this direction by States at 1993 World Conference on Human Rights (para.75)[451] and culminated in a report with a draft protocol on the grounds that it would better highlight "concrete and tangible issues", "provide a focuses "framework for inquiry and help realise economic, social, and cultural rights since decisions would carry some weight even though they would be "non-binding(para.32-38)[452]".The Commission on Human Rights, in paragraph 6 of its Resolution 1994/20, took note of the "steps taken by the Committee … for

[447] Dennis M, Stewart D, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be a International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?' in *98 American Journal of International Law*, (2004) P.489.

[448] CESCR, 'Report on the Seventh Session' UN Doc. E/C.12/1991/Wp.2 (11 December 1992).

[449] CESCR, 'General Comment № 3' in 'The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)' UN Doc. E/1991/23 (14 December 1990); CESC, 'General Comment № 3' in 'The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)' UN Doc. E/1991/23 (14 December 1990); E/CN.4/1997/105.

[450]UNGA, 'Contribution of the Committee on Economic, Social and Cultural Rights to the World Conference on Human Rights' UN Doc. A/CONF.157/PC/62/Add.5 (26 March 1993).

[451]UN (Distr. General), 'Vienna Declaration and Program of Action' A/CONF.157/23 (12 July 1993); Mahon C, 'Progress at the Front: The Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights'8 *Human Rights Law Review* (2008) P. 617.

[452] UNGA, 'Contribution of the Committee on Economic, Social and Cultural Rights to the World Conference on Human Rights' UN Doc. A/CONF.157/PC/62/Add.5 (26 March 1993). The Committee's draft was subject to some scholarly debate and one workshop produced a slightly different draft. Arambulo K, 'Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights' (Antwerpen: Intersentia, 1999).

the drafting of an Optional Protocol... granting the rights of individuals or groups to submit communications concerning non-compliance with the Covenant, and invited the Committee to report thereon to the Commission…" A draft of an Optional Protocol was adopted in 1996 at the Committee's fifteenth session[453]. From 1997-2000 the Commission "did not take any decision"[454]. M. Dennis and D. Steward characterized the actions of those pushing this process within the United Nations as being "dismissive of other viewpoints, and self-serving" and having a "build it and they will come attitude[455]".

However, some states made critical comments. For example, two US State Department legal advisers stated that: "the proposal for a new individual - complaints mechanism remains an ill-considered effort to mimic the structures of the International Covenant on Civil and Political Rights – and largely for mimicry's sake; the rights and obligations contained in the International Covenant on Economic, Social and Cultural Rights were "never intended to be susceptible to judicial or quasi - judicial determination[456]". C. Tomuschat have praised these jurisprudential developments and questioned how an individual complaints mechanism could make these obligations justiciable. Considering the right to work, he concludes that:

"It is incumbent on [on States] … to take steps which activate the economy so that job opportunities may arise for everyone desirous of finding employment. … but the general obligation is not owed specifically to every individual…. Judicial protection against State action is generally confined to measures which adversely affect a person individually. General political measures which have repercussions on all citizens alike, are not subject to judicial review. This position can be explained by the opposition between East and West and, moreover, by willing of West not to admit equality and justiciability of economic, social, and cultural rights[457]".

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[453] UNCHR, 'Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (53d Session), U.N. Doc. E/CN.4/1997/105 (1997).

[454] OHCHR, 'Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights' UN Doc.E/CN.4/RES/1997/17 (11 April 1997).

[455] Dennis M, Stewart D, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be a International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?' in *98 American Journal of International Law*, (2004) P.475-476.

[456] Dennis M, Stewart D, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be a International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?' in *98 American Journal of International Law*, (2004) P.524.

[457] Tomuchat C, 'An Optional Protocol for the International Covenant on Economic, Social and Cultural Rights', in *Weltinnenrecht: Liber amicorum Jost Delbrüc* (Berlin: Duncker and Humblot, 2005), P. 815, 828.

In 2001 the Committee made an important step and appointed an Independent Expert (Professor Hatem Kotrane) who created two reports and concluded that "there is no longer any doubt about essentially justiciable nature of all the rights guaranteed by the Covenant[458]". The Representative of the United States of America said that: "While his country had joined consensus on the decision it did not support the draft optional protocol, as it confused economic, social and cultural rights, which should be realized progressively with legally enforceable entitlements[459]".

In 2003 the Commission established an "Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights" that met three times to "considering options" regarding the elaboration of an Optional Protocol (para.12-13)[460]. In the first session of the Working Group in 2004, the competing views on this aspect of justiciability amongst States was evident from "the opening paragraphs of the Chairperson's report:

-some delegations believed that the provisions of the Covenant were insufficiently clear to lend themselves to a complaints procedure or to be justiciable,

-other delegations referred to national and regional legislation and case law, arguing that experience shows that the vagueness of legal provisions of the Covenant can be clarified by courts,

- some delegations stated that action by the legislature is sometimes necessary to clarify the scope of obligations,

-several delegations underlined that States parties have an immediate obligation to take prompt and effective measures towards the implementation of the rights covered by the Covenant (para.23)[461]".

Moreover, M. Dennis and D. Steward suggested that the Independent Expert was pressured to be more supportive of a protocol of his second report and critical of the

[458] OHCHR, Independent Expert (Mr Kotrane Hatem), 'Report on the Question of a Draft Optional Protocol to the ICESCR' UN Doc.E/CN.4/2002/57 (12 February 2002).

[459] ECOSOC, 'The situation of human rights in parts of South-Eastern Europe' Decision 2001/219 (4 June 2001).

[460] OHCHR, 'Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights' Resolution 2003/18, E/CN.4/2003/L.11/Add.3 (22 April 2003).

[461] ECOSOS, 'Report of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its first session', U.N. Doc E/CN.4/2004/44 (Geneva, 23 February-5 March 2004) < https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/120/29/PDF/G0412029.pdf?OpenElement> accessed 5 April 2023.

Chairperson's recommendation to proceed to drafting despite the 2004 meeting of the Working Group ending in what they saw as "disarray[462]".

In July of 2007, "a draft Optional Protocol was presented to the Working Group by Catarina de Albuquerque[463]". The Committee on Economic, Social, and Cultural Rights' version of a protocol was not used as a basis for drafting but was produced with reference to other existing United Nations communications procedures. As "some States were "allergic" to the Committee on Economic, Social, and Cultural Rights' draft, it allowed for a fresh way forward and increased the level of support"[464].

On 4 April 2008 consensus on a final draft of the Option Protocol was achieved. N. Pillay, the UN High Commissioner for Human Rights, greeted the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights by saying that it "is of singular importance … closing a historic gap in human rights protection under the international system[465]". The Finnish delegate stated that: "The protocol was a 'great step towards full realization of all human rights' and that his country would sign it 'at the earliest possible occasion[466]". However, Denmark was of a wholly other view. According to their representative, "the majority of the rights in the Covenant did not carry immediate legal effect and, considering the vague nature of the rights and the principle of progressive realisation, Denmark believed that the majority of rights were insufficiently judiciable and less suited to form the basis of an individual complaints mechanism[467]".Curiously though, on adoption of the Protocol, States were given the opportunity to lodge formal "explanations of the vote", but no States did so[468].

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[462] Dennis M, Stewart D, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be a International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?' in *98 American Journal of International Law*, (2004) P.462.

[463] UNHR Council, 'Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' UN Doc A/HRC/6/WG.4/2 (23 April 2007).

[464] Communication from Catarina de Albuquerque.

[465] UNHR, 'Statement of Ms. Navanethem Pillay' (65th Plenary meeting) U.N. Doc. A/63/PV. 66 (10 December 2008).

[466] UNGA, Third Committee, 'Third Committee Recommends General Assembly Adoption of Optional Protocol to International Convention on Economic, Social and Cultural Rights, Sixty-third General Assembly' (40 and 41st Meetings) GA/SHC/3938 (18 November 2008) P. 11.

[467] Ibid, P.9.

[468] UNGA, 'Resolution No 832' (63rd Session) UN Doc A/RES/63/117 (2008).

M. Craven pointed out that the International Labour Organization clamed "such a complaint procedure would overlap with their own while other specialised agencies vigorously argued that were better technically qualified to support implementation of the rights[469]".

Of course, countries underlined some arguments for and against this Protocol. Some States pointed to a range of benefits, "they were predominantly what one would call 'indirect' in contributing to the realisation of the Covenant rights - i.e., the Optional Protocol would spur other necessary activities. The complaint mechanism would:

-encourage States parties to ensure more effective local remedies;

-promote the development of international jurisprudence, which would in turn promote the development of domestic jurisprudence on economic, social and cultural rights;

-strengthen international accountability;

-enable the adjudicating body to study concrete cases and thus enable it to create a more concise jurisprudence (para.23)[470]". Others noted that: "it would also provide 'a remedy for victims of violations of those rights[471]".

However, a range of arguments against its consequential value were put in response. Some expressed "concern over the cost of an additional human rights procedure in light of the overstretched resources of the United Nations" and that it "could have a negative impact on the ability of the Committee to undertake its existing functions[472]".

In addition, the most persistent critique or query was whether the protocol would result in duplication with the underlying concern that there was a "proliferation of mechanisms under human rights treaties[473]". However, the International Law Organization representatives at the Working Group noted the strong complementarity of such a mechanism – a significant reversal from the position of most specialised agencies during the drafting of the International Covenant on Economic, Social, and Cultural Rights. The International Law Organization representative said, for example, that there is "no individual complaints mechanism within the International Law Organization framework" which is particularly significant given that in many developing countries most workers, particularly those in the formal economy, are not organised. Other States argued that: "None of the existing mechanisms addressed the provisions in a comprehensive way, and that they are limited either by subject matter, geographic scope or the

[469] Craven M, 'The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development' (Oxford: Oxford University Press, 1995), P.35-36.

[470] ECOSOS, 'Report of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its first session', U.N. Doc E/CN.4/2004/44 (Geneva, 23 February-5 March 2004) < https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/120/29/PDF/G0412029.pdf?OpenElement> accessed 5 April 2023.

[471] Ibid, para.70.

[472] Ibid, para.71.

[473] Ibid, para 71,74.

groups of individuals withstanding to bring a complaint[474]". Mahon also suggested examining in the future "whether the protocol complements existing mechanisms in terms of developing new adjudicative space and whether victims will be able to effectively access and utilise the procedures, noting that the bar may have been set too high[475]".

Table: Optional Protocol of International Covenant on Economic, Social and Cultural Rights[476]

May victims file communications as individuals and/or in groups of individuals?	Individuals or groups of individuals (2)
Who can submit individual communications?	By or on behalf of victim, where on behalf of victim, with the victim's consent unless the author can justify acting without (2)
Is there a time limit to file an individual communication after domestic remedies have been exhausted?	1 year unless demonstrably not possible (3.2 (a))
Are individual communications admissible when being or previously examined under another international investigation/settlement procedure?	Inadmissible (3.2 (c))
Are individual communications considered inadmissible for lack of support or where submitted in bad faith?	Inadmissible where an abuse of the right to submit a communication, manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media (3.2(e), (f))
What else might the Committee decline to hear an individual communication?	Committee may decline to consider communications where the author has not suffered a clear disadvantage, unless the communication raises a serious issue of general importance (4)
May individual communications be submitted anonymously?	No, may not be submitted anonymously (3.2) ((g)
Must individual communications be in writing?	Yes, must be in writing (3.2 (g))

[474] Ibid, para.73.

[475] Mahon C, 'Progress at the Front: The Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights'8 *Human Rights Law Review* (2008) P. 617.

[476] 'Child rights international network'<https://home.crin.org> accessed 6 March 2023.

Are there provisions for confidentiality in submitting/ considering individual communications?	Yes, complaints are communicated to state confidentially, and the Committee may decide or request that authors and victim names not be disclosed (6, Rule 19)
What is the time limit for States to respond to individual communications?	6 months (6.2)
When do domestic remedies not need to be exhausted for individual communications to be accepted for review?	Where application of remedies is unreasonably prolonged (3.1)
Is friendly settlement explicitly permitted for individual communications?	Yes, friendly settlement is permitted, but closes consideration of the communication (7.2)
May the Committee consider the reasonableness of steps taken by States to implement the rights in question when reviewing individual communications?	Yes, the Committee may consider the reasonableness of steps taken to implement rights, bearing in mind that States can adopt a range of policy measures (8.4)
When must a State submit a follow-up response detailing measures taken after receiving the Committees recommendations on an individual communication?	States must submit follow-up responses within 6 months (9.2)
Is there an inquiry procedure? If so, when may it be used?	Yes, inquiry procedure for grave or systematic violations. States must respond within 6 months and Committee may request follow-up after additional 6 months (11,12)
Is the inquiry procedure mandatory for all States parties?	No, States parties must opt in (11.1)
Are there provisions for reviewing inter-state communications?	Yes, inter-state communications may be filled where a State is not fulfilling its obligations. States must respond within 3 months and friendly settlement is possible (10)
Is it mandatory that all State parties accept the inter-state communications?	No, States parties must opt in to accept/ file communications (10)
Are reservations to the Optional Protocol permitted?	Yes

Analysing the table, it is interesting to note that the Optional Protocol includes several progressive provisions. For instance, State parties receive and consider “communications of three types:

-communications by or on behalf of individuals or groups of individuals; It has several advantages: wide range of subjects applying for; within a state's territory;

-communication could be brought alleging a violation of any provision of the Covenant and some provisions;

-inter-state communications: it is not widely used; it provides useful tools for international diplomacy; inquiry procedure (Article 11).

However, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights has its own limitations:

-First, the State might simply ignore the Committee's Recommendations.

-Secondly, "existing United Nations treaty monitoring bodies have not handled many cases compared to regional human rights courts[477]".

-Thirdly, it is ratification issues. For example, in the National Report submitted in accordance with the paragraph 5 of the Annex to Human Rights Council Resolution № 16/21 by Guinea[478], the State declared "to have some problems with the signature and ratification of the Optional Protocol without explaining them in the paragraph 13[479]". Previously, "in accordance with Recommendations 118.1, 2, 3, the Republic of Guinea has ratified the International Covenant on Economic, Social and Cultural Rights… [and] undertook to act in the spirit of Article 2 (paragraph 1) by taking measures to the maximum extent of available resources to ensure the progressive full realization of the rights recognized in this Covenant, as well as the right to development in accordance with United Nations General Assembly Declaration 42/23 of 1986 (paragraph 12)[480]".

Despite above mentioned limitation, the Office of the United Nations High Commissioner for Human Rights, has worked to promote the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, considering: "the monitoring of the implementation of economic, social and cultural rights, a human rights-based approach

[477] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *International Journal of Human Rights* (15(6), 2011) P. 969-1012 <https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[478]UNGA, 'National report submitted in accordance with paragraph 5 of the Annex to Human Rights Council' A/HRC/WG.6/35/GIN/1 (11 November 2019) <https://www.upr-info.org/sites/default/files/documents/2019-12/a_hrc_wg.6_35_gin_1_r.pdf> accessed 4 April 2023.

[479] Ibid.

[480] UNGA, 'National report submitted in accordance with paragraph 5 of the Annex to Human Rights Council' A/HRC/WG.6/35/GIN/1 (11 November 2019) <https://www.upr-info.org/sites/default/files/documents/2019-12/a_hrc_wg.6_35_gin_1_r.pdf> accessed 4 April 2023.

in policy development[481]". In order to achieve better results for the ratification, the Office of the United Nations High Commissioner for Human Rights:

✓ "Focus[ed] on technical assistance, capacity-building, training, providing support to field offices. The Office was strengthening the mechanism for integrating economic, social, and cultural rights into their work plans and launching relevant activities, including in Central Asia, South Africa, West Africa, and South America (paragraph 12)"[482].

✓ Conducted seminars and activities. For example, based on the information from the Report of the United Nations High Commissioner for Human Rights on the implementation of economic, social and cultural rights in all countries, called "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", 10th of April 2012, "in 2011, seminars were held in Burkina Faso, Cape Verde and Mali, aimed at a wide range of participants, including judges, high-ranking officials, legislators, representatives of civil society organizations and lawyers. As a result, Cape Verde signed the Optional Protocol on September 26, 2011[483]". "In July 2011, the Office of the United Nations High Commissioner for Human Rights, conducted several activities in Costa Rica and Panama aimed at promoting the ratification of the Optional Protocol and raising awareness of the judicial protection of economic, social, and cultural rights. Relevant activities included:

- presentations to the Committee on International Relations of the National Assembly and the Office of the Ombudsman of Costa Rica to discuss the content of the Optional Protocol and the possibility of its ratification,
- two events in Panama with the assistance of the Ministry of Foreign Affairs and the Office of the Ombudsman on issues related to the judicial protection of economic, social and cultural rights and ratification of the Optional Protocol (para.25-26)[484]".

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[481] UNHR, 'Report on the implementation of economic, social and cultural rights in all countries' in 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' 10/L.13 (10th of April 2012) <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4fe06da92 > accessed 3 April 2023.

[482] UNHR, 'Report on the implementation of economic, social and cultural rights in all countries' in 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' 10/L.13 (10th of April 2012) <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4fe06da92 > accessed 3 April 2023.

[483] UNHR, 'Report on the implementation of economic, social, and cultural rights in all countries' in 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' 10/L.13 (10th of April 2012) <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4fe06da92 > accessed 3 April 2023.

[484] UNHR, 'Report on the implementation of economic, social, and cultural rights in all countries' in 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' 10/L.13 (10th of April 2012) <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4fe06da92 > accessed 3 April 2023.

The complaints procedure under the Optional Protocol contributes to the implementation by states parties of the obligations under the International Covenant on Economic, Social, and Cultural Rights in several ways including the following:

1) Concrete and tangible cases would be discussed by the Committee in a framework of inquiry that is otherwise absent under the abstract discussions that arise under the State reporting procedure.

2) The views of a treaty monitoring on a complaint can be more specific than General Comments on how provisions should be understood.

3) The mere possibility that complaints might be brought before an international forum could encourage governments to ensure that more effective local remedies are made available. This protocol "helps to overcome the common misconception that economic, social, and cultural rights are not "justiciable[485]". Also, it brings economic, social, and cultural rights on the same level of protection with civil and political rights at international level.

Thus, an Optional protocol to the International Covenant on Economic, Social and Cultural Rights is a legal instrument that provides additional mechanisms for the protection and promotion of economic, social, and cultural rights. It allows individuals and groups who have exhausted all domestic remedies to bring complaints about alleged violations of their economic, social, and cultural rights to the attention of the Committee on Economic, Social and Cultural Rights, the body of independent experts that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights.

Moreover, there are several reasons why the Optional Protocol is beneficial, because it aims:

-to provide additional remedies for individuals and groups whose economic, social, and cultural rights have been violated. In many cases, individuals and groups may not have access to effective remedies at the national level to address violations of their economic, social, and cultural rights. An optional protocol to the International Covenant on Economic, Social and Cultural Rights would provide an additional avenue for seeking justice and holding states accountable for such violations.

-to increase awareness of economic, social, and cultural rights. An optional protocol to the International Covenant on Economic, Social and Cultural Rights could raise awareness about the importance of economic, social, and cultural rights and the obligations of states to protect and promote these rights.

-to provide a forum for the exchange of information and good practices. An optional protocol to the International Covenant on Economic, Social and Cultural Rights could provide a forum for the exchange of information and good practices between states, civil society

[485] 'Benefits of an OP-ICESCR' < https://www.escr-net.org/resources/section-6-benefits-op-icescr#:~:text=An%20OP%20to%20the%20ICESCR,are%20universal%2C%20indivisible%20and%20interdependent> accessed 2 April 2023.

organizations, and other stakeholders on issues related to the protection and promotion of economic, social, and cultural rights.

-to strengthen the monitoring and implementation of the International Covenant on Economic, Social and Cultural Rights. An Optional protocol to International Covenant on Economic, Social and Cultural Rights could strengthen the ability of the Committee on Economic, Social and Cultural Rights to monitor and facilitate the implementation of the International Covenant on Economic, Social and Cultural Rights at the national level.

Despite abovementioned, there are several potential disadvantages to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights:

-Limited number of states parties. As of January 2023, only a limited number of states have ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which means that the number of individuals and groups who have access to the complaint's mechanism provided by the Optional Protocol is relatively small.

-Limited scope. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights only applies to the economic, social, and cultural rights recognized in the ICESCR, which means that it does not provide a mechanism for the protection of other human rights such as civil and political rights.

-Limited remedies. The remedies available under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights are limited to the adoption of views or recommendations by the Committee on Economic, Social and Cultural Rights. While these views or recommendations may be influential, they do not have the same legal force as a judicial decision and may not be enforceable.

-Potential for abuse. There is a potential for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to be abused by individuals or groups who seek to use it for frivolous or vexatious purposes. This could place an undue burden on the Committee on Economic, Social and Cultural Rights and undermine the effectiveness of the complaint's mechanisms.

It is possible that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights might need to be amended in the future in order to address emerging issues or to make improvements to the existing system. Any decision to amend the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights would need to be taken by the state's parties to the Optional Protocol, in consultation with civil society organizations and other stakeholders. Any proposed amendments would need to be adopted by a two-thirds majority of states parties and would enter into force for those states that have accepted the amendments once they have been ratified by enough states.

Conclusion of Chapter 1

The origins of the rights of the second generation originate from ancient centuries, and laid in written sources, doctrines, theories. In the sayings of philosophers, these rights (the rights of the second generation) were inextricably linked with the rights of the first generation. The idea that was laid down in the Universal Declaration dates back much earlier. Nowadays these rights are reflected in many documents, including constitutions and declarations. There are many different approaches in the literature to determine the value of these human rights that either recognize these human rights or be little them. However, despite the consolidation of equality of these rights, in science disputes about the dominance of one of the categories of rights do not cease.

The process of preparing the Universal Declaration on Human Rights has not been easy. The philosophical doctrines underlying this document have been advocated by the countries concerned. Preparation of the Universal Declaration1948 is the struggle of East and West, the struggle of Western liberalism and Marxism, the struggle for world domination.

The question arises why countries have established a sign of universality, indivisibility of rights only formally? Can we assert confidently that the drafters of the Universal Declaration on Human Rights were not 'blinded by their own ambitions'? As C. Tomuschat says that "they did not realize that the existing cultural differences between the many nations and other ethnic as well as linguistic communities of this globe[486]". Y. Khushalani thought that "evidently, there cannot be universal understanding of human rights[487]". Mrs Eleanor Roosevelt, the United States representative to the General Assembly and Chairman of the United Nations Commission on Human Rights during the drafting of the Universal Declaration on Human Rights, noted that this document "is not, and does not purport to be a statement of law or of legal obligation" but "a common standard of achievement for all peoples of all nations[488]". However, this document serves as a normative basis for constitutions because many provisions of the Universal Declaration on Human Rights are included in modern constitutions. Some scholars[489] note that it is a basis for assess the legal systems, policies and practices of all States under the universal periodic reviews. Three doctrines as western liberalism, socialism, third world approach contributed the inclusion of economic, social and cultural rights in the Universal Declaration on Human Rights 1948. The combination of ideas of three doctrines has made it possible to consolidate in the Universal Declaration on Human rights 1948 the maximum possible list of

[486] Tomuchat C, 'Human rights in a World-Wide Framework Some Current Issues' (1985), P.548 < https://www.za oerv.de/45_1985/45_1985_3_k_547_584.pdf> accessed 2 April 2023.

[487] Khushalani Y, 'Human Rights in Asia and Africa', in *4 HRLJ* (1983) P.405.

[488] 19 US Department of State Bulletin 751 (1948).

[489]OHCHR, 'Human Rights and Constitution making' HR/PUB/17/5 (New York and Geneva, 2018) <https://www. .ohchr.org/Documents/Publications/ConstitutionMaking_RU.pdf> accessed 1 April 2023.

human rights and freedoms, becoming a universal standard for States with different political systems, adhering to different ideological, religious, cultural directions in their development. The work of the Soviet Union and Latin American countries in implementing second-generation rights was significant. The debate between the West and the East about the supremacy of a particular category of rights is still being discussed in the scientific literature.

Two categories of rights are of the same nature and their differentiation into two international covenants was unreasonable. The analysis shows that the rights of the second generation contain similar features belonging to the rights of the first generation. This means that two groups of rights are subject to judicial protection at the same level. With its elements such as the right to free speech and solidarity, political rights emerge as a primary instrument to claim social and economic rights. On the other hand, without economic and social rights the exercise of civil and political rights can be undefined. Especially, the right to education prepares a proper foundation to understand and practice civil and political rights. Advocating civil and political rights and blaming social and economic rights for downgrading the importance of human rights would be unfair and may lead to miss the foundational logic of these rights. Because of all these basic reasons and the indivisible connection, rights should not be concern superior to each other. The second-generation rights meet the same criteria as first-generation rights. These rights should therefore be afforded similar protection.

Conclusión del Capítulo 1

Los orígenes de los derechos de la segunda generación se remontan a siglos antiguos y se encuentran en fuentes escritas, doctrinas y teorías. En los dichos de los filósofos, estos derechos (los derechos de la segunda generación) estaban inextricablemente ligados a los derechos de la primera generación. La idea que se plasmó en la Declaración Universal data de mucho antes. Hoy en día estos derechos se reflejan en muchos documentos, incluidas constituciones y declaraciones. En la literatura existen muchos enfoques diferentes para determinar el valor de estos derechos humanos que, o bien los reconocen, o bien los menosprecian. Sin embargo, a pesar de la consolidación de la igualdad de estos derechos, en la ciencia no cesan las disputas sobre el predominio de una de las categorías de derechos.

El proceso de elaboración de la Declaración Universal de los Derechos Humanos no ha sido fácil. Las doctrinas filosóficas subyacentes a este documento han sido defendidas por los países interesados. La preparación de la Declaración Universal 1948 es la lucha de Oriente y Occidente, la lucha del liberalismo occidental y el marxismo, la lucha por la dominación del mundo.

Cabe preguntarse por qué los países han establecido un signo de universalidad, de indivisibilidad de los derechos sólo formalmente. ¿Podemos afirmar con seguridad que los redactores de la Declaración Universal de los Derechos Humanos no estaban "cegados por sus propias ambiciones"? Como dice C. Tomuschat que "no se dieron cuenta de las diferencias culturales existentes entre las numerosas naciones y otras comunidades étnicas y lingüísticas de este globo[490]". Y. Khushalani pensaba que "evidentemente, no puede haber una comprensión universal de los derechos humanos[491]". La Sra. Eleanor Roosevelt, representante de Estados Unidos ante la Asamblea General y Presidenta de la Comisión de Derechos Humanos de las Naciones Unidas durante la redacción de la Declaración Universal de Derechos Humanos, señaló que este documento "no es, ni pretende ser, una declaración de derecho o de obligación jurídica", sino "un ideal común por el que todos los pueblos de todas las naciones deben esforzarse[492]". Sin embargo, este documento sirve de base normativa para las constituciones, ya que muchas disposiciones de la Declaración Universal de Derechos Humanos están incluidas en las constituciones modernas. Algunos[493] estudiosos señalan que sirve de base para evaluar los sistemas jurídicos, las políticas y las prácticas de todos los Estados en el marco de los exámenes periódicos universales. Tres doctrinas como el liberalismo occidental, el socialismo

[490]Tomuchat C, 'Human rights in a World-Wide Framework Some Current Issues' (1985), P.548 < https://www.zaoerv.de/45_1985/45_1985_3_k_547_584.pdf> accessed 2 April 2023.

[491] Khushalani Y, 'Human Rights in Asia and Africa', in *4 HRLJ* (1983) P.405.

[492] 19 US Department of State Bulletin 751 (1948).

[493] OHCHR, 'Human Rights and Constitution making' HR/PUB/17/5 (New York and Geneva, 2018) <https://www..ohchr.org/Documents/Publications/ConstitutionMaking_RU.pdf> accessed 1 April 2023.

y el enfoque tercermundista contribuyeron a la inclusión de los derechos económicos, sociales y culturales en la Declaración Universal de Derechos Humanos de 1948. La combinación de ideas de las tres doctrinas ha hecho posible consolidar en la Declaración Universal de los Derechos Humanos de 1948 la máxima lista posible de derechos humanos y libertades, convirtiéndose en una norma universal para Estados con diferentes sistemas políticos, adheridos a diferentes direcciones ideológicas, religiosas y culturales en su desarrollo. La labor de la Unión Soviética y los países latinoamericanos en la aplicación de los derechos de segunda generación fue significativa. El debate entre Occidente y Oriente sobre la supremacía de una determinada categoría de derechos sigue debatiéndose en la literatura científica.

Las dos categorías de derechos son de la misma naturaleza y su diferenciación en dos pactos internacionales no era razonable. El análisis muestra que los derechos de la segunda generación contienen características similares pertenecientes a los derechos de la primera generación. Esto significa que dos grupos de derechos son objeto de protección judicial al mismo nivel. Con sus elementos como el derecho a la libertad de expresión y a la solidaridad, los derechos políticos surgen como instrumento primordial para reclamar derechos sociales y económicos. Por otra parte, sin derechos económicos y sociales el ejercicio de los derechos civiles y políticos puede quedar indefinido. Especialmente, el derecho a la educación prepara una base adecuada para comprender y practicar los derechos civiles y políticos. Defender los derechos civiles y políticos y culpar a los derechos sociales y económicos de restar importancia a los derechos humanos sería injusto y podría llevar a perder la lógica fundacional de estos derechos. Por todas estas razones básicas y por su conexión indivisible, los derechos no deben considerarse superiores unos a otros. Los derechos de segunda generación cumplen los mismos criterios que los derechos de primera generación. Por lo tanto, estos derechos deberían gozar de una protección similar.

Chapter 2. The contribution of the Inter-American and African regional levels in featuring economic, social and cultural rights

Introduction of Chapter 2

The Chapter I is devoted to the universal level of economic, social, and cultural rights protection. Some documents such as Peace treaties, the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol are analyzed in order to show the unified nature of two categories of human rights through different types of State obligations: positive and negative, cost free and expensive, progressive and immediate, vague and precise, justiciable and non-justiciable, derogable and non- derogable, thin and thick. As a result, it was shown that the system of the protection of economic, social, and cultural rights at the universal level is weaker than the protection of civil and political rights at the same level, and it is still an issue why there was a need to adopt two international covenants instead of one.

Before moving to Chapter 2, it is important to note that the main milestones at the regional level were the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms on November 4, 1950, the American Convention on Human Rights on November 22, 1969 (entered into force in 1978), the African Charter on Human and Peoples' Rights on June 26, 1981, the Islamic Declaration of Human Rights of 1990, and the Arab Charter of Human Rights adopted on September 15, 1994.The catalogue of rights and freedoms of these documents repeats the universal set of rights from the Universal Declaration of Human Rights. The implementation of these rights turned out to be complicated, "it encounters resistance from real life relationships that have historically formed and are developing on other value networks[494]". For example, main differences are religion, in which the population professes Judaism, Buddhism, Hinduism, Confucianism.

However, there are some difficulties in these regional human rights systems:

✓ The limited legal recognition of economic, social, and cultural rights. While the above-mentioned documents recognize a range of economic, social, and cultural rights, these rights are not given the same level of legal recognition as civil and political rights. This can make it more difficult to enforce economic, social, and cultural rights and to hold states accountable for violations of these rights.

✓ The lack of effective remedies. Economic, social, and cultural rights often require significant resources to be realized, and it can be difficult for individuals and groups to obtain effective remedies for violations of these rights through both human rights systems. Two commissions (the African Commission on Human and Peoples' Rights, and the Inter-American Commission on Human Rights), and two courts (the African Court on Human and Peoples'

[494] Lukasheva E.A, 'Human rights and the processes of globalization of the modern world' (Publishing House NORM, 2007); Mingazov L, 'Problemy universalizma i regionalizma v sfere mezhdunarodnoj zashchity prav cheloveka' in *JS*, (2021) P.99.

Rights and the Inter-American Court of Human Rights) have had a limited power to order states to take specific actions to remedy violations of these rights.

✓ The limited capacity of national human rights institutions. They play an important role in promoting and protecting human rights in the African and Inter-American regions, however, some of them lack the capacity and resources to effectively address economic, social, and cultural rights issues, which can hinder the protection of these rights.

✓ The poverty and inequality. Economic, social, and cultural rights are often most relevant for marginalized and disadvantaged groups, who may face barriers to accessing justice and seeking remedies for violations of these rights. Poverty and inequality can also be drivers of human rights violations, including violations of economic, social, and cultural rights.

Considering the Inter-American human rights system, it is important to note that the American Convention on Human Rights is the main regional human rights treaty and provides for the protection of economic, social, and cultural rights. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are responsible for promoting and protecting human rights in the region and have issued numerous decisions on economic, social, and cultural rights. Their work includes two stages: complaints submitted to the Court are first considered by the Commission. The Commission performs the function of protecting human rights by considering "petitions" submitted by individuals and non-governmental organizations and "communications" from States that it receives (Articles 44-45)[495]. The competence of the Commission extends to all member States of the American Convention on Human Rights (Article 61.1)[496]. The competence of the Inter-American Court extends to the interpretation of the American Convention on Human Rights, any other American document relating to human rights, as well as to any issues within the competence of OAS bodies, at the request of OAS member States. This distinguishes it from the European Court of Human Rights which is designed to ensure strict compliance and enforcement only of the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms by its member States. Decisions taken by the Inter-American Court of Human Rights may include compensation for victims of violations of these rights. "The Inter-American Court monitors each case individually, and also conducts joint monitoring of compensation measures issued in several court decisions against the same State[497]". The Inter-American Court also differs from

[495] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[496] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[497] Davtyan M.K, Nikolaev A.M, 'Ispolnenie reshenij Evropejskogo Suda I Mezhamerikanskogo Suda po pravam cheloveka: sravnitel'nyj analiz' *in Mezhdunarodnoe i integracionnoe pravo. Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedeniya* (№ 4, 2018) P.43.

the European Court of Human Rights in that individuals cannot apply directly to the Inter-American Court. Only the Member States and the Commission have the right to refer the case to the Court (Article 61.1)[498]. One of the conditions for the admissibility of the case is that the Commission exhausts all the procedures provided for (Article 61.2)[499].Applications of individuals are first submitted to the Inter-American Commission on Human Rights, which decides whether to refer them to the Inter-American Court of Human Rights established by the Convention, if the respondent State recognizes the jurisdiction of the court.

Next, in the African human rights system, the African Charter on Human and Peoples' Rights is the main regional human rights treaty, and this document provides the protection of a range of economic, social, and cultural rights, including different rights such as the right to education, the right to work, and the right to health. In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa contains specific provisions on the rights of women in relation to economic, social, and cultural rights. The African system also includes the African Court on Human and Peoples' Rights, which has jurisdiction to hear cases involving alleged violations of the African Charter and other regional human rights instruments. The African Court has the authority to consider cases involving alleged violations of economic, social, and cultural rights and has issued several decisions on these issues.

The Chapter II explores special provisions for the protection of economic, social, and cultural rights at two levels: the African and Inter-American. These regional systems of human rights protection, their uniqueness, including the case-law on specific state obligations, its relation to economic, social, and cultural rights, and the contribution of the Inter-American and African (regional) level in featuring economic, social, and cultural rights are considered. The Chapter 2 consists of paragraphs such as: 2.1. The uniqueness of the Inter-American human rights system, 2.2. State’s obligations on economic, social and cultural right protection in Inter-American legal documents and reports (including i. Obligation to respect, ii. Obligation to protect, iii. Obligation to fulful, iv. Obligation to promote),2.3. Selected case-law of the Inter-American Commission and Court of Human Rights on state obligations aimed at economic, social, and cultural rights protection (including i. Positive and negative obligations, ii. Cost free and expensive state obligations, iii. Progressive and immediate state obligations, iv. Vague and precise state obligations, v. Justiciable and non-justiciable state obligations, vi. Derogable and non- derogable state obligations, vii. Thin and thick state obligations, Table ‘Case-law of the Inter-American Commission and Court of Human Rights on obligations for realization of

[498] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[499] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

economic, social, and cultural rights', 2.4. The uniqueness of the African human rights system, 2.5. Indivisibility of economic, social and cultural rights within the African Commission on Human and Peoples' Rights' understanding, 2.6. The concept of minimum core obligations in the African Commission on Human and Peoples' Rights' activity, 2.7. Approaches to the adjudication of economic, social, and cultural rights, 2.8. A difference between the United Nation Committee on economic, social, and cultural rights understanding of the obligations engendered by the International Covenant on Economic, Social, and Cultural Rights of 1966 and the African Commission on Human and Peoples' Rights view of the obligations engendered by the African Charter on Human and Peoples' Rights of 1981, 2.9. Reasonableness test on economic, social and cultural rights enforcement, 2.10. State obligations to respect, protect and fulfil economic, social and cultural rights (including i. Obligation to respect, ii. Obligation to protect, iii. Obligation to fulfil, iv. Obligation to promote), 2.11. Selected case-law of the African Commission and Court on Human and People's Rights on state obligations aimed at economic, social, and cultural rights protection (including i. Positive and negative state obligations, ii. Cost free and expensive state obligations, iii. Progressive and immediate state obligations, iv. Vague and precise state obligations, v. Justiciable and non-justiciable state obligations, vi. Derogable and non- derogable state obligations, vii. Thin and thick state obligations), Table "Case-law of the African Commission and Court on Human and Peoples' Rights on obligations for realization of economic, social, and cultural rights".

Introducción del Capítulo 2

El capítulo I está dedicado al nivel universal de protección de los derechos económicos, sociales y culturales. Se analizan algunos documentos como los tratados de Paz, la Declaración Universal de Derechos Humanos, el Pacto Internacional de Derechos Económicos, Sociales y Culturales y su Protocolo Facultativo con el fin de mostrar la naturaleza unificada de dos categorías de derechos humanos a través de diferentes tipos de obligaciones estatales: positivas y negativas, gratuitas y costosas, progresivas e inmediatas, vagas y precisas, justiciables y no justiciables, derogables e irrenunciables, delgadas y gruesas. Como resultado, se demostró que el sistema de protección de los derechos económicos, sociales y culturales a nivel universal es más débil que la protección de los derechos civiles y políticos al mismo nivel, y sigue siendo un problema por qué era necesario adoptar dos pactos internacionales en lugar de uno.

Antes de pasar al Capítulo 2, es importante señalar que los principales hitos a nivel regional fueron la adopción del Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales el 4 de noviembre de 1950, la Convención Americana sobre Derechos Humanos el 22 de noviembre de 1969 (entró en vigor en 1978), la Carta Africana de Derechos Humanos y de los Pueblos el 26 de junio de 1981, la Declaración Islámica de Derechos Humanos de 1990 y la Carta Árabe de Derechos Humanos adoptada el 15 de septiembre, 1994. El catálogo de derechos y libertades de estos documentos repite el conjunto universal de derechos de la Declaración Universal de Derechos Humanos. La implementación de estos derechos resultó complicada, "encuentra resistencia de relaciones de la vida real que históricamente se han formado y se están desarrollando en otras redes de valores[500]". Por ejemplo, las principales diferencias son la religión, en la que la población profesa el judaísmo, el budismo, el hinduismo y el confucianismo.

Sin embargo, existen algunas dificultades en estos sistemas regionales de derechos humanos:

✓ Abolir el limitado reconocimiento legal de los derechos económicos, sociales y culturales. Si bien los documentos mencionados reconocen una serie de derechos económicos, sociales y culturales, estos derechos no reciben el mismo nivel de reconocimiento legal que los derechos civiles y políticos. Esto puede hacer que sea más difícil hacer cumplir los derechos económicos, sociales y culturales y responsabilizar a los Estados por las violaciones de estos derechos.

✓ Paliar la falta de remedios efectivos. Los derechos económicos, sociales y culturales a menudo requieren recursos significativos para su realización, y puede ser difícil para individuos y grupos obtener remedios efectivos para las violaciones de estos derechos a través de ambos sistemas de derechos humanos. Dos comisiones (la Comisión Africana de Derechos Humanos y de los Pueblos y la Comisión Interamericana de Derechos Humanos) y dos tribunales (la Corte Africana de Derechos Humanos y de los Pueblos y la Corte Interamericana de Derechos

[500] Lukasheva E.A, 'Human rights and the processes of globalization of the modern world' (Publishing House NORM, 2007); Mingazov L, 'Problemy universalizma i regionalizma v sfere mezhdunarodnoj zashchity prav cheloveka' in *JS*, (2021) P.99.

Humanos) han tenido un poder limitado para ordenar a los Estados que tomen medidas específicas para remediar las violaciones de estos derechos.

✓ Paliar la limitada capacidad de las instituciones nacionales de derechos humanos. Desempeñan un papel importante en la promoción y protección de los derechos humanos en las regiones africana e interamericana, sin embargo, algunos de ellos carecen de la capacidad y los recursos para abordar de manera efectiva los problemas de derechos económicos, sociales y culturales, lo que puede obstaculizar la protección de estos derechos.

✓ Paliar la pobreza y la desigualdad. Los derechos económicos, sociales y culturales a menudo son más relevantes para los grupos marginados y desfavorecidos, que pueden enfrentar barreras para acceder a la justicia y buscar remedios por violaciones de estos derechos. La pobreza y la desigualdad también pueden ser impulsores de violaciones de los derechos humanos, incluidas las violaciones de los derechos económicos, sociales y culturales.

Considerando el sistema interamericano de derechos humanos, es importante señalar que la Convención Americana sobre Derechos Humanos es el principal tratado regional de derechos humanos y prevé la protección de los derechos económicos, sociales y culturales. La Comisión Interamericana de Derechos Humanos y la Corte Interamericana de Derechos Humanos son responsables de promover y proteger los derechos humanos en la región y han emitido numerosas decisiones sobre derechos económicos, sociales y culturales. Su trabajo incluye dos etapas: las quejas presentadas a la Corte son consideradas primero por la Comisión. La Comisión cumple la función de proteger los derechos humanos considerando las "peticiones" presentadas por particulares y organizaciones no gubernamentales y las 'comunicaciones' de los Estados que recibe (Artículos 44-45)[501]. La competencia de la Comisión se extiende a todos los Estados miembros de la Convención Americana sobre Derechos Humanos (Artículo 61.1)[502]. La competencia de la Corte Interamericana se extiende a la interpretación de la Convención Americana sobre Derechos Humanos, a cualquier otro documento americano relativo a los derechos humanos, así como a cualquier asunto de la competencia de los órganos de la OEA, a solicitud de los Estados miembros de la OEA. Esto lo distingue del Tribunal Europeo de Derechos Humanos, que está diseñado para garantizar el estricto cumplimiento y la aplicación de las normas del Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales por parte de sus Estados miembros. Las decisiones adoptadas por la Corte Interamericana de Derechos Humanos pueden incluir la indemnización de las víctimas de violaciones de estos derechos. "La Corte Interamericana monitorea cada caso de manera individual, y también realiza un monitoreo conjunto de las medidas de compensación

[501] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[502] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

emitidas en varias decisiones judiciales contra el mismo Estado[503]". La Corte Interamericana también difiere de la Corte Europea de Derechos Humanos en que los individuos no pueden presentar una solicitud directamente ante la Corte Interamericana. Solo los Estados miembros y la Comisión tienen derecho a remitir el asunto al Tribunal de Justicia (Artículo 61.1)[504]. Una de las condiciones para la admisibilidad del caso es que la Comisión agote todos los procedimientos previstos (Artículo 61.2)[505].Las demandas de las personas se presentan primero a la Comisión Interamericana de Derechos Humanos, que decide si las remite a la Corte Interamericana de Derechos Humanos establecida por la Convención, si el Estado demandado reconoce la jurisdicción de la corte.

Luego, en el sistema africano de derechos humanos, la Carta Africana de Derechos Humanos y de los Pueblos es el principal tratado regional de derechos humanos, y este documento brinda la protección de una variedad de derechos económicos, sociales y culturales, incluidos diferentes derechos como el derecho a la educación, el derecho al trabajo y el derecho a la salud. Además, el Protocolo de la Carta Africana de Derechos Humanos y de los Pueblos sobre los Derechos de las Mujeres en África contiene disposiciones específicas sobre los derechos de las mujeres en relación con los derechos económicos, sociales y culturales. El sistema africano también incluye la Corte Africana de Derechos Humanos y de los Pueblos, que tiene jurisdicción para conocer de casos relacionados con presuntas violaciones de la Carta Africana y otros instrumentos regionales de derechos humanos. La Corte Africana tiene la autoridad para considerar casos que involucran presuntas violaciones de los derechos económicos, sociales y culturales y ha emitido varias decisiones sobre estos temas.

El capítulo II explora disposiciones especiales para la protección de los derechos económicos, sociales y culturales en dos niveles: el africano y el interamericano. Se consideran estos sistemas regionales de protección de los derechos humanos, su singularidad, incluida la jurisprudencia sobre obligaciones estatales específicas, su relación con los derechos económicos, sociales y culturales, y la contribución del nivel interamericano y africano (regional) al destacar los derechos económicos, sociales y culturales. El capítulo 2 consta de párrafos como: 2.1. La singularidad del sistema interamericano de derechos humanos, 2.2. Obligaciones del Estado en materia de protección de derechos económicos, sociales y culturales en documentos e informes jurídicos interamericanos (incluyendo i. Obligación de respetar, ii.

[503] Davtyan M.K, Nikolaev A.M, 'Ispolnenie reshenij Evropejskogo Suda I Mezhamerikanskogo Suda po pravam cheloveka: sravnitel'nyj analiz' *in Mezhdunarodnoe i integracionnoe pravo. Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedeniya* (№ 4, 2018) P.43.

[504] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[505] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

Obligación de proteger, iii. Obligación de cumplir, iv.Obligación de promover),2.3. Jurisprudencia seleccionada de la Comisión y la Corte Interamericanas de Derechos Humanos sobre obligaciones estatales destinadas a la protección de los derechos económicos, sociales y culturales (incluidas i. Obligaciones positivas y negativas, ii. Obligaciones estatales gratuitas y costosas, iii. Obligaciones estatales progresivas e inmediatas, iv. Obligaciones estatales vagas y precisas, v. Obligaciones estatales justiciables y no justiciables, vi. Obligaciones estatales derogables y no derogables, vii. Obligaciones estatales finas y gruesas, Cuadro 'Jurisprudencia de la Comisión y Corte Interamericanas de Derechos Humanos sobre obligaciones para la realización de los derechos económicos, sociales y culturales', 2.4. La singularidad del sistema africano de derechos humanos, 2.5. Indivisibilidad de los derechos económicos, sociales y culturales en el entendimiento de la Comisión Africana de Derechos Humanos y de los Pueblos, 2.6. El concepto de obligaciones básicas mínimas en la actividad de la Comisión Africana de Derechos Humanos y de los Pueblos, 2.7. Enfoques para la adjudicación de derechos económicos, sociales y culturales, 2.8. Una diferencia entre el Comité de Derechos económicos, sociales y culturales de las Naciones Unidas comprensión de las obligaciones generadas por el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966 y la Comisión Africana de Derechos Humanos y de los Pueblos visión de las obligaciones generadas por la Carta Africana de Derechos Humanos y de los Pueblos de 1981, 2.9. Prueba de razonabilidad en la aplicación de los derechos económicos, sociales y culturales, 2.10. Obligaciones de los Estados de respetar, proteger y hacer efectivos los derechos económicos, sociales y culturales (incluidas i. La obligación de respetar, ii. La obligación de proteger, iii. La obligación de cumplir, iv. la obligación de promover), 2.11. Jurisprudencia seleccionada de la Comisión y la Corte Africana de Derechos Humanos y de los Pueblos sobre obligaciones estatales destinadas a la protección de los derechos económicos, sociales y culturales (incluidas i. Obligaciones estatales positivas y negativas, ii. Obligaciones estatales costosas y gratuitas, iii. Obligaciones estatales progresivas e inmediatas, iv. Obligaciones estatales vagas y precisas, v. Obligaciones estatales justiciables y no justiciables, vi. Obligaciones estatales derogables y no derogables, vii. Obligaciones estatales delgadas y gruesas), Cuadro 'Jurisprudencia de la Comisión y Corte Africana de Derechos Humanos y de los Pueblos sobre obligaciones para la realización de los derechos económicos, sociales y culturales'.

2.1. The uniqueness of the Inter-American human rights system

After the adoption of the Universal Declaration of Human Rights 1948, different world regions developed their own systems for the human rights protection, existing along with the system established by the United Nations. There are regional human rights institutions in Europe, America, and Africa such as Council of Europe, Organization of American States and Organization of African Unity, replaced by African Union in July of 2002. The Inter-American Human Rights system represents "a collection of human rights norms and regulatory bodies operating in the Americas[506]". The creation of this system contributed to the so-called democratic transition in the countries of the region in 1980, that is, the restoration of constitutional governments and the end of the era of military dictatorships. It operates within the framework of the Organization of American States.

The normative basis for its functioning is the Charter of the Organization of American States of 1948, the American Declaration of Human Rights and Duties[507], the American Convention on Human Rights which was ratified by only 25 of the 35 OAS states (for example, the USA, despite participation in this organization, never ratified the Convention), while some States ratified it with a reservation (in particular, Mexico made a reservation allowing not to recognize the right of the embryo to life from the moment of conception). The latter contains a list of rights and freedoms and the procedure for their application, which the participating States undertake to respect and ensure to all persons within their jurisdiction. The text of the American Convention on Human Rights was adopted in 1969 but entered into force only in 1978. It can be stated that the Inter-American system of protection of rights currently does not apply to the entire group of the Organization of American States, but functions within the framework of most of this international organization.

Institutionally, the Inter-American Human Rights system resembles the European one that operated before the reform of the European Court of Human Rights in 1998 (for example, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, in the absence of direct access of individual applicants to the court)[508]. It is also important to note that historically the first Inter-American Commission on Human Rights was established within the framework of the Organization of American States in 1959 and for quite a long time its activities were based on the provisions of the American Declaration of Human

[506] Grossman S, 'The Inter-American system of human rights: Challenges for the future' in *Indiana law journal* (Bloomington, Vol. 84, № 4, 2008) P. 1267–1282.

[507] American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992).

[508] Burma S. K, 'Druzhestvennoe uregulirovanie v praktike organov Mezhamerikanskoj sistemy zashchity prav cheloveka' in *Vestnik Yuzhnogo regional'nogo centra Nacional'noj akademii pravovyh nauk Ukrainy* (№ 3, 2015) P. 168–175.

Rights and Duties of 1948 (a non-legally binding document), and after the adoption and entry into force of the American Convention on Human Rights in 1978. The Inter-American Commission has become guided by its provisions in relation to those States that have ratified the Convention, while in relation to Member States that have not ratified the Convention, she continues to apply the Declaration. With regard to economic, social, and cultural rights, Article 26 of the American Convention on Human Rights adopts an evolutionary approach to the development of economic, social, educational, scientific, and cultural standards. Its ratification is a right, not an obligation.

Several institutional differences of this system should be highlighted:

✓ It is the existence of reconciliation principles to resolve most applications acting as an intermediary between the applicant and the State. This procedure, in accordance with article 48 of the American Convention on Human Rights, is called a "friendly settlement". Only in some of the most cases, the Inter-American Commission does not recognize friendly settlement procedures. The friendly settlement procedure assumes the presence of confidential the relationship between the applicant and the State, as well as the applicant's ability to clearly identify measures of compensation for violated rights that they consider sufficient, and the State should be ready to implement these measures, as well as realistically assess the possibility of implementing general measures that would make it impossible for the relevant violations in the future. A significant difference between the friendly settlement procedure in the Inter - American system and a similar procedure in the European human rights system is that it is not confidential and, accordingly, all the terms of the agreement (both individual and general) are always published in full by the Inter - American Commission together with the report on the case as an integral part of it.

It is important to note that in the friendly settlement agreement, the applicants and the State are not only able to agree on damages, but the violation of human rights must also be eliminated. "The restitution is intended to stop the violation and return the victim to the state in which he or she was before the commission violations. Examples of individual restitution measures may include the restoration of individual freedom, the repeal of regulations, the restoration of employment[509]". An interesting feature of the friendly settlement in the Inter-American System of Human Rights protection lies in the so-called 'satisfaction measures', which "are caused by the consequences of the publicity and accessibility of friendly settlement agreements[510]". When the parties choose a friendly settlement, the main task of the state is not to 'save its face' (which characterizes the corresponding procedure in the European system),

[509] Inter-American Commission on Human Rights, 'Impacto del procedimiento de solution amistosa' OEA/Ser.L/V/II. Doc. 45/13 (18 December 2013) <https://clck.ru/32PYn6> accessed 26 March 2023.

[510] Burma S. K, 'Druzhestvennoe uregulirovanie v praktike organov Mezhamerikanskoj sistemy zashchity prav cheloveka' in *Vestnik Yuzhnogo regional'nogo centra Nacional'noj akademii pravovyh nauk Ukrainy* (№ 3, 2015) P. 168–175.

but on the contrary, recognition of violations and the public nature of the restoration of human rights.

It should also be noted that in the case when a friendly settlement failed, and violations on the part of the State were established by the commission, it issues a separate report, which it sends to the State and defines its comments on the problematic situation in it. The respondent State, in turn, may appeal such a report to the Inter-American Court of Human Rights or, within three months, correct the situation with human rights violations. After the expiration of three months, the Commission itself may initiate the consideration of the case in the Inter-American Court if the State does not respond to its orders. However, in any case, jurisdiction of the Inter-American Court of Human Rights is optional, that is, a case can be considered in it only if the State has made a special declaration recognizing this jurisdiction in accordance with Article 62 of the American Convention.

In the institutional mechanism, the more important structure is the Inter-American Commission on Human Rights, whose activities are based not on resolving the case on the merits and finding the State guilty of human rights violations, but in promoting a friendly settlement of the conflict and establishing mutual understanding between the applicants and the respondent States, which should be based, among other things, on compensation for damages and maximum restoration of violated rights. As stated in the Report "The Impact of the Friendly settlement Procedure" prepared and published in 2014 by the Inter-American Commission on Human Rights, "the friendly settlement procedure has developed over three decades of gradual implementation in order to eventually create a flexible and effective mechanism for the protection of human rights[511]".This feature of the Inter-American System of Human Rights protection is noted by many experts as the most acceptable and effective under the legal regimes of many States of South and Latin America, whose experience shows that friendly settlement agreements are sometimes the best chance for a real change in the problematic situation on the scale of a particular State.

✓ It is a two-stage nature, namely the availability of the possibility of resolving legal disputes at the level of: Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (the presence of these two bodies resembles the European system that was in effect until 1988).

✓ It is the lack of direct access of individuals to the Inter-American Court of Human Rights.

✓ It is the sessional procedure for the work of the Inter-American Court of Human Rights.

[511] Inter-American Commission on Human Rights, 'Impacto del procedimiento de solution amistosa' OEA/Ser.L/V/II. Doc. 45/13 (18 December 2013) <https://clck.ru/32PYn6> accessed 26 March 2023.

✓ There is a widespread use of consultative procedures for resolving disputes. The advisory jurisdiction of the Inter-American Court of Human Rights is the broadest to all other regional courts, since it makes "a significant contribution to enhancing the uniformity and consistency of interpretation of the substantive and procedural provisions of the American Convention and other human rights treaties", "forms a uniform culture of human rights in the region", providing for the "constitutionalization of Inter-American human rights law", allowing to characterize the Inter-American Court of Human Rights as "the only body in the international arena that effectively carries out its advisory jurisdiction[512]".

✓ The Inter-American Court of Human Rights is the main importer of the practice of interpreting international human rights law.

✓ There is a low percentage of enforcement of decisions made within the framework of the Inter-American System of Human Rights Protection. Article 68 of the American Convention on Human Rights of 1969 states: "The States Parties to the Convention undertake to obey the Court's decision in any case to which they are parties. The part of the decision that relates to compensatory damages may be executed in the relevant country according to the internal procedure governing the execution of decisions rendered against the State[513]". According to some data, "the level of enforcement of decisions of the Inter-American Court of Human Rights is only 4%[514], 83% of decisions of the Inter-American Court of Human Rights are partially executed, 11% of decisions are not fully executed, and only 6% of decisions are fully executed. The respondent States fulfil the financial part of the decision (about 50% of such obligations are fulfilled), but the situation is much worse with the regulations concerning legislative changes - about 5-10% of such orders of the Inter-American Court of Human Rights are executed[515]".

2.2. State's obligations on economic, social and cultural right protection in Inter-American legal documents and reports

i. Obligation to respect

[512] Pasqualucci J.M, 'The Practice and Procedure of the Inter-American Court of Human Rights' (Cambridge, 2003) P. 80; Hennebel L, 'The Inter-American Court of Human Rights: The Ambassador of Universalism' in *Quebec Journal of International Law* (Special Edition, 2011) P. 71—76.

[513] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) reprinted in Basic Documents Pertaining to Human Rights in the Inter- American System OEA/Ser L V/II.82 Doc 6 Rev 1 (1992).

[514] Posner E, Yoo J, 'Judicial Independence in International Tribunals' *in California Law Review* (Vol. 93, № 1, 2005), P. 1- 74.

[515] Ispolinov A, 'Evolyuciya i puti razvitiya sovremennogo mezhdunarodnogo pravosudiya' in *Mezhdunarodnoe publichnoe pravo* (№ 10, 2017) P. 70.

Before moving to the obligation to respect, it is important to note that the Inter-American Court of Human Rights takes the position that the obligations of States enshrined in the American Convention on Human Rights[516], contain the responsibility of a State Party both for acts performed by officials acting on behalf of the State, and for acts committed by third parties, if they were the result of the state's failure to fulfil its obligations to exercise control over their activities.

The obligation to respect economic, social, and cultural rights in the Inter-American regional system of human rights protection refers to the obligation of states to refrain from interfering with the enjoyment of these rights by individuals. This means that states must not take any action that would diminish or restrict the enjoyment of these rights. In "Compendium on the Obligation of States to adapt their Domestic Legislation to the Inter-American Standards of Human Rights" which was approved by the Inter-American Commission on Human Rights on January 25, 2021, it is stated that this type of the obligation is "the norm [] that determine the linkage and articulation between inter-American law and domestic law[517]". For example, states have an obligation to respect the right to education by not enacting laws or policies that would limit access to education or prevent individuals from obtaining an education. Similarly, states have an obligation to respect the right to work by not enacting laws or policies that would restrict the ability of individuals to work or engage in economic activities. In addition to this general obligation to respect economic, social, and cultural rights, states may also have specific obligations to respect certain rights in certain circumstances.

The obligation to respect economic, social, and cultural rights is set forth in several Inter-American legal instruments, including the American Declaration of the Rights and Duties of Man and the Protocol of San Salvador. It is also interpreted and applied by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In *Valasquez Rodriguez* the Inter-American Court of Human Rights held: "The first obligation assumed by the States Parties under Article 1 (1) is "to respect the rights and freedoms"[518] recognized by the Convention. The exercise of public authority has certain limits which derive from the fact

[516] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[517] Inter – American Commission on Human Rights, 'Compendium on the Obligation of States to adapt their Domestic Legislation to the Inter-American Standards of Human Rights' OEA/Ser.L/V/II. Doc. 11 (January 25, 2021).

[518] Article 1, American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) TS No 36 (Organization of American States, 1969)<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.*Velázquez-Rodríguez v. Honduras* (Articles 1.1. and 4 of the American Convention) Inter-American Court of Human Rights Series C No 4 (July 29, 1988).

that “human rights are inherent attributes of human dignity and are, therefore, superior to the power of the state (para.165)”[519].

In another case of *González and Others v. Mexico*, the Inter-American Court of Human Rights found that: “The State had to tak[e] steps to ensure that children from disadvantaged groups had access to quality education[520]”. For example, states have an obligation to respect the rights of indigenous peoples to their traditional lands, cultures, and ways of life. The American Convention on Human Rights 1969 includes provisions that directly relate to the rights of indigenous peoples. “States Parties to this Convention undertake to respect the rights and freedoms and to ensure to all persons within their jurisdiction the free and full exercise of such rights and freedoms without discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition (Article 1)[521]”.“Where the exercise of any of the rights or freedoms referred to in Article 1 is not yet secured by law or other provisions, the participating States undertake to accept, in accordance with their constitutional the procedure and provisions of this Convention, such legislative or other measures as may be necessary to give effect to such rights and freedoms (Article 2)[522]”. These articles are very important to ensure the equality of rights of indigenous peoples and other members of this society.

Analyzing other cases, it is also important to demonstrate a case such as *Pacotaype Chaupin, Martín Cayllahua Galindo, Marcelo Cabana Tucno and Isaías Huamán Vilca v. Peru*[523]. In this case, the Peruvian State included the obligation to respect rights in domestic laws.

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[519] *Velázquez-Rodríguez v. Honduras* (Articles 1.1. and 4 of the American Convention) Inter-American Court of Human Rights Series C No 4 (July 29, 1988).

[520] *González et al. (‘Cotton Field’) v. Mexico* (Articles 4, 5, 8, 19, and 25 of the American Convention) Inter-American Court of Human Rights Series C No 205 (November 16, 2009) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf> accessed 24 March 2023.

[521] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[522] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[523] Paragraph 76, *Manuel Pacotaype Chaupin, Martín Cayllahua Galindo, Marcelo Cabana Tucno and Isaías Huamán Vilca v. Peru* (Articles 3, 4, 5, 7, 25 of the American Convention) Inter-American Commission on Human Rights No 47/00 Case 10/908 (April 13,2000); Paragraph 68, *Américo Zavala Martinez v. Peru* (Articles 3, 4, 5, 7, and 25 of the American Convention) Inter-American Commission on Human Rights No 44/00 Case 10/820 (April 13, 2000).

ii. Obligation to protect

The obligation to protect economic, social, and cultural rights refers to the obligation of states to take steps to prevent harm or abuse to individuals in the enjoyment of these rights. For example, in 2017 the Inter-American Convention on the Promotion and Protection of the Rights of Older Persons[524] came into force and showed that older people also need the protection. States must adopt measures to ensure that individuals are able to enjoy these rights without fear of harm or abuse from state or non-state actors. The Inter-American Court of Human Rights held that states have an obligation to protect the right to education by adopting measures to ensure that individuals have access to education and that the education system is of good quality. Similarly, the Inter-American Court of Human Rights stated that states have an obligation to protect the right to work by adopting measures to ensure that individuals have access to employment opportunities and that the working conditions are safe and fair.

iii. Obligation to fulfil

The obligation to fulfill economic, social, and cultural rights requires that counties "take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights (para.6)[525]". In the case of *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights found that: "The State had an obligation to fulfill the right, which included taking steps to prevent deaths that resulted from its failure to provide basic services such as health care and police protection[526]". In another case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua,* the Inter-American Court of Human Rights considering rights of indigenous people, stated that: "The State had an obligation to fulfill the right to property which included providing the indigenous community with access to land and natural resources and had an obligation to consult with indigenous communities and to obtain their consent prior to taking any action that may affect their rights[527]". In next case, in *Yakye Axa Indigenous*

[524] Inter-American Convention on the Promotion and Protection of the Rights of Older Persons (entered into force January 11, 2017, the thirtieth day after the date of deposit of the second instrument of ratification or accession to the Convention with the General Secretariat of the Organization of American States) General Secretariat OAS (Washington, 2017) <https://www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp accessed 22 March 2023.

[525] International Commission of Jurists, 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (26 January 1997) <http://www.refworld.org/docid/48abd5730.html> accessed 21 March 2023.

[526] *Velázquez-Rodríguez v. Honduras* (Articles 1.1. and 4 of the American Convention) Inter-American Court of Human Rights Series C No 4 (July 29, 1988).

[527] *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf> accessed 19 March 2023.

Community v. Paraguay, the Inter-American Court of Human Rights held that: "In accordance with Articles 24 (Equality before the law) and 1.1 of the American Convention on Human Rights of 1969, States must ensure the full realization and exercise of the rights of indigenous peoples who are under their jurisdiction. In order to ensure these rights [including economic, social, and cultural rights] effectively, when interpreting and applying their domestic legislation, States should consider the peculiarities that distinguish representatives of indigenous peoples from the general population and the components of their cultural identity. The same justification should be applied …to assess the scope and content of the articles of the American Convention on Human Rights of 1969, the violation of which the Commission charges the State"[528].

Moreover, while serving as president of the Court, Diego García-Sayán cultivated the idea when he asserted in a concurring opinion that, ". . . national courts are called upon to fulfill a crucial role as one of the main vehicles for translating the obligations specified in international human rights treaties into domestic norms—applying them in their case law and other everyday challenges. National courts must put into practice the legally binding decisions of the Inter-American Court that interpret and define international regulations and standards of human rights protection (para.30)[529]".

iv. Obligation to promote

In general, state parties to the Inter-American human rights system have an obligation to respect, protect, fulfill and promote economic, social, and cultural rights. Sates must refrain from interfering with the enjoyment of these rights, take steps to protect individuals from harm or abuse, and take positive steps to ensure that individuals are able to enjoy these rights. Analysing the right to promote, it is important to note that: "States have an obligation of the to promote the welfare of its individual citizens[530]". It was declared in the first two drafts of the American Declaration of the Rights and Duties of Man prepared by the Inter-American Juridical Committee. Thus, the four types of obligations to protect, respect, fulfill, and promote economic, social and cultural rights are important because they provide a framework for governments to ensure that all individuals within their jurisdiction can fully enjoy rights of the second generation possible. Overall, the four types of obligations are critical for ensuring that

[528] *Yakye Axa Indigenous Community v. Paraguay* (Articles of 4, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 125 (June 17, 2005).

[529] *Manuel Cepeda Vargas v. Colombia* (Articles 23 and 16 of the American Convention) Inter-American Court of Human Rights Series C No 213 (May 26, 2010); Bazán V, 'Control de convencionalidad, aperturas dialógicas e influencias jurisdiccionales recíprocas' in *Revista Europea de Derechos Fundamentales* (№ 18/2, 2011) P.75.

[530] Inter-American Juridical Committee, 'Draft Declaration of the International Rights and Duties of Man and Accompanying Report' E/CN.4/2 (Washington 1947) P.21-22.

all individuals can live free from discrimination, abuse, and oppression, and are able to enjoy the full range of their economic, social and cultural rights.

2.3. Selected case-law of the Inter-American Commission and Court of Human Rights on state obligations aimed at economic, social, and cultural rights protection

i. Positive and negative state obligations

In recent decades the massive and systematic violations of civil and political rights were the subject of litigations. For this reason, V. Ambramovich considers that economic, social, and cultural rights have not been "a common subject of complaints before the Inter-American Commission on Human Rights[531]".Generally, the Inter-American Court of Human Rights found that a State violated a duty to protect rights of the second generation (for example, in cases od *Mapiripán Massacre v. Colombia*, *Ituango Massacres v. Colombia*[532]where the massacres caused the forced eviction, and the loss of their homes and means of livelihood.

In the case-law of the Inter-American Commission and Court of Human Rights considered different types of state obligations to protect economic, social, and cultural rights which correspond state obligations of rights of the first generation. In accordance with an opinion of Burgorgue-Larsen Laurence, "the dichotomy negative/positive obligation dichotomy has never been determinative in the jurisprudence of the Inter-American Court of Human Rights[533]".

In addition, in the first two drafts of the American Declaration of the Rights and Duties of Man which were prepared by the Inter-American Juridical Committee, it was proposed that "newer economic and social rights of a positive character which [had] come to be recognized… as a necessary inference from the conception of the democratic state as a cooperative commonwealth seeking the general welfare of all its members[534].There are some examples of positive state's obligations on economic, social, and cultural right protection. For example, in the case of *Acevedo-Buendía et al. v. Peru* it is stated that: "the States are under the positive

[531]Ambramovich V, 'Los derechos economicos, sociales y culturales en la denuncia ante la Comisión Interamericana de Derechos Humanos', in *Presente y Futuro de los Derechos Humanos: Ensayos en honor a F. V. Jimnez* (Instituto Interamericano de Derechos Humanos, San José, Costa Rica, 1997) P.137.

[532] *Mapiripán Massacre v. Colombia* (Article 25 of the American Convention) Inter-American Court of Human Rights Series C No 140 (September 15, 2005); *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).

[533] Aliverti M, 'Positive Obligations in the Inter-American System' in *Interrights Bulletin* (2006) P. 120.

[534] Inter-American Juridical Committee, 'Draft Declaration of the International Rights and Duties of Man and Accompanying Report' E/CN.4/2 (Washington 1947) P.21.

obligation of adopting measures in order to guarantee the satisfaction of [economic, social and cultural rights], but this obligation was considered to be subject to the economic and financial resources of the States"[535].

Considering another right - the right to health, in the case of *Jorge Odir Miranda Cortéz and others v. El Salvador*, the State (respondent) did not provide medicines for HIV treatment. The Inter-American Commission on Human Rights indicated that: "it will interpret the provisions of Article 10 of the San Salvador Protocol on the Right to Health in the light of the provisions of Articles 26 and 29 of the American Convention on Human Rights[536]".

In another decision, *Mendoza Beatriz Silva and others v. Argentina*, the Inter-American Court of Human Rights "ordered the defendants to take positive measures to improve the quality of life of the population of the Matanza/Riachuelo River basin, compensate for environmental damage and prevent similar consequences in the future without direct reference to the provisions of international human rights law[537]". Moreover, the Inter-American Court of Human Rights "has focused on issues that have far-reaching implications in terms of human rights and their relationship to the state of the environment, including health, sanitation and a healthy environment[538]". This decision contains "an action plan: to ensure more timely and comprehensive public awareness of the current situation [p. 17.II]; containment and elimination of the consequences of industrial pollution [p. 17.III]; commissioning of additional water supply facilities, as well as sewerage and sanitation [p. 17, VI–VIII]; development of emergency medical response plan [item 17.IX]; as well as the creation of an international monitoring system to assess the achievement of the goals set out in the plan. The Court clarified

[535] *Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009); *Sawhoyamaxa Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 146 (March 29, 2006); Gonzalez - Salzberg D.A, 'Economic and social rights within the Inter-American Human Rights System: thinking strategies for obtaining judicial protection' in *18 International Law, Revista Colombiana de Derecho Internacional,* (2011), P. 117-154 <http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S1692-81562011000100005#nota_36> accessed 19 March 2023.

[536] *Jorge Odir Miranda Cortéz and Others v. El Salvador* (Articles 2, 24, 25, and 26 of the American Convention) Inter-American Court of Human Rights case № 12.249 (March 20, 2009).

[537] *Mendoza Beatriz Silva et al v. State of Argentina et al* (Articles 41 and 43 of the Fundamental Law and Article 30 of Law 25.675, the National State and the Province of Buenos Aires) Supreme Court of Argentine File M. 1569. XL (July 8, 2008) <https://www.icj.org/escr_litigation/mendoza-beatriz-silva-et-al-v-state-of-argentina-et-al-file-m-1569-xl/> accessed 20 March 2023.

[538] *Mendoza Beatriz Silva et al v. State of Argentina et al* (Articles 41 and 43 of the Fundamental Law and Article 30 of Law 25.675, the National State and the Province of Buenos Aires) Supreme Court of Argentine File M. 1569. XL (July 8, 2008) <https://www.icj.org/escr_litigation/mendoza-beatriz-silva-et-al-v-state-of-argentina-et-al-file-m-1569-xl/> accessed 20 March 2023.

that the main goal should be to improve the quality of life of the local population [paragraph 17.I][539]".

More than 10 years later, in the case of *Cuscul Pivaral and Others v. Guatemala*, the Inter-American Court of Human Rights explained that this rights "is protected by Article 26 of the American Convention on Human Rights; the protection of [it] requires the State guarantee timely and appropriate medical care in accordance with the principles of availability, accessibility, acceptability and quality; the State should pay special attention to providing medical care to vulnerable and marginalized groups[540]".

Next right to analyse – the right to health care. In the case *Poblete Vilches and Others v. Chile*, being an autonomous right, the right to health care "requires States to properly regulate medical services under conditions of maintaining equality and non-discrimination, as well as providing support to vulnerable groups of the population; the elderly should enjoy increased protection in the field of healthcare in cases of prevention and urgent care[541]".

In the case *I.V. v. Bolivia*, the Inter-American Court examined women's right to freedom and autonomy in relation to sexual health issues. This right "has historically been restricted, restrained, or rejected as a result of negative and harmful gender stereotypes. Such stereotypes could influence and influence access to information about a woman's sexual and reproductive health, as well as the process and method of obtaining such consent. Sterilization in the absence of informed consent is a product of historical inequality between men and women and affects women disproportionately because of their socially assigned reproductive role and responsibility for contraception[542]". The Inter-American Court of Human Rights decided that: "the State should apply preventive measures to ensure the right to make its own decisions regarding women's reproductive health and to choose contraceptive measures more adapted to a woman's life plan[543]".

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[539]*Mendoza Beatriz Silva et al v. State of Argentina et al* (Articles 41 and 43 of the Fundamental Law and Article 30 of Law 25.675, the National State and the Province of Buenos Aires) Supreme Court of Argentine File M. 1569. XL (July 8, 2008) <https://www.icj.org/escr_litigation/mendoza-beatriz-silva-et-al-v-state-of-argentina-et-al-file-m-1569-xl/> accessed 20 March 2023.

[540]*Cuscul Pivaral et al. v. Guatemala* (Articles 26 of the American Convention) Inter-American Court of Human Rights Series C No 359 (August 23, 2018) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_359ing.pdf> accessed 20 March 2023.

[541]*Poblete Vilches and Others v. Chile* (Articles 26, 1(1), 4, 5, 13, 7 and 11 the American Convention) Inter-American Court of Human Rights Series C No 349 (March 8, 2018) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_349_ing.pdf>accessed 21 March.

[542] *I.V. v. Bolivia* (Articles 5.1, 7.1, 11.1,11.2,13.1,17.2 of the American Convention) Inter-American Court of Human Rights Series C No 329 (November 30, 2016) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_329_ing.pdf> accessed 20 March.

[543] *I.V. v. Bolivia* (Articles 5.1, 7.1, 11.1,11.2,13.1,17.2 of the American Convention) Inter-American Court of Human Rights Series C No 329 (November 30, 2016) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_329

A rights which also requires the positive obligations from states is the right to cultural expression. On June 27, 2012, the Inter-American Court of Human Rights unanimously decided that: "in accordance with the provisions of Article 21, the State of Ecuador is responsible for violating the rights to cultural identity of indigenous peoples of the American Convention, with respect to its Articles 1.1 and 2, to the detriment of the indigenous peoples of Kichwa de Sarayaku due to the permission of private oil companies have been engaged in oil exploration on their territory since the late 1990s without consulting them earlier[544]". "The Inter-American Court of Human Rights reiterated that, since the hereditary rights of indigenous communities on their territory are not defined, other fundamental rights may be affected, such as the right to cultural identity and the very survival of indigenous communities and their members. Since the effective enjoyment and exercise of the right to communal ownership of land ensures that members of indigenous communities preserve their heritage, States must respect these special relationships in order to guarantee their social, cultural, and economic survival. In addition, the close connection of the territory was recognized with traditions, customs, languages, art, rituals, knowledge and other aspects of the identity of indigenous peoples, noting that, depending on their environment, their integration with nature and its history, members of indigenous communities transmit from generation to generation this intangible cultural heritage, which is constantly recreated by members of indigenous communities and groups[545]".

Considering economic rights, one of the examples is the right on communal land ownership. In the case of *Awas Tingni Community v Nicaragua* the Inter-American Court of Human Rights stated that: "these rights should be recognized in the Nicaraguan Constitution, as well as regulated in the national law in accordance with the American Convention on Human Rights. Therefore, under Article 2 of the American Convention on Human Rights, the State must take the necessary legislative, administrative, and other measures to establish an effective mechanism for the identification and ownership of such property by members of the Mayagna Awas Tingni community in accordance with the law, values, traditions, and customs of that community[546]".The Government also "must provide replacement lands of equivalent size and

_ing.pdf> accessed 20 March.

[544]*Kichwa indigenous people of Sarayaku v. Ecuador* (Article 21 of the American Convention) Inter-American Court of Human Rights Series C No 245(June 27, 2012) <http://corteidh.or.cr/docs/casos/articulos/seriec_245_Ing.pdf> accessed 19 March 2023.

[545]*Kichwa indigenous people of Sarayaku v. Ecuador* (Article 21 of the American Convention) Inter-American Court of Human Rights Series C No 245(June 27, 2012) <http://corteidh.or.cr/docs/casos/articulos/seriec_245_Ing.pdf> accessed 19 March 2023.

[546] *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf> accessed 19 March 2023.

quality, to be determined by agreement with community members and in accordance with their own decision-making and negotiation processes[547]".

Another example of positive State's obligations is for the right to work under Article 26 of the Inter-American Convention on Human Rights. The Inter-American Court of Human Rights stated that:

"[T]he State's duties with regard to the protection of the right to stable employment in the private sphere are mainly expressed in the following requirements:

-taking appropriate measures to properly regulate and monitor compliance with the said right,

-ensuring protection of workers by the competent authorities against unfair dismissal,

-restoration of rights in case of unfair dismissal (through reinstatement or, as the case may be, compensation or other payments provided for in national legislation, as the case may be),

- the right to work in the private sphere[548549]".

Very similarly, in an issue of the right to work stability, in the case *Lagos del Campo v. Peru*, the Inter-American Court of Human Rights analysed "the scope and content of [this right] from the Charter of the Organization of American States and the American Declaration of Human Rights and Duties, [and] the rules of interpretation established in Article 29 of the American Convention on Human Rights, international and regional corpus juris, and the legislation of Peru, [and] established, that the protection of the right to work stability in the private sphere corresponds to the specific duties of the state, such as adequate regulation and audit, protection of employees from unjustified dismissals, provision of remedies in case of unjustified dismissal and the creation of effective legal mechanisms[550]", which are by nature positive.

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[547] *Sawhoyamaxa Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 146 (March 29, 2006).

[548] Parra O, Tarre P, 'The Inter-American Court of Human Rights: A review of the jurisprudence of 2017' in *International Justice* (2018) P. 3.

[549] *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017).

[550] *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017).

Analysing approaches used by the Inter-American Court of Human Rights, it is important also to underline the multicultural approach. Using it, the Inter-American Court of Human Rights understood:

"[T]he right to life (Article 4) in cases involving indigenous peoples' issues … the right to "live with dignity"[551]; freedom of expression (Article 13) includes indigenous peoples' right to speak their own language, as this "ensures the expression, dissemination and transmission of culture"[552]; the right to participate in the political society (Article 23) and equality before (Article 24) have been interpreted in such a way so that the traditional ways of organizing communities may be regarded as political parties and indigenous communities and they may also participate in the democratic process in their States[553]". In accordance with an opinion of Burgorgue-Larsen Laurence, "this Court's approach to the interpretation of the Convention entails an increase in the number of positive obligations of States[554]".

In the of cases *the Yakye Axa Indigenous Community v Paraguay, the Sawhoyamaxa Indigenous Community v Paraguay, the Xákmok Kásek Indigenous Community v Paraguay:*

"The Inter-American Court of Human Rights interpreted Article 4 of the American Convention on Human Rights in the context of international law on the special protection that indigenous persons need. The Court referred to Article 26 of the American Convention on Human Rights (San José Pact), Articles 10 (right to health), 11 (right to a healthy environment), 12 (right to food), 13 (right to education) and 14 (right to cultural benefits) of the San Salvador Protocol (Protocol to the American Convention on Human Rights on economic, social, and cultural rights), and the relevant provisions of International Labour Organization Convention № 169. The Inter-American Court of Human Rights also took into account the views of the United Nations Committee on Economic, Social and Cultural Rights in the General Comment № 14[555]".

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[551] *Sawhoyamaxa Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 146 (March 29, 2006).

[552] *López Alvárez v. Honduras* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No141 (February 1, 2006).

[553] *Yatama v. Nicaragua Honduras* (Articles of 1.1, 2, 8.1, 25 of the American Convention) Inter-American Court of Human Rights Series C No141 Series C No 127 (June 23, 2005).

[554] Burgorgue-Larsen L, 'Positive obligations in the practice of the Inter-American Human Rights system' in *International Justice* (2014) P. 106

[555] *Yakye Axa Indigenous Community v. Paraguay* (Articles of 4, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 125 (June 17, 2005); *Sawhoyamaxa Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 146 (March 29, 2006); *Xákmok Kásek Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 214 (August 24, 2010).

In addition, there are some examples of negative obligation on economic, social, and cultural rights protection. "States also have a negative obligation not to interfere with the exercise of economic, social, and cultural rights and to take protective measures to prevent such interference by third parties[556]". For example, a decrease in cases of forced eviction[557] from housing can lead to the realization of the right to adequate housing which represents one of the economic, social, and cultural rights. In a case of *Massacres of Ituango v. Colombia*[558], in July 2006, the Inter-American Court of Human Rights concluded that: "The forced evictions and destruction of housing violated Article 21 (the right to property) of the American Convention on Human Rights[559] … [and] the effect of the housing destruction was the loss … of material possessions[560]". In the case of *Gonzales Lluy and Others v. Ecuador*, the Inter-American Court of Human Rights, considering the negative obligation to protect the right to health, found that Ecuador "was responsible for violating the obligation to verify and monitor the provision of medical services[561]", as a result, the applicant's blood was infected. Considering the right to health[562], it is important to note that every person should be able to exercise it, being under the jurisdiction of the state, and the state should also pursue a socio-economic policy aimed at achieving a reduction in the level of risks to public health.

Thus, there is a need for protection of economic, social, and cultural rights in both dimensions (individual and collective). The case-law of the Inter-American Court of Human Rights has also been firmer and more robust in demanding effective observance of the right to

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[556] 'Rassmotrenie ekonomicheskih, social'nyh i kul'turnyh prav nacional'nyh sudah' in *Prakticheskoe rukovodstvo* (№ 8 2017) P.49.

[557] According to General Comment № 7 of the CESCR, forced eviction is a "permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection". CESCR, General comment № 7' in 'The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions' E/1998/22 (20 May 1997) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en> accessed 30 March 2023.

[558] *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).

[559] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[560] *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).

[561] *Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015).

[562] *Ximenes-Lopes v Brazil* (Articles 4, 5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 149 (July 4, 2006) P. 87–91.

effective judicial protection for economic, social, and cultural rights in their individual dimension.

ii. Cost free and expensive state obligations

It is generally accepted that second-generation rights obligations require resources, and they are expensive. There was a precedent where it was found that member - states bore an obligation "regardless of the level of economic development, to guarantee a minimum threshold of these rights [in the American Declaration and the American Convention]"[563].It is also well known that minimum core obligations have been developed at the Inter-American regional levels, and included in legal documents and reports and jurisprudence of the Inter-American Commission on Human Rights[564], the African Commission on Human and People's Rights[565].

In a case of *Massacres of Ituango v. Colombia*[566] it was shown that "the forced evictions violated Article 21 (the right to property) of the American Convention on Human Rights"[567]. In order to avoid future similar violations, the State should reduce a number of these evictions which are conducted by officers and must be paid. On the other hand, when a violated right needs further measures, it should be noted that measures might be free of cost and expensive. For example, in order to realize the right to health, the State needs to ensure the provision of various medical services and doctors.

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[563] Inter-American Commission on Human Rights, 'Annual Report' (1993) OEA/ Ser. L /V.85, Doc. 9 <http://www.cidh.org/annualrep/93eng/chap.5.htm > accessed 26 March 2023.

[564] Inter-American Commission on Human Rights, 'Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico' (2013) < http://www.oas.org/en/iachr/migrants/docs/pdf/report-migrants-mexico-2013.pdf> accessed 26 March 2023; Inter - American Commission on Human Rights, 'Annual Report' (1993) OEA/ Ser. L /V.85, Doc. 9 <http://www.cidh.org/annualrep/93eng/chap.5.htm > accessed 26 March 2023; *Juvenile Reeducation Institute v. Paraguay* (Articles 4, 5, and 26 of the American Convention) Inter-American Court of Human Rights Series C No112 (2 September 2004).

[565] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social, and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

[566] *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).

[567]American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

Due to the fact that rights of the second generation require resources, it is important to note that the problem of calculating availability of resources is a subject of discussion at conferences on biological diversity[568]. In paragraph 15 (f) of 'the In-depth review of the availability of financial resources[569]' the Executive Secretary stated that "countries raised issues related to:

(a) accuracy of information, assistance to countries in using resources allocated personally to them and/or a group of countries to fulfil obligations within the originally set deadlines,

(b) approaches focused on the needs of the country, making appropriate decisions and participating in the work,

(e) ensuring transparency and predictability,

(f) assisting countries in building capacity to use the resources[570]".

However, the second-generation rights also require cost free state obligations through:

1). Removing limitations. Considering them in the realisation of some labour rights, in case of *Former Employees of the Judiciary v. Guatemala,* there were some limitations for "the right to strike, to freedom of association, to freedom of association and they affected the right to work and labour stability of the 65 victims[571]". For example, in the case of *Palacio Urrutia et al. v Ecuador*[572] Palacio Urrutia published an article 'NO a las mentiras' for which he was prosecuted and had to quit his job. Palacio's future employment options were also limited. The Inter-American Court of Human Rights concluded that "the State is responsible for the violation of the right to stable employment to the detriment of Palacio Urrutia under Article 26 of the American Convention with respect to Articles 13, 22 and 1.1 of the same instruments[573]" and awarded compensatory damages for pecuniary and non-pecuniary damage. Another example is connected with Cuba where the Inter-American Court of Human Rights analysed reports with limitations to "the access of trans persons to management or promotion positions in

[568] For example, one of the examples is Conference of the parties to the convention on biological diversity, 9th meeting, Bonn, May 19-30, 2008.

[569] UNEP, 'Financial resources and financing mechanism' UNEP/CBD/COP/9/16 (26 February 2008) <https://www.cbd.int/doc/meetings/cop/cop-09/official/cop-09-16-ru.pdf> accessed 29 March 2023.

[570] UNEP, 'Financial resources and financing mechanism' UNEP/CBD/COP/9/16 (26 February 2008) <https://www.cbd.int/doc/meetings/cop/cop-09/official/cop-09-16-ru.pdf> accessed 29 March 2023.

[571] *Former Workers of the Judiciary v. Guatemala* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (July 27, 2022).

[572] *Palacio Urrutia et al. v. Ecuador* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (November 24, 2021).

[573] *Palacio Urrutia et al. v. Ecuador* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (November 24, 2021).

employment and the practice of homophobic attitudes against LGBT persons in the workplace (para.267)[574]". However, not every limitation is banned. In case *of National Association of Ex-Employees of the Peruvian Social Institute et al. v. Peru*, the Inter-American Court of Human Rights found that the limitation imposed to the right to a pension by a constitutional reform met the standard of proportionality and did not amount to a deprivation of the right to property for the purposes of Article 21(2) of the American Convention(para.126-127)[575].

It is worth considering separately the issue of restrictions on women. In June of 2020 the Inter-American Commission concluded that: "it is important that States not only refrain from discriminating or tolerating forms of discrimination in the labour sphere, including the trade union sphere, but also not[ed] their obligation to create conditions that facilitate the insertion and permanence of women in these spheres (para.85)[576]".For example, "in the area of maternity, [it is recommended for] States [to] adopt a comprehensive strategy that addresses not only the adoption of maternity leave, but also paternity and parental leave, so that the reproductive role of women does not become an excluding and discriminatory variable[577]".

The most recent limitations/restrictions were due to COVID-19. The Inter-American Court of Human Rights highlighted the fact that: "[COVID-19] measures do not incorporate a human rights approach, they not only tragically expose the drastic and complex situations in which these populations find themselves; in turn, they generate greater risks of contagion and damage to their health, as they are forced to fail to comply with the measures established in order to achieve essential access to water and food sources[578]".

In addition, the Inter-American Commission and the Court created "a graded proportionality test [for the limitation][579]". In accordance with the Inter-American Convention

[574] Inter-American Commission on Human Rights 'Situation of human rights in Cuba' OEA/Ser.L/V/II. Doc. 2 (3 February 2020).

[575] *National Association of Ex-Employees of the Peruvian Social Institute et al v. Peru* (Articles 2, 4, 17, and 24 of the American Convention) Inter-American Court of Human Rights Case 12.670 No 38.09 (March 27, 2009).

[576] *Scope of States' obligations under the Inter-American System on guarantees to freedom of association, its relationship with other rights and application from a gender perspective*, Advisory Opinion OC 27/21 Inter-American Court of Human Rights (May 5, 2021).

[577] *Scope of States' obligations under the Inter-American System on guarantees to freedom of association, its relationship with other rights and application from a gender perspective*, Advisory Opinion OC 27/21 Inter-American Court of Human Rights (May 5, 2021).

[578]'IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas in the face of the COVID-19 pandemic' in *Press Releases* (№ 126, 2020) < https://www.oas.org/en/iachr/media_center/PReleases/2020/124.asp> accessed 21 March 2021.

[579] *Former Workers of the Judiciary v. Guatemala* (Article 13 of the American Convention) Inter-American Court of Human Rights Series S No 446 (July 27, 2022).

against Racism, Racial Discrimination and Related Forms of Intolerance[580], "it is the duty of the States to prevent, eliminate, prohibit and punish the restriction or limitation to access or sustainable use of water, natural resources and ecosystems, based on ethnic-racial origin and to adopt legislation that clearly defines and prohibits racial discrimination in access to public services (para.229)[581]".

The test included "the following elements:

1) the existence of a legitimate aim;

2) appropriateness, whether there is a conventionally acceptable restriction to the right to strike:

i) the existence of a legitimate aim;

ii) appropriateness, that is, the determination of whether there is a logical relationship of means-to-ends causality between the distinction and the aim pursued;

iii) necessity, that is, the determination of whether there are less restrictive and equally suitable alternatives; and

iv) proportionality in the strict sense, that is, the balance of the interests at stake and the degree of sacrifice of one with respect to the other[582]".

It should be emphasized that these stages of checking the proportionality of the measures taken are carried out sequentially, and the negative result of one of them makes the others unnecessary, since means a violation of this principle. In other words, the requirements forming the content of the principle of proportionality are not cumulative. Violation of any of them is sufficient to recognize the actions of the authorities as disproportionate. The principle of proportionality also is used by the European Court of Human Rights and it "has penetrated into the domestic law of not only the states of Western, Central and Eastern Europe, but also a number of other countries of Eurasia, as well as North America, South America, Africa, Australia and New Zealand[583]". Mandatory consideration of the principle of proportionality should be one of the conditions for further improvement of the system of evidence. In this regard, a doctrinal elaboration of the content of the principle of proportionality is necessary. As a result, in order to protect these violated rights, the State had to remove the above-mentioned limitations which were cost free.

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[580] Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (adopted at the second plenary session, held on June 5, 2013) OEA/Ser.PAG/RES. 2804 (XLIII-O/13) (2013).

[581] *Economic, Social, Cultural and Environmental Rights of Afro-descendants,* Project document, OEA/Ser.L/V/II. Doc. 109 Inter-American Court of Human Rights (March 16, 2021).

[582] *Former Workers of the Judiciary v. Guatemala* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (July 27, 2022).

[583] Barak A, 'Proportionality. Constitutional Rights and their Limitation' (Cambridge: Cambridge University Press (2012)) P.186-202.

2) Providing access. It is necessary for right to food for indigenous peoples to ensure "access to sources of food based on their own activities, such as hunting, fishing (para.288)[584]". Restrictions on this access may "endanger the very existence of indigenous peoples if they do not find new alternatives for subsistence[585]". In the case of *Gonzales Lluy v. Ecuador*, the Inter-American Court concluded that: "the State had discriminated against and inhibited the enjoyment of the right to education of the victim by not guaranteeing her access to the educational system because she was a person living with HIV (para.252, 256, 265, 274, 291)[586]". In another case, *Duque v. Colombia*, there was a law which "did not allow the payment of pensions … and the enjoyment of the right to social security (para.125)[587]".

iii. Progressive and immediate state obligations

Article 26 of the Charter of the Organization of American States prescribes that: "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires[588]". Similarly, the Protocol of San Salvador confirmed the intention of States to develop and improve the protection of economic, social, and cultural human rights[589]. States parties in accordance with

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[584] *Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extraction, exploitation and development activities,* Project document, OEA/Ser.L/V/II. Doc. 47/15 Inter-American Court of Human Rights (December 31, 2015).

[585] *Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extraction, exploitation and development activities,* Executive summary OEA/Ser.L/V/II. Doc. 47/15 Inter-American Court of Human Rights (December 31, 2015).

[586]*Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015).

[587] *Duque v. Colombia* (Articles 1.1., 2 and 24 of the American Convention) Inter-American Court of Human Rights Series C No 310 (February 26, 2016).

[588] Chapter VII-VIII, Charter of the Organization of American States (entered into force 13 December 1951, amended by the Protocol of Buenos Aires of February 27, 1967, amended by the Protocol of Cartagena de Indias of November 16, 1985, and amended by the Protocol of Managua of October 6, 1993, which entered into force on January 29, 1996) < http://www.oas.org/dil/1948%20charter%20of%20the%20organization%20of%20american%20states.pdf> accessed 25 March 2023.

[589] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) reprinted in Basic Documents Pertaining to Human Rights in the Inter- American System OEA/Ser L V/II.82 Doc 6 Rev 1 (1992).

Article 1 of the Protocol of San Salvador "undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, within their capacities, and taking into account the degree of their development with a view to gradually achieving full compliance with the rights recognized in the present Protocol[590]".Evidently, the concepts contained in the expressions "to the extent allowed by their available resources" and "progressively" were drawn from Article 2 of the International Covenant on Economic, Social, and Cultural Rights of 1966 and Article 26 of the American Convention on Human Rights.

Moreover, the obligation to protect economic, social, and cultural rights progressively implies that "States cannot adopt regressive measures, unless there are reasons of weight to justify them (para.103)[591]". In addition, in the case of *Acevedo Buendia et al. v. Peru* the Inter-American Court of Human Rights held that: "compliance of the principle of non-regression of economic, social, and cultural rights, including social security could be reviewed under its contentious jurisdiction (para.106)[592]".

Progressive obligations are shown in several cases such as:

✓ *Cuscul Pivaral and Others v. Guatemala.* The Inter-American Court of Human Rights ruled that: "the State violated the obligation of progressive development of economic, social, and cultural rights arising from Article 26 of the American Convention on Human Rights. The progressive development of economic, social, and cultural rights will not be achieved in a short period of time, but the obligation to gradually realize these rights prohibits the inaction of the State in fulfilling its task of implementing actions for their effective protection.This is especially true in those areas where the complete lack of protection from the state puts people in front of the inevitable damage to their lives or their personal integrity. A similar situation concerns people living with a diagnosis of HIV when they do not receive proper medical care. Moreover, the protection of the right to health should be implemented gradually, considering available resources and in accordance with applicable domestic legislation[593]".

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[590] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) reprinted in Basic Documents Pertaining to Human Rights in the Inter- American System OEA/Ser L V/II.82 Doc 6 Rev 1 (1992).

[591] *Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009).

[592] *Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009).

[593]*Cuscul Pivaral et al. v. Guatemala* (Articles 26 of the American Convention) Inter-American Court of Human Rights Series C No 359 (August 23, 2018) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_359ing.pdf> accessed 20 March 2023.

✓ *Lagos del Campo v Peru* (2017), the Court stated that Article 26 of the American Declaration of the Rights and Duties of Man (American Declaration) "includes the obligation to progressive development"[594].Thus, this judgement emphasizes that the obligations to protect second generation rights are not only progressive, but also immediate, which is always inherent in first generation rights.

✓ *Poblete Vilches and Others*. The Inter-American Court of Human Rights clarified that "States have a special and permanent duty to strive as quickly and effectively as possible for the full effectiveness of economic, social, cultural, and environmental rights. Progressive measures of a general nature mean that States cannot constantly postpone the adoption of measures to improve the effectiveness of the rights in question, namely, to apply the principle of the inadmissibility of regression[595]".

✓ *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru*[596], The Inter-American Court of Human Rights, considering the right and conditions of work guaranteed by the Charter of the Organization of American States, Article 14 of the American Declaration of the Rights and Duties of Man (American Declaration), and Article 1 of the International Labour Organization Convention №100, concluded that:

✓ "The State failed to make payments due to a subset of the 2,309 maritime ship and dock workers …[which] affected the right to full payment of wages, ... the right to work ... and gave rise to a violation of Articles 8.1, 25.1, and 25.2.c of the American Convention ... the duty to comply with the relevant decisions and final rulings rendered by the competent authorities ... requires a heightened standard of promptness. This heightened duty to protect ... constitutes a general principle of public international law[597]". Moreover, in the Part III of the case ("Reparations") "the Court … ordered to make payment of the reimbursements progressively[598]" which expresses the nature of the obligations to protect economic, social, and cultural rights.

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[594]*Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017).

[595]*Poblete Vilches and Others v. Chile* (Articles 26, 1(1), 4, 5, 13, 7 and 11 the American Convention) Inter-American Court of Human Rights Series C No 349 (March 8, 2018) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_349_ing.pdf>accessed 21 March.

[596]*The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001).

[597] *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001).

[598] *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001).

Another clarification made by the Inter-American Commission illustrated that "the progressive nature of the measures to be taken does not mean that such adoption could be postponed indefinitely, but the process to achieve the full realization of economic, social, and cultural rights should begin immediately[599]".The Inter-American Court "interpreted standard of progressive realization as only prohibiting the adoption of regressive measures, and missed an important opportunity to establish that the principle of progressive development is not just about prohibiting regressive measures, but it also creates an actual obligation to a continued improvement of the protection of economic, social, and cultural rights[600]".

In contrast with progressive obligations, some authors such as E. Arosemena de Troitiño Margarette, J.M. Falcón, J.H. García, M. Macaulay, S. G. Munoz (the Special Rapporteur on Economic, Social, Cultural and Environmental Rights Inter-American Commission on Human Rights), A.U. Noguera, F. Piovesan, E.S. Ralón consider that the obligation to adopt measures, stated in the Article 26 of American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969) consists of "the enforceable and immediate components[601]".They also interpreted the immediate obligation through:

-"a programmatic approach is used for the realization of economic, social and cultural rights,

- non-discrimination, as a principle that must govern the exercise of the State's functions in this regard[602]".

Immediate obligations were demonstrated in the following cases:

✓ *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru*. In the last two sentences of the judgement, it was shown that the fulfilment of the duty is heightened (in the phrases "a heightened standard", "the heightened duty"), indicating immediacy which is inherent in the rights of the first generation. Following the interpretation, the word "immediately" enhances the speed of fulfilment of state obligations.

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[599] *Third Report on the Situation of Human Rights in Colombia*, Inter-American Commission on Human Rights, OEA/ /II.102, Doc. 9 Rev. 1, P. 6 (1999) <http://www.cidh.OAS.org/countryrep/colom99en/table%20of%20contents.htm> accessed 20 March 2023.

[600] Gonzalez - Salzberg D.A, 'Economic and social rights within the Inter-American Human Rights System: thinking strategies for obtaining judicial protection' <http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S1692-81562011000100005#nota_36> accessed 19 March 2023.

[601] Inter-American Commission on Human Rights, 'Compendium on Economic, Social, Cultural and Environmental Rights, Inter-American Standards' OEA/Ser.L/V/II. Doc. 465 (31 December 2021) P.23 <https://www.oas.org/en/iachr/reports/pdfs/escer%20compendium_eng_complete.pdf> accessed 29 March 2023.

[602] Inter-American Commission on Human Rights, 'Compendium on Economic, Social, Cultural and Environmental Rights, Inter-American Standards' OEA/Ser.L/V/II. Doc. 465 (31 December 2021) P.28 <https://www.oas.org/en/iachr/reports/pdfs/escer%20compendium_eng_complete.pdf> accessed 29 March 2023.

✓ *Ituango Massacres v. Colombia* was also related to the right to work. The perpetrators stole cattle from the victims and forced 17 peasants to carry the stolen cattle to territory under the control of the paramilitary groups, without pay and under threat of violence. The Inter-American Court considered that: "The prohibition of forced labor had immediate effect and read Article 6.2 (Prohibition of forced or compulsory labor) and Article 7 (Right to personal liberty) of the American Convention on Human Rights in the light of Convention № 29 of the International Labor Organization, finding that the State was liable for the breach of these rights (para.145-168)[603]".

In addition, in spheres of education and health, the Inter-American Court of Human Rights provides examples of "immediate obligations:

a) The incorporation of a gender perspective and the elimination of forms of de facto and de jure discrimination that impede women's access to maternal health services, which is applicable to cases of sexual violence.

b) Prioritization of efforts and resources to guarantee access to health services for women who may be at greater risk because they have been subjected to various forms of discrimination, such as indigenous women, women of African descent and adolescents, women living in poverty and women living in rural areas.

c) Timely access to effective judicial remedies to ensure that women who consider that the State has not complied with its obligations in this area have access to effective judicial remedies[604]".

Moreover, both the Inter-American Commission and Court identified "the need to provide procedural measures by which to ensure immediate - and even precautionary or preventive - protection of social rights (para.28)[605]".

iv. Vague and precise state obligations

Vague obligations on the protection of economic, social, and cultural rights may arise when the Inter-American Court of Human Rights is called upon to interpret the provisions of

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[603] *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).

[604]Inter-American Commission on Human Rights, 'Access to justice for women victims of sexual violence: Education and health' OEA/Ser.L/V/II. Doc. 65 (December 28, 2011); Inter-American Commission on Human Rights, 'Compendium on Economic, Social, Cultural and Environmental Rights, Inter-American Standards' OEA/Ser.L/V/II. Doc. 465 (31 December 2021) P.122 <https://www.oas.org/en/iachr/reports/pdfs/escer%20compendium_eng_complete.pdf> accessed 29 March 2023.

[605] *Access to justice as a guarantee of economic, social, and cultural rights,* A review of the standards, Inter-American system of Human Rights Series L/V/II.129 (September 7, 2007).

the American Convention on Human Rights or other legal instruments that relate to these rights. Vague obligations are those that are not clearly or specifically defined in the American Convention or other legal instruments of this region. Examples of vague obligations on the protection of economic, social, and cultural rights that may arise in the cases of Inter-American Court of Human Rights include the obligation to adopt measures to ensure the progressive realization of these rights, the obligation to take steps to prevent discrimination and other forms of inequality that may hinder the enjoyment of these rights, and the obligation to ensure that individuals are able to participate in the decisions that affect their lives.

The Inter-American Court of Human Rights may provide guidance on the steps that states must take to fulfill their vague obligations on the protection of economic, social, and cultural rights, and may consider whether a state has taken sufficient measures to prevent human rights violations in these areas. There are some examples of cases before the Inter-American Court of Human Rights that have addressed vague obligations on the protection of economic, social, and cultural rights.

For example, in *Velásquez Rodríguez v. Honduras*[606], *Mayagna Awas Tingni Community v. Nicaragua*[607], the Inter-American Court of Human Rights found that Nicaragua had failed to fulfill its vague obligations under the American Convention to adopt measures to prevent the violation of abovementioned rights, and to ensure their effective protection. In the case of *Black Community Process v. Colombia*, the Inter-American Court of Human Rights found that Colombia had violated the rights of the Black Community Process to cultural identity, education, and judicial protection.

In contrast, precise obligations on the protection of economic, social, and cultural rights are those that are clearly and specifically defined in the American Convention on Human Rights and are easy for states to understand and fulfil. The Protocol of San Salvador represents a clear advance in setting forth economic, social, and cultural rights as compared to the treatment of these rights in the Declaration and the Convention. The content of the rights and obligations undertaken by states is defined with greater specificity. In addition, economic, social, and cultural rights "set forth in the Declaration may be interpreted considering the provisions on such rights in the Protocol, by application of the principle of pro homine[608]". Examples of precise obligations on the protection of economic, social, and cultural rights that are recognized

[606] *Velásquez Rodríguez v. Honduras* (Articles 1,4,5 and 7 of the American Convention) Inter-American Court of Human Rights Series C No 4 (July 29, 1988).

[607] *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf> accessed 19 March 2023.

[608] Rossi J, 'The Inter-American System for the protection of Human Rights and economic, social, and cultural rights' <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module30.htm#_edn8> accessed 25 March 2023.

by Inter-American Court of Human Rights include the obligation to respect the rights to an adequate standard of living, the right to education, and the right to work. The Inter-American Court of Human Rights held that these rights are protected under the American Convention and that states have a duty to respect, protect, and guarantee these rights to all individuals within their jurisdiction.

There is a constant need for precise obligations on economic, social and cultural rights protection. For example, analysing the right to health, the Inter-American Commission concluded that States should clarify "the social determinants of the right to health, such as the validity of a regulatory framework that discriminates against these persons or population groups[609]".

Another example is the right to water[610]. G. Raion, a former Adviser to the United Nations Director General, Vice-President of the French Water Partnership and ASTEE and Administrator of the Academy of Water Resources concluded that: "In 2015, the United Nations made water one of its 17 top global priorities. So far, States have shared only 2 common goals and unanimously adopted about twenty new ambitious goals related to water resources. After 5 years, progress is extremely insufficient. A major World Conference on Water Resources is scheduled for March 2023, which will provide an opportunity to make the necessary practical decisions and increase collective efficiency[611]". In a paragraph 290 of the document № 176 of the Organization of American States, called "Situation of the human rights of the indigenous and tribal peoples of Panamazonia", it is stated that "the specific regulation of this matter, with respect to the areas that constitute the Amazon region, has been generally vague and not very concise[612]".It is known that the right to water and sanitation depends on the economic conditions of individual countries and the tasks set in relation to health. This implies the implementation of the most appropriate solutions to solve problems that arise in specific situations. In order to ensure the effectiveness of the right to water, the responsible public authorities should follow precise actions: establish the scope of the right to water, determine

[609] Inter-American Commission on Human Rights, 'Compendium on Economic, Social, Cultural and Environmental Rights Inter-American Standards, Special Rapporteurship on Economic, Social, Cultural and Environmental Rights' OEA/Ser.L/V/II. Doc. 465 (31 December 2021) P.122 <https://www.oas.org/en/iachr/reports/pdfs/escer%20compendium_eng_complete.pdf> accessed 29 March 2023.

[610] The right to water was officially recognized in 1999 by the UN General Assembly. In 2002 it became the object of the General Comment № 15, in which the Committee on Economic, Social and Cultural Rights described the scope of the right to water, a fundamental right guaranteed by the International Treaty on Economic, Social and Cultural Rights (1966), ratified by 152 countries. The Parliamentary Assembly of French–speaking Countries determined that "access to safe water is the right of every person, both individual and collective". 'Water is the mirror of our lives' <http://academie-eau.org/en/> accessed 27 March 2023.

[611] 'Water against epidemics - State of play of a vital resource'<http://academie-eau.org/en/water_and_health-22.html> accessed 28 March 2023.

[612] Inter-American Commission on Human Rights, 'Situation of the human rights of the indigenous and tribal peoples of Panamazonia' OAS/Ser.L/V/II. Doc. 176 (September 29, 2019).

which public authority is responsible for this, and what services should be provided, develop methods of financing water supply, calling on society to assist. In a meantime the city authorities should:

1) integrate the right to water into national legislation and guarantee the application of the law;

2) organize water supply services at the most appropriate decentralized territorial level and as close as possible to consumers;

3) identify the responsibilities of the parties involved and determine the distribution of water costs among consumers, as well as between consumers and other parties, especially taxpayers;

4) set goals for access to water (quality, quantity, availability and price) for each situation, adopt and implement a priority action and investment plan, identify people who do not have access to drinking water;

5) exercise effective supervision over the management of water supply services and monitor the gradual fulfilment of the tasks of public services; to establish sustainable systems to guarantee the quality, consistency of services and rationally cover the costs of these systems in the long term[613]".

v. Justiciable and non-justiciable state obligations

The Supreme Court of El Salvador is a good example of the role of the active participation of the judicial system in the protection of economic, social, and cultural rights. The judgement № 53–2005/55-2005 (February 2013) "reflects the readiness of the Supreme Court of El Salvador to ensure the broad protection of all economic, social, and cultural rights in accordance with the relevant international legal obligations[614]". It ruled the following on the issue of the protection of economic, social, and cultural rights:

(a) "Certain rights that currently do not enjoy direct protection based on constitutional and legislative provisions, nevertheless, they may enjoy the protection of the Constitutional Chamber as a result of reading or interpreting existing provisions and rights enshrined in the Constitution and legislation;

(b) the authorities have both negative and positive obligations with respect to economic, social, and cultural rights; and

[613]'Water is the mirror of our lives' <http://academie-eau.org/en/> accessed 27 March 2023; 'Water right documents'< http://academie-eau.org/en/water_right-73.html> accessed 28 March 2023.

[614] Supreme Court of El Salvador, Constitutional Chamber, Judgement № 53-2005/55- 2005, February 2013.

(c) depending on the circumstances, the exercise of rights may require the authorities to commit certain acts or refrain from committing them[615]".

In 2017, in a special opinion[616] Judge Caldas positively assessed "the expansion of judicial protection of economic, social, cultural and environmental rights, usually protected in relation to other rights civil or political nature, along with recognizing the right to work as a standalone right and contributing to topics such as access to justice, freedom of expression and freedom of association[617]". Considering the right to work, D.A. González-Salzberg described the right to work as the right having "a certain judicial character[618]". In addition, in the cases of *Baena*[619], *Acevedo-Jaramillo*[620] and *Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru* [621], "the Court granted judicial protection for public workers dismissed by the State, showing a path that could be followed within the system[622]".

Moreover, even though in some courts the protection of economic, social, and cultural rights is indirect (for example, the European Court of Human Rights), in the case of

[615] Supreme Court of El Salvador, Constitutional Chamber, Judgement № 53-2005/55- 2005, February 2013.

[616] *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017).

[617] *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017); Parra O, Tarre P 'The Inter-American Court of Human Rights: A review of the jurisprudence of 2017' in International Justice (2018) P. 3.

[618] American Convention on Human Rights (adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, entered into force 18 July 1978) Treaty Series No 36 (Organization of American States, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed March 23, 2023.

[619] *Baena Ricardo et al. v. Panama Peru* (Articles 8.2 of the American Convention) Inter-American Court of Human Rights Series C No 72 (2 February 2001).

[620] *Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009).

[621] *Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru Peru* (Articles 1.1, and 2 of the American Convention) Inter-American Court of Human Rights Series C № 158, 36 (24 November 2006).

[622] Gonzalez - Salzberg D.A, 'Economic and social rights within the Inter-American Human Rights System: thinking strategies for obtaining judicial protection' in *18 International Law, Revista Colombiana de Derecho Internacional,* (2011), P. 117-154 <http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S1692-81562011000100005#nota_36> accessed 19 March 2023.

Trabajadores Cesados de Petroperú y otros v. Perú the Court "re-emphasized the possibility of direct judicial protection of social rights[623]".

For example, *Gonzales Lluy and Family v. Ecuador*[624] is a case involving treatment for infection with HIV because of a blood transfusion. In a key passage, the Inter-American Court of Human Rights explicitly drew a connection between the right to health in the Protocol of San Salvador and the MCOs set out in General Comment № 14, especially to provide essential drugs. The Inter-American Court of Human Rights protected the right to health through its connectivity with the justiciable rights to life and to personal integrity, finding a violation of "the obligation to monitor and supervise the provision of health care services, within the framework of the right to personal integrity and of the obligation not to endanger life (para.193)[625]".

Moreover, in precedents dealing with economic, social, and cultural rights, the Inter-American Commission has emphasized the need to ensure expedition in proceedings on petitions for constitutional relief (amparo). The Inter-American Court of Human Rights has determined that: "Timeliness is critical to the effectiveness of a remedy and that the right to judicial protection requires that courts act with due dispatch in issuing opinions and decisions, particularly in urgent cases (para.23)[626]".For example, the Inter-American Court recognized "the need for states to design and implement effective judicial grievance mechanisms to claim protection of basic social rights, such as the rights of workers (para.31,32)[627]".

vi. Derogable and non- derogable state obligations

Derogable and non-derogable obligations are terms used to describe the extent to which a state is permitted to suspend or waive its obligations under a treaty or other legal instrument. Non-derogable obligations are those that a state is not allowed to suspend or waive, even in

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[623] *Trabajadores Cesados de Petroper y otros v. Perú* (Articles 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 344 (23 November 2017).

[624] *Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015).

[625] *Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015).

[626] *Access to justice as a guarantee of economic, social, and cultural rights,* A review of the standards, Inter-American system of Human Rights Series L/V/II.129 (September 7, 2007).

[627] *Access to justice as a guarantee of economic, social, and cultural rights,* A review of the standards, Inter-American system of Human Rights Series L/V/II.129 (September 7, 2007).

times of emergency or public necessity. Derogable obligations are those that a state may be allowed to suspend or waive under certain circumstances, such as in times of emergency or public necessity. A concept of derogable and non-derogable obligations is relevant in the Inter-American Human Rights system, in which states have certain obligations to respect, protect, and guarantee the human rights of individuals within their jurisdiction. It is important to note that R. Gittleman stated that "the American Convention contains the most extensive list of non-derogable rights which are not explicitly suspended by the American Charter[628]".

For example, the non-derogability of the right to health is affirmed in "The right of everyone to the enjoyment of the highest attainable standard of health" (11 August 2014) which states: "Even if an obligation of immediate effect depends on resources, a State may not rely on the lack of resources as a defence or excuse for not fulfilling the obligation (para.11)[629]". Moreover, the non-derogable nature of some rights[630] confirmed by the Inter-American Commission on Human Rights.

vii. Thin and thick state obligations

Thin and thick state obligations are terms used to describe the nature and extent of a government's obligations to its citizens. Thin obligations refer to a minimal set of duties that a government is required to fulfill in order to meet the basic needs and interests of its citizens. These obligations may include providing basic social services, such as healthcare and education, and protecting the rights and freedoms of citizens. In the case-law of the Inter-American Court of Human Rights, thin obligations refer to the minimal set of duties that states have under the American Convention to respect, protect, and guarantee the human rights of individuals within their jurisdiction. These obligations are considered "thin" because they are considered essential or fundamental duties that states must fulfill in order to ensure that individuals are able to enjoy their human rights. Examples of thin obligations under the American Convention include the obligation to refrain from violating the human rights of individuals, the obligation to protect individuals from violations of their human rights by third parties, and the obligation to provide effective remedies for human rights violations. The Inter-American Court of Human Rights has held that these thin obligations are non-derogable, meaning that states cannot suspend or waive them, even in times of emergency or public necessity.

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[628] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4) P. 692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 19 March 2023.

[629] UNGA, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' UN GAOR 69th session Supp No A UN Doc. A/69/150 (2014).

[630] *Juridical condition and Rights of Undocumented Migrants,* Advisory Opinion OC-18/03 Inter-American Court of Human Rights Series A № 18 (September 17, 2003) <https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf> accessed 18 March 2023.

Thick obligations, on the other hand, refer to a more extensive set of duties that a government is required to fulfill in order to promote the well-being and flourishing of its citizens. These obligations may go beyond meeting basic needs and may include efforts to improve the quality of life for citizens, such as by promoting economic development, cultural enrichment, and social cohesion. The concept of thin and thick obligations is often used in political philosophy and can be used to evaluate the nature and extent of a government's responsibilities towards its citizens. The Inter-American Court of Human Rights recognized that States have a positive obligation to take steps to prevent economic, social, and cultural rights violations and held that States must adopt measures to address structural problems that contribute to their violations. It may also consider whether a state has fulfilled its thick obligations in cases involving claims that the state has failed to provide individuals with access to education, healthcare, or other social services, or has failed to protect the rights of vulnerable groups.

Thus, there are the following possible strategies for enforcement before the Court:

- "economic, social, and cultural rights issues should be pursued considering the protection of civil and political rights,

- the right to not suffer discrimination in relation to economic, social, and cultural rights should be argued as falling within the scope of civil and political rights,

- the right to judicial protection and the due process clause should be pursued as an alternative means of protection for economic, social, and cultural rights,

- pursuant to Article 26 of the American Convention, the obligation of non-regressivity should be interpreted considering the General Comments issued by the United Nations Committee on Economic, Social and Cultural Rights (para.31)[631]".

Various types of state obligations on the protection of economic, social, and cultural rights are important in the Inter-American region for several reasons. Firstly, the enjoyment of these rights is essential for the well-being and flourishing of individuals and communities. These rights are fundamental to the dignity and equality of all people and are necessary for the full realization of other human rights. Secondly, state obligations on the protection of economic, social, and cultural rights are important in the Inter - American region because these rights are often disproportionately denied to disadvantaged or marginalized groups, such as indigenous communities, women, racial and ethnic minorities, and people with disabilities. Ensuring the protection of these rights can help to address inequality and discrimination and promote more

[631] *Exceptions to the Exhaustion of Domestic Remedies,* Advisory Opinion OC-11/90, Inter-American Court of Human Rights Series A № 11 (10 August 1990).

inclusive and just societies. Finally, state obligations on the protection of economic, social, and cultural rights are important in the Inter-American region because they can contribute to the sustainable development and prosperity of states. Ensuring the enjoyment of these rights can foster economic growth, improve health and education outcomes, and strengthen social cohesion and stability. Moreover, the case-law of the Inter-American Court of Human Rights proves that the rights of the second generation and their protection require the same seven types of state obligations as the rights of the first generation has.

Table 'Case-law of the Inter-American Commission and Court of Human Rights on obligations for realization of economic, social, and cultural rights'

Positive obligation	*Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009). *Cuscul Pivaral et al. v. Guatemala* (Articles 26 of the American Convention) Inter-American Court of Human Rights Series C No 359 (August 23, 2018). *I.V. v. Bolivia* (Articles 5.1, 7.1, 11.1,11.2,13.1,17.2 of the American Convention) Inter-American Court of Human Rights Series C No 329 (November 30, 2016). *Jorge Odir Miranda Cortéz and Others v. El Salvador* (Articles 2, 24, 25, and 26 of the American Convention) Inter-American Court of Human Rights case № 12.249 (March 20, 2009). *Kichwa indigenous people of Sarayaku v. Ecuador* (Article 21 of the American Convention) Inter-American Court of Human Rights Series C No 245(June 27, 2012). *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017). *López Alvárez v. Honduras* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No141 (February 1, 2006). *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001). *Mendoza Beatriz Silva et al v. State of Argentina et al* (Articles 41 and 43 of the Fundamental Law and Article 30 of Law 25.675, the National State and the Province of Buenos Aires) Supreme Court of Argentine File M. 1569. XL (July 8, 2008).

	Poblete Vilches and Others v. Chile (Articles 26, 1(1), 4, 5, 13, 7 and 11 the American Convention) Inter-American Court of Human Rights Series C No 349 (March 8, 2018). *Sawhoyamaxa Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 146 (March 29, 2006). *Xákmok Kásek Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 214 (August 24, 2010). *Yakye Axa Indigenous Community v. Paraguay* (Articles of 4, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 125 (June 17, 2005). *Yatama v. Nicaragua Honduras* (Articles of 1.1, 2, 8.1, 25 of the American Convention) Inter-American Court of Human Rights Series C No141 Series C No 127 (June 23, 2005).
Negative obligations	*Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015). *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).
Expensive obligations	*Palacio Urrutia et al. v. Ecuador* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (November 24, 2021)
Cost free obligations	*Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015) *Duque v. Colombia* (Articles 1.1., 2 and 24 of the American Convention) Inter-American Court of Human Rights Series C No 310 (February 26, 2016) *Former Workers of the Judiciary v. Guatemala* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (July 27, 2022)

Progressive obligation	*Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009). *Cuscul Pivaral et al. v. Guatemala* (Articles 26 of the American Convention) Inter-American Court of Human Rights Series C No 359 (August 23, 2018) *Lagos del Campo v. Peru* (Articles 62(3) and 63(1) of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017). *Poblete Vilches and Others v. Chile* (Articles 26, 1(1), 4, 5, 13, 7 and 11 the American Convention) Inter-American Court of Human Rights Series C No 349 (March 8, 2018) *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001) *Third Report on the Situation of Human Rights in Colombia*, Inter-American Commission on Human Rights, OEA/ /II.102, Doc. 9 Rev. 1, P. 6 (1999)
Immediate obligations	*Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006) *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001)
Vague obligations	*Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001) *Velásquez Rodríguez v. Honduras* (Articles 1,4,5 and 7 of the American Convention) Inter-American Court of Human Rights Series C No 4 (July 29, 1988)

Judiciable obligations	*Acevedo Buendia et al.* ('Discharged and Retired Employees of the Comptroller') v. Peru (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009) *Baena Ricardo et al. v. Panama Peru* (Articles 8.2 of the American Convention) Inter-American Court of Human Rights Series C No 72 (2 February 2001) *Dismissed Congressional Employees* (Aguado-Alfaro et al.) v. Peru (Articles 1.1, and 2 of the American Convention) Inter-American Court of Human Rights Series C № 158, 36 (24 November 2006) *Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015) *Lagos del Campo v. Peru* (Articles 62(3) and 63(1) of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017) *Trabajadores Cesados de Petroper y otros v. Perú* (Articles 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 344 (23 November 2017)

Cuadro 'Jurisprudencia de la Comisión y Corte Interamericanas de Derechos Humanos sobre obligaciones para la realización de los derechos económicos, sociales y culturales'

Obligación positiva	*Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009). *Cuscul Pivaral et al. v. Guatemala* (Articles 26 of the American Convention) Inter-American Court of Human Rights Series C No 359 (August 23, 2018). *I.V. v. Bolivia* (Articles 5.1, 7.1, 11.1,11.2,13.1,17.2 of the American Convention) Inter-American Court of Human Rights Series C No 329 (November 30, 2016). *Jorge Odir Miranda Cortéz and Others v. El Salvador* (Articles 2, 24, 25, and 26 of the American Convention) Inter-American Court of Human Rights case № 12.249 (March 20, 2009). *Kichwa indigenous people of Sarayaku v. Ecuador* (Article 21 of the American Convention) Inter-American Court of Human Rights Series C No 245(June 27, 2012). *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017). *López Alvárez v. Honduras* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No141 (February 1, 2006). *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001). *Mendoza Beatriz Silva et al v. State of Argentina et al* (Articles 41 and 43 of the Fundamental Law and Article 30 of Law 25.675, the National State and the Province of Buenos Aires) Supreme Court of Argentine File M. 1569. XL (July 8, 2008).

	Poblete Vilches and Others v. Chile (Articles 26, 1(1), 4, 5, 13, 7 and 11 the American Convention) Inter-American Court of Human Rights Series C No 349 (March 8, 2018). *Sawhoyamaxa Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 146 (March 29, 2006). *Xákmok Kásek Indigenous Community v. Paraguay* (Articles of 3, 4.1, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 214 (August 24, 2010). *Yakye Axa Indigenous Community v. Paraguay* (Articles of 4, 8, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 125 (June 17, 2005). *Yatama v. Nicaragua Honduras* (Articles of 1.1, 2, 8.1, 25 of the American Convention) Inter-American Court of Human Rights Series C No141 Series C No 127 (June 23, 2005).
Obligaciones negativas	*Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015). *Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006).
Obligaciones costosas	*Palacio Urrutia et al. v. Ecuador* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (November 24, 2021)
Obligaciones sin coste	*Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015) *Duque v. Colombia* (Articles 1.1., 2 and 24 of the American Convention) Inter-American Court of Human Rights Series C No 310 (February 26, 2016) *Former Workers of the Judiciary v. Guatemala* (Article 13of the American Convention) Inter-American Court of Human Rights Series S No 446 (July 27, 2022)

Obligación progresiva	*Acevedo Buendia et al. ('Discharged and Retired Employees of the Comptroller') v. Peru* (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009). *Cuscul Pivaral et al. v. Guatemala* (Articles 26 of the American Convention) Inter-American Court of Human Rights Series C No 359 (August 23, 2018) *Lagos del Campo v. Peru* (Articles 62(3) and 63(1) of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017). *Poblete Vilches and Others v. Chile* (Articles 26, 1(1), 4, 5, 13, 7 and 11 the American Convention) Inter-American Court of Human Rights Series C No 349 (March 8, 2018) *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001) *Third Report on the Situation of Human Rights in Colombia*, Inter-American Commission on Human Rights, OEA/ /II.102, Doc. 9 Rev. 1, P. 6 (1999)
Obligaciones inmediatas	*Ituango Massacres v. Colombia* (Articles 6.2, 7 of the American Convention) Inter-American Court of Human Rights Series S No 148 (July 1, 2006) *The National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* (Articles 1.1, 8.1, 21, 25.1, 25.2 and 26 of the American Convention) Inter-American Court of Human Rights Series S No 448 (10 October 2001)
Obligaciones vagas	*Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Articles 1,2, 21 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 4 (August 31, 2001) *Velásquez Rodríguez v. Honduras* (Articles 1,4,5 and 7 of the American Convention) Inter-American Court of Human Rights Series C No 4 (July 29, 1988)

Obligaciones judiciales	*Acevedo Buendia et al.* ('Discharged and Retired Employees of the Comptroller') v. Peru (Articles 1, 21, 25 of the American Convention) Inter-American Court of Human Rights Series C No 54 (July 1, 2009) *Baena Ricardo et al. v. Panama Peru* (Articles 8.2 of the American Convention) Inter-American Court of Human Rights Series C No 72 (2 February 2001) *Dismissed Congressional Employees* (Aguado-Alfaro et al.) v. Peru (Articles 1.1, and 2 of the American Convention) Inter-American Court of Human Rights Series C № 158, 36 (24 November 2006) *Gonzales Lluy and Family v. Ecuador* (Articles 4,5, 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 298 (1 September 2015) *Lagos del Campo v. Peru* (Articles 62(3) and 63(1) of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017) *Trabajadores Cesados de Petroper y otros v. Perú* (Articles 8 and 25 of the American Convention) Inter-American Court of Human Rights Series C No 344 (23 November 2017)

2.4. The uniqueness of the African human rights system

The African human rights system is the youngest. This is since for a long time the entire African continent was divided into certain groups of States (French-speaking countries, countries of Central and Eastern Africa) which are in colonial dependence. "Only the intensification of the struggle of national liberation movements in the mid-1950s - early 1960s against colonial dependence, along with the problem of holding general elections and overcoming ethnic separatism, contributed to increased attention to the issue of human rights and freedoms in Africa[632]". Moreover, the development of the human rights protection system and mechanisms on the African continent is by far the least studied among other regional human rights protection systems.

There are several features which should be mentioned:

✓ Recognition of the rights of the people which belong to the rights of the 'third generation'. These are collective rights, including the right to political, economic, social, and cultural self-determination, the right to receive and use the 'common heritage of mankind', the right to peace, the right to a healthy and balanced environment and the right to humanitarian assistance in the event of a disaster. Such consolidation of collective rights can be found only in the United Nation Universal Declaration of Human Rights of 1948 in Article 28[633] which makes this document an innovative document in the field of human rights protection.

✓ Indivisibility of human rights in the spheres of social relations, namely political, civil, economic, social, and cultural rights, as in other regional systems. In 1980 - 1981 the General Assembly of the Organization of American States drew attention, upon recommendation of the Inter-American Commission on Human Rights, to "the importance of the observance economic, social, and cultural rights in the American Continent[634]". The Inter-American Commission on Human Rights and Inter-American Court of Human Rights are responsible for interpreting and applying the human rights provisions and issued several reports and judgments that detail the obligations of states about economic, social, and cultural rights. For example, the Inter-American Commission of Human Rights has stated: "There is a close relationship between the effectiveness of economic, social and cultural rights and that of civil and political rights, since both groups of rights constitute an indissoluble whole, upon which the recognition of the dignity of the human individual is based, for which reason both groups of rights require constant

[632] Mazrui A.A, 'General History of Africa VIII. Africa since 1935' in *Heinemann Publishers* (Vol. 8, 1993) P. 105 <https://ru.scribd.com/doc/119374843/General-History-of-Africa-Vol-8> accessed 28 March 2023.

[633] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[634] Organization of American States (adopted on November 27, 1980) General Assembly resolutions AG/RES.510 (X-0/80)<https://www.missionhaiti-oea.org/27-novembre-1980-rapport-annuel-et-rapports-speciaux-de-la-commission-interamericaine-des-droits-de-l-homme-ag-res-510-x-0-80/> accessed 25 March 2023; Organization of American States (adopted on December 10, 1981) General Assembly resolutions AG/RES.543 (XI-0/81).

protection and promotion in order to achieve their full realization, and the sacrifice of some rights for the benefit of others can never be justified[635]". Even though like the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the American Convention aims to protect civil and political rights, but this gap is filled by the protocols. In other words, states fulfill "the obligations arising from the observance of economic, social and cultural rights as fundamental and independent (§51)[636]".

✓ "Absence of any distinction between the justiciability or implementation of the two "categories of rights"[637].

✓ Recognition of the right to development as a human right. States must individually or collectively ensure this right (Article 22)[638]. The presence of such right in the document reflects the specific development of the African continent, which for many years had been in colonial dependence.

✓ Consolidation of several duties that a person has to the family, community, society, state, as well as other legally recognized entities and the international community (Articles 27-29)[639]. Neither the European nor the American conventions on human rights mention such a list of duties of individuals[640].

[635] Inter-American Commission on Human Rights, 'Annual report 1983-1984' OEA/Ser.L/V/II.63 Doc. 10 (24 September 1984) P.137; Rossi J, 'The Inter-American System for the protection of Human Rights and economic, social, and cultural rights' <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module30.htm#_edn8> accessed 25 March 2023.

[636] *Lagos del Campo v. Peru* (Articles 13, 8, 26, 16, 1(1) and 2 of the American Convention) Inter-American Court of Human Rights Series C No 340 (31 August 2017).

[637] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

[638] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

[639]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

[640] Hanski R, Souxie M, 'Introduction to the international protection of human rights: textbook' (ABO Academi University, 1997) P. 327 <http://www.hrpublishers.org/site/ site-files/library/introduction_on_the_topic_of_international_protection_of_ human_rights.pdf> accessed 27 March 2023.

✓ Collectivist approach to human rights. An individual should give priority to the interests of society. In turn, the community must assume the responsibility to protect its members [641].

✓ Possibility to allocate separation of messages on single violations of the rights of individuals which "testify to existence of numerous cases of mass and gross violations of human rights and the rights of the people" (Article 58)[642]:. It depends on what measures the African Commission will take to further resolve the problem of violation of the rights of citizens.

✓ The African Court by an individual or a non- governmental organisation with observer status at the African Commission is not automatic according to Article 34(6)[643] which provides: "At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5 (3) of this Protocol [Article 5(3) reads: The Court may entitle relevant non-governmental organizations with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol]. The Court shall not receive any petition under Article 5 (3) involving a State Party which has not made such a declaration".

2.5. Indivisibility of economic, social and cultural rights within the African Commission on Human and Peoples' Rights' understanding

The preamble to the African Charter on Human and Peoples' Rights of 1981 states that: "...civil and political rights cannot be separated from economic, social and cultural rights in either a conceptual or a universal sense, and the satisfaction of economic, social and cultural rights is a guarantee of the enjoyment of civil and political rights[644]". According to C. Odinkalu, "[t]he distinctive contribution of the African Charter [on Human and Peoples' Rights of 1981] to the African regional human rights system was for the first time to break through the resistance

[641]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

[642]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

[643] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (entered into force 9 June 1998) OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

[644] African (Banjul) Charter on Human and People's Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

of African countries to supra-national human rights oversight, albeit through the creation of a quasi-judicial regional human rights commission[645]".

The African Commission on Human and Peoples' Rights is a quasi-judicial regional body, promoting and protecting economic, social, and cultural rights. It was the third regional human rights body after the European, American regional bodies. The African Commission on Human and Peoples' Rights, when interpreting the African Charter on Human and Peoples' Rights of 1981, took the correct position in favor of the concept of the indivisibility of all major categories of human rights[646], and noted in its 'Resolution on economic, social, and cultural rights in Africa[647]' that "despite the consensus on the indivisibility of human rights, economic, social and cultural rights remain marginalized in their implementation[648]" in Africa.

For example, in the case of *the Inter-African Union for human rights v. Angola*, the African Commission on Human and Peoples' Rights stated that the mass expulsion of aliens "raises many questions in connection with the use of a number of rights" enshrined in the African Charter on Human and Peoples' Rights of 1981, including the principle of non-discrimination, the right of ownership, right to work, right to education and right to protection of the family (para.15-17)[649]. In *Malawi African Association v. Mauritania*[650], the African Commission on Human and Peoples' Rights held that: "unremunerated work is tantamount to a violation of the right to respect for the dignity inherent in the human being[651]". It shows the indivisibility and interconnectedness. Moreover, the important conclusion from cases of *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme[652], Les Témoins de Jehovah v. Zaire* is that these cases underlined "the

[645] Odinkali C.A, 'Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa' in 47J. Afr. L.1, 19 (2003).

[646]Abashidze A.K, Solntsev A.M, 'Yubiley afrikanskoy sistemy pravam cheloveka i narodov' in *Evraziyskiy yuridicheskiy zhurnal* (№ 2, 2012) P. 22-25.

[647] African Commission on Human and Peoples' Rights, 'Resolution on economic, social, and cultural rights in Africa' (2004) ACHPR /Res.73(XXXVI)04.

[648] Ibid.

[649] *Union Interafricaine des Droit de I'Homme & Others v. Angola* № 159/96, (2000) AHRLR 18 (African Commission on Human and Peoples' Rights).

[650] *Malawi African Association and Ors. v Mauritania,* № 54/91, 61/91, 98/93, 164/97 and 210/98 (African Commission on Human and Peoples' Rights).

[651] *Malawi African Association and Ors. v Mauritania,* № 54/91, 61/91, 98/93, 164/97 and 210/98 (African Commission on Human and Peoples' Rights).

[652] *Union Interafricaine des Droit de I'Homme & Others v. Angola* № 159/96, (2000) AHRLR 18 (African Commission on Human and Peoples' Rights).

universality and indivisibility of all human rights by treating economic, social, and cultural rights in the same way as civil and political rights[653]".

2.6. The concept of minimum core obligations in the African Commission on Human and Peoples' Rights' activity

The African Commission on Human and Peoples' Rights follows the concept of "minimum core obligations (MCO) of the state, developed by the United Nations Committee on economic, social, and cultural rights which monitors compliance of states parties to the International Covenant on Economic, Social, and Cultural Rights of 1966. Minimum core obligations are explicitly enshrined in the African Commission on Human and Peoples' Rights' "Principles and Guidelines on the Implementations of Economic, Social and Cultural Rights[654]".

In the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)* the African Commission on Human and Peoples' Rights stated that: "the minimum core of the right to food requires that the Nigerian government should not destroy or contaminate food sources (para.65)[655]".Similarly, the minimum obligation embodied in the right to shelter obliged the Nigerian government "not to destroy the house of its citizens and not to obstruct efforts by individuals or communities to rebuild lost houses (para.61-62)[656]".The African Commission's on Human and Peoples' Rights 'Resolution on Access to Health and Needed Medicines in Africa' requires states to meet "immediately … the minimum core obligations of ensuring availability and affordability to all of essential medicines

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[653] *Free Legal Assistance Group and Others v. Zaire,* № 25/89, 47/90, 56/91, 100/93 [1995] ACHPR 9 (African Commission on Human and Peoples' Rights) <https://www.escr-net.org/caselaw/2008/free-legal-assistance-group-and-others-v-zaire-comm-no-2589-4790-5691-10093> accessed 18 March 2023.

[654] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social, and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

[655] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[656] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

as defined by the country's essential medicines list and the World Health Organization Action Program on Essential Drugs[657]".

2.7. Approaches to the adjudication of economic, social, and cultural rights

They have been developed and advanced in the practices of judicial and quasi-judicial organs and in scholarly writings[658].They may be broadly categorised as direct and indirect approaches. Direct approaches are based on the argument that economic, social and cultural rights are directly enforceable by adjudicatory organs and they apply in systems where the rights are expressly protected as justiciable substantive norms. Indirect or interdependence approaches, which rely on the indivisibility, interdependence, and interrelatedness of all human rights, are typically employed in systems where economic, social, and cultural rights are not clearly or sufficiently protected in applicable legal instruments.

Types of approaches	
Direct approach	**Indirect approach**
"This approach has been advocated and applied in the enforcement of negative (non-interference) as well as positive (action - oriented and resource-dependent) duties of States. Two such approaches are as follows: -one that relies on the identification of the minimum essential elements of rights,	"Under this approach, it makes a case for the interdependent interpretation of substantive rights falling in different commonly used categories to bridge gaps in the protection of specific economic social and cultural rights and to ensure the coherent application of human rights norm [660]".

[657] African Commission on Human and Peoples' Rights, 'Resolution on Access to Health and Needed Medicines in Africa' (2008) <http:// www.achpr.org/sessions/44th/resolutions/141> accessed 5 March 2023.

[658]Melish T, 'Protecting economic, social, and cultural rights in the Inter-American human rights system: A manual on presenting claims' (2002), P. 193-357.

[660] Yeshanew S.A, 'Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights' in *African Human Rights Law Journal* (Progress and perspectives, 2011) P.320.

-another that inquiries into the reasonableness or justifiability of a state's action or inaction[659]".	

2.8. A difference between the United Nation Committee on economic, social, and cultural rights understanding of the obligations engendered by the International Covenant on Economic, Social, and Cultural Rights of 1966 and the African Commission on Human and Peoples' Rights view of the obligations engendered by the African Charter on Human and Peoples' Rights of 1981

It is well known that while both UN Committee on economic, social, and cultural rights and the African Commission on Human and Peoples' Rights recognize economic, social, and cultural rights, the understanding of the Committee is more aligned with the broader international human rights framework, emphasizing the indivisibility and interdependence of all rights. On the other hand, the African Commission places greater emphasis on collective or group rights, reflecting the unique regional context and African cultural values.

The African Commission on Human and Peoples' Rights has stated that: "emphasising the all-embracing nature of their obligations, the International Covenant on Economic, Social, and Cultural Rights of 1966, for instance, under Article 2(1), stipulates exemplarily that States "undertake to take steps…by all appropriate means, including particularly the adoption or legislative measures[661]".

It is important to note that the African Chapter on Human and Peoples' Rights does not contain a limitation clause similar to the one contained in Section 2(1) of International Covenant on Economic, Social and Cultural Rights of 1966. The African Commission "is not bound by the kind of language used in Section 2(1) and there is therefore no explicit limit placed on the set of duties by the state to respect, protect, promote and fulfil the rights in the Charter and thus no explicit instruction that the state's duties are subject to available resources or should be achieved progressively[662]". However, depending on the type of rights under consideration, the level of emphasis in the application of these duties varies. "Sometimes, the need to

[659] Yeshanew S.A, 'Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights' in *African Human Rights Law Journal* (Progress and perspectives, 2011) P.320.

[661] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html > accessed 16 May 2023.

[662] Pierre De Vos, 'A new beginning? The enforcement of social, economic, and cultural rights under the African Charter on Human and People's Rights' in *African Journals Online* (2011) P.21.

meaningfully enjoy some of the fights demands a concerted action from the State in terms of more than one of the said duties[663]".

2.9. Reasonableness test on economic, social and cultural rights enforcement

Despite reading the qualification of "maximum available resources" into the right to enjoy the best attainable state of physical and mental health under the African Charter on Human and Peoples' Rights of 1981, the African Commission on Human and Peoples' Rights went on to recommend that Gambia provides adequate medical supplies to patients detained under the Lunatics Detention Act[664]. It was clear from the evidence presented to the African Commission on Human and Peoples' Rights that resources were available.

The enforcement of economic, social, and cultural rights by courts was considered in length in *Government of the Republic of South Africa and Others v Grootboom and Others* [665] decision wherein the Constitutional Court of South Africa adopted a "reasonableness" test. It entails a range of considerations.

Firstly, the program must be a comprehensive and coordinated one that "clearly allocates responsibilities and tasks to the different spheres of government and ensures that appropriate financial and human resources are available[666]".

Secondly, "the measures adopted must be directed towards the progressive realization of the right within the state's available means. A reasonable plan might include the adoption of legislation invariably supported by appropriate, well-directed policies and programs implemented by executive[667]".

Thirdly, "the policies and programs adopted must be reasonable "both in their conception and their implementation[668]".

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[663] *Media Rights Agenda & Others v. Nigeria* (2000) AHRLR 200 (African Commission on Human and Peoples' Rights).

[664] *Purohit v. the Gambia* [2003] AHRLR 96 (African Commission on Human and People's Rights).

[665] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[666] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[667] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[668] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

Fourthly, the program or measure must be "balanced and flexible and make appropriate provision for attention to housing crises and to short-, medium- and long-term needs[669]".

Fifthly, the program must respond to those "whose needs are most urgent and whose ability to enjoy all rights therefore is most in peril"[670].

Sixthly, "measures cannot leave out of account the degree and the extent of the denial of the right they endeavor to realize. Those whose needs are the most urgent and whose ability to enjoy all fights are most in peril, must not be ignored by the measures aimed at achieving the realization of the goal where measures, though statistically successful, fail to respond to those most desperate, they may nor pass (the test of reasonableness[671]".

The reasonableness test determines whether the State was complying with its obligations with respect to economic, social, and cultural rights. According to the Court's methodology, the degree of the violation should be considered considering its social, economic and historical context and the capacity of official institutions to implement programs to address it. It is more convincing and appropriate to employ and interpret the minimum core model together with a "reasonableness test" drafted by the South-African Constitutional Court in *Government of the Republic of South Africa and Others v Grootboom and Others* and subsequent cases[672]. The Court eloquently stated in *Government of the Republic of South Africa and Others v Grootboom and Others* that:

"[T]hey must, however, ensure that the measures they adopt are reasonable. In any challenge based on Section 26 in which it is argued that the state has failed to meet the positive obligations imposed upon it by Section 26(2) the question will be whether the legislative and other measures taken by the state are reasonable. A court considering reasonableness will not enquire whether other more desirable or favorable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognize that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would

[669] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[670] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[671] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[672] *Mazibuko and Others v. City of Johannesburg and Others* 2009 (1) SA 1 (Constitutional Court of South Africa); *Nokotyana and Others v. Ekurhuleni Metropolitan Municipality and Others* 2009 (1) SA 1 (Constitutional Court of South Africa); Mureinik E, 'Beyond a Charter of Luxuries: Economic Rights in the Constitution', in *8 S. AFR. J. HUM. RTS* (464, 473 (1992)).

meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met (para.41)"[673].

The African Commission on Human and Peoples' Rights construed the right to a healthy environment under Article 24 of the African Charter on Human and Peoples' Rights of 1981 as obligating States to "take reasonable" measures to prevent "pollution and ecological derogation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources (para.52)[674]".As a result, "it remains unclear as to when a State will be held to be in a violation of its positive obligations in relation to socio-economic rights under the African Charter on Human and Peoples' Rights of 1981[675]".

2.10. State obligations to respect, protect and fulfil economic, social and cultural rights

i. Obligation to respect

According to the Second Periodic Report of ECOSOS, "African states have the obligation to "promot[e] a coherent and dynamic employment policy" and to "attenuate[e], moderat[e] and correct [] labor market trends; they must "orient[] manpower and control[]the recruitment and laying-off of workers; they must "protect people in the workplace: ensur[e to] workers the right to enjoy just and favorable conditions of work; and they must "enhance[e] public and trade-union freedom" realizing that the right to work means "participation by workers in the life of the enterprise", which, in turn, provides "a forum for citizenship and realization of the democratic ideal[676]".

In addition to the Report, the African Charter on Human and Peoples' Rights of 1981 commits states to recognize, promote and realize all rights[677]. Three types or levels of multi-layered state obligations has been applied by regional human rights supervisory bodies such as

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[673] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[674] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[675] Langford M, 'Social Rights Jurisprudence: Emerging Trends in International Law' (2009) P.326.

[676] ECOSOS, 'Second Periodic Reports', P.45-46.

[677] Articles 1, 25, 26 of African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

the African Commission on Human and Peoples' Rights in some of its decisions (para.44)[678].It is important to analyze state obligation on the protection of economic, social and cultural rights in the case-law of the African Court and Commission in order to prove that rights of the second generation deserve state obligations for rights of the first generation. The first case, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria,* established the obligations to "respect", "protect", "ensure" and "implement".

The African Commission on Human and Peoples' Rights endorsed the notion of duties to respect the enjoyment of economic, social, and cultural rights[679], and stated the following:

"The obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to economic, social, and cultural rights, this means that the State is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And about a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs (para. 45)[680]". "A State is obliged to protect subjects of law from interference of a political, economic, or social nature by other subjects by creating an appropriate legislative framework and taking effective administrative and judicial measures to protect individuals[681]".

There are some examples of obligations to respect violations in some rights. The Government of Nigeria breached its duties to respect the rights to health and to a healthy environment, by directly "attacking, burning and destroying several Ogoni villages and homes (para.54)[682]".The African Commission on Human and Peoples' Rights considered the violations of the right to housing: "at a very minimum, the right to shelter obliges the Nigerian Government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes; the State's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating

[678]*Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[679] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[680] Ibid.

[681] Ruchka O.A, 'Understanding and providing of social rights by the African Commission on Human and Peoples' rights' in *Vestnik RUDN, series of Legal Sciences* (№ 3 0214) P.253.

[682] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs. [...] The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes. These actions constitute massive violations of the right to shelter, in violation of Articles 14, 16, and 18(1) of the African Charter (para.61-62)[683]". Similarly, the African Commission found that the State had also breached its duties to respect the right to food (para.66)[684].

In another case of *Jaftha v. Schoeman and Van Rooyen v. Stoltz* the South-African Constitutional Court decided that: "provisions of the Magistrates' Courts Act that allowed, without adequate judicial oversight, the sale of a person's home to make good a judgment debt, breached the duty to respect the right of everyone to have access to adequate housing[685]".It is clear that the duty to respect can easily be implemented and enforced immediately as well as the minimum core obligations. The State has three levels of positive obligations: to protect, to promote, to fulfil.

ii. Obligation to protect

The obligation to protect requires a State to take measures to protect beneficiaries of the protected rights against political, economic, and social interferences. This protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms[686].

The African Commission on Human and Peoples' Rights in the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*[687] found violations of the State's failure to regulate and prevent the conduct of a

[683] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[684] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[685] *Jaftha v. Schoeman*, *Van Rooyen v. Stoltz* [2005] 1 BCLR 78 (October 8, 2004) (Constitutional Court of South Africa).

[686] Drzewicki K, 'Internationalization of Human Rights and their juridization' in Hanski R, Suksi M. (eds) in *An Introduction to the International Protection of Human Rights: A Textbook* (2 ed (rev) (1991)) P. 31.

[687] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed

private oil company which polluted natural resources and destroyed the traditional means of livelihood of the Ogoni people. The African Commission on Human and Peoples' Rights held that: "Nigeria had violated its duty to protect by failing to prevent a private multinational oil company from polluting the environment (para.63)[688]".

iii. Obligation to fulfil

The African Commission on Human and Peoples' Rights defined the duty to fulfil as "requiring the state to move its machinery towards the actual realization of the rights and as consisting of direct provision of basic needs or resources that can be used for meeting those basic needs (para.47)[689]". This obligation "is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights and is linked to the duty to promote social and economic rights; it could consist of the direct provision of basic needs such as food or resources that can be used for food (direct food aid or social security)[690]".

In case of *Soobramoney v. Minister of Health (KwaZulu-Natal)*[691], an elderly person with kidney failure needed dialysis treatment, normally provided by the State. In an attempt to rationalize the use of scarce resources, the medical authorities had declared him ineligible for the treatment. The patient did not receive the treatment and subsequently died. The Constitutional Court of South Africa maintained that the case was not covered by the duty to provide emergency treatment enshrined in the South African Constitution and had no hesitation in finding the case justiciable. This approach was to apply a "reasonableness" test to the regulations that governed the provision of the dialysis service (and who had access to it) and found that the criteria advanced by the government were acceptable in that they fell within the scope of what was reasonable. The Constitutional Court of South Africa "felt at ease in

12 March 2023; Coomans F, 'The Ogoni Case Before The African Commission on Human and Peoples' Rights' in *International and Comparative Law Quarterly* (Vol. 52 (2003)) P. 749-760.

[688] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[689] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[690] Drzewicki K, 'Internationalization of Human Rights and their juridization' in Hanski R, Suksi M. (eds) in *An Introduction to the International Protection of Human Rights: A Textbook* (2 ed (rev) (1991)) P. 31.

[691] *Soobramoney v. Minister of Health (KwaZulu-Natal)* [1998] (1) SA 765 (November 27, 1997) (Constitutional Court of South Africa).

scrutinizing how the medical authorities justified their distribution of scarce medical resources in beyond emergency cases[692]".

iv. Obligation to promote

The African Commission on Human and Peoples' Rights defined the duty to promote as "requiring States parties to promote tolerance, raise awareness and build infrastructures to enable individuals to exercise their rights and freedoms (para.46)[693]", and explained that: "A state has a duty to make sure that individuals can exercise their rights and freedoms[694]". "Last three (positive) obligations may not be implemented or enforced with equal ease as issues of resources availability could come into play[695]".

The next types of states obligations are divided into seven groups which are analysed below. These states obligations are essential for the second-generation rights and the case-law of African region proves it.

2.11. Selected case-law of the African Commission and Court on Human and People's Rights on state obligations aimed at economic, social, and cultural rights protection

i. Positive and negative state obligations

The African Commission has developed a young economic, social, and cultural rights jurisprudence from the small, but relatively sizable, number of pertinent cases[696].Civil, political, and economic, social, and cultural rights "generate at least four levels of duties for a State that

[692] 'Court and legal enforcement of economic, social, and cultural rights. Comparative analysis of justiciability' in *Human Rights and Rule of Law Series № 2* (2008) P.52 < https://www.refworld.org/pdfid/4a7840562.pdf> accessed 19 March 2023.

[693] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[694] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[695] Langford M, 'Social Rights Jurisprudence: Emerging Trends in International Law' in *Malcolm Langford, Norwegian Centre for Human Rights* (University of Oslo, 2009) P.328.

[696] Yeshanew S.A, 'Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights' in *African Human Rights Law Journal* (Progress and perspectives, 2011) P.320.

undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights [which] universally apply to all rights and entail a combination of negative and positive duties[697]". These rights are declared in different documents such as the African Charter.

There are many articles in the African Charter of Human and Peoples' Rights of 1981 where a State has positive obligations. For example, Article 15 of the African Charter on Human and People's Right of 1981 can be considered as having a positive obligation due to the fact that it obliges a State to provide "equitable and satisfactory conditions (para.44)[698]" for the right to work. Next, it is a paragraph 2 of Article 18 of the African Charter which declares that: "States have a positive [obligation] to assist the family which is the custodian of morals and traditional values recognised by the community[699]".

Moreover, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of 2003 clearly specifies states' obligations regarding social rights, obligating states:

- "to adopt and enforce legislative and other measures to guarantee women equal opportunities in work, career advancement, and other economic opportunities (Art.13)[700]";

- "to ensure transparency in recruitment, promotion and dismissal of women and [to] combat and punish sexual harassment in the workplace (Art.13 (c))[701]";

- "to create conditions [that] promote and support the occupations and economic activities of women, in particular, within the informal sector (Art.13 (e))[702]";

[697] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023.

[698] Article 15, African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

[699] Paragraph 2 of Article 18, African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

[700] African Union, 'Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (11 July 2003) <https://www.refworld.org/docid/3f4b139d4.html> accessed 17 March 2023.

[701] African Union, 'Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (11 July 2003) <https://www.refworld.org/docid/3f4b139d4.html> accessed 17 March 2023.

[702] African Union, 'Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (11 July 2003) <https://www.refworld.org/docid/3f4b139d4.html> accessed 17 March 2023.

- "to establish a system of protection and social insurance for women working in the informal sector and sensitize them to adhere to it (Art.13 (f))[703]".

Analysing a case-law of the African Court and Commission on the issue of positive obligations it is important to mention some cases. In 2010, the African Court on Human and Peoples' Rights delivered a landmark judgment in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International v Kenya*[704]. The case concerned the forced eviction of the Endorois indigenous people from their ancestral lands in the Lake Bogoria area of Kenya. Kenya violated the Endorois' rights to property, culture, religion, and natural resources under the African Charter on Human and Peoples' Rights of 1981. The African Commission ordered Kenya to take measures to restore the Endorois' land rights and to provide them with adequate compensation for the harm suffered. Next case is *Association pour la Défense des Droits de l'Homme et des Libertés (ASADEHL) and others v Côte d'Ivoire*[705] in which the right to health of residents of the Abidjan district of Côte d'Ivoire was affected by toxic waste. The African Commission held that Côte d'Ivoire violated the right to health of the plaintiffs and ordered the state to take measures to provide them with adequate medical treatment and to prevent future violations of the right to health. In 2020, in a case of *XYZ v. Republic of Benin*[706], an applicant declared that the Republic of Benin violated the right to economic, social, and cultural development. The African Court on Human and Peoples' Right confirmed it by stating that: "These rights protected by Articles 22(1) and 23(1) of the African Charter of Human and Peoples' Rights of 1981 had been violated and … ordered the Respondent State to take[707]" different measures such as "legislative, regulatory[708]" to restore violated rights.

O. Mba in the own article named "Positive obligations under the African Charter on Human and Peoples' Rights: the duty of the Nigerian Government to enact a Freedom of Information Act" considered an example of positive obligations for economic, social, and

[703] African Union, 'Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (11 July 2003) <https://www.refworld.org/docid/3f4b139d4.html> accessed 17 March 2023.

[704] *Centre for Minority Rights Development and Minority Rights Group International v. Kenya* [2010] 276/2003 (African Commission on Human and Peoples' Rights).

[705] *Association pour la défense des droits de l'Homme et des libertés v. Djibouti* [2000] 133/94 (African Commission on Human and Peoples' Rights).

[706] *XYZ v. Republic of Benin,* 010/2020, [2020] AFCHPR 3 (African Court on Human and Peoples' Rights).

[707] *XYZ v. Republic of Benin,* 010/2020, [2020] AFCHPR 3 (African Court on Human and Peoples' Rights); 2020 Joint Law Report of the African Court on Human and Peoples' Rights, European Court of Human Rights, Inter-American Court of Human Rights, 2020, P.14.

[708] *XYZ v. Republic of Benin,* 010/2020, [2020] AFCHPR 3 (African Court on Human and Peoples' Rights); 2020 Joint Law Report of the African Court on Human and Peoples' Rights, European Court of Human Rights, Inter-American Court of Human Rights, 2020, P.14.

cultural rights such as "adopting legislative and other measures[709]". For instance, some laws were adopted in the South Africa:

1) the Law on Compulsory School Attendance by Children of 1942 of the Province of Natal which contained a reservation regarding children of colour living in districts where there are no educational institutions intended for the black population. If there were no such institutions in the region, children of the Negro race were suspended from school.

2) the South African Schools Act of 1996[710] established a system of compulsory education for all from 7 to 15 years, or from 9 years, if education has not yet begun before this age. In addition, the Minister of Education determined the age of compulsory school attendance for persons with special educational needs. The Act ensures democratic governance when making decisions on the establishment of rules of conduct at school and rules of school management through persons engaged in the educational process, students and their parents based on partnership with government agencies. They receive the right to manage the school through the Institute of People's democracy as an element of the state structure. Key recommendations and proposals were developed concerning:

-official recognition of 11 languages at the level of national communication;

-granting the right to provincial autonomies to declare any language as national and any language as official;

-following the principle of equality;

-transformation of education according to the principles of rationalization, coordination of the activities of all 19 departments of education in the country;

-determining the role of all state and provincial bodies in the field of education; creating an audit system for the training of teaching staff.

3) Green Paper on Emerging Policy on Inclusive Education of 1999[711] which points to six principles of activity in this direction:

-education and training policy, legislation, consulting and management services, organizational support focus on the ability to build and manage levels of education, mutual support and cooperation, information exchange;

- strengthening education support services, focusing on the development of strategic lines in education, defining the new role of special schools, and their status as part of the overall structure of education;

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[709] Mba O, 'Positive obligations under the African Charter on Human and Peoples' Rights: the duty of the Nigerian Government to enact a Freedom of Information Act' < https://www.tandfonline.com/doi/abs/10.1080/03050710902924296?journalCode=rclb20> accessed 19 March 2023.

[710] South African Schools Act № 86, 1996. Department of Education. Pretoria: Government Printer, 1996. P. 28–34.

[711] Green Paper on Emerging Policy on Inclusive Education. Department of Education. Pretoria: Government Printer, 1999. P. 24-26.

- ensuring the expansion and access to education, focusing on the development of an all-encompassing attention of the educational system in the context of the development of school districts;

- providing guarantees of high-quality education and highly qualified personnel, full-scale curricula, preference for flexibility of individual study plans, targeting of training, disclosure of individual abilities;

-providing truthful information on educational policy issues, educational resource mobilization programs;

-providing an adequate perception system, close to the realities of life, formed on a system of individually selected training courses, expanding horizons.

4) In 2001, a working group was established within the Ministry of Education of South Africa to analyze the results of spreading democratic ideals among young South Africans in order to eliminate the possibility of any manifestations of social disintegration, desegregation and cruelty. Later, the Ministry of Education published a Manifesto of the Values of Education and Democracy in 1991. It was aimed at forming the basic values of education, focusing on understanding and responsibility for oneself as a citizen and a person, focusing on constitutional attitudes that give birth to a new patriotism based on a sense of social equality and cosmopolitanism. Development policy in this context is a defining, universal principle that characterizes the human right to basic education, equality, awareness of the democratic right of parents, teachers, and all students, including the unemployed and persons with disabilities.

In contrast, there are some cases of the African Court and Commission with negative obligations. In the case of *Sudan human rights organisation, Centre on housing rights and evictions v. Sudan* [712], the African Commission on Human and Peoples' Rights held that: "The right to adequate housing including the prohibition on forced eviction[713]" which meant a negative obligation. Another case belongs to the South African Constitutional Court. *In re Certification of the Constitution of the Republic of South Africa*[714], in which the South African Constitutional Court concluded that: "Socio-economic rights can be negatively protected from improper invasion[715]". Moreover, considering the right to a satisfactory environment, E. Ankumah, M. Linde, and L. Louw pointed out that this right imposes a negative obligation which includes "Refrain[ing] from action or inaction that would impair an individual's

[712] *Sudan human rights organisation, Centre on housing rights and evictions v. Sudan*, 279/03, 296/05, [2009] ACHPR 100 (African Commission on Human and Peoples' Rights).

[713] Ibid.

[714] *In Re Certification of the Constitution of the Republic of South Africa,* 1996 (4) SA 744 (CC), 1996 (10) BCLR 1253 (Constitutional Court of South Africa).

[715] Ibid.

enjoyment [of these rights] and refrain[ing] from practices that might be harmful to the environment[716]".

There is also a mixture of positive and negative obligations in certain rights of the second generation. It is interesting to note that the African Commission on Human and Peoples' Rights, when required to deal with the question of whether the Nigerian government had violated the right to health (para.16) [717] and the right to a satisfactory environment (para.24)[718] confirmed that: "Social and economic rights place clear obligations on the state and engender both positive and negative obligations[719]". The negative aspect of these rights places an obligation on the state to respect the rights "and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual[720]".

For example, the right to work consists of an obligation to "prohibit slavery and forced labour…all forms of economic exploitations of children and other members of vulnerable and disadvantaged groups[721]" which is a negative obligation, and an obligation to "provide an adequate protection against unfair or unjustified arbitrary and constructive dismissal[722]", which is a positive obligation.

Following a similar pattern of two types of obligations, the right to education puts on an obligation "to implement policies to eliminate or reduce the costs of attending primary school[723]" (a positive obligation) and an obligation of "a prohibition on the use of corporal

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[716] Linde M, Louw L, 'Considering the interpretation and implementation of article 24 of the African Charter on Human and People's Right in light of the SERAC communication' in *African Human Rights Law Journal* (3 (2003)) P.175 <https://www.corteidh.or.cr/tablas/R21586.pdf> accessed 7 July 2022; Ankumah N, 'The African Commission on Human and People's Rights: Practices and Procedures' (1996), P.168.

[717] *Media Rights Agenda & Others v. Nigeria* (2000) AHRLR 200 (African Commission on Human and Peoples' Rights).

[718] *Media Rights Agenda & Others v. Nigeria* (2000) AHRLR 200 (African Commission on Human and Peoples' Rights).

[719] Ibid, para.52.

[720] Ibid, para.52.

[721] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social, and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

[722] Ibid, P.21.

[723] Ibid, P.34.

punishment[724]; to prohibit and prevent all discrimination in education against children[725]" (a negative obligation). Another example is the right to water and sanitation. It imposes an obligation "to ensure access to the minimum essential amount of water[726]" (a positive obligation) and an obligation to "avoid prohibiting waiting times; refrain from using access to water as a political tool[727]" (a negative obligation).

Moreover, there are other rights of the second generation which require positive and negative obligation for their realization.

Table 'Positive and negative obligation of economic, social, and cultural rights in accordance with principles and guidelines on the implementation of economic, social, and cultural rights in the African Charter on Human and Peoples' Rights'

The right	Positive obligation	Negative obligation
The right to culture	An obligation to "implement policies generally aimed at the conservation, development and diffusion of culture and the promotion of cultural identity[728]";	An obligation "to prohibit child marriage and the betrothal of girls and boys[729]";
The right to education	An obligation "to implement policies to eliminate or reduce the costs of attending primary school[730]";	An obligation of "a prohibition on the use of corporal punishment[731]"; "to prohibit and prevent all discrimination

[724] Ibid, P.39.

[725] Ibid, P.37.

[726] Ibid, P.51.

[727] Ibid, P.51.

[728] Ibid, P.38.

[729] Ibid, P.39.

[730] Ibid, P.34.

[731] Ibid, P.36.

		in education against children[732]";
The right to social security	An obligation to "ensure access to a social security scheme; take measures[733]"; "establish social safety nets[734]";	"no direct or indirect discrimination in social security schemes[735]";
The right to water	An obligation "to ensure access to the minimum essential amount of water[736]";	An obligation to "avoid prohibiting waiting times; refrain from using access to water as a political tool[737]";
The right to work	An obligation to "provide an adequate protection against unfair arbitrary and constructive dismissal[738]";	An obligation to "prohibit [ion of] slavery and forced labour…all forms of economic exploitations of children and other members of vulnerable and disadvantaged groups[739]";

In comparison, considering rights of the first generation and their nature, J. Zuma, the South African President in his speech declared that, for example, "the right to freedom and

[732] Ibid, P.37.

[733] Ibid, P.45.

[734] Ibid, P.46.

[735] Ibid, P.46.

[736] Ibid, P.51.

[737] Ibid, P.51.

[738] Ibid, P.21.

[739] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social, and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

security of the person places a positive obligation to take preventive measures…rights to equality, human dignity, freedom, security of person[740]" also require positive obligations.

ii. Cost free and expensive state obligations

It is believed that economic, social, and cultural rights require resources and impose expensive obligation. Analysing Article 11(3) (a) and (b) of the African Charter on the Rights and Welfare of the Child, "State parties should provide free textbooks, sanitary materials, and school feeding programs"[741], "free bus rides for school children, particularity those living in rural areas, are recommended"[742], "state parties are required to offer girls protection against all forms of abuse in schools"743. For instance, in a case of *Kevin Mgwanga Gunme et al v. Cameroon*, "[the State] is under an obligation to invest its resources in the best way possible to attain the realisation of the right to development (para.205)[744]".

In contrast, in a case of *Soobramoney v. Minister of Health*, *Kwazulu-Natal*[745] it is stated by the Constitutional Court of South Africa that: "fears that legal enforcement of positive socio-economic rights will suddenly open the floodgates and swamp the state with resource demands appear to be unfounded[746]". For instance, let consider the right to free and compulsory primary education. The African Commission on Human and Peoples' Rights explained in its "Principles and Guidelines on the implementation of economic, social and cultural rights in the African

[740] Pierre De Vos, 'The court keeping a check on the South African state' <https://www.theguardian.com/commentisfree/libertycentral/2011/dec/02/south-africa-jacob-zuma-constitutional-court' accessed 18 June 2022.

[741] African Commission of Experts on the Rights and Welfare of the Child, 'Concluding Observations and Recommendations by the ACERWC on the Republic of Zimbabwe Report on the Status of Implementation of the ACRWC' (2015), P.39-40 <http://www.acerwc.org/download/concludingobservations-zimbabwe/?wpdmdl=100051, accessed 19 June 2023.

[742] African Commission of Experts on the Rights and Welfare of the Child, 'Concluding Recommendations by the ACERWC on the Republic of Ghana Initial Report on the Status of Implementation of the ACRWC' (2016), P.25-26 <http://www.acerwc.org/download/concluding-observations-ghana/?wpdmdl=9997> accessed 20 June 2022.

[743] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, O.A.U. Doc. CAB/LEG/66.6.

[744] *Kevin Mgwanga Gunme et al v. Cameroon* (2009) AHRLR 9 (ACHPR 2009) (African Court on Human and Peoples' Rights).

[745] *Soobramoney v. Minister of Health (Kwazulu-Natal)* (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) (Constitutional Court of South Africa) <http://www.saflii.org/za/cases/ZACC/1997/17.html> accessed 5 March 2023.

[746] Wiles E, 'Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law' in *American University International Law Review* (Volume 22, Issue 1, 2006) P.47- 48.

Charter on Human and Peoples' Rights" that in order to provide the right to education the state's actions must include the following actions: "[to] foster[] respect for human rights and fundamental freedoms with reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions; [to] preserve[] and strengthen positive African morals, traditional values and cultures[747]". Moreover, in a case of *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, it is stated that countries must "organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights (para.157)[748]".

From another side, considering the fact that according to the majority of scholars civil and political rights does not require resources, it is demonstrated in the General Comment № 5 of the African Committee of Experts on the rights and welfare of the Child on "State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection" that rights of the first generation require the following: "extensive resource allocation, such as maintaining voter's rolls, convening democratic elections and national population surveys, and improving birth registration systems[749]". In addition, the South African Constitutional Court, in response to the claim that the enforcement of socio-economic rights must be dependent on the capacity of a state to afford the cost, stated[750]:

"The inclusion of socio-economic rights may result in courts making orders that have direct implications for budgetary matters. However, even when a court enforces civil and political rights such as equality, freedom of speech and the right to a fair trial, the order it makes will often have such implications. A court may require the provision of a legal aid, or the extension of state benefits to a class of people who were formerly not beneficiaries of such benefits[751]". The above conclusion confirms that obligations on the protection of the first-

[747] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social, and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

[748] *Zimbabwe Human Rights NGO Forum/ Zimbabwe,* № 245/ 2002 [2006] ACHPR 73 (African Commission on Human and Peoples' Rights) <https://www.achpr.org/public/Document/file/English/achpr39_245_02_eng.pdf> accessed 5 March 2023.

[749] African Committee of Experts on the rights and welfare of the Child, 'General Comment № 5 on 'State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection' (2008), P.8 < https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files /regions/acerwc_general_comment_no._5_-2018.pdf> accessed 3 March 2023.

[750] Ibid.

[751] *In Re Certification of the Constitution of the Republic of South Africa,* 1996 (4) SA 744 (CC), 1996 (10) BCLR 1289 (Constitutional Court of South Africa).

generation rights are not free. For instance, the right to a fair trial requires a "resource intensive obligation[752]".

In addition, considering case-law of India, the Indian Supreme Court has demonstrated that considerations of economic complexities should not necessarily excuse judges from addressing questions of social justice. In *Paschim Banga Khet Mazdoor Samity v. West Bengal*[753], the Indian Supreme Court held that: "The provision of medical facilities for citizen is an obligation of the state; though acknowledging the existence of financial constraints, the Court insisted that the state is not discharged from its obligation merely by pleading such constraints[754]".

iii. Progressive and immediate state obligations

The African human rights treaty system is "unique for enjoining immediate obligations[755]". The African Committee of Experts on the Rights and Welfare of the Child stated in its General Comment № 5 on "State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection" that: "There is no hierarchy of rights…all rights are equally important and must be implemented immediately[756]".The right of the first and second generations require immediate implementation. In addition, considering the nature of immediate obligations in the "Principles and Guidelines on the implementation of economic, social and cultural rights in the African Chapter on Human and Peoples' Rights", the African Commission on Human and Peoples' Rights commented that: "Immediate obligations include but are not limited to the obligation to take steps, the prohibitions of retrogressive steps, minimum core obligations and the obligation to prevent discrimination in the enjoyment of economic, social and cultural rights (para. 16)[757]".

[752] Agbakwa S.C, 'Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights' in *Yale Human Rights and Development Journal* (Volume 5, 2002), P.12.

[753] *Paschim Banga Khet Mazdoor Samity v. West Bengal*, (1996) 4 S.C.C. 37 (Indian Supreme Court).

[754] *Paschim Banga Khet Mazdoor Samity v. West Bengal*, (1996) 4 S.C.C. 37 (Indian Supreme Court).

[755] Udombana N.J, 'Social Rights are Human Rights: Actualizing the Rights to Work and Social Security' (Vol.39, Issue 2, 2006) P.199.

[756] African Committee of Experts on the rights and welfare of the Child, 'General Comment № 5 on 'State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection' (2008), P.7 < https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files /regions/acerwc_general_comment_no._5_-2018.pdf> accessed 4 March 2023.

[757] African Committee of Experts on the rights and welfare of the Child, 'General Comment № 5 on 'State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection' (2008), P.7 < https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files /regions/acerwc_general_comment_no._5_-2018.pdf> accessed 4 March 2023.

In the next paragraphs (17-30) the African Commission on Human and Peoples' Rights considered each of the above actions included in immediate obligations.

It is important to note that the African Commission on Human and Peoples' Rights of 1981 has considered and defined those immediate duties are represented by positive obligations established by the African Charter on Human and Peoples' Rights of 1981, regardless of the wealth of the country involved. In a significant decision involving a low-income country (Mauritania), where allegations, where made regarding large scale slave labour, the African Commission on Human and Peoples' Rights concluded that:

"In a line with the provisions of Article 23(3) of the Universal Declaration of Human Rights of 1948[758], that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. These provisions are complemented by those of Article 7 of the International Covenant on Economic, Social and Cultural Rights of 1966[759]". "The African Commission on Human and Peoples' Rights deems that there was a violation of Article 5 of the African Commission on Human and Peoples' Rights of 1981 due to practices analogous to slavery and emphasises that unremunerated work is tantamount to a violation of the right to respect for the dignity inherent in the human being. It furthermore considers that the conditions to which the descendants of slaves are subjected clearly constitute exploitation and degradation of man; both practices condemned by the African Commission on Human and Peoples' Rights (para.135)[760]".

The example of an immediate obligation for economic, social, and cultural rights is in the case of *Governing Body of the Juma Musjid Primary School & Others v Essay NO and Others,* in which the Constitutional Court of South Africa held that: "the right to a basic education is immediately realisable (para.37)[761]".Another example of the right with an immediate obligation is the right to health. This right has an immediate effect which described in the African Commission on Human and Peoples' Rights' "Resolution on Access to Health and Needed Medicines in Africa № 141[762]" which was adopted at meeting at its 44th Ordinary Session held

[758] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[759] International Covenant on Economic, Social and Cultural Rights,16.12.1966 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> accessed 7 March 2023.

[760] *Malawi African Association and Others v. Mauritania,* № 54/91, 61/91, 98/93, 164/97-196/97 and 210/98 (2000) (African Commission on Human and Peoples' Rights).

[761] *Governing Body of the Juma Musjid Primary School & Others v. Essay NO and Others* [2011] ZACC 13 (Constitutional Court of South Africa).

[762] African Commission on Human and Peoples' Rights, 'Resolution on Access to Health and Needed Medicines in Africa' (2008) <http:// www.achpr.org/sessions/44th/resolutions/141> accessed 5 March 2023; Tasioulas J, 'The minimum core of the Human Right to Health' (Research paper) (October 2017) P. 18

in Abuja, Federal Republic of Nigeria, from the 10th to 24th November 2008. It "requires states to meet immediately… the minimum core obligations of ensuring availability and affordability to all of essential medicines as defined by the country's essential medicines list and the WHO Action Programme on Essential Drugs"[763]. So, is it possible to immediately implement the obligations of States parties in the African Charter on Human and Peoples' Rights of 1981 in relation to economic and social rights? What should be done if there are not enough material resources to provide them? The African Charter on Human and Peoples' Rights of 1981 clearly requires states parties to implement economic and social human rights immediately, regardless of any material problems[764]. In addition, C. Odinkalu also added that the African Charter formulated its rights without internal modifiers[765].

The more difficult question, however, is to determine to what extent the state has an obligation to act immediately to ensure realization of the right(s) in question. The African Commission on Human and Peoples' Rights confirmed that: "In the context of Articles 16 and 24, these rights impose "clear obligations upon the government" and that the state therefore has a duty "to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources[766]".

In contrast with immediate obligations, there are progressive obligations for economic, social, and cultural rights. However, among authors, C. A. Odinkalu stated that: "The African Charter on Human and Peoples' Rights of 1981 does not provide the progressive realisation for social and economic rights[767]". Pierre de Vos, Professor of Law at the University of the Western Cape, confirmed the previous statement of C.A. Odinkalu by giving an example of Article 16 (2) of The African Charter on Human and Peoples' Rights of 1981 which "does not refer to the progressive realisation of the right to health[768]". Despite the above-mentioned statements, the

<https://documents1.worldbank.org/curated/en/194751515587192833/pdf/122561-WP-Tasioulas-PUBLIC.pdf> accessed 6 March 2023.

[763] Ibid.

[764] Evans M, Murray R, 'The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000' (Cambridge University Press, 2002), P.178-218.

[765]Odinkalu C.A, 'Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights', in Evans M, Murray R, (eds.), in *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* (Cambridge: Cambridge University Press, 2002), P. 196-198.

[766] Ibid, para.52.

[767] Odinkalu C.A, 'The individual Complaints Procedure of the African Commission on Human and People's Rights: A Preliminary assessment' in *Transnational Law and Contemporary Problems* (Vol 8, 1998) P.349.

[768] Pierre De Vos, 'A new beginning? The enforcement of social, economic, and cultural rights under the African Charter on Human and People's Rights in *Law, Democracy and Development* (2004), P.16.

African Commission on Human and Peoples' Rights found that: «The [progressive realisation of economic, social, and cultural rights] has been implied in accordance with Articles 61 and 62 of the African Charter on Human and Peoples' Rights of 1981. States are under a duty to move as expeditiously and effectively as possible towards the full realisation of [these] rights[769]". In cases of *Treatment Action Campaign and others v. Minister of Health and others* and *Minister of Health and others* Constitutional Court of South Africa held that: "While it is practically impossible to give everyone access to care service immediately, the state is under an obligation progressively to realise the economic and social rights in the Constitution[770]".

For example, "the right to further education imposes an obligation of progressive realisation upon the state[771]". In the case of *Equal Education and Others v. Minister of Basic Education and Others,* the government was "ordered to implement without delay" the national nutrition school program[772]". In another case of *Kevin Mgwanga Gunme et al v. Cameroon*, "[the State] is under an obligation to invest its resources in the best way possible to attain the progressive realisation of the right to development (para.205)[773]". In the next case, *Purohit v. the Gambia*, where the African Commission on Human and Peoples' Rights not only accepted the doctrine of progressive realization – the doctrine that provides the background rationale for the MCD's operation – but also stressed the importance of non-discrimination in the fulfilment of the right to health, an element with a strong claim to inclusion within the core obligations associated with that right: "having due regard to this depressing but real state of affairs [poverty in Africa rendering the full realization of the right to health impossible), the African

[769] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

[770] *Treatment Action Campaign and others v. Minister of Health and others* 21181/2001 (2002) 5 SA 721 (CC) (Constitutional Court of South Africa) <https://www.escr-net.org/sites/default/files/TAC_Heads_for_Leave_to_Appeal_and_Execution_of_Order_0.doc> accessed 7 March 2023; *Mr William García Álvarez v. Caja Costarricense de Seguro* 5779-V-97 (1997) (Constitutional Court of Costa Rica)<http://www.poderjudicial.go.cr/scij/index_pj.asp?url=busqueda/jurisprudencia/jur_ficha_completa_sentencia.asp?nBaseDatos=1&nSentencia=15980> accessed 7 March 2023; Nampewo Z., Heaven M. J., Wolff J, 'Respecting, protecting, and fulfilling the human right to health' in *International Journal for Equity in Health* (Vol. 21, Article number: 36 (2022)) <https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-022-01634-3> accessed 8 March 2023.

[771] Cepeda M, O'Regan K, Scheinin M, 'The development and application of the concept of the progressive realisation of human rights: Report to the Scottish National Taskforce for Human Rights Leadership' in *Bonavero Reports* <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_12021_1.pdf> accessed 6 March 2023.

[772] *Equal Education and Others v. Minister of Basic Education and Others* [2020] ZAGPPHC 306 (Higher Court of South Africa).

[773] *Kevin Mgwanga Gunme et al v. Cameroon* (2009) AHRLR 9 (ACHPR 2009) (African Commission on Human and Peoples' Rights).

Commission would like to read into Article 16 the obligation on part of states party to the African Charter to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realized in all its aspects without discrimination of any kind (para.84)[774]". However, what are concrete and targeted steps? This confusion is compounded by the fact that "the African Commission did not relate its understanding of socio-economic rights obligations incumbent upon the Gambia in this case to its earlier holding in the SERAC Case requiring States to take reasonable states to realize these rights. This case establishes that resource scarcity is a possible defense to a case alleging violations of ESC rights under the African Charter[775]".

The subjects of exercising progressive obligations are not only states, but also private landowners. In *Daniels v. Scribante and Another,* Constitutional Court of South Africa found that: "A private landowner is in some cases obliged to provide basic amenities to a tenant on their property and cannot take steps which will prevent the tenant from realising their socio-economic rights[776]".

In addition, the African Committee of Experts on the Rights and Welfare of the Child confirmed in the General Comment № 5 on "State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection" that: "progressive realisation" applies to "civil and political rights[777]". Moreover, "progressive realisation should not mean postponement of implementation…progressive realisation must be understood in the context of the urgency to fulfil… rights[778]".

iv. Vague and precise state obligations

M. Hansungule, Professor of Law of Centre for Human Rights at University of Pretoria, in his paper which was presented at the First International Conference on "The Application of the Death Penalty in Commonwealth Africa" organized by the British Institute of International and Comparative Law held on to 10th to 11th May 2004 at Entebbe described "the formulation

[774] *Purohit v. the Gambia* (2003) AHRLR 96 (African Commission on Human and People's Rights).

[775] Langford M, 'Social Rights Jurisprudence: Emerging Trends in International Law' in *Malcolm Langford, Norwegian Centre for Human Rights* (University of Oslo 2009) P.326-327.

[776] *Daniels v Scribante and Another* (CCT 50/16) [2017] ZACC 13 (Constitutional Court of South Africa).

[777] African Committee of Experts on the rights and welfare of the Child, 'General Comment № 5 on 'State party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection' (2008), P.6 < https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/regions/acerwc_general_comment_no._5_-2018.pdf> accessed 4 March 2023.

[778] Ibid, P.7-8.

of the system of human rights as incomplete and imprecise[779]". More specifically, S. C. Agbakwa underlined "well-known normative inadequacies of the African Charter…and [its] lack of conceptual clarity[780]".

There are several problems in economic, social, and cultural rights' realisation:

1). Absence of a provision which would contain economic, social, and cultural rights. For example, "there is no mention of the right to food or housing in the Chapter in explicit terms[781]".

2). Vagueness of provisions. For example, Article 15 of the African Charter on Human and People's Rights of 1981 is "vaguely phrased, making its scope from the text alone unclear[782]". Next, the right to education is vague too, and in accordance with the opinion of F. Ouguergouz this right "does not specify any content of meaning of education, and it is unclear what the … obligations are[783]". Another right is the right to a satisfactory environment which was analysed by M. Van Der Linde and L. Louw. They concluded that this right is "vague and ambiguous[784]" due to "no clear indication [of] terms satisfactory and environment… which [has] positive and negative aspects of the interpretation [that allows] … wider …and … narrower …interpretation [respectively][785]". An additional example is the right to health for which "the [African] Charter imposes an unlimited obligation to provide free medical services[786]". In addition, K. N. Christian-Junior agreed with it by adding that: "The right to work which is not formulated in a way that put upon the state the duty to provide for

[779] Hansungule M, 'Towards a more effective African system of human rights: 'entebbe proposals' <https://www.biicl.org/files/2309_hansungule_towards_more_effective.pdf> accessed 8 March 2023.

[780] Agbakwa S.C, 'Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights' in *Yale Human Rights and Development Journal* (Volume 5, 2002) P.16.

[781] Bulto S. T, 'The Utility of Cross-Cutting Rights in Enhancing Justiciability of Socio-Economic Rights in the African Charter on Human and Peoples' Rights' in *The University of Tasmania Law Review* (Vol.29, № 2 (2010)) P.150 <http://www.austlii.edu.au/au/journals/UTasLawRw/2010/7.pdf> accessed 8 March 2023.

[782] Udombana N.J, 'Social Rights are Human Rights: Actualizing the Rights to work and social security in Africa' in *Cornell International law journal* (Issue 2, volume 39 (2006) P.188.

[783] Ouguergouz F, 'The African Charter on Human and People's Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa' (Martinus Nijhoff Publishers, 2003), P.190.

[784] Linde M, Louw L, 'Considering the interpretation and implementation of article 24 of the African Charter on Human and People's Right in light of the SERAC communication' in *African Human Rights Law Journal* (3 (2003)) P.174 <https://www.corteidh.or.cr/tablas/R21586.pdf> accessed 10 March 2023.

[785] Ibid, P.174.

[786] Agbakwa S.C, 'Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights' in *Yale Human Rights and Development Journal* (Volume 5, 2002) P.18.

jobs[787]…and even some [socio-economic rights] have not been given a strong contain[788]". However, some rights have are written in a clear way, for example, the right to a basic education requires an obligation to provide "school furnishing, transport to school, and a teacher post provisioning[789]".

Moreover, Brigit C.A. Toebes, M. Gomez, and Y. Yokota considered "the vagueness[790]" of the second-generation rights which might be "misuse[d] by governments [and] give much room for interpretation[791]". In addition, Judge M. Ngugi of the High Court of Kenya noted in the judgement in 2009 that: "There can be no room for ambiguity where [is] the right to health[792]". As a result, "the omission of some rights and the vagueness in the definition of some others has provided an escarpment corridor to states parties in the fulfilling of their obligation[793]". However, Justice C. Nwobike stated that: "the African Commission [on Human

[787] African Charter and Human and Peoples' Rights, June 27, 1981, O.A.U. DO. CAB/LEG/67/4/Rev.5, reprinted in 21 I.L.M. 58 (1982).

[788] 'Réunion des experts pour l'élaboration d'un avant-projet de Charte Africaine des droits de l'Homme et des Peuples 1–2' in *Virginia Journal of International Law* (1982) P. 667, 685.

[789] *Section 27 v. Minister of Education* [2012] ZAGPPHC 114 (Higher Court of South Africa); *Madzodzo v. Minister of Basic Education* [2014] ZAECMHC 5 (Higher Court of South Africa); *Tripartite Steering Committee v. Minister of Basic Education* [2015] ZAECGHC 67(Higher Court of South Africa); *Center for Child Law and Others v. Minister of Basic Education* [2012] ZAECGHC 60(Higher Court of South Africa); Cepeda M, O'Regan K, Scheinin M, 'The development and application of the concept of the progressive realisation of human rights: Report to the Scottish National Taskforce for Human Rights Leadership' in Bonavero Reports <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_12021_1.pdf> accessed 6 March 2023.

[790] Brigit C. A. Toebes, 'The right to health as a human right' in *International law* (№ 6 (1999); Yokota Y., 'Reflections on the Future of Economic, Social and Cultural Rights' in *Future of International Human Rights* (Burns H. Weston, P. Stephen Marks eds, 1999) P. 205-206; Brigit C.A. Toebes, 'Towards an improved understanding of the international human right to health' in *21 Human Rights Quarter* (1999), P.661, 661- 662; Gomez M, 'Social economic rights and Human Rights Commission' in *17 Human Rights Quarter* (1995) P.155,161.

[791]'Mixed Feedback on the 'African Union Convention on Cyber Security and Personal Data Protection" <https://ccdcoe.org/incyder-articles/mixed-feedback-on-the-african-union-convention-on-cyber-security-and personal-data-protection/> accessed 9 March 2023.

[792]*Patricia Asero Ochieng, Maurine Atieno, Joseph Munyi v. the attorney General, Aids Law Project* № 409 (2009) (High Court of Kenya) <http://kelinkenya.org/wp-content/uploads/2010/10/Judgment-Petition-No-409-of-2009-Anti-counterfeit-case.pdf > accessed 9 March 2023.

[793] Nkongolo K. C.-J, 'Protection of Human Rights in Africa: African Human Rights in a Comparative Perspective' <https://www.leganet.cd/Doctrine.textes/DroitPublic/DH/ProtectionofHR.Kabange.htm#_ftNref61> accessed 11 March 2023.

and Peoples' Rights] convincingly countered the often-overstated arguments that these rights [economic and cultural rights] are vague[794]".

v. Justiciable and non-justiciable state obligations

"[International legal] protection of socio-economic rights…has to be seen in the context of the debate that has often characterised the justiciability of such rights[795]". G. Mugwanya also considered the fact that the rights of the African Charter [on Human and Peoples' Rights of 1981 are] with "less judicial precision[796]". The African Commission on Human and Peoples' Rights believed that economic, social, and cultural rights "should be justiciable in the same way as are civil and political rights[797]" due to their universal nature. Analysing the justiciability of economic, social, and cultural rights, S. T. Bulto pointed out some advantages, starting with a view that: "[it] would boost their domestic enforcement and implementation[798]", and in accordance with an opinion of C.A. Odinkalu, the justiciability of economic, social, and cultural rights will improve "the progressive development of associated norms of the African Charter on Human and People's Rights[799]".

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[794] Nwobike C, 'The African Commission on Human and Peoples' Rights and the Demystification of Second and Third Generation Rights under the African Charter: Social and Economic Rights Action Centre (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria' in *African Journal of Legal Studies 2* (2005), P.145.

[795] Mbaku J.M, 'The Role of International Human Rights Law in the Adjudication of Economic, Social and Cultural Rights in Africa' in *Penn State Journal of Law & International Affairs* (Vol.8, Issue 2 (2020)) P.695 <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=jlia> accessed 10 March 2023.

[796] Mugwanya G. W, 'Realizing Universal Human Rights Norms Through Regional Human Rights Mechanisms: Reinvigorating the African System' in *Indiana International & Comparative Law Review* (10(1) (1999)), P. 35–50, 43; Plagis M.A, Riemir L, 'From context to Content of Human Rights: The Drafting History of the African Charter on Human and People's Rights and the Enigma of Article 7' in *Journal of History of International Law,* (2020) < https://brill.com/view/journals/jhil/23/4/article-p556_3.xml#FN000025> accessed 9 March 2023.

[797] *The Centre for Human Rights (University of Pretoria) and Recontre Africaine pour la defense des droits de l'homme (Senegal) v. Government of Senegal* № 003/Com/001/2012 (2014) (The African Committee of Experts on the Rights and Welfare of the Child) <https://www.globalhealthrights.org/the-centre-for-human-rights-university-of-pretoria-and-la-rencontre-africaine-pour-la-defense-des-droits-de-lhomme-senegal-v government-of-senegal/> accessed 11 March 2023.

[798] Bulto S. T, 'The Utility of Cross-Cutting Rights in Enhancing Justiciability of Socio-Economic Rights in the African Charter on Human and Peoples' Rights' in *The University of Tasmania Law Review* (Vol.29, № 2 (2010)), P.148 <http://www.austlii.edu.au/au/journals/UTasLawRw/2010/7.pdf> accessed 11 March 2023.

[799] Odinkalu C.A, 'The Role of Case and Complaints Procedures in the Reform of the African Regional Human Rights System' in *African Human Rights Law Journal* (№ 1 (2001)) P. 225, 239.

It is important to distinguish next three cases, including two cases from Nigeria and one from South Africa, in order to show the justiciability of economic, social, and cultural rights. In the case of *Government of the Republic of South Africa and Others v. Grootboom and others, J. Yacoob* stated that:

"[w]hile the justiciability of socio-economic rights has been the subject of considerable jurisprudential and political debate; the issue is whether socio-economic rights are justiciable at all in South Africa has been put beyond question by the text of our Constitution as construed in the Certification judgement[800]".

Considering cases from Nigeria, it is better to start with the case of *SERAC v. Nigeria* where the African Commission on Human and Peoples' Rights ma[de] "clear that here is no right in the African Charter that cannot be made effective[801], all rights are recognized and justiciable (para 68)[802]", including economic, social, and cultural rights as well as civil and political rights. In the second case, namely *Abacha v. Fawehinmi,* the Supreme Court of Nigeria admitted the justiciability of provisions of the African Charter and held that: "The individuals rights contained in Articles of the African Charter on Human and People's Rights of 1981 are justiciable in Nigerian Courts. Thus, the Articles of the Charter show that individuals are assured rights which they can seek to protect from being violated and if violated to seek appropriate remedies[803]".

It is important to note that in the "Principles and Guidelines on the implementation of economic, social and cultural rights in the African Chapter on Human and Peoples' Rights" it is commented by the African Commission that "administrative tribunals and courts should recognize the justiciability of economic, social, and cultural rights… and [their] training…should expressly include the enforceability of economic, social, and cultural rights[804]". In addition, in accordance with F. Viljoen "the justiciability of economic rights was

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[800] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) *(*Constitutional Court of South Africa).

[801] *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) < https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf> accessed 12 March 2023.

[802] 'Main features of the African Charter' <https://www.achpr.org/mfoac> accessed 13 March 2023.

[803] *Abacha v. Fawehinmi,* SC 45/1997, (2000) 6 NWLR 228, (2002) 3 LRC 296, (2001) 1 CHR 95, ILDC 21 (NG 2000) P.249 (Supreme Court of Nigeria).

[804] African Commission on Human and Peoples Rights, 'Principles and Guidelines on the implementation of economic, social, and cultural rights in the African Chapter on Human and Peoples' Rights' (2011) P.14 <https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf> accessed 4 March 2023.

an acknowledgement that the accountability through the law was a part of the solution to Africa's economic woes[805]".

Moreover, there are other cases where economic, social, and cultural rights were considered as justiciable rights. In general, in the case of *In re Certification of the Constitution of the Republic of South Africa,* the Constitutional Court of South Africa held that: "These [economic, social, and cultural] rights are, at least, at some content, justiciable…[they] will almost inevitably give rise to such implications [which] d[o] not seem to us to be a bar to their justiciability[806]". An interesting approach was shown in the case of *Festus Odafe and another v. Attorney General of the Federation and another.* The Federal High Court of Nigeria stated that: "Denial of medical care to four HIV positive prisoners was not only contrary to the African Charter but also amounted to inhuman and degrading treatment contrary to Section 34 of the Nigerian Constitution[807]". The Federal High Court of Nigeria admitted the justiciability of the right to health through the violation of rights of the first generation.

The same approach was taken in a case of *Jonah Gbemre v. Shell Petroleum Development Company.* The plaintiff declared that the defendant violated his right to health and the right to clean environment. The Federal High Court of Nigeria found violations by "relying on the provisions of the right to life and human dignity[808]".

In addition, T. S. Bulto also provides an example of a violation of the right of the first generation which can lead to protection of economic, social, and cultural rights. If due process is violated, "it could bring about a violation…of the arbitrary termination of welfare benefits (right to social security) or of employment (the right to work), illegally forced evictions (the right to housing), or confiscation (the right to property)[809]".In addition, this right "protects people against unreasonable or procedurally unfair administrative action in the sphere of social

[805] Viljoen F, 'International human rights law in Africa' (OUP 2012) P.215.

[806] *In re Certification of the Constitution of the Republic of South Africa* (4) SA 744 (CC) (1996) (Constitutional Court of South Africa).

[807] *Festus Odafe and Others v. Attorney-General and Others* (2004) AHRLR 205 (Federal High Court of Nigeria).

[808] *Jonah Gbemre v. Shell Petroleum Development Company* (2005) AHRLR 151 (Federal High Court of Nigeria).

[809] Bulto S. T, 'The Utility of Cross-Cutting Rights in Enhancing Justiciability of Socio-Economic Rights in the African Charter on Human and Peoples' Rights' in *The University of Tasmania Law Review* (Vol.29, № 2 (2010)), P.173-174 <http://www.austlii.edu.au/au/journals/UTasLawRw/2010/7.pdf> accessed 11 March 2023.

services such as social security, health care, housing, and education[810]". Bulto S.T. believes that "socio-economic rights would eventually come to have sufficient case-law of their own[811]".

Another example is the right to culture. There have been cases in South Africa in which the mentioned right was under judicial enforcement. For example, it is the case of *Mabena v. Latsoalo*[812]. In another case of *the Social and Economic Rights Action Centre and another v. Nigeria,* the African Commission on Human and Peoples' Rights "found the Nigerian Government in violation of Article 24 of the African Charter [which] highlights the justiciability of the right to a satisfactory environment[813]". In next case of *World Organization against Torture v. Zaire,* the African Commission on Human and Peoples' Rights concluded that: "the closure of universities and secondary schools for two years constituted serious or massive violations of the right to education (specifically, of Article 17 of the African Charter on Human and Peoples' Rights of 1981)[814]".

It is important to note that H.P. Faga, F. Aloh, U. Urugu made a conclusion that: "The South African Courts have adopted the strategic declarations in economic, social, and cultural rights related litigations that ensure that its orders are complied with[815]". Moreover, in the case of *Fose v. Minister of Safety and Security,* the South African Court stated that: "Relief…is required to protect and enforce the constitution and the court may even fashion new remedies

[810] Liebenberg S, 'The Protection of Economic, Social and Cultural Rights in Domestic Legal Systems' in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (Kluwer Law International 2001) P.73.

[811] Bulto S. T, 'The Utility of Cross-Cutting Rights in Enhancing Justiciability of Socio-Economic Rights in the African Charter on Human and Peoples' Rights' in *The University of Tasmania Law Review* (Vol.29, № 2 (2010)), P.76 <http://www.austlii.edu.au/au/journals/UTasLawRw/2010/7.pdf> accessed 11 March 2023.

[812] Fishbayn L, 'Litigating the Right to Culture: Family Law in the New South Africa' in *International Journal of Law, Policy and the Family* (Vol. 13 (1999)); 'Economic, Social and Cultural Rights in Zimbabwe: Opinions for Constitutional Protections' <http://hrp.law.harvard.edu/wp-content/uploads/2009/08/Zimbabwe_6.23.09.pdf> accessed 12 March 2023; *Mabena v. Letsoalo* (1998) (2) SA 1068 (T).

[813] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) <http://www.achpr.org> accessed 12 March 2023 ; Linde M, Louw L, 'Considering the interpretation and implementation of article 24 of the African Charter on Human and People's Right in light of the SERAC communication' in *African Human Rights Law Journal* (3 (2003)) P.176 <https://www.corteidh.or.cr/tablas/R21586.pdf> accessed 10 March 2023.

[814] *World Organisation against Torture &Amp; Ors. v. Zaire* № 25/89, 47/90, 56/91, 100/93 [1996] ACHPR 1 (4 April 1996), paras. 42–8 (African Commission on Human and Peoples' Rights).

[815] Faga H.P, Aloh F, Uguru U, 'Is the Non-Justiciability of Economic and Socio-Cultural Rights in the Nigerian Constitution Unassailable? Re-Examining Judicial Bypass from the Lens of South African and Indian Experiences' in *Fiat Justisia* (14, 3 (2020)) P. 213 <file:///Users/IlianaValiullina/Downloads/1801-Article%20Text-6276-3-10-20210707.pdf> accessed 13 March 2023.

to secure the protection and enforcement of all-important rights (para.19)[816]". Under remedies it was understood the following:

- "an extension of constitutional provisions[817]",

- "an order requiring rectifying its breach of the constitutional provision[818]".

Moreover, P. Alston considered "complaints…at the international level [might be means for] encourage[ing] governments to ensure that more effective local remedies are available in respect of economic, social, and cultural rights issues[819]".

As a result, based on the case -law on economic, social, and cultural rights, H.P. Faga, F. Aloh, U. Urugu came to the conclusion that:

"Economic, social, and cultural rights are litigated as a subset of fundamental human rights; government and its agencies are often coerced to comply with court judgements through structural court supervision of implementation; declaration as void government programs, legislation and policies that infringe on economic, social, and cultural rights[820]".

Increase in domestic case-law on economic, social, and cultural rights clearly indicates that violations of economic, social, and cultural rights "are justiciable in practice, and states should ensure their justiciability in practice at a national level[821]". Moreover, the case-law of the European Court of Justice of the European Union, the collective complaint mechanisms

[816] *Fose v. Minister of Safety and Security* [1996] (2) BCLR 232 (W), (3) SA 786 (CC) (Constitutional Court of South Africa).

[817] *National Coalition for Gay and Lesbian Equality v. Ministry of Home Affairs* [2000] (2) SA (Constitutional Court of South Africa).

[818] *August v. Electoral Commission* [1999] (3) SA 1 (Constitutional Court of South Africa).

[819] Alston P, 'No Right to Complain about Being Poor: The Need for an Optional Protocol to the Economic Rights Covenant' in Asbjorn Eide and Jan Helgesen (eds), *The Future of Human Rights Protection in a Changing World: Fifty Years since the Four Freedoms Address-Essays in Honour of Torkel Opsahl* (Norwegian University Press, 1991), P.79, 92.

[820] Faga H.P, Aloh F, Uguru U, 'Is the Non-Justiciability of Economic and Socio-Cultural Rights in the Nigerian Constitution Unassailable? Re-Examining Judicial Bypass from the Lens of South African and Indian Experiences' in *Fiat Justisia* (14, 3 (2020)) P. 213 <file:///Users/IlianaValiullina/Downloads/1801-Article%20Text-6276-3-10-20210707.pdf> accessed 13 March 2023.

[821] Ssenyonjo M, 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' in *The International Journal of Human Rights* (15(6), 2011) P. 969-1012<https://www.tandfonline.com/doi/full/10.1080/13642981003719158> accessed 17 March 2023.

under the European Social Charter 1966 and in the International Labour Organization[822] and the adversarial procedure in the African Court on Human and Peoples' Rights encompassing economic and social rights show that there are no fundamental obstacles to the judicial enforcement of those rights. In addition, objections to the justiciability of economic, social, and cultural rights, which question the legal nature of these rights and the competence of judicial and quasi-judicial organs to enforce them, fail to realise that there is "no monolithic model of judicial enforcement for all human rights"[823]. Judicial creativity is similarly needed from African courts in order to give meaning and hope to the many Africans who struggle "between wine and starvation[824]".

vi. Derogable and non- derogable state obligations

There are some authors who considered non-derogation:

- A. J. Ali in his article "Derogation from constitutional rights and its implication under the African Charter on Human and People's Rights" expressed the following point of view that: "The inclusion of economic, social and cultural rights under the African Charter further expanded non-derogable rights[825]".

- M. Hansungule paid attention to the fact that "no derogation is permitted from any of the rights in the African Chapter at any time[826]".

The similar point of view waw expressed by R. Murray who stated that: "The African Chapter, unlike other human rights instruments, does not allow for States parties to derogate from their treaty obligations during emergency situations[827]".

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[822] In the ILO system, the Committee of Experts and the Committee on Freedom of Association receive collective complaints by trade unions and employers' organizations.

[823] An-na'im A.A, 'To affirm the full human rights standing of economic, social and cultural rights' in Ghai Y. & Cottrell G.(eds) *in Economic, social and cultural rights in practice: The role of judges in implementing economic, social and cultural rights* (2004) P.7.

[824] *Paschim Banga Khet Mazdoor Samity v. West Bengal*, (1996) 4 S.C.C. 37 (Indian Supreme Court).

[825] Ali A.J, 'Derogation from constitutional rights and its implication under the African Charter on Human and People's Rights' in *Law Democracy & Development* (Vol.17, 2013) P.86 <https://journals.co.za/doi/pdf/10.4314/ldd.v17i1.5> accessed 14 March 2023.

[826]Hansungule M, 'Towards a more effective African system of human rights: 'entebbe proposals' <https://www.biicl.org/files/2309_hansungule_towards_more_effective.pdf> accessed 8 March 2023.

[827] Murray R, 'Serious and massive violations under the African Chapter on Human and People's Rights: A comparison with the Inter-American and European Mechanisms' (NQHR 2, 1992).

As an example of the case, in *Media Rights Agenda v. Nigeria* in paragraphs 68 - 69, it was clarified that:

"...the African Charter does not contain a derogation clause…the limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies and special circumstances. The only legitimate reasons for limitations to the rights and freedoms of the Charter are found in Article 27(2), that is, that the rights of the Charter shall be exercised with due regard to the rights of others, collective security, morality and common interest (paragraphs 68 and 69)[828]". Similarly, it was confirmed that rights enshrined in the African Charter on Human and Peoples' Rights of 1981 are not subject to any derogation or restriction (para.67)[829].

R. Gittleman pointed out the same idea including the following: "The African Charter contains no specific provision entitling a State to derogate from its obligations - to temporarily suspend a right guaranteed under the Charter…[and] contain "clawback clauses[830]"". More importantly, unlike other authors, R. Gittleman compared advantages and disadvantages of both clauses which can be shown below.

Table. Features of derogable and clawback clauses (author – R. Gittleman)

Features	Derogation clause	Clawback clause
A level of preciseness	It is more precise than a clawback clause.	It "tend[s] to be less precise[831]";
A level of restriction/ protection	It "limit[s] the circumstances in which derogation may occur; define non-derogable rights [which] must be respected[832]";	It "does not provide the individual the same degree of

[828] *Media Rights Agenda and Others v. Nigeria* № 105/93, 128/94, 130/94 and 152/96 (1998) (African Commission on Human and Peoples' Rights) <https://www.globalhealthrights.org/wp-content/uploads/2014/07/Media-Rights-Agenda-v.-Nigeria.pdf> accessed 15 March 2023.

[829] *Media Rights Agenda and Others v. Nigeria* № 105/93, 128/94, 130/94 and 152/96 (1998) (African Commission on Human and Peoples' Rights) <https://www.globalhealthrights.org/wp-content/uploads/2014/07/Media-Rights-Agenda-v.-Nigeria.pdf> accessed 15 March 2023.

[830] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4, 1982) P.691 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

[831] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

[832] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

		protection provided by derogation clauses[833]";
An effect of a clause	It "defines the limits of State behaviour; permit[s] the suspension of previously granted rights[834]";	It "restricts rights *ab initio*[835]"; Such authors as B. O. Okere[836], Ebow B.[837], M. Mutua[838], O.C. Okafor[839] consider them as "to be more expansive[840]".
An external control	It "provid[es] an external control as evidenced by an examination of specific rights provided for in the African Charter[841]";	It "do[es] not provide an external control of State behaviour[842]";

[833] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.691-692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

[834] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.691 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

[835] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

[836] Obinna B.O, 'The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems' in *Human Rights Quaterly* (Vol. 6, № 2, 1984) P.142-158.

[837] Ebow B, 'A Critique of the African Charter on Human and Peoples' Rights' in *Harvard Law Journal* (Vol. 31, Issue 4, 2002) P.643-660.

[838] Mutua M, 'The African Human Rights Court: A Two-Legged Stool?' in *Human Rights Quaterly* (Vol. 21, № 2,1999) P.342.

[839] Okafor O. C, 'The African Human Rights System: Activist Forces and International Institutions' (Cambridge: Cambridge University Press (2007)), P.63-75.

[840] 'Derogation in times of public emergency' <https://www.unodc.org/e4j/en/terrorism/module-7/keyissues/derogation-during-public-emergency.html> accessed 17 March 2023.

[841] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

[842] Gittleman R, 'The African Charter on Human and People's Rights: A Legal Analysis' in *Virginia Journal of International Law* (Vol.22-4,1982) P.692 <https://www.corteidh.or.cr/tablas/4558.pdf> accessed 16 March 2023.

Regarding clawback clauses, O. Dejo attributed them only to "the rights of the first generation[843]" which are in Articles: 6,8,9(2),12(1),12(2),13. Due to absence of derogable clauses in the African Charter on Human and People's Rights of 1981 relating to economic, social, and cultural rights, M. Mutua in the article :The African Human Rights System: A critical evaluation" offered "inserting a provision on non-derogable rights, and another specifying from which rights States can derogate, when and under what conditions[844]".

vii. Thin and thick state obligations

The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' have made significant contributions to the protection of economic, social, and cultural rights in Africa. While they have not explicitly used the terms 'thin' and 'thick' obligations in their case-law, they have addressed various aspects of economic, social, and cultural rights' protection. Some notable cases of the African Commission include *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* (an issue of the rights to health, food, water, and housing, emphasizing the obligations of states to take progressive measures to ensure the realization of these rights), *Endorois Welfare Council v. Kenya* (including the right to property and traditional livelihoods of the Endorois community), *Purohit and Moore v. The Gambia*. These cases highlighted the duty of states to protect individuals and communities from human rights violations perpetrated by non-state actors, including corporations.

Among cases of African Court, it is important to mention the following cases: *Tanganyika Law Society and the Legal and Human Rights Centre v. Tanzania* (rights to freedom of expression, association, and assembly in the context of protests, restrictions on these rights were not justifiable), *Alex Thomas v. Tanzania* (the right to education; the expulsion of a student without a fair hearing violated the right to education as protected under the African Charter).

While both bodies have not explicitly categorized obligations as 'thin' or 'thick', their case-law reflects a recognition of the multifaceted nature of economic, social, and cultural rights and the need for states to take both immediate and progressive measures to protect and fulfill these rights.

[843]Dejo O, 'An Integrative Rights-Based Agenda for Human Development in Africa' (Pretoria University Law Press, 2009) P. 55.

[844]Makau M, 'The African Human Rights System: A Critical Evaluation'<https://www.undp.org/hdro/MUTUA.pdf> accessed 17 March 2023.

Table 'Case-law of the African Commission and Court on Human and Peoples' Rights on obligations for realization of economic, social, and cultural rights'

Positive obligations	*Association pour la défense des droits de l'Homme et des libertés v. Djibouti* [2000] 133/94 (African Commission on Human and Peoples' Rights) *Centre for Minority Rights Development and Minority Rights Group International v. Kenya* [2010] 276/2003 (African Commission on Human and Peoples' Rights) *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) *XYZ v. Republic of Benin,* 010/2020, [2020] AFCHPR 3 (African Court on Human and Peoples' Rights).
Negative obligations	*In Re Certification of the Constitution of the Republic of South Africa,* 1996 (4) SA 744 (CC), 1996 (10) BCLR 1253. *Sudan human rights organisation, Centre on housing rights and evictions v. Sudan,* 279/03, 296/05, [2009] ACHPR 100 (African Commission on Human and Peoples' Rights).
Positive and negative obligations	*Media Rights Agenda & Others v. Nigeria* (2000) AHRLR 200 (African Commission on Human and Peoples' Rights).
Free cost obligations	*Soobramoney v. Minister of Health (Kwazulu-Natal)* (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) (Constitutional Court of South Africa) *Zimbabwe Human Rights NGO Forum/ Zimbabwe,* № 245/ 2002 [2006] ACHPR 73 (African Commission on Human and Peoples' Rights)
Expensive obligations	*Kevin Mgwanga Gunme et al v. Cameroon* (2009) AHRLR 9 (ACHPR 2009) (African Court on Human and Peoples' Rights).
Progressive obligations	*Daniels v Scribante and Another* (CCT 50/16) [2017] ZACC 13 (Constitutional Court of South Africa) *Equal Education and Others v. Minister of Basic Education and Others* [2020] ZAGPPHC 306 (Higher Court of South Africa)

	Kevin Mgwanga Gunme et al v. Cameroon (2009) AHRLR 9 (ACHPR 2009) (African Commission on Human and Peoples' Rights) *Mr William García Álvarez v. Caja Costarricense de Seguro* 5779-V-97 (1997) (Constitutional Court of Costa Rica) *Purohit v. the Gambia* (2003) AHRLR 96 (African Commission on Human and People's Rights) *Treatment Action Campaign and others v. Minister of Health and others* 21181/2001 (2002) 5 SA 721 (CC) (Constitutional Court of South Africa)
Immediate obligations	*Governing Body of the Juma Musjid Primary School & Others v. Essay NO and Others* [2011] ZACC 13 (Constitutional Court of South Africa). *Malawi African Association and Others v. Mauritania*, № 54/91, 61/91, 98/93, 164/97-196/97 and 210/98 (2000) (African Commission on Human and Peoples' Rights).
Precise obligations	*Center for Child Law and Others v. Minister of Basic Education* [2012] ZAECGHC 60 (Higher Court of South Africa) *Madzodzo v. Minister of Basic Education* [2014] ZAECMHC 5 (Higher Court of South Africa) *Section 27 v. Minister of Education* [2012] ZAGPPHC 114 (Higher Court of South Africa) *Tripartite Steering Committee v. Minister of Basic Education* [2015] ZAECGHC 67(Higher Court of South Africa)
Judiciable obligation	*Abacha v. Fawehinmi,* SC 45/1997, (2000) 6 NWLR 228, (2002) 3 LRC 296, (2001) 1 CHR 95, ILDC 21 (NG 2000) P.249 (Supreme Court of Nigeria) *August v. Electoral Commission* [1999] (3) SA 1 (Constitutional Court of South Africa) *Festus Odafe and Others v. Attorney-General and Others* (2004) AHRLR 205 (Federal High Court of Nigeria) *Fose v. Minister of Safety and Security* [1996] (2) BCLR 232 (W), (3) SA 786 (CC) (Constitutional Court of South Africa)

	Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) (Constitutional Court of South Africa) *In re Certification of the Constitution of the Republic of South Africa* (4) SA 744 (CC) (1996) (Constitutional Court of South Africa) *Jonah Gbemre v. Shell Petroleum Development Company* (2005) AHRLR 151 (Federal High Court of Nigeria) *National Coalition for Gay and Lesbian Equality v. Ministry of Home Affairs* [2000] (2) SA (Constitutional Court of South Africa) *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights)
Non-derogable obligation	*Media Rights Agenda and Others v. Nigeria* № 105/93, 128/94, 130/94 and 152/96 (1998) (African Commission on Human and Peoples' Rights)

Cuadro 'Jurisprudencia de la Comisión y del Tribunal Africanos de Derechos Humanos y de los Pueblos sobre las obligaciones para la realización de los derechos económicos, sociales y culturales'

Obligaciones positivas	*Association pour la défense des droits de l'Homme et des libertés v. Djibouti* [2000] 133/94 (African Commission on Human and Peoples' Rights) *Centre for Minority Rights Development and Minority Rights Group International v. Kenya* [2010] 276/2003 (African Commission on Human and Peoples' Rights) *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights) *XYZ v. Republic of Benin,* 010/2020, [2020] AFCHPR 3 (African Court on Human and Peoples' Rights).
Obligaciones negativas	*In Re Certification of the Constitution of the Republic of South Africa,* 1996 (4) SA 744 (CC), 1996 (10) BCLR 1253. *Sudan human rights organisation, Centre on housing rights and evictions v. Sudan,* 279/03, 296/05, [2009] ACHPR 100 (African Commission on Human and Peoples' Rights).
Obligaciones positivas y negativas	*Media Rights Agenda & Others v. Nigeria* (2000) AHRLR 200 (African Commission on Human and Peoples' Rights).
Obligaciones gratuitas	*Soobramoney v. Minister of Health (Kwazulu-Natal)* (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) (Constitutional Court of South Africa) *Zimbabwe Human Rights NGO Forum/ Zimbabwe,* № 245/ 2002 [2006] ACHPR 73 (African Commission on Human and Peoples' Rights)
Obligaciones onerosas	*Kevin Mgwanga Gunme et al v. Cameroon* (2009) AHRLR 9 (ACHPR 2009) (African Court on Human and Peoples' Rights).
Obligaciones progresivas	*Daniels v Scribante and Another* (CCT 50/16) [2017] ZACC 13 (Constitutional Court of South Africa) *Equal Education and Others v. Minister of Basic Education and Others* [2020] ZAGPPHC 306 (Higher Court of South Africa) *Kevin Mgwanga Gunme et al v. Cameroon* (2009) AHRLR 9 (ACHPR 2009) (African Commission on Human and Peoples' Rights) *Mr William García Álvarez v. Caja Costarricense de Seguro* 5779-V-97 (1997) (Constitutional Court of Costa Rica) *Purohit v. the Gambia* (2003) AHRLR 96 (African Commission on Human and People's Rights)

	Treatment Action Campaign and others v. Minister of Health and others 21181/2001 (2002) 5 SA 721 (CC) (Constitutional Court of South Africa)
Obligaciones inmediatas	*Governing Body of the Juma Musjid Primary School & Others v. Essay NO and Others* [2011] ZACC 13 (Constitutional Court of South Africa). *Malawi African Association and Others v. Mauritania*, № 54/91, 61/91, 98/93, 164/97-196/97 and 210/98 (2000) (African Commission on Human and Peoples' Rights).
Obligaciones precisas	*Center for Child Law and Others v. Minister of Basic Education* [2012] ZAECGHC 60 (Higher Court of South Africa) *Madzodzo v. Minister of Basic Education* [2014] ZAECMHC 5 (Higher Court of South Africa) *Section 27 v. Minister of Education* [2012] ZAGPPHC 114 (Higher Court of South Africa) *Tripartite Steering Committee v. Minister of Basic Education* [2015] ZAECGHC 67(Higher Court of South Africa)
Obligación judicializable	*Abacha v. Fawehinmi,* SC 45/1997, (2000) 6 NWLR 228, (2002) 3 LRC 296, (2001) 1 CHR 95, ILDC 21 (NG 2000) P.249 (Supreme Court of Nigeria) *August v. Electoral Commission* [1999] (3) SA 1 (Constitutional Court of South Africa) *Festus Odafe and Others v. Attorney-General and Others* (2004) AHRLR 205 (Federal High Court of Nigeria) *Fose v. Minister of Safety and Security* [1996] (2) BCLR 232 (W), (3) SA 786 (CC) (Constitutional Court of South Africa) *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) (Constitutional Court of South Africa) *In re Certification of the Constitution of the Republic of South Africa* (4) SA 744 (CC) (1996) (Constitutional Court of South Africa) *Jonah Gbemre v. Shell Petroleum Development Company* (2005) AHRLR 151 (Federal High Court of Nigeria) *National Coalition for Gay and Lesbian Equality v. Ministry of Home Affairs* [2000] (2) SA (Constitutional Court of South Africa) *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* № 155/96 (2002) (African Commission on Human and People's Rights)

Obligación inderogable	*Media Rights Agenda and Others v. Nigeria* № 105/93, 128/94, 130/94 and 152/96 (1998) (African Commission on Human and Peoples' Rights)

Conclusion of Chapter 2

It is difficult to compare the level of economic, social, and cultural rights protection at the African and Inter-American regions, as the level of protection varies widely among states and depends on a variety of factors, including the level of economic development, the existence of strong legal and institutional frameworks, and the presence of effective mechanisms to address human rights violations. The Inter-American and African regional level organizations have made significant contributions to the promotion and protection of economic, social, and cultural rights in their respective regions. In the Inter-American region, the Organization of American States played a key role, adopted several instruments that recognize and protect economic, social, and cultural rights, such as the American Declaration of the Rights and Duties of Man and the Protocol of San Salvador, established mechanisms to monitor the compliance of member states with their obligations under these instruments. In Africa, the African Union has similarly played a central role in promoting and protecting economic, social, and cultural rights. The African Union adopted the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, established mechanisms to monitor the compliance of member states with their obligations under these instruments.

Based on the case-law of the African Court on Human and Peoples' Rights and the Inter-American Commission and Court of Human Rights, both regions have made progress in the protection of economic, social, and cultural rights in recent decades. Many states in both regions have adopted legal and policy frameworks to promote the enjoyment of these rights and have made efforts to address structural problems that contribute to the violation of these rights, such as poverty, inequality, and discrimination.

However, challenges remain in the protection of economic, social, and cultural rights in both regions. Many states continue to face high levels of poverty and inequality, and some groups, such as indigenous communities, women, racial and ethnic minorities, and people with disabilities, continue to be disproportionately denied the enjoyment of these rights. States also face challenges in providing access to quality education, healthcare, and other social services, particularly in rural and disadvantaged areas.

The African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights are responsible for the promotion and protection of human rights in their respective regions, including economic, social, and cultural rights. These bodies can provide guidance and hold states accountable for the fulfilment of their obligations under the relevant human rights instruments.

For example, there are several steps that could be taken to improve the work of the above-mentioned courts:

1. Increase resources. The Inter-American Court of Human Rights may benefit from increased resources to allow it to more effectively carry out its mandate. This could include additional funding for staff, travel, and other expenses.

2. Expand the jurisdiction. The Inter-American Court of Human Rights currently only has jurisdiction to hear cases involving states that have ratified the American Convention on Human Rights. Expanding the jurisdiction of the Court to include all states in the Inter-American region could help to ensure that all individuals have access to justice and the protection of their human rights.

3. Strengthen the monitoring and implementation of judgments. The Inter-American Court of Human Rights can play a more effective role in the promotion and protection of human rights in the Inter-American region by strengthening its monitoring and implementation of its judgments. This could include the development of mechanisms to ensure that states comply with the decisions of the Court and provide effective remedies to individuals whose rights have been violated.

4. Enhance cooperation with civil society. Courts can enhance its work by fostering closer cooperation with civil society organizations, including human rights groups, which can provide valuable information and perspectives on human rights issues in the region.

5. Increase public outreach and education. Courts can increase its impact by increasing its public outreach and education efforts, such as using social media and other platforms to raise awareness about its work and the human rights issues it addresses.

6. Development of national action plans. States can develop national action plans to set out specific goals and targets for the realization of economic, social, and cultural rights and to outline the steps that will be taken to achieve these goals.

In both regions we can take steps to improve the level of economic, social, and cultural rights protection:

1. Adopt and implement legal and policy frameworks that promote the enjoyment of these rights. States can adopt laws, policies, and programs that aim to protect and promote the enjoyment of economic, social, and cultural rights, such as social welfare programs, education and healthcare policies, and labour and employment protections.

2. Address structural problems that contribute to the violation of these rights. States can take steps to address structural problems that contribute to the violation of these rights, such as poverty, inequality, and discrimination. This may involve adopting targeted measures to address the needs of disadvantaged or marginalized groups, such as indigenous communities, women, racial and ethnic minorities, and people with disabilities.

3. Provide access to quality education, healthcare, and other social services. States can ensure that all individuals have access to quality education, healthcare, and other social services, particularly in disadvantaged or underserved areas.

4. Promote the participation of civil society in the development and implementation of policies. States can involve civil society organizations, including human rights groups, in the development and implementation of policies and programs that aim to protect and promote the enjoyment of economic, social, and cultural rights.

5. Cooperate with international bodies. States can cooperate with international bodies, such as the United Nations, to promote and protect the enjoyment of these rights in the regions.

Conclusión del Capítulo 2

Es difícil comparar el nivel de protección de los derechos económicos, sociales y culturales en las regiones africana e interamericana, ya que el nivel de protección varía ampliamente entre los Estados y depende de una variedad de factores, incluido el nivel de desarrollo económico, la existencia de marcos legales e institucionales sólidos y la presencia de mecanismos efectivos para abordar las violaciones de los derechos humanos. Las organizaciones regionales interamericanas y africanas han hecho contribuciones significativas a la promoción y protección de los derechos económicos, sociales y culturales en sus respectivas regiones. En la región Interamericana, la Organización de los Estados Americanos desempeñó un papel clave, adoptó varios instrumentos que reconocen y protegen los derechos económicos, sociales y culturales, como la Declaración Americana de los Derechos y Deberes del Hombre y el Protocolo de San Salvador, estableció mecanismos para monitorear el cumplimiento de los Estados miembros con sus obligaciones en virtud de estos instrumentos. En África, la Unión Africana ha desempeñado de manera similar un papel central en la promoción y protección de los derechos económicos, sociales y culturales. La Unión Africana adoptó la Carta Africana de Derechos Humanos y de los Pueblos y el Protocolo de la Carta Africana de Derechos Humanos y de los Pueblos sobre los Derechos de las Mujeres en África, estableció mecanismos para supervisar el cumplimiento de los Estados miembros de sus obligaciones en virtud de estos instrumentos.

Con base en la jurisprudencia de la Corte Africana de Derechos Humanos y de los Pueblos y de la Comisión y Corte Interamericanas de Derechos Humanos, ambas regiones han avanzado en la protección de los derechos económicos, sociales y culturales en las últimas décadas. Muchos Estados de ambas regiones han adoptado marcos legales y de políticas para promover el disfrute de estos derechos y han hecho esfuerzos para abordar problemas estructurales que contribuyen a la violación de estos derechos, como la pobreza, la desigualdad y la discriminación.

Sin embargo, persisten desafíos en la protección de los derechos económicos, sociales y culturales en ambas regiones. Muchos Estados continúan enfrentando altos niveles de pobreza y desigualdad, y a algunos grupos, como las comunidades indígenas, las mujeres, las minorías raciales y étnicas y las personas con discapacidad, se les sigue negando de manera desproporcionada el disfrute de estos derechos. Los Estados también enfrentan desafíos para brindar acceso a educación, atención médica y otros servicios sociales de calidad, particularmente en áreas rurales y desfavorecidas.

La Corte Africana de Derechos Humanos y de los Pueblos y la Corte Interamericana de Derechos Humanos son responsables de la promoción y protección de los derechos humanos en sus respectivas regiones, incluidos los derechos económicos, sociales y culturales. Estos órganos pueden proporcionar orientación y responsabilizar a los Estados por el cumplimiento de sus obligaciones en virtud de los instrumentos de derechos humanos pertinentes.

Por ejemplo, hay varios pasos que podrían tomarse para mejorar el trabajo de los tribunales mencionados anteriormente:

1. Aumentar los recursos. La Corte Interamericana de Derechos Humanos puede beneficiarse de mayores recursos que le permitan cumplir con mayor eficacia su mandato. Esto podría incluir fondos adicionales para personal, viajes y otros gastos.

2. Ampliar la jurisdicción. En la actualidad, la Corte Interamericana de Derechos Humanos solo tiene jurisdicción para conocer casos que involucran a Estados que han ratificado la Convención Americana sobre Derechos Humanos. Ampliar la jurisdicción de la Corte para incluir a todos los Estados de la región interamericana podría ayudar a garantizar que todas las personas tengan acceso a la justicia y a la protección de sus derechos humanos.

3. Fortalecer el monitoreo y la implementación de las sentencias. La Corte Interamericana de Derechos Humanos puede desempeñar un papel más eficaz en la promoción y protección de los derechos humanos en la región Interamericana fortaleciendo el monitoreo y la implementación de sus sentencias. Esto podría incluir el desarrollo de mecanismos para garantizar que los Estados cumplan con las decisiones de la Corte y proporcionen recursos efectivos a las personas cuyos derechos han sido violados.

4. Mejorar la cooperación con la sociedad civil. Los tribunales pueden mejorar su trabajo fomentando una cooperación más estrecha con las organizaciones de la sociedad civil, incluidos los grupos de derechos humanos, que pueden proporcionar información y perspectivas valiosas sobre cuestiones de derechos humanos en la región.

5. Aumentar el alcance público y la educación. Los tribunales pueden aumentar su impacto aumentando sus esfuerzos de divulgación y educación públicas, como el uso de las redes sociales y otras plataformas para crear conciencia sobre su trabajo y los problemas de derechos humanos que aborda.

6. Desarrollo de planes de acción nacionales. Los Estados pueden desarrollar planes de acción nacionales para establecer metas y objetivos específicos para la realización de los derechos económicos, sociales y culturales y para delinear los pasos que se tomarán para lograr estos objetivos.

En ambas regiones podemos tomar medidas para mejorar el nivel de protección de los derechos económicos, sociales y culturales:

1. Adoptar e implementar marcos legales y de políticas que promuevan el disfrute de estos derechos. Los Estados pueden adoptar leyes, políticas y programas que tengan como objetivo proteger y promover el disfrute de los derechos económicos, sociales y culturales, como programas de bienestar social, políticas de educación y atención médica, y protecciones laborales y de empleo.

2. Abordar los problemas estructurales que contribuyen a la violación de estos derechos. Los Estados pueden tomar medidas para abordar los problemas estructurales que contribuyen a la violación de estos derechos, como la pobreza, la desigualdad y la discriminación. Esto puede implicar la adopción de medidas específicas para abordar las necesidades de los grupos desfavorecidos o marginados, como las comunidades indígenas, las mujeres, las minorías raciales y étnicas y las personas con discapacidad.

3. Proporcionar acceso a educación de calidad, atención médica y otros servicios sociales. Los Estados pueden garantizar que todas las personas tengan acceso a una educación, atención

médica y otros servicios sociales de calidad, especialmente en áreas desfavorecidas o desatendidas.

4. Promover la participación de la sociedad civil en el desarrollo e implementación de políticas. Los Estados pueden involucrar a las organizaciones de la sociedad civil, incluidos los grupos de derechos humanos, en el desarrollo y la implementación de políticas y programas que tengan como objetivo proteger y promover el disfrute de los derechos económicos, sociales y culturales.

5. Cooperar con organismos internacionales. Los Estados pueden cooperar con organismos internacionales, como las Naciones Unidas, para promover y proteger el disfrute de estos derechos en las regiones.

Part II. The features of economic, social, and cultural rights' protection at the European level

Introduction of Chapter 3

Economic, social, and cultural rights which are fundamental, and essential for the dignity and well-being of individuals and communities, are recognized by international law and are protected at both the universal and regional levels. Previously, in **Part I** "Philosophical and ideological perspectives in economic, social and cultural rights conceptualization, protection and recognition at the universal level and its features at the Inter-American and African regional levels", **Chapter 1** was devoted to the protection of economic, social, and cultural rights at the universal level. Among a variety of documents adopted at the universal level, Peace treaties, the Universal Declaration on Human Rights, and the International Covenant on Economic, Social and Cultural Rights contributed to the protection of abovementioned human rights. Analysis of nature of the rights of the second generation is based on types of State obligations (specifically, the following types: positive and negative; cost free and expensive obligations; progressive and immediate obligations; vague and precise; justiciable and non-justiciable; derogable and non- derogable; thin and thick). As a result, second-generation rights are also characterised by the obligations which were originally imposed to implement rights of the first generation. Considering development of state obligations, two methods, namely, a method centring upon obligations of conduct and result, and a method centring upon obligations to respect, protect and fulfil, are important and used by the courts. In examining state obligation on the issue of economic, social, and cultural rights' realization, the emphasis is usually placed on the International Covenant on Economic, Social and Cultural Rights 1966, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 1966.

In the **Chapter 2** of Part I "The contribution of the Inter-American and African regional level in featuring economic, social, and cultural rights", legal regulation of both regions on the issue of state obligations for second-generation rights protection and case-law of the African Commission and Court on Human and People's Rights, and the Inter-American Commission and Court on Human Rights. Regional protection at analysed levels ensures that economic, social, and cultural rights are tailored to the specific needs and circumstances of both regions. Their protection in these regions reduces poverty and helps individuals to have access to necessities and participation in the economic and social life of own communities; promotes gender equality and addresses gender-based discrimination and ensures that women have equal access to education, employment, and healthcare; promotes, and preserves cultural diversity. The protection of these rights in the Inter-American and African regions can help individuals and communities to maintain and celebrate their cultural traditions and practices, participate in and contribute to the economic, social, and cultural progress of their societies. These rights are recognized and protected at both the universal and regional levels, and their protection is essential for the well-being and prosperity of individuals and communities.

The **Part II** is devoted to economic, social, and cultural rights in the Council of Europe and the European Union. It is well known that rights of the second generation apply to all people, regardless of their nationality, ethnicity, gender, or any other status. Their recognition ensures that all individuals have access to basic needs such as food, shelter, education, and healthcare. The Council of Europe and the European Union are two separate international organizations with different mandates and areas of focus. While both organizations promote human rights, including economic, social, and cultural rights, there are some differences in how these rights are protected.

The **Chapter 3**, which is called "The role of the Council of Europe[845] in protection of economic, social, and cultural rights", consists of 4 paragraphs. The Chapter begins with two subparagraphs, including the reasons of why the Council of Europe and its role is important in ESCR protection, lists the ways of strengthening economic, social, and cultural rights, and describes possibilities for additional protocols to the (Revised) European Social Charter. This Chapter discusses creation, history, origin of the European Social Charter 1961[846] and provides answers for the following questions: 1) What was the purpose of the adoption of the European Social Charter 1961? 2) Was the adoption of the two instruments, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the European Social Charter 1961, a copy of the actions of Member States at the universal level? 3). What was the attitude of countries towards second-generation rights at the regional level after the Second World War? It also compares the European Social Charter 1961 with the Revised European Social Charter 1996, analyses states' obligations under these both Charters and its difference from the obligations set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The features of collective complaint procedure, its advantages, disadvantages, and comparison with the procedure provided by the Optional Protocol of the ICESCR, and selected case-law of the European Committee of Social Rights and the European Court of Human Rights are presented in the Chapter 2.

[845] The Council of Europe is primarily focused on promoting human rights, democracy, and the rule of law across its 47 member states. It has adopted several conventions and resolutions that promote economic, social, and cultural rights, including the European Social Charter, which sets out a comprehensive range of ESCR. The Council of Europe's monitoring mechanisms, such as the European Committee of Social Rights, are tasked with assessing member states' compliance with ESCR and promoting their effective implementation.

[846] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

Introducción del Capitulo 3

Los derechos económicos, sociales y culturales, que son fundamentales y esenciales para la dignidad y el bienestar de los individuos y las comunidades, están reconocidos por el derecho internacional y protegidos tanto a nivel universal como regional. Anteriormente, en **la Parte I** "Perspectivas filosóficas e ideológicas en la conceptualización, protección y reconocimiento de los derechos económicos, sociales y culturales a nivel universal y sus características a nivel regional interamericano y africano", **el Capítulo 1** se dedicó a la protección de los derechos económicos, sociales y culturales a nivel universal. Entre los diversos documentos adoptados a nivel universal, los Tratados de Paz, la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Económicos, Sociales y Culturales contribuyeron a la protección de los derechos humanos mencionados. El análisis de la naturaleza de los derechos de segunda generación se basa en los tipos de obligaciones del Estado (en concreto, los siguientes tipos: positivas y negativas; obligaciones gratuitas y onerosas; obligaciones progresivas e inmediatas; vagas y precisas; justiciables y no justiciables; derogables y no derogables; finas y gruesas). En consecuencia, los derechos de segunda generación también se caracterizan por las obligaciones que se impusieron originalmente para aplicar los derechos de primera generación. En cuanto al desarrollo de las obligaciones estatales, los tribunales utilizan dos métodos importantes: el método centrado en las obligaciones de conducta y resultado y el método centrado en las obligaciones de respeto, protección y cumplimiento. Al examinar la obligación del Estado en la cuestión de la realización de los derechos económicos, sociales y culturales, se suele hacer hincapié en el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966, y en el Protocolo Facultativo del Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966.

En **el Capítulo 2** de la Parte I "La contribución del nivel regional interamericano y africano en la garantía de los derechos económicos, sociales y culturales", se analiza la regulación jurídica de ambas regiones sobre la cuestión de las obligaciones estatales para la protección de los derechos de segunda generación y la jurisprudencia de la Comisión y la Corte Africanas de Derechos Humanos y de los Pueblos, y de la Comisión y la Corte Interamericanas de Derechos Humanos. La protección regional en los niveles analizados garantiza que los derechos económicos, sociales y culturales se adapten a las necesidades y circunstancias específicas de ambas regiones. Su protección en estas regiones reduce la pobreza y ayuda a las personas a tener acceso a las necesidades y a participar en la vida económica y social de sus propias comunidades; promueve la igualdad de género y aborda la discriminación basada en el género y garantiza que las mujeres tengan igualdad de acceso a la educación, el empleo y la atención sanitaria; promueve y preserva la diversidad cultural. La protección de estos derechos en las regiones interamericana y africana puede ayudar a individuos y comunidades a mantener y celebrar sus tradiciones y prácticas culturales, participar y contribuir al progreso económico, social y cultural de sus sociedades. Estos derechos están reconocidos y protegidos tanto a nivel universal como regional, y su protección es esencial para el bienestar y la prosperidad de las personas y las comunidades.

La Parte II está dedicada a los derechos económicos, sociales y culturales en el Consejo de Europa y la Unión Europea. Es bien sabido que los derechos de segunda generación se aplican a todas las personas, independientemente de su nacionalidad, etnia, sexo o cualquier otra condición. Su reconocimiento garantiza que todas las personas tengan acceso a necesidades básicas como la alimentación, la vivienda, la educación y la atención sanitaria. El Consejo de Europa y la Unión Europea son dos organizaciones internacionales distintas con mandatos y áreas de interés diferentes. Aunque ambas organizaciones promueven los derechos humanos, incluidos los derechos económicos, sociales y culturales, existen algunas diferencias en la forma de proteger estos derechos.

El Capítulo 3, que se titula "El papel del Consejo de Europa en la protección de los derechos económicos, sociales y culturales", consta de 4 apartados. El Capítulo comienza con dos subapartados, que incluyen las razones por las que el Consejo de Europa y su papel son importantes en la protección de los DESC, enumera las formas de reforzar los derechos económicos, sociales y culturales y describe las posibilidades de protocolos adicionales a la Carta Social Europea (revisada). Este capítulo aborda la creación, la historia y el origen de la Carta Social Europea de 1961 y ofrece respuestas a las siguientes preguntas: 1) ¿Cuál fue el objetivo de la adopción de la Carta Social Europea de 1961? 2) ¿Fue la adopción de los dos instrumentos, el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950 y la Carta Social Europea de 1961, una copia de las acciones de los Estados miembros a nivel universal? 3). ¿Cuál fue la actitud de los países hacia los derechos de segunda generación a nivel regional después de la Segunda Guerra Mundial? También compara la Carta Social Europea de 1961 con la Carta Social Europea Revisada de 1996, analiza las obligaciones de los Estados en virtud de ambas Cartas y su diferencia con las obligaciones establecidas en el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950. En el Capítulo 2 se presentan las características del procedimiento de reclamación colectiva, sus ventajas e inconvenientes y su comparación con el procedimiento previsto en el Protocolo Facultativo del PIDESC, así como una selección de jurisprudencia del Comité Europeo de Derechos Sociales y del Tribunal Europeo de Derechos Humanos.

Chapter 3. The role of the Council of Europe in protection of economic, social, and cultural rights

The goal is to show the historical development of European System of Human Rights within the Council of Europe which plays an important role in the protection of economic, social and cultural rights in several ways.

Firstly, the Council of Europe has developed several legal instruments that promote and protect economic, social, and cultural rights. For example, the European Social Charter[847] is a legally binding instrument that sets out a range of economic and social rights, including the right to work, the right to social security, and the right to education. The Charter has been ratified by most member states of the Council of Europe and is monitored by the European Committee of Social Rights, which examines states' compliance with the Charter. Another instrument is the Revised European Social Charter. In 1988, the Council of Europe adopted the Additional Protocol to the Revised European Social Charter[848], which established specific obligations for member states to promote employment, protect workers' rights, and ensure equal opportunities for women and men in the workplace. In 1991, 21st of October, there was another Protocol – "Protocol amending the European Social Charter[849]". In 1995, the Additional Protocol to the European Social Charter[850]established a system of collective complaints. In 1996 the Revised European Social Charter[851] was adopted, which updated and expanded the provisions of the original Charter and strengthened the monitoring and reporting mechanisms.

Secondly, the Council of Europe has established several mechanisms to monitor and promote economic, social, and cultural rights. For example, the European Committee of Social Rights is responsible for monitoring states' compliance with the European Social Charter. It publishes reports and recommendations on member states' compliance with the Charter and provides advice on how to improve the protection of economic, social, and cultural rights.

Thirdly, the Council of Europe works with member states to promote and protect economic, social, and cultural rights. For example, the Council of Europe's Directorate General

[847] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[848]Additional Protocol to the European Social Charter (adopted 05 May1988) EST 128 <https://rm.coe.int/168007a84e > accessed 26 May 2023.

[849]Protocol amending the European Social Charter (adopted 21 October 1991) EST 142 < https://rm.coe.int/168007bd24 > accessed 24 May 2023.

[850] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (adopted 9 November 1995) <https://rm.coe.int/168007cdad > accessed 23 May 2023.

[851] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

of Democracy[852] provides technical assistance and support to member states on a range of issues related to economic, social, and cultural rights. This includes providing advice on the implementation of the European Social Charter, supporting member states in developing national action plans on economic, social, and cultural rights, and providing training to government officials, civil society organizations, and other stakeholders.

While the Council of Europe does not have the power to enforce economic, social, and cultural rights, it plays an important role in their protection through the development of legal instruments, the establishment of monitoring mechanisms, and the provision of technical assistance and support to member states.

Moreover, there are some examples of the Council of Europe's recent activities in the protection of economic, social, and cultural rights:

1) An adoption of Statement of interpretation on the right to protection of health in times of pandemic[853] (adopted by the European Committee of Social Rights on 21 April 2020). This protocol aims to improve the protection of the right to health in Europe by setting out specific obligations[854] for member states to ensure access to healthcare services, medicines, and vaccines. The protocol also includes provisions on non-discrimination in access to healthcare and the protection of vulnerable groups, such as children, pregnant women, and people with disabilities.

2) The work of the European Committee of Social Rights[855], which is responsible for monitoring the implementation of the European Social Charter[856]. In 2020, the European Committee of Social Rights adopted several decisions and conclusions on member states' compliance with the Charter. For example, the European Committee of Social Rights found that several member states were not meeting their obligations to ensure access to adequate housing or to protect the rights of migrant workers.

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[852]'Directorate General for Democracy' <https://rm.coe.int/16806f5526> accessed 22 May 2023.

[853] European Committee of Social Rights, 'Statement of interpretation on the right to protection of health in times of pandemic' (adopted 21 April 2020) <https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640> accessed 22 May 2023.

[854] Ibid. In this document the following measures include: "to prevent epidemic diseases (Article 11§3), remove the causes of ill health (Article 11§1), and provide advisory facilities for the promotion of health and the encouragement of individual responsibility in matters of health (Article 11§2); …testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements; carrying out public awareness programmes so as to inform people about how to mitigate the risks of contagion and how to access healthcare services as necessary".

[855]'European Committee of Social Rights'<https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights> accessed 22 May 2023.

[856] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

3) The Council of Europe has also been working on issues related to economic and social rights in the context of the COVID-19 pandemic. In 2020, there was a draft of a resolution on human rights and the rule of law in the context of the pandemic[857], which included guidance on ensuring that emergency measures did not undermine economic, social, and cultural rights.

i. The Council of Europe' ways of strengthening economic, social, and cultural rights

It is important to note that the Council of Europe constantly improves the protection of economic, social, and cultural rights by:

1. strengthening the monitoring mechanisms. "At the moment, despite all its effectiveness, the mechanism provided for in the European Social Charter (Revised) can hardly be considered better than the control mechanism established in the European Convention for the Protection of Human Rights and Fundamental Freedoms, which enshrines the right to file an individual petition, and also provides for the judgment of the European Court of Human Rights[858]".The Council of Europe considers strengthening the monitoring mechanisms by increasing the capacity and resources of the European Committee of Social Rights and developing new tools to assess member states' compliance with the European Social Charter. The Secretary General of the Council of Europe, M. Pejčinović Burić, suggested some "improvements[859] to the procedures established under the European Social Charter and processes; and forward-looking substantive and procedural developments"[860].

[857] Committee on Legal Affairs and Human Rights, 'A draft resolution' in 'The impact of the Covid-19 pandemic on human rights and the rule of law' (adopted 29 June 2020) AS/JUR (2020) 13 <http://www.assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2020/20200702-CovidImpact-EN.pdf > accessed 21 May 2023.

[858] 'Izbrannye reshenija Evropejskogo suda po pravam cheloveka. Stat'ja 11 Evropejskoj konvencii o zashhite prav cheloveka i osnovnyh svobod' (sost.: K. Baranov, V. Gromova, N. Zvjagina, D. Makarov) (M.: Moskovskaja Hel'sinskaja gruppa, 2012).

[859] It is important to note that the Secretary General of the Council of Europe, M. Pejčinović Burić based her proposals on the following documents: "the Committee of Ministers' decisions; the proposals made collectively by member states' human rights experts in the 2019 report of the Steering Committee for Human Rights (CDDH); the proposals made by the European Committee of Social Rights (ECSR); the position paper by the Governmental Committee of the European Social Charter and European Code of Social Security (GC)". See more at: 'The Secretary General presents her vision for improving the implementation of social rights in Europe' (29 April 2021) <https://www.coe.int/en/web/european-social-charter/-/the-secretary-general-presents-her-vision-forimproving-the-implementation-of-social-rights-in-europe> accessed 21 May 2023.

[860] 'The Secretary General presents her vision for improving the implementation of social rights in Europe' (29 April 2021) <https://www.coe.int/en/web/european-social-charter/-/the-secretary-general-presents-her-vision-forimproving-the-implementation-of-social-rights-in-europe> accessed 21 May 2023.

2. addressing new challenges which arise in the protection of economic, social, and cultural rights, including in the context of new technologies and globalization, and provide guidance and support to member states in adapting their policies and practices to address these challenges.

3. fostering cooperation and dialogue between member states, civil society organizations, and other stakeholders to promote the protection of economic, social, and cultural rights. This includes the promotion of participatory approaches, such as public consultations, in the development of policies and strategies related to economic, social, and cultural rights.

4. strengthening the implementation of the European Social Charter by promoting awareness-raising and capacity-building activities and supporting the development of national action plans to implement the Charter's provisions.

5. mainstreaming economic, social, and cultural rights across its various activities and sectors, including in the development of new legal instruments and policies, and in the provision of technical assistance and support to member states. This helps to ensure that economic, social, and cultural rights are fully integrated into the Council of Europe's work and priorities.

The future of the Council of Europe in economic, social, and cultural rights protection will depend on several factors, including:

✓ the political will of member states. The problem of political will absence was mentioned in discussions of different conferences. In the IFPRI-FAQ Conference on Accelerating the process of eradicating hunger and malnutrition which was held in Bangkok on November 28-30, 2018, the former General Director J. Graziano da Silva emphasized the "fundamental"[861] character of the political will. The second was conducted by the Economic and Social Commission for Asia and the Pacific at the Sixth meeting of the Interim Intergovernmental Steering Group on Facilitation of Cross-Border Paperless Trade (Bangkok, January 25-26, 2021). In the provisional agenda "Overview of regional progress in cross-border paperless trade. Results and implications of the Global Survey" it is stated that "the lack of political will seems to be the most pressing problem of small island developing States[862]".

At the regional level, for example, the Secretary General of the Council of Europe, M. Pejčinović Burić, also underlined the importance of "the political support [which] needed to

[861]'States urged to accelerate efforts to eradicate hunger and malnutrition' <https://www.fao.org/director-general/former-dg/director-general/newsroom/news/detail/ru/c/1172276/> accessed 20 May 2023.

[862] UN, 'Provisional agenda' in 'Overview of regional progress in cross-border paperless trade. Results and implications of the Global Survey' of Economic and Social Commission for Asia and the Pacific at the Sixth meeting of the Interim Intergovernmental Steering Group on Facilitation of Cross-Border Paperless Trade' (January 25-26, 2021) ESCAP/PTA/IISG/2021/1 <https://www.unescap.org/sites/default/d8files/event-documents/PTA%20IISG%202021%201%20%28R%29_1_0.pdf> accessed 19 May 2023.

improve the Council of Europe's contribution to the implementation of social rights in Europe[863]". However, the question is "how to make it happen?". In order to clarify the meaning of the political support and possible ways of increasing it, the Secretary explained it in the Information Documents, SG/Inf (2021)13 "Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General's proposals"[864]. The main attention in a paragraph 1 of the Document "Political commitment and support" was paid to "fundamental values of human rights; objectives [of the European Social Charter]; capacity of organs [of the European Social Charter][865]". Moreover, the author used an expression "at the highest political level"[866]. The exact definition of the highest political level can vary[867] depending on the country and political system in question. The paragraph 1 of the abovementioned document needs to provide different approaches in order to reach the goal. For instance, it might be a multifaceted approach that involves both international organizations and civil society groups.

There are some strategies that might be used for increasing the political will of member-states:

1. Awareness-raising campaigns. One of the most effective ways to increase political will is to raise awareness among policymakers and the public about the importance of ratifying conventions. International organizations and civil society groups can work together to organize campaigns that highlight the benefits of ratification and the negative consequences of non-ratification.

2. Engage with key stakeholders. It is important to engage with key stakeholders, such as parliamentarians, civil society organizations, and relevant government agencies, to build support for ratification. This can involve organizing meetings, workshops, and other events that

[863] 'The Secretary General presents her vision for improving the implementation of social rights in Europe' (29 April 2021) <https://www.coe.int/en/web/european-social-charter/-/the-secretary-general-presents-her-vision-forimproving-the-implementation-of-social-rights-in-europe> accessed 21 May 2023.

[864] Council of Europe, 'Information Documents' in 'Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General's proposals' SG/Inf (2021)13 < https://rm.coe.int/CoERM PublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a238c2 > accessed 18 May 2023.

[865] Ibid, paragraph 1.

[866] Ibid, paragraph 1.

[867] For example, in a presidential system, the highest political level would be the President, who is typically the head of state and head of government. In a parliamentary system, the highest political level may be the Prime Minister or the monarch (if the country has a constitutional monarchy). In some cases, the highest political level may refer to a group of officials, such as the Cabinet or the Council of Ministers, who collectively hold significant political power and are responsible for making major decisions on behalf of the government. Regardless of the specific political system or country, the highest political level is typically made up of the most influential and powerful individuals who are responsible for setting policy, making decisions, and leading the government.

provide opportunities for stakeholders to discuss the benefits of ratification and address any concerns or questions they may have.

3. Provide technical assistance. Some member states may require technical assistance to implement the provisions of the convention. International organizations and civil society groups can provide technical assistance to help member states comply with the requirements of the convention, which can help to build support for ratification.

4. Share best practices. Sharing best practices from other member states that have ratified the convention can be helpful in building political will. International organizations and civil society groups can organize workshops and other events that bring together policymakers from different countries to share their experiences and discuss ways to overcome common challenges.

5. Foster political dialogue. Finally, fostering political dialogue between member states can help to build support for ratification. International organizations can facilitate dialogue between member states to discuss the benefits of ratification and to address any concerns or questions they may have. This can help to build trust and support for ratification over time.

✓ the effectiveness of monitoring and enforcement mechanisms. In the Information Documents, SG/Inf (2021)13 "Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General's proposals"[868], some measures such as:
- "improvements[869] to the procedures established under the European Social Charter;
- procedural developments"[870].

[868] Council of Europe, 'Information Documents' in 'Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General's proposals' SG/Inf (2021)13 <https://rm.coe.int/CoERM PublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a238c2 > accessed 18 May 2023.

[869] It is important to note that the Secretary General of the Council of Europe, M. Pejčinović Burić based her proposals on the following documents: "the Committee of Ministers' decisions; the proposals made collectively by member states' human rights experts in the 2019 report of the Steering Committee for Human Rights (CDDH); the proposals made by the European Committee of Social Rights (ECSR); the position paper by the Governmental Committee of the European Social Charter and European Code of Social Security (GC)". See more at: 'The Secretary General presents her vision for improving the implementation of social rights in Europe' (29 April 2021) <https://www.coe.int/en/web/european-social-charter/-/the-secretary-general-presents-her-vision-forimproving-the-implementation-of-social-rights-in-europe> accessed 21 May 2023.

[870] 'The Secretary General presents her vision for improving the implementation of social rights in Europe' (29 April 2021) <https://www.coe.int/en/web/european-social-charter/-/the-secretary-general-presents-her-vision-forimproving-the-implementation-of-social-rights-in-europe> accessed 21 May 2023.

Considering the first measure, the Secretary mentioned: "a new reporting procedure[871]" (paragraph 2.1.) with reports[872]. In accordance with it, "simplified quadrennial reports could be submitted …by states … that have not accepted the collective complaints procedure; ad hoc reports may also be required from states parties that have accepted the collective complaints procedure[873]". Secondly, in a paragraph 2.2. which is called "Strengthening the adversarial dimension of collective complaints[874]" the main proposal was concentrated in "ensur[ing] strict application of admissibility criteria[875]". In addition, it seems necessary to improve the legal regulation of each procedure that makes up the mechanism provided for by the Revised European Social Charter.

✓ the ability to adapt to new challenges and emerging issues. One of the most pressing challenges that the Council of Europe faces today is the rise of populism and nationalism in some member states. Populist and nationalist movements often promote policies that are contrary to the Council's core values, such as respect for human rights and the rule of law. To counter this trend, the Council of Europe must become more proactive in promoting democratic principles and the rule of law. The organization should invest in education and awareness-raising campaigns to help citizens understand the importance of democratic values and the risks of populism and nationalism. Another challenge for the Council of Europe is the changing nature of conflicts and security threats in Europe. Traditional security challenges, such as military conflicts, are becoming less prevalent, while non-traditional security challenges, such as terrorism, cyber-attacks, and organized crime, are on the rise. This could involve investing in new technologies and capacities to prevent and respond to cyber-attacks, improving

[871] Council of Europe, 'Information Documents' in 'Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General's proposals' SG/Inf (2021)13 < https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a238c2 > accessed 18 May 2023.

[872] According to Part IV of the ESC, as amended by the Turin Protocol of 1991, each State is obliged to regularly – once every two years – submit reports to the Secretary General of the Council of Europe on measures to apply the provisions of the Charter to which they have acceded. At the request of the Committee of Ministers of the Council of Europe, States may also submit reports on the provisions of the Charter in respect of which the State has not committed itself. Regular reports on the implementation of the provisions for which commitments have been made are drawn up in a certain form approved by the Committee of Ministers. Copies of such reports are also sent by the Parties to national organizations that are part of international organizations of workers and employers. Organizations may make comments on the content of the reports, and the Secretary General of the Council of Europe brings these comments to the attention of the reporting States. European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[873] Council of Europe, 'Information Documents' in 'Improving the implementation of social rights – reinforcing the European Social Charter system: Secretary General's proposals' SG/Inf (2021)13 para.2.1. < https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a238c2 > accessed 18 May 2023.

[874] Ibid, paragraph 2.2.

[875] Ibid, paragraph 2.2.

cooperation between member states to combat terrorism and transnational crime, and strengthening the protection of fundamental rights in the context of security measures. In addition, the COVID-19 pandemic has also highlighted the need for the Council of Europe to adapt to new challenges in the field of health. The pandemic has had a profound impact on the health and well-being of citizens across Europe, and it has exposed weaknesses in health systems and emergency preparedness. The Council of Europe plays an important role in promoting international cooperation and solidarity in the fight against pandemics and other health crises. It might involve supporting the development of effective vaccines and treatments, promoting public health measures, and strengthening health systems and emergency preparedness.

In conclusion, the Council of Europe must also adapt to new challenges in the field of digitalization. Digitalization is transforming the way we live and work, and it has the potential to bring significant benefits to society. However, it also poses new risks and challenges, such as data protection, and the impact of artificial intelligence on human rights. The Council of Europe must take a leading role in addressing these challenges by developing new legal and policy frameworks that promote the responsible and ethical use of digital technologies while protecting fundamental rights.

ii. Possibilities for Additional Protocols to the Revised European Charter and their content

It is important to add that the Council of Europe has the power to adopt additional protocols to the Revised European Social Charter to strengthen the protection of rights of the second generation. For example, it is advisable to attribute a number of social problems (including the elimination of gross violations of social rights, and norms) to the jurisdiction of the ECtHR by developing an appropriate Additional Protocol.

In addition, there are some areas where new Additional Protocols might be adopted, including:

✓ The right to health. This right is enshrined in the Revised European Social Charter[876] which, as one of the goals of its policy, provided for the creation of conditions ensuring the effective realization of the right of everyone to use any means to achieve the highest attainable standard of health (part I, paragraph 11)[877]. The European Committee on Social Rights concretized obligations, pointing out that in order to fulfil it, it is necessary to have an adequate

[876] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[877] Ibid, part 1, paragraph 11.

health care system, which is financed mainly from the state budget. The concept of "proper health care system" implies: "a publicly accessible state system that allows providing the necessary medical care to the entire population and ensuring the prevention and diagnosis of diseases; special measures to protect the health of mothers, children and the elderly; general measures aimed at combating alcoholism and drug addiction, monitoring the quality of food and the state of the environment"[878].

In the comments to the European Social Charter, it is noted that the European Committee on Social Rights, in carrying out a legal assessment of the fulfilment by States of obligations under this paragraph, considers the following aspects: "measures to ensure medical and paramedical services of appropriate quality, especially in relation to vulnerable groups of the population; measures to ensure food safety, reduce soil and water pollution, and protect against noise. treatment of certain diseases - AIDS, mental disorders, diseases related to smoking, drug addiction, alcoholism; information on the number of persons employed in sanitary services, the number of medical institutions and their territorial placement[879]".

In March of 2009, the Secretariat of ESC prepared the document on "The right to health and the European Social Charter"[880]. The structure of the document is the following: I. Measures to promote health[881]; II. Health care provisions in case of sickness[882]. In 2021 the ESCR issued the Social Right Monitoring[883], in which the Committee listed "main findings: insufficient measures to reduce the high number of fatal accidents at the workplace; insufficient measures taken to address persistently high levels of infant and maternal mortality; inadequate level of social security benefits (notably unemployment and old age benefits); inadequate level of social assistance paid to persons without resources; inadequate measures taken against poverty and social exclusion[884]".

[878] Gom'en D, Harris D, Zvaak L, 'Evropejskaya konvenciya o pravah cheloveka i Evropejskaya social'naya hartiya: pravo i praktika' (M., 1998) P. 516.

[879] 'Evropejskaya social'naya hartiya' in *Spravochnik* (M., 2000) P. 171–172.

[880] Secretariat of the European Social Charter, 'Information document' in 'The right to health and the European Social Charter' (March 2009) <https://www.ilga-europe.org/sites/default/files/right_to_health_and_esc.pdf> accessed 19 May 2023.

[881] Ibid, P.2.

[882] Ibid, P.9.

[883]Council of Europe, '2021 Conclusions of the European Committee of Social Rights'< https://rm.coe.int/conclusions-2021-highlights-en/1680a5eed4> accessed 18 May 2023.

[884] Ibid, P.1.

However, an additional protocol would provide more specific obligations for member states to ensure access to quality healthcare services for all, including vulnerable and marginalized groups.

✓ The right to adequate housing[885]. There are many advantages of creating an additional protocol on this right within the Council of Europe. Firstly, it would provide a clear legal framework for states parties to the European Social Charter to ensure the right to adequate housing. Secondly, it would provide an additional avenue for monitoring and enforcing the right, which would help to hold states parties accountable for their obligations. Finally, it would demonstrate a commitment on the part of the Council of Europe to protecting the right to adequate housing as a fundamental human right. The provisions of a possible additional protocol on the right to adequate housing would likely include definitions of what constitutes adequate housing, the obligations of states parties to ensure the right to adequate housing, and the mechanisms for monitoring and enforcing the right.

✓ The right to a healthy environment. The most recent document on an issue of the right to a healthy environment in the Council of Europe is the Resolution 2396 (2021) of the Parliamentary Assembly of the Council of Europe "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe[886]". The Resolution is

[885] The right to adequate housing is an independent social right, as well as an integral part of everyone's right to an adequate standard of living. A modern cultural state should create conditions for everyone to realize the right to adequate housing. It is noteworthy that it is the availability of housing that everyone needs for a decent existence in modern society, because only having good housing conditions, a person can think about his further development. At the same time, the United Nations Committee on Economic, Social and Cultural Rights emphasizes that the right to adequate housing should not be interpreted narrowly (CESCR, 'General Comment № 4' in 'The Right to Adequate Housing (Art. 11 (1) of the Covenant) (adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights) E/1992/23 (13 December 1991). It should be regarded as the right to live somewhere in security, peace and dignity ('Pravo na dostatochnoe zhil'e: doklad verhovnogo komissara Organizacii Ob"edinennyh Nacij po pravam cheloveka za 2010' (ZHeneva,2010) 124p.). Modern states that create the necessary conditions for an adequate standard of living can be considered as "cultural states". The concept of a "cultural state", according to E.V. Sazonnikova, "is a state of state form and content that combines all its essential characteristics, when a person feels himself to be the highest value and he is provided with security, a decent life and free development" (Sazonnikova E.V, 'Kul'turnoe gosudarstvo i vzaimosvyazannye s nim ponyatiya' in *Vestnik Voronezhskogo gosudarstvennogo universiteta* (Seriya: Pravo, № 2, 2011) P. 47-52). Such a State, represented by the relevant authorities, plans, designs, implements and provides programs to maintain an adequate standard of living for a person. According to the United Nations Committee on Economic, Social and Cultural Rights, "adequate housing must meet the following conditions:1. Availability of necessary services, materials, amenities and infrastructure; 2. The affordability of housing or the absence of inflated mortgage lending rates, which jeopardizes the possibility of its inhabitants exercising other human rights; 3. The dwelling is suitable for living in it; 4. Residential areas are built considering the needs of people – medical services, schools, children's institutions, as well as social facilities are located near the house" (CESCR, 'General Comment № 4' in 'The Right to Adequate Housing (Art. 11 (1) of the Covenant) (adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights) E/1992/23 (13 December 1991).

[886] Parliamentary Assembly of the Council of Europe, 'Resolution' in 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe' 2396 (2021) <https://pace.coe.int/pdf/658d3f594762736ba3c0f378798b2c9529cf4be34aa45a8c38616ecd18fa80c0/resolution%202396.pdf> accessed 17 May 2023.

significant because it highlights the need for enhanced action by the Council of Europe to protect the environment and ensure that everyone's right to a healthy environment is respected. Some of the advantages of this resolution include:

1. Protection of human health. The Resolution recognizes the link between human health and the environment. By anchoring the right to a healthy environment, the resolution aims to protect people from environmental harm, including pollution, climate change, and other environmental hazards.

2. Strengthening environmental laws and policies. Countries are held accountable for protecting the environment and that there are consequences for those who violate environmental laws.

3. Encouraging sustainable development which is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This will help ensure that economic development is balanced with environmental protection.

4. Promoting environmental education. The Resolution calls for the promotion of environmental education, which will help raise awareness about environmental issues and encourage individuals to take action to protect the environment.

5. Enhancing international cooperation. The document recognizes that environmental problems are global in nature and require international cooperation to be effectively addressed. The Council of Europe can play a vital role in promoting international cooperation to protect the environment and ensure that everyone's right to a healthy environment is respected.

However, the Resolution: i) is not legally binding, and there are no specific enforcement mechanisms to ensure that countries comply with the provisions outlined in the resolution; ii) only applies to member states of the Council of Europe; iii) calls for enhanced action by the Council of Europe to protect the environment, but it is unclear how this action will be implemented, and it may face challenges due to limited resources or competing priorities; iv) anchoring the right to a healthy environment could conflict with economic development; v). has a limited effectiveness.

For these reasons, a possible additional protocol on the right to a healthy environment would be a better solution for recognition this right and establishing obligations for member-states to protect the environment and prevent environmental harm.

✓ The rights of persons with disabilities. The ESC includes provisions on the rights of persons with disabilities, but an additional protocol could further strengthen their protection and promote their full participation and inclusion in society.

✓ The right to work-life balance. An additional protocol could recognize the importance of work-life balance and establish obligations for member states to promote flexible working arrangements, parental leave, and other measures to support work-life balance.

It might be presumed that a new protocol would need to be structured in a way that is consistent with the Revised Social Charter. For example, an additional protocol on the right to healthy environment would likely include setting out specific obligations for member states related to this right, as well as establishing a monitoring mechanism to assess compliance with these obligations.

In terms of content, a new additional protocol would have several articles related to environmental protection and the right to a healthy environment. For instance, it could include provisions on the following:

1. Access to information and participation. Member states could be required to ensure that citizens have access to information about environmental risks and the impact of human activities on the environment. They could also be required to promote public participation in decision-making processes related to the environment.
2. Environmental quality standards. The protocol could establish minimum standards for environmental quality, including air and water quality, soil pollution, and exposure to hazardous substances.
3. Environmental impact assessments. Member states could be required to conduct environmental impact assessments for major infrastructure projects, and to ensure that these assessments consider the potential impact on the right to a healthy environment.
4. Climate change. The protocol could recognize the importance of addressing climate change and establish obligations for member states to reduce greenhouse gas emissions and promote adaptation to the impacts of climate change.
5. Environmental justice. The protocol could recognize that environmental harms disproportionately affect marginalized and vulnerable groups and establish obligations for member states to address these disparities and ensure that all individuals are able to enjoy the right to a healthy environment.

The European Committee of Social Rights which is responsible for monitoring the implementation of the European Social Charter 1961 may propose new protocols based on its findings and recommendations. In addition, non-government organizations and other civil society organizations often advocate for additional protocols to address emerging social issues or to strengthen existing rights protections. Individual Member States may also propose new protocols, either on their own or in collaboration with other states, to address specific social and economic challenges that are unique to their country or region.

3.1. The Council of Europe: its creation and origins of the European Social Charter 1961

In domestic and partly foreign literature and historiography, there is no comprehensive study of the formation of the Council of Europe from the beginning of the Pan-European Union to the transformation of the Council of Europe into the first pan-European organization. This

paragraph is intended to examine the process of creating the oldest regional organization – the Council of Europe, including different reasons for its creation, the role of Winston Churchill, the work of the drafters of the European Social Charter, and the breadth of the issues under consideration.

In the middle of 20th century, the protection of human rights was not only on the agenda at the universal level, but also at the regional level. After the creation of the UN, the countries of the European continent came to the idea of creating such an organization. Today, the Council of Europe is the oldest, most authoritative and representative organization on the European continent. It seems reasonable to consider the main reasons for creating this organization in a more detailed way.

i. Philosophical reasons

The first ideas belong to A. Charles de Saint-Pierre (1658 – 1743), who proposed the creation of a European league. After the American Revolution (1775- 1783) the vision of a United States of Europe was shared by M. Lafayette (1757- 1834) and T. Kościuszko (1746 – 1817)[887]. Marquis de Lafayette, a French aristocrat and a strong advocate for democracy and individual rights, envisioned a Europe in which nations would work together for the common good, sharing resources and cooperating on issues of mutual concern. Tadeusz Kościuszko, a Polish-Lithuanian military engineer, believed in the importance of national sovereignty and self-determination, but also recognized the need for cooperation and unity among European nations. He proposed the creation of a confederation of European states, in which each nation would retain its independence.

In 19th century, V. Hugo (1802 -1885), a French romantic writer and politician wrote the following words: "[…] the day would come when you, France, you, Russia, you, Italy, you, England, you Germany - all of you, all the nations of the continent - will, without losing your distinguishing features and your splendid distinctiveness, merge inseparably into some high society and form a European brotherhood[888]". In 1867 G. Garibaldi, and J.S. Mill joined him at a congress of the League of Peace and Freedom in Geneva. Later, the United States of Europe was the name of the concept presented by W. Jastrzębowski (1799 – 1882) in his own work

[887] See more Patrick P, 'Imagining European unity since 1000 AD' (New York: Palgrave Macmillan, 2015); Stirk P.M.R, 'European Unity in Context: The Interwar Period (1st ed.)' (London: Pinter Publishers 1989); Smith M.L. Stirk P.M.R, 'Making the New Europe: European Unity and the Second World War' (London: Pinter Publishers 1990).

[888] Parliamentary Assembly of the Council of Europe, 'Official Report on the forty-first ordinary session' 'Speech by Mikhail Gorbachev' (8-12 May, 3-7 July 1990) (Vol. I) P. 197-205 <http://www.cvce.eu/obj/address_given_by_mikhail_gorbachev_to_the_council_of_europe_6_july_1989-en-4c021687-98f9-4727-9e8b836e0bc1f6fb.html > accessed 16 May 2023.

named as “About eternal peace between the nations”. He believed that the envisioned United States of Europe was to be an international organization[889].C. Cattaneo (1801-1869), an Italian philosopher, agreeing with the latter wrote the following: “The ocean is rough and whirling, and the currents go to two possible endings: the autocrat, or the United States of Europe”[890]. In addition, M. Bakunin, the Russian revolutionary anarchist (1814 -1876) stated that: “In order to achieve the triumph of liberty, justice and peace in the international relations of Europe, and to render civil war impossible among the various peoples which make up the European family, only a single course lies open: to constitute the United States of Europe”[891].

In 20th century, P. F. Markham (1930 – 2019) provided Napoleon’s remarks about Europe, which are the following: “Europe thus divided into nationalities freely formed and free internally, peace between States would have become easier: the United States of Europe would become a possibility[892]”. C. Coudenhove – Kalergi (1894 -1972), an Austrian-Japanese politician, in his own book Pan-Europa called for a European federation and subsequently founded a movement for this purpose. In 1929 A. Briand, a French statesman, in the “Memorandum on European Federal Union” proposed to the League of Nations a “federal bond” between the European peoples[893]. Thus, the idea of the Council of Europe had been propagated by many philosophers, writers, politicians for many centuries.

ii. The recurrence of tragedies during the Second World War[894]

The tragedy of the Second World War[895] played a significant role in the creation of the Council of Europe. It was one of the deadliest conflicts in human history, resulting in the deaths of millions of people and causing widespread destruction throughout Europe. The War revealed the importance of international cooperation and the need to prevent future conflicts. The leaders

[889] Uroc P, Lea P, ‘European Union in 21st century’ (University of SS. Cyril and Methodius, Faculty of Social Sciences, 2012).

[890] See more at: ‘Quotes’ <https://quotes.yourdictionary.com/author/quote/585317> accessed 16 May 2023.

[891] Bakunin M*,* ‘Selected Writings’ (edited by Arthur Lehning) (London, Jonathan Cape, 1973).

[892] Markham P.F, ‘Napoleon’ (New York: Penguin Books USA Inc., 1966) P. 257; Zareczny M, ‘Napoleon's European Union: The Grand Empire of the United States of Europe’ (Kent State University master’s thesis*)* P.2.

[893] Boyd A.F, ‘Western Union: A Study of the Trend toward European Unity’ (Public Affairs Washington 1949).

[894] Tomuschat C, ‘European Convention on Human Rights and the European Social Charter’ P.30.

[895] “Only irretrievable losses amounted to more than 8.5 million people. The total human losses of the German armed forces in World War II amount to more than 13.5 million people, or 75% of the number of mobilized and 46% of the total male population of Germany”, Eremenko S.B, ‘K voprosu o poteryah protivoborstvuyushchih storon na sovetsko-germanskom fronte v gody Velikoj Otechestvennoj vojny: pravda i vymysel’ <https://mil.ru/winner_may/history/more.htm?id=11359251@cmsArticle> accessed 21 May 2023.

of Europe recognized that a new approach was necessary to maintain peace and stability on the continent.

J. Polakiewicz supposes that only the catastrophe of the Second World War, during which people of Europe were victims of suffering and human rights violations on an unprecedented scale, prompted European politicians to act[896].

Another scholar, N.V. Kalashnikova considers that: "There was a conviction in Europe that it was necessary to become a single entity in political, socio-economic terms in order to strengthen the positions of European countries in world politics. The establishment of European integration structures was preceded by the centuries-old work of thought of politicians, public figures and scientists. The First World War was the catalyst that brought the idea of the unification of Europe to the socio-political level, giving rise to the so-called "Pan-European Movement[897]".

Thus, in modern legal literature the recurrence of tragedies during the Second World War as a reason for the creation of the Council of Europe is the most common.

iii. Political reasons

In 1929 Eleftherios Venizelos, the Prime Minister of Greece, outlined the government's support in his own speech by saying that: "The United States of Europe will represent, even without Russia, a power strong enough to advance, up to a satisfactory point, the prosperity of the other continents as well"[898].After the Second World War, the United States prepared for most weakened Western European States the role of members, to some extent subordinated to the American leadership, in NATO. This meant that the major European States would be in a secondary position relative to the United States. Many major politicians such as W. Churchill faced the challenge of gaining a leading position in NATO and preserving the former greatness of Britain, France and all Western Europe. There was a thirst for the creation of Western European integration. Thus, the above reasons in aggregate were the reason for the creation of the Council of Europe.

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[896] Polakiewicz J, 'Council of Europe' <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e607> accessed 22 May 2023.

[897] Kalashnikova N.V, 'Obrazovanie Soveta Evropy, ego struktura i osnovnye napravleniya deyatel'nosti' 2004< https://www.dissercat.com/content/obrazovanie-soveta-evropy-ego-struktura-i-osnovnye-napravleniya-deyatelnosti> accessed 23 May 2023.

[898] Nikolas E.P, 'Eleftherios K. Venizelos – A Biography. National Research Foundation' in *Eleftherios K. Venizelos* (2006) P. 48–50.

The main pioneer of the Council of Europe formation was W. Churchill. In October 1942, he wrote A. Eden, the Minister of Foreign Affairs, about the desire to see the European Family of Nations acting together under the authority of the Council of Europe[899]. He continued this theme: 1) in a radio address on March 21st of 1943, and 2) at a meeting in Quebec with the President F. D. Roosevelt. In accordance with an opinion of W. Churchill, "the pre-war League of Nations was to be replaced by a new international organization, consisting of two tiers. The upper tier would be the Alliance of Great States, and the lower tier - regional associations. One such regional association would cover Europe, the Council of Europe being the first practical step towards it"[900]. In September of 1946 W. Churchill at the University of Zurich proclaimed the idea of creating the "United States of Europe", and E. Bevin, the British Foreign Minister was proposing a project of the Western Union. However, in both speeches looked through the UK's claim to leadership in the European tandem. The British initiative has stirred up numerous other proposals which were put forward by socialists, liberals, social Christians. By the end of the 1940s, the Socialist movement for:

- the United States of Europe,
- the European League for Economic Cooperation,
- the Customs and Economic Union were founded, and
- the Pan-European Union was restored (1947).

It is important to note that it was difficult to unite or bring together these diverse forces. It turned out that the UK itself, taking care of maintaining ties with the Commonwealth countries, is not ready to give up the established traditions and values. France openly claimed the leadership and the accession to its territory not only the Saar, and the Ruhr. Meanwhile, the United States persistently turned Western Europe into the main zone of its globalist activity: the Truman doctrine[901], the "Marshall plan"[902], the creation of NATO.

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[899] Macmillan H, 'Tides of fortune, 1945-1955' (London, 1969) P.153.

[900] Heller F.H, Gillingm J.R, 'The United States and the integration of Europe: legacies of the post-war era' (N.Y. 1998) P.48.

[901] "This doctrine was aimed at limiting the increased after the 2nd World War 1939-1945 growth of the forces of socialism, the provision of continuous pressure on the Soviet Union and other countries of the socialist bloc, the maintenance of reactionary forces and regimes. Used to justify U.S. interference in the internal Affairs of other countries, to unleash the cold war and to escalate international tensions. It marked the beginning of the provision of broad military assistance to other countries, accompanied by the creation of a network of military bases in foreign territories and carried out by the United States in other programs". See more at: 'The Truman Doctrine' <https://dic.academic.ru/dic.nsf/ruwiki/421205> accessed 19 May 2023.

[902] The Marshall plan ("European reconstruction Program") is a post-World War II European assistance program. It was nominated in 1947 by American Secretary of state George C. Marshall and came into force in April 1949. 17 European countries, including West Germany, participated in the implementation of the plan. This plan promoted post-war peace in Western Europe. The stated US goal of implementing the plan was the restoration of war-ravaged economies of Europe, removing trade barriers, modernizing industry of European countries and Europe as a whole. See more at: 'The Marshall plan' <http://whatismoney.ru/plan-marshalla/> accessed 18 May 2023.

On May 10 of 1948, the first Congress of the "European movement" was held in Hague, which was attended by about 800 delegates from 15 countries of Western Europe. The honorary presidents were elected from: L. Blum, W. Churchill, A. de Gasperi, P. A. Shiak, later K. Adenauer. Lasted quite a long negotiation at various levels. There were two schools of thought competing: some favoured a classical international organization with representatives of governments, while others preferred a political forum with parliamentarians. Both approaches were finally combined through the creation of a Committee of Ministers and a Consultative Assembly.

As a result, two aims of the Council of Europe were presented in the Draft Opinion by the Committee on Social Questions:

- ✓ "The prime aim of the Council of Europe in the social field" was "the abolition from the social legislation of its Member States of discrimination on grounds of nationality (Chapter 1, article 4),

- ✓ the second aim – the greatest possible harmonization of the social legislation of its members, with a view to unifying to some extent the various social systems (Chapter 1, article 6). However, M. Heyman, a former Chairman and a Rapporteur of the Committee on Social Questions asserted that "the Council of Europe has aim to bring about closer union between the fifteen Member States"[903].

On May 5 of 1949, the Statute of the international intergovernmental organization, which was called the Council of Europe, was signed in London. In accordance with the preamble of the Statute of the international intergovernmental organization: "Reaffirming their devotion to the spiritual and moral values which are the common heritage of their people and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy[904]. Each member is required to "accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms" [905].

iv. The drafting process of the European Social Charter 1961

[903] Consultative Assembly of the Council of Europe, 'Official Report on the Fifth Ordinary Session, twenty-first sitting' in 'Common Policy of Member States in Social Matters (Debate on the Report of the Committee on Social Questions' Doc.188 (23 September 1953).

[904] Council of Europe, 'Statute' (London) (5 May 1949) <https://rm.coe.int/1680306052> accessed 17 May 2023.

[905] Council of Europe, 'Statute' (London) (5 May 1949) <https://rm.coe.int/1680306052> accessed 17 May 2023.

After the formation of the organization, its first immediate task was to draft a comprehensive human rights treaty that would embody all the rights included in the Universal Declaration of Human Rights[906] adopted by the United Nations in 1948: civil, political, economic, social, and cultural rights. In 1950 the European Convention for the Protection of Human Rights and Fundamental Freedoms[907] was adopted. After its adoption there were "two constant shifts between two possibilities:

- ✓ the first one was to draft another human rights treaty dedicated to social and economic rights, as the same level as the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- ✓ the second was to draft a European treaty that would serve as a framework for social policies and would allow the Council of Europe member states to coordinate and/or harmonize their social policies"[908]. It might be stated that although the "interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms may extend into the sphere of social and economic rights"[909], the European Convention for the Protection of Human Rights and Fundamental Freedoms does not protect economic, social and cultural rights, "explicitly (except for the right to education and possibly the right to property) or impliedly"[910].

In this regard, it is appropriate to quote the Report of the Ad Hoc (Committee of Social Experts) from 12 September 1953, in which it was stated: "Now the time had come – in harmony with the decision of the Committee of Ministers to establish a long-term program of action for the Council of Europe – to continue with the economic and social rights. Some members of the Committee thought that a European Social Charter would be of a great importance[911]".

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[906] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[907] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[908] Brillat R, 'The European Committee of Social Rights and the Employment Relation: Strengths and Future Prospects' in a book *The European Social Charter and the employment relation* (2017) P.1 <https://www.bloomsburycollections.com/book/the-european-social-charter-and-the-employment-relation/ > accessed 16 May 2023.

[909] *Airey v. Ireland* (1979) A 32, 2 EHRR 305, at para. 26.

[910] Walbrick C, 'Economic and Social Interests and the European Convention on Human Rights', in Baderin M. and Mccorquodale in *Economic, Social and Cultural Rights in Action* (Oxford: Oxford University Press, 2007) P.241.

[911] ECOSOS, 'Report of the Ad Hoc of the Committee of Social Experts on 13th Session in Strasbourg' NS 36 (12 September 1953).

However, Mr. Nutting from the United Kingdom wondered whether there was much to be gained from drafting the European Social Charter. For one thing, "all the Member States of the Council of Europe were already parties to similar declarations, like the United Nations Declaration on Human Rights or the Declarations under the International Labour Organization. Moreover, it might be wondered whether the European Social Charter could do more than define social rights in extremely general terms and whether this would really be of any great value. One of the arguments often brought up by one country or another against certain schemes for agreements in economic matters was that the social charges which they had to bear were too heavy"[912].The arguments of the representative of the United Kingdom are insufficient to the extent that at the regional level a document was required similar to Articles 22-27 of the Universal Declaration of Human Rights 1948[913], the International Covenant on Economic, Social and Cultural Rights 1966[914]. The next argument is that states' heavy burden statements regarding second-generation rights do not take into account the fact that the realization of certain civil and political rights also requires state resources. One gets the impression that state representatives poorly understood the unified nature of human rights. In other words, the regional level should have been a parallel for the universal level. The absence of such a document as the European Social Charter was a big gap in the regulatory framework of the Council of Europe.

It is encouraging that among the representatives of the countries there were defenders of the European Social Charter. In particular, M. Weber from German Federal Republic stated that "the European Social Charter might serve as a guide in the social sphere and give reality to the principles of social life – security and healthy conditions in work, protection of family life, and a proper level of existence for everybody[915].Truly, the European Social Charter would enshrine the various ideas and principles. For example, the European Social Charter would:

- serve as a guide for a social program embodying the main social principles characteristic of the Western Democracies, and
- certainly, be a valuable pendant to [the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe][916]. M. Spaak from

[912] Ibid.

[913] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[914] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 (ICESCR) <https://www.refworld.org/docid/3ae6b36c0.html> accessed 16 May 2023.

[915] Consultative Assembly of the Council of Europe, 'Official Report on the Fifth Ordinary Session, twenty-first sitting' in 'Common Policy of Member States in Social Matters (Debate on the Report of the Committee on Social Questions' Doc.188 (23 September 1953).

[916] Consultative Assembly of the Council of Europe, 'Official Report on the Fifth Ordinary Session, twenty-first sitting' in 'Common Policy of Member States in Social Matters (Debate on the Report of the Committee on Social Questions' Doc.188 (23 September 1953).

Belgium considered that: "the [European] Social Charter would take its place side by side with the principles formulated by International Labour Organization and the United Nations Universal Declaration of Human Rights 1948[917] as a declaration especially applicable to the European countries in which the attempt would be made to stipulate the minimum aims of social legislation"[918][919].

Moving to the work of the drafters of the European Social Charter, it should be emphasized that drafters of the European Social Charter 1961 expected that "this social Charter would, together with the European Convention for the Protection of Human Rights and Fundamental Freedoms[920], constitute a solemn declaration by the European states of the spiritual values underlying western civilization"[921]. M. Heyman, the former Chairman and Rapporteur of the Committee on Social Questions, said that:

"To 1953 the work of preparing the Charter made steady progress, but the Assembly was quick to realize the need for a more comprehensive and coherent social program. Indeed, social questions are in many respects the more important. [People] are bound together by … major social problems more than by any others, for their solutions should be a means of bringing peace to our peoples and aiding their cooperation"[922].

It should be noted that economic conditions of that period of time "reflected the heavy strain imposed by defence expenditure, adverse trade conditions and the need for increased exports"[923]. For these mentioned reasons the Government members aimed to:

- ✓ stress the principles that characterize Western democracies in the social field;

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[917] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[918] Committee of Ministers of the Council of Europe, 'Draft Report for the Third Meeting' on the 14th Session' (20th of May 1954).

[919] See more at: Council of Europe, 'Minutes of the first meeting of the Social Committee' CE/Soc (55) 1 (4-7 October 1954).

[920] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[921] Secretariat - General of the Council of Europe, 'Memorandum on the Role of the Council of Europe in the Social Field in Collected (provisional) edition of the 'Travaux Preparatoires' of the Council of Europe for the European Social Charter' (Volume I, 1953-1954) P.4.

[922] See more at: Consultative Assembly of the Council of Europe, 'Official Report' in 'Speech of Mme. Weber' (23rd September 1954).

[923] Secretariat - General of the Council of Europe, 'Memorandum on the Role of the Council of Europe in the Social Field in Collected (provisional) edition of the 'Travaux Preparatoires' of the Council of Europe for the European Social Charter' (Volume I, 1953-1954) P.4.

✓ be the continuous improvement of the standard of living of all members of society to the greatest extent possible in the light of economic conditions, and the fair distribution of available resources as well as the equal sharing of burdens;

✓ declare their intention of maintaining a high level of production, a growing liberalization of trade, financial stability and a high level of employment.

Other principles whose inclusion might be considered were various (for example, security of employment for everyone; wages or other remunerations sufficient to guarantee a decent living for the workers and their families; equal pay for work of equal value; safe and healthy working conditions; sufficient rest and leisure; periodic holidays with pay; facilities for healthy spare time activities; social security covering all ordinary contingencies; general health protection; general family protection; special protection for certain groups (mothers, children and young persons, physically and mentally handicapped, aged persons); fair distribution of economic burdens through a just taxation system with effective control of tax evasion; adequate food, clothing and housing for everyone)),

What legislative gaps have the countries considered at the regional level regarding social rights?

1) Employment of older workers. This has recently been given careful consideration both on the national and international plane. It is studied from the point of view of national economy – to utilize the economic value in skill and experience of older people as long as possible and if socially and economically desirable. The possibility should be opened for the older workers to continue their work if they so desire through an appropriate organization of the working processes, so that the skill of these workers can be utilized, with due consideration to their physical abilities and without danger of over strain. They should not be forced to continue their work by any direct or indirect means, such as, for example, by the raising of the ordinary pensionable age. Furthermore, the question of retiring age has been placed on the Agenda of the Regional European Conference.

2) Obtaining full employment[924];

[924]The Assembly recalls that it has already adopted three Recommendations on a common policy for full employment, namely: Recommendation 25(1950), Recommendation 5 (1951) and Recommendation 10 (1951). See more n.10 of Consultative Assembly of the Council of Europe, 'Official Report' on 'Debate on the Report of the Committee on Social Questions expressing an opinion on Chapter III of the Special Message of the Committee of Ministers dealing with the social program of the Council of Europe' Doc.252 (28th May 1954).

3) Vocational training[925], particularly from the point of view of the retraining of workers who have become unemployed, adult workers and young people[926]. M. Haekkerup from Denmark on debate on the Report of the Committee on Social Questions expressing an opinion on the [European Social] Chapter III of the Special Message of the Committee of Ministers dealing with the social program of the Council of Europe underlined the importance of the question of demographic development which brings a great number of young persons[927]. These issues were designed to cover existing gaps in the legislation.

To sum up, after the Second World War, there was a growing recognition among countries that economic, social, and cultural rights were essential for ensuring the well-being and dignity of individuals. It is important to note that the recognition and protection of rights of the second generation has not been consistent across all countries and regions because some countries have been more resistant to this idea.

The adoption of the European Social Charter 1961 was motivated by a desire of European counties to address the social and economic problems facing Europe in the aftermath of World War II. The Charter was considered as a way of promoting social justice and reducing inequality. Based on opinion of D. Gomien, D. Harris, and l. Zwook, the European Social Charter was designed to require that "State Parties uphold the European Social Chapter Standards, irrespective of their national resources, and that they do so immediately upon ratification"[928]. The Charter has been ratified by most of the countries in Europe, and it is legally binding on those countries that have ratified it.

Moreover, the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter was not a copy of the actions of states at the universal level. Both documents were specific to Europe and were guided and inspired by principles and norms of human rights emerging at the universal level.

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[925] The whole question of vocational training is being studied by various other international organizations. The Assembly wished to draw particular attention to International Labour Organization № 88, concerning the vocational training of adults, including disabled persons. This Recommendation, which was adopted by the International Conference in 1930, contains a special chapter on international co-operation in the training of adults. It might well serve as a basis for the work of the Council of Europe in this field. See more at n.11 of: Consultative Assembly of the Council of Europe, 'Official Report' on 'Debate on the Report of the Committee on Social Questions expressing an opinion on Chapter III of the Special Message of the Committee of Ministers dealing with the social program of the Council of Europe' Doc.252 (28th May 1954).

[926] Ibid.

[927] Consultative Assembly of the Council of Europe, 'Official Report' on 'Debate on the Report of the Committee on Social Questions expressing an Opinion on Chapter III of the Special Message of the Committee of Ministers dealing with the social program of the Council of Europe' (Speech of M. Haekkerup (Denmark)) Doc.252 (28th May 1954).

[928] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381.

3.2. A comparative analysis of the European Social Charter 1961, the Revised European Social Charter 1996 and the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

i. Understanding the nature, development and content of economic, social, and cultural rights

Based on the theory of Professor M. Mikkola, human rights may be divided into two categories:

✓ "Fundamental human rights. This first category can itself be divided into two types of rights:

- firstly, those which can suffer no restriction and no derivation, and which are extremely limited and appear only in the human rights convention, namely Article 2 of the right to life and Article 3 [of European Convention for the Protection of Human Rights and Fundamental Freedoms[929]] of prohibition of inhuman or degrading treatment[930]";

- "Secondly, all of the rights which can be claimed immediately by every individual as from the entry into force of the treaty in which they are enshrined but may be subject to restrictions according to certain conditions provided by the said treaty. These are the rights of European Convention for the Protection of Human Rights and Fundamental Freedoms except the rights which cannot be subject to any restriction. In this category there are many of the rights of the European Social Charter 1961, for example the freedom to organize, non-discrimination in employment, and right to education[931]".

- "Welfare /development rights. The second category is composed only of rights appearing in the European Social Charter 1961 which are of a different nature from the category of fundamental rights because of their complexity, the cost of their implementation for public and/or private authorities, and their link with the economy situation of the country concerned[932]". R. Brillat, Executive Secretary of the European Committee of Social Rights,

[929] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[930] Brillat R, 'Division of social human rights into fundamental rights and welfare/development rights' in *Reform of the European Social Charter* (2011) P.47.

[931] Brillat R, 'Division of social human rights into fundamental rights and welfare/development rights' in *Reform of the European Social Charter* (2011) P.47.

[932] Brillat R, 'Division of social human rights into fundamental rights and welfare/development rights' in *Reform of the European Social Charter* (2011) P.47.

considered that "several provisions of the European Social Charter 1961[933] proclaim rights constituted of several elements which may belong to either of the two categories"[934]. Moreover, J. Hausermann considers that ensuring social welfare rights is part of governmental responsibility.

Economic, social, and cultural rights are a category of human rights, or rights of the second generation, which ensure that individuals and communities have access to basic needs, such as food, housing, education, healthcare, and employment. In other words, L. Senghor, a former President of Senegal stated that: "Human rights begin with breakfast", the obvious necessity for access to adequate food, shelter, healthcare and other essentials confirmed[935]. For example, M.M. Utyashev and L.M. Utyasheva, Russian scholars, combine the rights enshrined in Articles 22-28 of the Universal Declaration of Human Rights of 1948 into one group which is called "economic, social and cultural rights"[936].

According to an opinion of E.A. Lukasheva[937], instead of one complex term – economic, social and cultural rights, it is more accurate and easier to use specific designations of types of rights:

-Social rights. P. Alston made a conclusion that "some social rights remain the poor step - sister of civil and political rights and [that] this is every bit as true within the Council of Europe as elsewhere[938].

-Economic rights. I.A. Fedotov argues that "economic rights are a subsystem in the general system of human and civil rights and freedoms and suggests that they be considered as a set of legal opportunities in the economic sphere enshrined and guaranteed by the Constitution of the Russian Federation, allowing a person and a citizen to participate in the functioning of the economic system of the Russian Federation"[939].

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[933] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[934] Brillat R, 'Division of social human rights into fundamental rights and welfare/development rights' in *Reform of the European Social Charter* (2011) P.47.

[935] Beddard R, Hill M.D, 'Economic, Social and Cultural Rights: progress and achievement' (Macmillan, Basingstoke 2016) P. 49 – 50 <https://www.abebooks.com/book-search/title/economic-social-cultural-rights/ author/beddard/> accessed 22 May 2023.

[936] Utyashev M.M, Utyasheva L.M, 'Prava cheloveka v Rossii: sostoyanie i perspektivy' (Ufa, 1997) P.20.

[937] Lukasheva E.A, 'Prava cheloveka' in *Uchebnik* (2-e izd, Moscow, 2010) P.187.

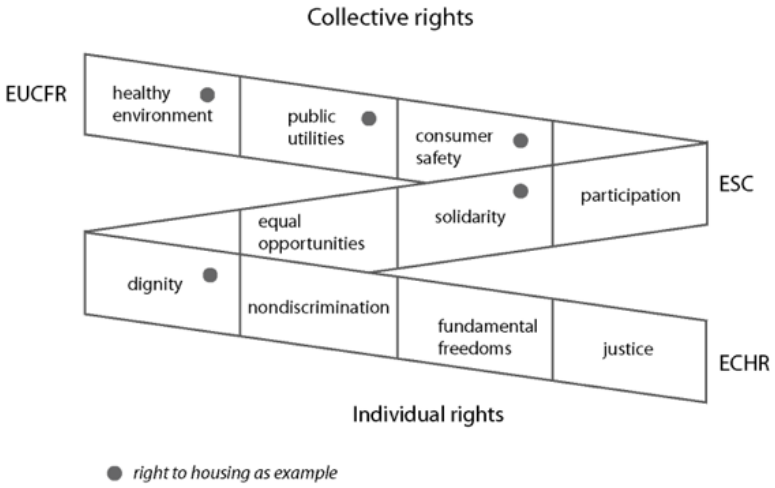
[938] Alston P, 'Assessing the strengths and weaknesses of the European Social Charter's Supervisory System' in G. Búrca, B. Witte, & L. Ogertschnig (Eds.), *Social rights in Europe* (Oxford University Press, 2005) P.47 <https://doi.org/10.1093/acprof:oso/9780199287994.003.0004> accessed 21 May 2023.

[939] Fedotov I.A, 'Ekonomicheskie prava cheloveka i grazhdanina v social'nom gosudarstve: sovremenniy opyt Rossii' in *Avtoref. dis. ... kand. yurid. nauk.* (Moscow, 2009) P.7.

-Cultural rights.

M. Mikkola, a Professor of Labour Law at the University of Helsinki, demonstrated the stages of development of human rights at the European level in:

Table "Three generation of human rights"[940]



It is important to note that Professor M. Mikkola connected each stage of human rights' development with the most significant legal documents adopted at the Council of Europe (the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[941] and the European Social Charter 1961[942]) and in the European Union (the Charter of Fundamental Rights of the European Union[943]).The latter document[944]is also significant because it has "consolidated all three generations of rights into one legal document, and their monitoring is done by the same bodies[945]".However, there were also other legal documents

[940] Mikkola M, 'Need to strengthen the monitoring mechanism of social human rights' *in Reform of the European Social Charter* (2011) P.27 <https://rm.coe.int/168048db08> accessed 22 May 2023.

[941] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[942] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[943] Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[944]Ibid.

[945] Mikkola M, 'Need to strengthen the monitoring mechanism of social human rights' *in Reform of the European Social Charter* (2011) P.27-28 <https://rm.coe.int/168048db08> accessed 22 May 2023.

which have contributed to the development of economic, social, and cultural rights and which should not be underestimated. It is a wide list, but in the analysis of social rights, there are:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[946] which regulates rights of the first generation, civil and political rights (for example, the right to life, liberty and personal integrity, respect for private and family life, freedom of thought, conscience and religion, the right to an effective remedy, etc.) and indirectly protects economic, social and cultural rights. The Convention includes provisions related to economic, social, and cultural rights. For example, Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[947] protects the right to life, which includes a duty on the part of the state to take positive steps to protect individuals from threats to their health and well-being. It can include ensuring access to healthcare, clean water, and adequate food. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[948] prohibits torture and inhuman or degrading treatment, which includes a duty on the part of the state to ensure that individuals have access to necessities such as shelter, and medical care. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[949] protects the right to respect for private and family life, which can include economic and social aspects such as the right to family reunification, social security, and adequate housing. Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[950] prohibits discrimination on various grounds, including social and economic status, which can affect access to education, employment, and other basic rights. Moreover, the European Court of Human Rights has also recognized the importance of economic, social, and cultural rights in its jurisprudence, particularly in cases related to access to healthcare, education, and housing.

- the Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 [951] which enshrined the right to education.

[946] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[947] Ibid, Article 2.

[948] Ibid, Article 3.

[949] Ibid, Article 8.

[950] Ibid, Article 14.

[951]Article 5. Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

- the Protocol № 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1984[952] established the equality of spouses with each other regarding marriage, staying in marriage or its dissolution.

- the European Convention on Social and Medical Assistance 1953 obliges "the signatory countries to provide citizens of other Council of Europe countries who are legally in a particular country of the Council of Europe and do not have sufficient means of subsistence with social and medical services on equal terms with their own citizens (Art.1)[953]".

- the Protocol to the European Convention on Social and Medical Assistance 1953[954] extended social and medical assistance to refugees (Art.2).

- the European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors 1953 and the Protocol to the Agreement. In accordance with the Interim Agreement, "citizens of any country of the Council of Europe have the opportunity to enjoy the same rights in the field of social security for old age, disability or loss of a breadwinner as citizens of country of the Council of Europe in whose territory they are located, provided that this citizen fulfils the conditions of residence of a country of the Council of Europe where he is located (Art.2)[955]". The Protocol extended the Agreement to refugees (Art.2)[956] as well.

- the European Convention on the Equivalence of Diplomas leading to Admission to Universities 1953[957], according to which "the diploma must confirm the necessary level of education for admission to similar educational institutions of the country where this diploma was issued[958]".

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[952]Article 5. Protocol № 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 22 November 1984) EST 117 <https://www.echr.coe.int/Documents/Library_Collection_P7postP11_ETS117E_ENG.pdf> accessed 18 May 2023.

[953]European Convention on Social and Medical Assistance (adopted 11 December 1953) EST 14 <https://rm.coe.int/16800637c2 > accessed 17 May 2023.

[954] Protocol to the European Convention on Social and Medical Assistance (adopted 11 December 1953) EST 14A <http://rm.coe.int/16800637c3> accessed 16 May 2023.

[955] European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors (adopted 11 December 1953) COETS 1 <http://www.worldlii.org/int/other/COETS/1953/1.html> accessed 15 May 2023.

[956] Protocol to the European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivor (adopted 11 December 1953) EST 12A< https://www.coe.int/ru/web/conventions/full-list/-/conventionns/rms/09000016800637b8> accessed 14 May 2023.

[957] European Convention on the Equivalence of Diplomas leading to Admission to Universities (adopted 11 December 1953) EST 15 <https://rm.coe.int/168006457b> accessed 13 May 2023.

[958] Ibid, Article 1.

- the European Agreement on the Abolition of Visas for Refugees 1959[959]. "The refugees permanently residing in the territory of one of the member States of the Council of Europe have received an exemption from visa formalities for entry into the territory of other countries that are members of the Council of Europe[960]".

- the European Social Charter 1961[961] became an important step in the creation of a mechanism for the implementation and protection of social rights and a kind of analogue of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in relation to the social and economic spheres of interaction between the Council countries. The European Social Charter was opened for signature in Turin on 18 October 1961 but "remained "Great Unknown" in legal and human rights discourse for more than 30 years because of deficiencies in the norm-setting"[962]. Researchers often face the question of why the European Social Charter, which is legally binding, is called a "Charter" and not a "Convention". The answer is that the European Social Charter 1961, from the point of view of its legal status, is "based on ideological factors aimed at legal means rather than performing a legal assessment"[963].

- the Additional Protocol to the European Social Charter 1988[964] included new rights. It extended the list of rights: the right to equal opportunities, with regard to employment and profession, the right of elderly persons to social protection, and also added the following rights: the right to protection against poverty and social exclusion, right to housing, the right to protection in the event of termination of employment, the right to protection from sexual harassment in the workplace and other forms of aggressive acts, the right of workers with family responsibilities to equal opportunities and equal treatment, right of workers' representatives in enterprises.

- the Protocol amending the European Social Rights 1991[965].It has changed the reporting system by providing the social partners with more central role in enforcing the European Social

[959] European Agreement on the Abolition of Visas for Refugees (adopted 20 April 1959) EST 31 <https://www.whatconvention.org/en/ratifications/256?sort_by=country&order=desc> accessed 12 May 2023.

[960] Ibid, Article 1.

[961] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[962] Mikkola M, 'Social Rights as Human Rights in Europe' in *EJSS* (№ 2/3, 2000) P.261.

[963] Social Charter Secretariat, 'Digest of the Case Law of the ECSR' [March 2015] P. 225.

[964] Additional Protocol to the European Social Charter (adopted 05 May1988) ETS № 128 <https://rm.coe.int/168007a84e> accessed 12 May 2023.

[965] Protocol amending the European Social Charter (adopted 21 October 1991) EST 142 < https://rm.coe.int/168007bd24 > accessed 24 May 2023.

Charter 1966 and by affirming the exclusive competence of the Committee of Independent Experts to make legal assessments[966].

- the Revised European Social Charter 1996[967].In Strasbourg, on May 3, 1996, the European Social Charter 1966 was revised. The adoption of the Revised European Social Charter was the result of the decision to relaunch the European Social Charter that was taken in 1990 on the occasion of the Inter-Ministerial Conference in Rome for the 40th Anniversary of the European Convention on Human Rights. The revision of the substance of the European Social Charter 1966 was, in quantitative terms, "the most significant task of the ad hoc Committee entrusted with the relaunching"[968].

In comparison with the European Social Charter 1961, which contains almost identical human rights in content (according to first part they are "programmatic", and according to Part II they are mandatory if they are chosen), the Revised European Social Charter 1991 contains all the rights guaranteed by the European Social Charter in 1961.

Both documents include some rights as:

-the right to adequate living (ESC art. 4(1) (for workers and their families); ESC Revised art.30 (protection against poverty and social exclusion);

-the right to housing (ESC Revised art.31);

-the right to health (ESC art.1);

-the right to medical care (ESC, art.13 (right to medical assistance);

-the right to social security (ESC art.12 (art.14 social welfare services) +art.13 (social assistance);

- the right of the family (ESC art.16).

- the right of workers to the protection of their claims in the event of the insolvency of their employer[969] (ESC Revised art.25).

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[966] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.48.

[967] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[968] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.48.

[969] European Union, 'Council Directive on the protection of employees in the event of the insolvency of their employer' 80/987/EEC OJ L 283 (28 October 1980) P. 23 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31980L0987> accessed 11 May 2023. This Directive was subsequently amended by: European Union, 'Council Directive' 87/164/EEC, OJ L 66 (11 March 1987) P.11; and European Parliament of the European Union, 'Directive' 2002/74/EC, OJ L 270 (8 October 2002) P.10; These successive changes were consolidated in: European Parliament of the European Union, 'Directive on the protection of employees in the event of the insolvency of their employer' 2008/94/EC, OJ L 283 (28 October 2008) P. 36–42; Schutter O.D, 'The European Pillar of Social Rights, and the Role of the European Social Charter in the EU legal order' (2018) P.10 <https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132> accessed 12 May 2023.

The Revised European Social Charter consists of six parts and a five-part Annex. The first two parts of the Revised European Social Charter 1996 list social rights and disclose what measures should be taken to ensure their implementation and protection. As stated in article «A» of part III of the Revised European Social Charter, the State must ultimately have obligations under sixteen articles or sixty-three numbered paragraphs. The other parts contain references to the previous version, the Additional Protocol, provisions on collective complaints (Part IV), the prohibition of discrimination, restrictions in application (Part V), the relationship with national legislation, the procedure for signing, ratification, denunciation, territorial application. The Annex to the Revised European Social Charter 1996 provides recommendations for interpreting the meaning of all three parts.

Paragraphs 20-23 of the Revised European Social Charter 1996[970] were taken from the Additional Protocol 1988, while paragraphs 24 to 31 are new, namely:

-Article 24 – "the right to protection upon termination of employment[971]",

-Article 25 – "the right of employees to protect their claims in the event of insolvency of the employer[972]",

-Article 26 – "the right of the employee to protect their dignity[973]",

-Article 27 – "the right of employees with family responsibilities to equal opportunities and equal treatment[974]",

-Article 28 –"the right of employees' representatives to protection and necessary conditions in enterprises[975]",

-Article 29 – "the right to information and advice in case of collective dismissals[976]",

-Article 30 – "the right to protection from poverty and social ostracism[977]". The rights composing the hard core of the Revised European Social Charter 1996 is more extensive than in the European Social Charter 1961. Parts II and III of the Revised European Social Charter 1996 increased by 12 points.

[970] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[971] Ibid, Article 24.

[972] Ibid, Article 25.

[973] Ibid, Article 26.

[974] Ibid, Article 27.

[975] Ibid, Article 28.

[976] Ibid, Article 29.

[977] Ibid, Article 30.

Despite the addition of new rights, it is important to note that some of these rights "are couched in relatively imprecise terms"[978] – a fact that "considerably increased the European Committee of Social Right's power to clarify and concretize these rights"[979]. Moreover, the European Social Charter 1961 and the Revised European Social Charter 1991 "differentiate between "core rights" and "selective rights" which creates unequal levels of protection across Europe"[980].According to A. K. Abashidze, and O. A. Ruchka, "the logic and meaning of such a division (and in fact a contradiction) becomes incomprehensible if we are talking about the same rights only with different formulations and legal consequences[981]".

The Revised European Social Charter 1996[982] makes to the text of the ESC 1961 the following changes:

-"reinforces the principle of non-discrimination;
- promotes equality between men and women in all areas governed by it;
-[provides] better protection of maternity and social protection of mothers;
-[provides]better social, legal and economic protection of employed children;
-[provides] better protection of physically handicapped persons[983]".

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[978] Akandji – Kombe J.F, 'The material impact of the Jurisprudence of the European Committee of Social Rights' in Grainne de Burca, Bruno de Witte, and Larissa Ogertschnig (eds) in *Social Rights in Europe* (Oxford Univ. Press, New York, 2005) P. 94; Hausler K, 'Chapter 2 The Normative Framework for the Rights of Children in Europe', in *Social Rights of Children in Europe* (2015) P.11-25 <https://brill.com/display/book/9789004375932/BP000002.xml?rskey=HurRzI8&result=1> accessed 10 May 2023.

[979] Harris D.J, Darcy J, 'The European Social Charter' in *The procedural aspects of international law monograph series* (2nd ed. Transnational Publishers, Ardsley, NY 2001) P. 373; Hausler K, 'Chapter 2 The Normative Framework for the Rights of Children in Europe', in *Social Rights of Children in Europe* (2015) P.11-25 <https://brill.com/display/book/9789004375932/BP000002.xml?rskey=HurRzI8&result=1> accessed 10 May 2023.

[980] Hausler K, 'Chapter 2 The Normative Framework for the Rights of Children in Europe', in *Social Rights of Children in Europe* (2015) P.13<https://brill.com/display/book/9789004375932/BP000002.xml?rskey=HurRzI8&result=1> accessed 10 May 2023.

[981] If the State chooses Article 16 from Part II, it will be mandatory, and the similar paragraph 16 of Part I of the European Social Charter of 1961 remains 'programmatic'. If the State does not choose Article 16 of Part II, then in both cases the right set forth in Part I, paragraph 16, and Part II, Article 16 of the European Social Charter 1961 remains optional for the state concerned. The same pattern is observed when comparing other paragraphs and articles of Part I and part II of the European Social Charter 1961. Abashidze A.K, Ruchka O.A, 'The European Social Charter -Initial and revised version: state and prospects' in *Journal of International and Comparative Law* (№1, 2014).

[982] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[983] Inshakova O.A, 'Pravovye standarty Soveta Evropy v Rossii (The Legal Standards of the European Council in Russia)' in Nauchno-analiticheskiy zhurnal 'Obozrevatel' (№ 9 (236), 2009) P.124-126; Abashidze A.K, Inshakova O.A'Osnovy evropeyskogo integratsionnogo prava' in the *Bases of European Integration Law* (Moscow, 2012) P. 451-476.

- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007[984].

- the European Convention on the Adoption of Children (Revised) 2008[985].

Thus, the Council of Europe unites 46 countries of Europe and the world under its auspices in the implementation of a minimum set of social, economic and cultural rights in their national legislation. The Council of Europe provides all possible technical assistance regarding the implementation of these rights. The text of the European Social Charter 1961 has been repeatedly amended and expanded through the adoption of protocols, but the most significant changes in the content were made in 1996. Back at the Ministerial Conference on October 22, 1991, it was decided to make the necessary amendments to the text of the European Social Charter 1961 to reflect the significant social changes that have occurred since its acceptance[986]. Overall, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [987], the European Social Charter 1961[988] and other legal documents on social issues form an integral complex covering basic human rights in the socio-economic sphere, and also serves as a kind of model for the legislation of the countries of the European Union and the other members of the Council of Europe. There are some differences in nature of economic, social and cultural rights within the Council of Europe:

Criteria	**The Council of Europe[989]**	**The European Union[990]**
Legal nature		

[984] Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007) EST № 201 <https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/0900001680084822> accessed 9 May 2023.

[985] European Convention on the Adoption of Children (Revised) (adopted 27 November 2008) EST № 202 <https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/0900001680084823> accessed 8 May 2023.

[986] Council of Europe, 'Explanatory Report to the European Social Charter (Revised)' (adopted 03 May 1996) EST 163<https://rm.coe.int/16800ccde4> accessed 7 May 2023.

[987] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[988] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[989] 'Council of Europe' <https://www.coe.int/en/web/portal/home> accessed 6 May 2023.

[990] 'European Union' <https://european-union.europa.eu/index_en> accessed 5 May 2023.

	The European Social Charter[991], which is the main instrument on economic, social, and cultural rights established by the Council of Europe, is a legally binding treaty that requires states to take concrete measures to ensure the enjoyment of these rights."The aim and purpose of the [European Social] Charter [1961], being a human rights instrument, is "to protect rights not merely theoretically, but also in fact (para. 32)[992]".	The EU has a softer legal framework for economic, social, and cultural rights. While the EU Charter of Fundamental Rights recognizes these rights, the charter is not a legally binding instrument in the same way that the European Social Charter 1961 is.
Scope	The European Social Charter 1961 covers a wide range of economic, social, and cultural rights, including the right to work, the right to social security, the right to health, the right to education, and the right to protection against poverty and social exclusion.	The EU Charter of Fundamental Rights covers some of the same rights, but it also includes civil and political rights that are not covered by the ESC, such as the right to a fair trial and the right to freedom of expression.
Implementation	The Council of Europe has established a monitoring mechanism for the European	The European Union has a different system for monitoring economic, social, and cultural rights, which involves the

[991] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[992] *International Commission of Jurists (ICJ) v. Portugal* (European Committee of Social Rights) № 1/1998, (12 October 1998) §32 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-1-1998-international-commission-of-jurists-icj-v-portugal> accessed 5 May 2023.

	Social Charter 1961[993]which involves regular reporting by member states on their implementation of the charter's provisions, as well as review by an expert committee. National reports are reviewed by the European Committee on Social Rights.	European Commission conducting periodic reviews of member states' progress in implementing these rights.

ii. Minimum core of economic, social, and cultural rights

"The minimum core is a concept introduced by the Committee on Economic, Social and Cultural Rights with the aim of ensuring "the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party; it aims to set a quantitative and qualitative floor of socio-economic and cultural rights that must be immediately realized by the state as a matter of top priority[994]".

The importance of minimum core for economic, social, and cultural rights can be seen in several ways:

1) Ensuring basic human dignity. States ensure that everyone has access to necessities such as food, housing, and healthcare. It helps to ensure that everyone can live with dignity, regardless of their socio-economic status.
2) Reducing inequality. States can help to reduce inequality between different socio-economic groups, and to create a more just and equitable society.
3) Protecting the most vulnerable. The minimum core of economic, social, and cultural rights is particularly important for protecting the most vulnerable members of society, such as children, the elderly, and those with disabilities. By ensuring that everyone has access to necessities, states can help to protect these vulnerable groups from the worst effects of poverty and marginalization.

[993] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[994] Fisher A, 'Minimum Core and the Right to Education' (World Bank, 2017) <https://elibrary.worldbank.org/doi/abs/10.1596/29142> accessed 4 May 2023.

4) Upholding international human rights obligations. States should comply with the provisions of international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights 1966 and others.

There are examples of the minimum cores for some economic, social, and cultural rights.

✓ Social right. Article 12 (2) of the European Social Charter 1961[995] state that: "Parties undertake "to maintain the social security system at a satisfactory level[996]". Similarly, in Article 12(2) of the Revised European Social Charter 1996[997] proclaims that: "With a view to ensuring the effective exercise of the right to social security, the Parties undertake: (2) to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security[998]". It is visible that the latter article was amended, and it added the reference to the level needed for the European Code of Social Security' ratification 1964[999]. In other words, under this article the minimum standard to be provided was raised to at least the standard prescribed by the European Code of Social Security which "requires States to accept more parts of the Code for its valid ratification (International Labor Organization Convention requires the acceptance of 3 parts, the Code requires 6 parts) (para.58)[1000]". The next part, part 3 of Article 12 of the European Social Charter 1961, the Revised European Social Charter 1996 contain a continuing obligation of states "to endeavor to raise progressively the system of social security to a higher level[1001]". The European minimum core of the rights to social security. It can also be assumed that the CESCR regards the standards set in ILO Convention 102 as the international minimum core of the right to social security, as it regularly recommends states to ratify this Convention[1002]. ILO Convention and

[995] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[996] Ibid, Article 12 (2).

[997] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[998] Ibid, Article 2 (2).

[999] European Code of Social Security (adopted 16 April 1964) ETS № 4<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=048> accessed 3 May 2023.

[1000] Council of Europe, 'Explanatory Report to the European Social Charter (Revised)' (adopted 03 May 1996) EST 163<https://rm.coe.int/16800ccde4> accessed 7 May 2023.

[1001] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023; European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1002]CESCR, 'Concluding Observations. Kazakhstan' E/C12/Kaz/CO/1/ (07 June 2010), para.23 <https://www.ohchr.org/es/documents/concluding-observations/ec12kazco1-concluding-observations> accessed 2 May 2023; CESCR, 'Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant' , 'Draft concluding observations of the Committee on Economic, Social and Cultural Rights: Australia' E/C.12/AUS/CO/4 (15 May 2009) para.20 <https://digitallibrary.un.org/record/654774?ln=en> accessed 1 May 2023; CESCR, 'Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant' 'Concluding

the European Code on Social Security can be used to determine a minimum standard of the right to health at the European level.

In a case of *European Roma rights Centre v. Bulgaria*, the European Committee of Social Rights held that: "Under Article 13(1) of the European Social Charter 1961, the Revised European Social Charter 1996 states were required "to guarantee minimum income and social assistance for persons without adequate resources" consistent with human dignity to combat social exclusion[1003]".

Moreover, in a review of the protection of socio-economic demands in the European Court of Human Rights' jurisprudence, I. Koch repeatedly observed that: "Certain statements by the European Court of Human Rights can be interpreted as recognizing the notion of a minimum core for basic health services[1004] and social cash benefits[1005]".

✓ Cultural right. One cultural right that is recognized in the European Social Charter 1961[1006], the Revised European Social Charter 1996[1007] and European Convention for the

observations of the Committee on Economic, Social and Cultural Rights: Nicaragua' E/C.12/NIC/CO.4 (28 November 2008) para.18 <https://digitallibrary.un.org/record/642979?ln=en> accessed31 April 2023.

[1003] *European Roma Rights Centre (ERRC) v. Bulgaria* (European Committee of Social Rights) № 48/2008, (18 February 2009) para.37-38 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-48-2008-european-roma-rights-centre-errc-v-bulgaria?inheritRedirect=false> accessed 28 April 2023. Moreover, "a significant number of Roma are living in conditions that fail to meet minimum standards in Greece in breach of the obligation to promote the right of families to adequate housing laid down in Article 16 of [the (Revised) European Social Charter]", *European Roma Rights Centre (ERRC) v. Greece* (European Committee of Social Rights) № 15/2003 (04 April 2003) para.42 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-15-2003-european-roma-rights-centre-errc-v-greece?inheritRedirect=false> accessed 27 April 2023.

[1004] Koch I, 'Human Rights as Invisible Rights, The Protection of Socio-Economic Demands Under the European Convention on Human Rights' (Martinus Nijhoff Publishers, 2009) P. 63-64 <https://www.google.co.uk/books/edition/Human_Rights_as_Indivisible_Rights/rfJ5DwAAQBAJ?hl=en&gbpv=0> accessed 30 April 2023; *Cypris v. Turkey* (2001) № 25781 /94, para.219 < https://hudoc.echr.coe.int/Eng#{%22itemid%22: [%22001-59454%22]} accessed 29 April 2023; Harris D.J, 'Law of the European Convention on Human Rights' (2d ed. 2009) P.46-47.

[1005]"European Court of Human Rights protected social cash benefits under Articles 6,8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 as well as under the right to property in Article 1 of Protocol 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms; or at least where the ECtHR did not exclude that social cash benefits were protected if an individual's living conditions attained a minimum level of severity", Koch I, 'Human Rights as Invisible Rights, The Protection of Socio-Economic Demands Under the European Convention on Human Rights' (Martinus Nijhoff Publishers, 2009) P. 63-64 <https://www.google.co.uk/books/edition/Human_Rights_as_Indivisible_Rights/rfJ5DwAAQBAJ?hl=en&gbpv=0> accessed 30 April 2023.

[1006] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1007] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

Protection of Human Rights and Fundamental Freedoms1950[1008] is the right to education[1009]. In addition, Article 2 of the European Social Charter 1961, which states that: "Everyone has the right to education[1010]".

In the legal literature, the multiplicity of approaches to a definition of the right to education. For example, A. F. Nozdrachev understands the right to education as "the right of a person to receive a certain amount of knowledge, cultural skills, professional orientation necessary for normal life in the conditions of modern society[1011]".More broadly, this concept is interpreted by V. I. Shkatulla, who defines the right to education as "a basic and natural right that aims to meet human needs for information and directly in education itself[1012]".E. D. Volokhova believes that the right to education is the freedom to receive education "in accordance with the beliefs of parents, their own desires and capabilities[1013]".

According to D. A. Iagofarov, the right to education is a set of rights and obligations, that is, "legal obligation[1014]". In support of his point of view, he cites the following arguments: "In the very concept of the "right to education", there are immanently elements of a duty (legal obligation), and not only opportunities. In other words, the right to education is also an obligation to receive (have) education[1015]".

[1008] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1009] It is enshrined in such important international legal acts as the Universal Declaration of Human Rights of December 10, 1948 (Article 26), the International Covenant on Economic, Social and Cultural Rights of December 16, 1966 (Articles 13, 14), the Convention on the Rights of the Child of November 20, 1989 (Article 28 29), the Convention on Combating Discrimination in Education of December 14, 1960. The right to education was also enshrined in the Constitution of the Russian Federation of 1993.

[1010] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1011] Matiusheva N.T, 'Pravo na obrazovanie – konstitutsionno zash- chishchaemaia dukhovnaia tsennost' [The right to education is constitutionally protected spiritual value]' in *Sovremennoe pravo* (Modern law, № 12, 2008) P. 37.

[1012] Shkatulla V.I, 'Pravo na obrazovanie [Right to education]' in *Gosudarstvo i pravo – State and law* (№ 7, 1997) P. 5.

[1013] Volokhova E.D, 'Zakonodatel'noe obespechenie prava na obrazovanie v Rossiiskoi Federatsii [Legislative support of the right to education in the Russian Federation]' (Moscow, Gotika Publ., 2004) P.11.

[1014] Iagofarov D.A, 'Obrazovatel'noe pravo: opyt teoreticheskogo osmysleniia [Educational law: experience of theoretical understanding]'in *Obrazovanie i nauka – Education and science* (№ 4, 2000) P. 54.

[1015] Ibid, p. 52.

T. V. Zhukova defines the right to education from the standpoint of the science of civil law as one of the non-property rights of participants in a civil legal relationship, the implementation of which is based on the principles of equality, autonomy of will and property independence of subjects[1016]. T. V. Gracheva, formulating the definition of the concept of "the right to education", proceeds from the fact that this right is an inalienable, subjective human right. The constitutional right to education, in her opinion, is a real, guaranteed by the state and the international community, the actual opportunity of a person to possess and use knowledge, skills and abilities in order to improve their cultural level in their personal interests and in the interests of the whole society[1017].

L. A. Rezvanova's point of view is of particular interest. In the content of the human right to education, she identifies the following elements: the right of access, the minimum right, the right to development and the right to participation. At the same time, the right of access is understood as the equal right to free access to all educational institutions and organizations; the minimum right is the right to acquire knowledge, skills and abilities necessary for a decent human existence in society; the right to development is the right to free development of creative abilities and interests of an individual; under the right of participation is the right of all employees of educational institutions and organizations to express their own will in matters of education and to participate in decision–making in these institutions[1018].

In general, the right to education includes:
- the right to access education,
- the right to education that is free and compulsory at the primary level,
- the right to higher education that is equally accessible to all,
-the right to education that is directed towards the full development of the human personality,
- the right to access information and to freedom of expression and thought,
- the right to participate in cultural life and the arts.

✓ Economic right. One of economic rights is the right to work which includes:
- the right to access employment,
-the right to fair and just working conditions,
-the right to protection against discrimination in employment,

[1016] Zhukova T.V, 'O prave na obrazovanie kak o lichnom neimushchestvennom prave [About the right to education as about the personal non-property right]'in *Zakony Rossii: opyt, analiz, praktika – Laws of Russia: experience, analysis, practice* (№ 4, 2012) P.47.

[1017] Gracheva T. V,'Realizatsiia konstitutsionnogo prava cheloveka i grazhdanina Rossiiskoi Federatsii na obrazovanie: na primere goroda Moskvy' in *avtoref. dis. ... kand. iurid. nauk* [Realization of constitutional right of man and citizen to education in the Russian Federation: on the example of Moscow: cand. law sci. diss. abstract] (Moscow, 2004) P.20.

[1018] Rezvanova L.A, 'Sushchnost' sotsial'nogo gosudarstva i ee proiavlenie v sfere obrazovaniia' in *avtoref. dis. ... kand. iurid. Nauk* (Rostov-on-Don, 2004) P.19-20.

- the right to receive just and favorable remuneration,
-the right to form and join trade unions, to bargain collectively, and to engage in lawful strikes.

Article 1 of the European Social Charter 1961[1019] contains the following obligations:

-to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

- to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

- to establish or maintain free employment services for all workers;

- to provide or promote appropriate vocational guidance, training and rehabilitation[1020]".

Thus, the concept of minimum core for economic, social, and cultural rights is essential for ensuring that everyone has access to basic human rights, and for creating a more just and equitable society. It refers to the minimum level of these rights that must be guaranteed by states in order to fulfill their obligations under international human rights law. Even though the concept of the minimum core for the economic, social, and cultural rights within the Council of Europe has been debated and discussed by experts and human rights advocates for several years, there have been no recent developments in terms of a new approach to it. However, there have been ongoing efforts to advance and promote the implementation of economic, social, and cultural rights across member states. Member States must recognize the interdependence of economic, social, and cultural rights and civil and political rights, and to adopt a more comprehensive approach to them which will emphasize the importance of addressing the underlying structural causes of poverty and inequality in order to fully realize human rights for all.

iii. State obligations to respect, protect and fulfil economic, social and cultural rights

At the universal level States' obligations to respect, to protect and fulfil human rights can be fixed in such documents as General Comments, which regional human rights commissions and courts often as "internationally accepted ideas of the various obligations engendered by human rights" and as "authoritative statements of the law"[1021].

[1019] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1020] Ibid, Article 1.

[1021] Blake C, 'Normative Instruments in International Human Rights Law: Locating the General Comment' in *Center for Human Rights and Global Justice Working Paper* (2008) <http://chrgj.org/wp-content/uploads/2012/07 /bl ake.pdf> accessed 27 May 2023.

If we turn to minimum core obligations for economic, social, and cultural rights have been developed in regional human rights instruments at the European level as A. Eide warns that: "Paths can and must be found that enable the state to ensure that it guarantees the respect and protection for economic, social and cultural rights[1022]". For example, the European Social Charter 1961 is an international treaty of the Member States of the Council of Europe containing the obligations assumed by the state in the social sphere. In the analysis of verbs which the drafters of the European Social Charter 1961 used in the provisions on social rights, there are the following actions that constitute different obligations:

-Ensure - "to make sure, certain (Article 2 (5) -weekly rest period[1023])[1024]".

-Provide - "to take precautionary measures, to make a proviso or stipulation, to make preparation to meet a need (Article 1 (4)- vocational training[1025], Article 2 (1,2,3) – working hours, holidays with pay[1026], Article 7 (1) – minimum age of admission to employment[1027])[1028]".

-Prevent - "to keep form happening or existing (Article 11 (3) -as far as possible epidemic, endemic and other diseases, as well as accidents[1029])[1030]".

[1022] Eide A, 'Economic, Social and Cultural Rights as Human Rights; Obstacles and Goals to be Pursued' in A. Eide et al. (Ed.), *Economic, Social, and Cultural Rights: A Textbook* (M. Nijhoff Publishers, 1995) P.385.

[1023] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1024] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023; Gomien D, Harris D, Zwook L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

[1025] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1026] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1027] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1028] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

[1029] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1030] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

-Issue - "publishing or officially giving out (Article 3 (2) – safety and health regulations[1031])[1032]".

-Eliminate - "to cast out or get rid of (Article 2 (4) -risks in inherently dangerous or unhealthy occupations[1033])[1034]".

-Recognize - "to acknowledge formally (Article 4 (1) -right to remuneration[1035])[1036]".

-Promote - "to encourage public acceptance (Article 6(1) – joint consultations between workers and employers[1037], Articles 14 (1)[1038] and 15 (3)[1039])[1040]".

-Formulate - "to develop (Article 3 (1)- formulation of coherent national policy on occupational safety[1041])[1042]".

[1031] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1032] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

[1033] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1034] H Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

[1035] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1036] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

[1037] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1038] Ibid.

[1039] Ibid.

[1040] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

[1041] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1042] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381; 'Merriam-Webster Dictionary'< https://www.merriam-webster.com> accessed 26 April 2023.

-Implement - “to give practical effect to and ensure of actual fulfilment by concrete measures (Article 3 (1) – implementation of coherent national policy on occupational safety, occupational health and the working environment[1043])[1044]”.

-Review - “a crucial evaluation, examination (Article 3 (1) – periodic review of coherent national policy on occupational safety, occupational health and the working environment[1045])[1046]”.

-Permit - “to authorize (Article 4 (5) – deduction of wages[1047])[1048].

-Establish - “to bring into existence, to put on a firm basis (Article 1 (3) -establishment of free employment services[1049])[1050]”.

-Maintain - “to sustain, continue or persevere (Article 1(3) -free employment services[1051])”[1052].

It might be concluded that the European Social Charter 1961 does not have “a single statement on the nature of obligations, rather, each and every position in the charter has possibly

[1043] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1044] Gomien D, Harris D, Zwak L, ‘Law and practice of the European Convention on Human Rights and the European Social Charter’ (Council of Europe Publishing, Strasbourg, 1996) P. 381; ‘Merriam-Webster Dictionary’< https:// www.merriam-webster.com> accessed 26 April 2023.

[1045] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1046] Gomien D, Harris D, Zwak L, ‘Law and practice of the European Convention on Human Rights and the European Social Charter’ (Council of Europe Publishing, Strasbourg, 1996) P. 381; ‘Merriam-Webster Dictionary’< https://www.merriam-webster.com> accessed 26 April 2023.

[1047] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1048] Gomien D, Harris D, Zwak L, ‘Law and practice of the European Convention on Human Rights and the European Social Charter’ (Council of Europe Publishing, Strasbourg, 1996) P. 381; ‘Merriam-Webster Dictionary’< https://www.merriam-webster.com> accessed 26 April 2023.

[1049] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1050] Gomien D, Harris D, Zwak L, ‘Law and practice of the European Convention on Human Rights and the European Social Charter’ (Council of Europe Publishing, Strasbourg, 1996) P. 381; ‘Merriam-Webster Dictionary’< https://www.merriam-webster.com> accessed 26 April 2023.

[1051] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1052] ‘Merriam-Webster Dictionary’< https://www.merriam-webster.com> accessed 26 April 2023.

different legal effect"[1053]. All above explained different obligations from the European Social Charter 1961, and the Revised European Social Charter 1996 can be grouped as in Table[1054].

Obligation to		**Obligation under European Social Charter**
Respect		Ensure
Protect		Issue, Permit
Fulfil	Facilitate	Eliminate, recognize, formulate, implement, review, establish, maintain
	Provide	Provide, Prevent
	Promote	Promote

Moreover, three types of obligations (to respect, protect and fulfil) are explained in a case of *European Roma Rights Centre v. Portugal*. The European Committee of Social Rights concluded that: "The prohibition on child labour (prohibiting the employment of children under 15 years old), as established by Article 7(1) of the European Social Charter 1961, applied to all economic sectors and all types of enterprises[1055]". The European Committee of Social Rights held that: "These encompassed family businesses, as well as all forms of work, whether paid or not, including agricultural and domestic work, domestic labour and sub-contracting, and even work within the family; the State's failure to conduct proper supervision of working conditions for children, coupled with the limitations in the work of the labour inspectorates, amounted to a violation of Article 7(1) of the European Social Charter[1056]". It shows how the European Committee of Social Rights has been assessing compliance with the State obligations and, particularly, the trilogy of the specific duties:

1) The duty to respect was interpreted in the case of *Quaker Council for European Affairs (QCEA) v. Greece*. The European Committee of Social Rights reviewed the Greek Government's legislation which required conscientious objectors to perform civil service in lieu

[1053] Gomien D, Harris D, Zwak L, 'Law and practice of the European Convention on Human Rights and the European Social Charter' (Council of Europe Publishing, Strasbourg, 1996) P. 381.

[1054] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.63 <http://dspace.ut.ee/bitstream/handle/10062/1232/kontkontson.pdf> accessed 25 April 2023.

[1055] *European Roma Rights Centre (ERRC) v. Portugal* (European Committee of Social Rights) № 61/2010 (23 April 2010)< https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkkJmH2bYG/content/no-61-2010-european-roma-rights-centre-errc-v-portugal?inheritRedirect=false> accessed 24 April 2023.

[1056] *International Commission of Jurists (ICJ) v. Portugal* (European Committee of Social Rights) № 1/1998, (12 October 1998) §32 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-1-1998-international-commission-of-jurists-icj-v-portugal> accessed 5 May 2023.

of compulsory military service. It found that: "The civil service requirements prescribed an excessive duration of service, compared to the duration of military service[1057]".

2) The duty to protect. The European Court of Human Rights and the European Committee of Social Rights seem to assume the obligation of states to protect a minimum core of socio-economic rights under their respective instruments, even if the content of this minimum core is not always well-defined. For example, in a case of *International Federation of Human Rights Leagues (FIDH) v. France*[1058], the FIDH submitted a complaint alleging that France was failing to fulfill its obligation to protect the right to housing under Article 31 of the Revised European Social Charter 1996. The complaint specifically focused on the lack of adequate housing for vulnerable groups, including homeless people and asylum seekers. The European Committee of Social Rights found that France had violated its duty to protect the right to housing under the Revised European Social Charter 1996. It noted that the French government had not taken sufficient measures to ensure that everyone had access to adequate housing, and that vulnerable groups were particularly affected by this failure. The Revised European Social Charter 1996 also emphasized that the duty to protect requires states to take proactive measures to prevent violations of social rights, and that this duty includes both negative and positive obligations. In the case of the right to housing, the duty to protect requires states to take steps to prevent homelessness and ensure access to adequate housing for all, including vulnerable groups.

3) The duty to fulfil (para. 40)[1059]. In a cease of *European Federation of Public Service Unions (EPSU) v. Ireland*[1060], the EPSU submitted a complaint alleging that Ireland was failing to fulfill its obligations under Article 7 of the Revised European Social Charter 1996, which

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[1057] *Quaker Council for European Affairs (QCEA) v. Greece* (European Committee of Social Rights) № 8/2000 (27 April 2001) <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-1-1998-international-commission-of-jurists-icj-v-portugal> accessed 4 May 2023.

[1058] *International Federation of Human Rights Leagues (FIDH) v. France* (European Committee of Social Rights) № 14/2003 (03 March 2003) < https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-14-2003-international-federation-of-human-rights-leagues-fidh-v-france> accessed 3 May 2023.

[1059] *European Roma Rights Centre (ERRC) v. Portugal* ((European Committee of Social Rights) № 61/2010, (23 April 2010) para.27-28 http://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publishesher/5GEFkJmH2bYG/content/no-61-2010-europe an-roma-rights-centre-errc-v-portugal?inheritReDirect=false >accessed 2 May 2023.

[1060] *European Federation of Public Service Unions (EPSU) v. Ireland* (European Committee of Social Rights) № 45 /2008 (13 December 2010) <https://www.coe.int/en/web/european-social-charter/decisions-of-the-committee//asset_publisher/bq4LO2B4t3sW/content/collective-complaint-no-45-2008-by-the-european-federation-of-public-service-unions-epsu-v-ireland-recogition-of-the-right-toorganisefornon?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Feuropean-social-charter%2Fdecisionothecommittee%3Fp_p_id%3D101_INSTANCE_bq4LO2B4t3sW%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1> accessed 1 May 2023.

guarantees the right of children and young persons to protection. The complaint focused on the issue of child poverty in Ireland and the lack of adequate measures taken to address this issue. The European Committee of Social Rights determined that Ireland had violated its duty to fulfill the right to protection of children and young persons under the Charter. It was stated that child poverty rates in Ireland were among the highest in the European Union and that the Irish government had not taken sufficient measures to address this issue. The European Committee of Social Rights underlined that the duty to fulfill requires states to take positive measures to ensure the effective realization of social rights. In the case of the right to protection of children and young persons, this duty includes taking steps to prevent and address child poverty and to ensure that all children have access to basic necessities such as housing, food, and healthcare.

In addition, there are a few examples of how the European Court on Human Rights has protected economic, social, and cultural rights through the three above mentioned obligations (obligations to respect, protect, and fulfill):

1) Obligation to respect. The European Court on Human Rights enforced this obligation by prohibiting certain actions by states that would undermine rights of the second generation. For example, in a case of *X and Y v. Netherlands*[1061], the European Court of Human Rights concluded that: "the Netherlands violated the right to respect for family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[1062] by refusing to grant residency permits to a couple based on their low income; the state's policy effectively prevented the couple from living together and undermined their right to respect for family life[1063]".

2) Obligation to protect requires states to take steps to prevent violations of economic, social, and cultural rights by third parties. For instance, in the case of *Rantsev v. Cyprus and Russia*[1064], the European Court on Human Rights stated that: "The state violated the obligation to protect the right to work under Article 4 of Protocol № 4 to the European Court on Human Rights 1963[1065] by failing to effectively investigate and prevent the trafficking of a young

[1061] *X and Y v. Netherlands* (1985) № 8978/80 <https://www.coe.int/t/dg2/equality//domesticviolencecampaign/resourcees/X%20AND%20Y%20v%20THE%20NETHERLANDS_en.asp> accessed 31 April 2023.

[1062] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1063] *X and Y v. Netherlands* (1985) № 8978/80 <https://www.coe.int/t/dg2/equality//domesticviolencecampaign/resourcees/X%20AND%20Y%20v%20THE%20NETHERLANDS_en.asp> accessed 31 April 2023.

[1064] *Rantsev v. Cyprus and Russia* (2010) 25965/04 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22002-1142%22] %7D > accessed 29 April 2023.

[1065] Protocol № 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (adopted 16 September 1963) ETS № 46< https://rm.coe.int/168006b65c> accessed 28 April 2023.

woman who was promised a job in Cyprus but was forced into prostitution upon arrival[1066]". Thus, the state had failed to take adequate steps to prevent the exploitation of migrant workers and had not fulfilled its obligation to protect their right to work.

3) Obligation to fulfill requires states to take positive steps to ensure that rights of the second generation are effectively realized. For example, in a case of *M.S.S. v. Belgium and Greece*[1067], the European Court on Human Rights considered that Belgium and Greece violated the obligation to fulfill the right to housing under Article 3 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1954[1068], by failing to provide adequate accommodation and support to an asylum seeker and his family. The state's failure to provide necessities such as food and shelter effectively deprived the family of their right to housing and undermined the effectiveness of the asylum system.

iv. Positive and negative state obligations

Every year the European Committee of Social Rights evaluates all documents submitted to it and makes a decision on the complaint. When deciding, the European Committee of Social Rights relies on various grounds, including own opinions. It focuses on other international legal acts and other international documents, such as the United Nations treaties, the Vienna Declaration of 1993, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1954[1069], decisions of the European Court of Human Rights. The European Committee of Social Rights also publishes Activity reports that set out "introduction, overview, collective complaint and report procedures, important developments and others[1070]". In 2021 the Activity Report for 2020 was realised. All decisions and conclusions, including statements of interpretations and separate opinions, of the Committee are officially published at HUDOC[1071]. It is worth paying attention to the fact that the interpretations of the articles of the European Social Charter of 1961 or the Revised European Social Charter of 1996 are

[1066] *Rantsev v. Cyprus and Russia* (2010) 25965/04 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22002-1142%22] %7D > accessed 29 April 2023.

[1067] *M.S.S. v. Belgium and Greece* (2011) № 30696/09 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-628%22]}> accessed 28 April 2023.

[1068] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1069] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1070] European Committee of Social Rights, 'Activity Report' 2020 <https://rm.coe.int/ecsr-activity-report-2020/1680a32088> accessed 27 April 2023.

[1071] HUDOC is based at https://hudoc.esc.coe.int.

contained in statements of interpretations, which has the following structure: an observation, the personal scope, an interpretation of each part of an article, and final remarks.

Economic, social and cultural rights require both types of obligations within the Council of Europe at the European level:

- ✓ Positive obligations.

"A very clear distinction between economic, social, and cultural rights and civil and political rights has been blurred theoretically by the development of "positive obligations" flowing from civil and political rights, a phenomenon that is deeply rooted in the jurisprudence of the European Court of Human Rights"[1072]. The positive obligation is the obligation of the relevant state bodies or officials to take certain active actions to protect the person's property from attacks by private individuals or other state bodies (officials). It is worth noting that this type of obligation, the positive obligation, owes its original existence to the implementation of the principle of non-discrimination.

Like economic, social, and cultural rights, the positive obligations under civil and political rights require the State to become active, leaving the State authorities various means to attain a certain result. Moreover, the "positive" dimension of civil and political rights is increasingly recognized regionally[1073]. For example, in order not to violate its citizen's right to a fair trial, the State must create a high - quality justice system. If it is to respect the prohibition of torture, it must adopt laws to that effect, and train its personnel accordingly.

Considering active measures, J. F. Akandji–Kombé states that they "can take different forms:

-enactment of substantial standards and/or procedural rules,

-adoption of practical measures[1074]".

[1072] Ress G, 'The Duty to protect and to ensure human rights under the European Convention on Human Rights' in E. Klein (ed), *The Duty to protect and ensure human rights* (2000) P.165-205; See also Dimitris X, 'The positive obligations under the European Convention of Human Rights' (Routledge, 2012); Mowbray A, 'The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights' (Oxford: Hart Publishing, 2004).

[1073] Viljanen V.P, 'Abstention or involvement? The Nature of State Obligations under different categories of rights' in K. Drzewicki, C. Krause, A. Rosas (eds.) S*ocial Right as Human Rights* (A European Challenge, Institute for Human Rights, Abo Akademi University,1994) P.52-60.

[1074] Akandji-Kombe J.F, 'Positive obligations, and protection of social rights in the European Human Rights System' <https://anescracse.files.wordpress.com/2014/10/jean-francois-akandji-kombc3a9-positive-obligations-and-theprotection-of-social-rights-in-the-european-human-rights-system.pdf> accessed 27 April 2023.

"Measures expected of the State may be socio-economic in nature and affect the rights which, by virtue of international texts, present this character[1075]". "It seems more fair to consider that positive obligations are involved in the elucidation, or even the description, of the content of the commitments of States and therefore the content of the standard; they are therefore to be regarded as the given result of an interpretation process conducted on the basis of principles – such as the principle of effectiveness – as well as through methods and techniques to the world to which they are foreign[1076]".

The European Social Charter 1961[1077], and the Revised European Social Charter 1996[1078] are international treaties of the Member States of the Council of Europe containing the obligations assumed by the state in the social sphere. D.J. Harris and J. Darcy suppose that: "for many … [provisions of the European Social Charter 1961] the European Committee of Social Rights is challenged to distil (positive) obligations "[…] on the basis of what can reasonably be expected of the parties to the Charter in terms of European standards and expectations[1079]". For example, in a case of *International Association Autism-Europe (IAAE) v. France*, the European Social Rights Committee stated that: "[w]hen the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, the State - party must take measures that allows it to achieve the objectives of the [the European Social Charter, the Revised European Social] Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources (para.53)[1080]". "States parties must be particularly mindful of the impact their choices will have for groups with heightened vulnerabilities as well as for other persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings[1081]".

In another case - *C.G.S.P. v. Belgium"*[1082]*,* the European Committee of Social Rights, interpreting Article 6 (§ 1) of the Charter on collective bargaining as meaning, concluded that:

[1075] Ibid.

[1076] Ibid.

[1077] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1078] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1079] Harris D.J, Darcy J, 'The European Social Charter' in *The procedural aspects of international law monograph series* (2nd ed. Transnational Publishers, Ardsley, NY 2001) P. 373.

[1080]*International Association Autism-Europe (IAAE) v. France* (European Committee of Social Rights) № 13/2002, (27 July 2002) <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france> accessed 26 April 2023.

[1081] Ibid, para. 53.

[1082] *C.G.S.P. v. Belgium* (European Committee of Social Rights) № 25/200 (18 March 2004) <https://rm.coe.int/no-25-2004-centrale-generale-des-services-publics-v-belgium-case-docum/1680740842> accessed 25 April 2023.

"States must take positive steps to encourage consultation between trade unions and employers' organisations (para.41)[1083]". In addition, in a case of *World Organisation against Torture (OMCT) v. Ireland* [1084], the State had to ban corporal punishment of children[1085]. Analysing child labour, in *International Commission of Jurists (ICJ) v. Portugal*, the European Committee of Social Rights determined that: "The legislation regulating child labour insufficiently addressed children working in the agricultural sector and that the number of labour inspectors was too low for ensuring that employers respected the legislation[1086]".

Article 11 of the Revised European Social Charter 1996[1087] guarantees the right to protection of health. When drafting the measures enshrined in Article 11 of the Revised European Social Charter 1996, the authors used the following expressions for the obligations of States: "remove, provide, prevent". The nature of these obligations is positive, since states are obliged to take actions to protect the right to health protection (for example, "to provide advisory facilities for the promotion of health[1088]"). The scope of any such positive obligation, including on issues related to health protection, is determined by the circumstances of a particular case or a complaint.

Considering the nature of positive obligations for the right to protection of health, in *Confederazione Generale Italiana de Lavoro (CGIL) v. Italy* the European Committee of Social Rights stated that health system and its services must "provide for the health needs of women will be in conformity with Article 11, or with Article E and 11 of the Revised Social Charter 1996[1089]". In *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia,* the European Committee of Social Rights stated that "the States Party have a positive obligation to ensure" the right to protection of health "by means of non-discriminatory sexual

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[1083] Ibid, para.41.

[1084] *World Organisation against Torture (OMCT) v. Ireland*, (European Committee of Social Rights) № 18/2003, (28 July 2003) <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-18-2003-world-organisation-against-torture-omct-v-ireland> accessed 24 April 2023.

[1085] Ibid, para.56-58.

[1086] *International Commission of Jurists (ICJ) v. Portugal* (European Committee of Social Rights) № 1/1998, (12 October 1998) §32 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-1-1998-international-commission-of-jurists-icj-v-portugal> accessed 5 May 2023.

[1087] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1088] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1089] *Confederazione Generale Italiana de Lavoro (CGIL) v. Italy* (European Committee of Social Rights) № 91/2013, (12 October 2015) P.162, 190 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-asset_publisher/5GEFkJmH2bYG/content/no-158-2017-confederazione-generale-italiana-del-lavoro-cgil-v-italy> accessed 6 May 2023.

and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity[1090]". "The obligation has two facets:

- children must not be subject to discrimination, and
- this education must not be used as a means of reinforcing stereotypes and perpetuating forms of prejudice which contribute to the social exclusion[1091]". Analyzing the term "discrimination" and its prohibition, it is worth noting that discrimination includes both negative and positive obligations of States. One of the conditions/facets of the above-mentioned obligation was that "children were not subjects of discrimination". This meant that the State represented by Croatia should not discriminate against children and should not adopt laws or legal acts that will discriminate against children.

Moreover, the positive obligations of states in the field of ensuring the right to protection of health require active interaction between state bodies or governments, and not only because the internal reserves of the state are often not enough, but because the health problems themselves (for example, medical, associated with the spread of infectious diseases or environmental problems human habitation/ habitation) in the conditions of a globalizing world should also be effectively addressed through joint interstate activities.

Another example is Article 16 of the Revised European Social Charter of 1996 imposes a positive obligation to provide "family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means[1092]". In *the Separate Opinion* Mr. D. Harris[1093] pays attention to the family housing as a part of a positive obligation in Article 16.

Article 20 of the Revised European Social Charter 1996 guarantees "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex[1094]". In this article obligations of States are positive because countries should "take appropriate measures" to provide the right of Article 20. The discrimination on the ground of sex includes 2 types: direct and indirect. In "Welfare

[1090] *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia* (European Committee of Social Rights) № 45/2007 (30 March 2009) P.50, 61 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-45-2007-international-centre-for-the-legal-protection-of-human-rightsinterights-v-croatia?inheritRedirect=false> accessed 23 April 2023.

[1091] European Committee of Social Rights, 'Digest of the case law' (December 2018) < https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80> accessed 22 April 2023.

[1092] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1093] European Committee of Social Rights, 'Separate opinion of Mr. D. Harris on Article 16 – Turkey' (30 Novembe1995)<https://hudoc.esc.coe.int/eng#{%22fulltext%22:[%22negative%20obligations%20positive%22],%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCDcType%22:[%22CON%22],%22ESCDcIdentifier%22:[%22XIII-3_Op_-1/Op/EN%22]}>accessed 21 April 2023.

[1094] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

Development Plan for 2016-2023" one of four sub-goals is gender equality. In order to decrease gender inequality, states must: "reduce gender stereotypes that cause gender inequality and their negative impact, reduce gender segregation in education and the labour market, support the economic independence of men and women, achieve a gender balance on the decision-making levels of society, enhance the protection of rights, ensure institutional capacity, including the analysis and management capabilities necessary for the promotion of gender equality[1095]". In order to determine discriminatory facts, the European Committee of Social Rights suggests using "statistical data on discrimination in equal opportunities. In some countries (Portugal), legislation was found to be inconsistent with the Revised European Social Charter 1996 since it did not allow for statistical analysis[1096]".

Considering the character of economic, social, and cultural rights protection offered by the European Social Charter 1961[1097], the European Committee of Social Rights has accepted in its case law[1098] not merely theoretical, but also practical. "State Parties have the positive obligation to take not only legal but also practical action "to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein[1099]".

[1095] European Committee of Social Rights, 'Conclusion. Estonia' (29 January 2021) EST 20 <https://hudoc.esc.coe.int/eng?i=2020/def/EST/20/EN> accessed 20 April 2023.

[1096] European Committee of Social Rights, 'Conclusions 2010 on Articles 2, 4, 5, 6, 21, 22, 26, 28, 29 of Revised European Social Charter 1966 for Lithuania, Malta, Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Sweden, Turkey, Ukraine' (Vol. 2, 2010) < http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/ Year/2010Vol2_en.pdf> accessed 20 April 2023; European Committee of Social Rights, 'Conclusions XIX-3 on Articles 2, 4, 5, 6 and Articles 2 and 3 of the 1988 Additional Protocol for Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Poland, Slovakia, Spain, "the Former Yugoslav Republic of Macedonia, United Kingdom' (2010) < http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Year/2010Vol2_en.pdf> accessed 20 April 2023.

[1097] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1098] *International Commission of Jurists (ICJ) v. Portugal* (European Committee of Social Rights) № 1/1998, (12 October 1998) §32 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-1-1998-international-commission-of-jurists-icj-v-portugal> accessed 5 May 2023; Interna*tional Association Autism-Europe (IAAE) v. France* (European Committee of Social Rights) № 13/2002 (27 July 2002) §53 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france> accessed 26 May 2023.

[1099] *International Movement ATD Fourth world v. France* (European Committee of Social Rights) № 33/2006, (5 December 2007) § 61 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-33-2006-international-movement-atd-fourth-world-v-france> accessed 22 May 2023; *European Roma Rights Centre v Bulgaria* (European Committee of Social Rights) №31/2005 (22 April 2005) para 29 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-31-2005-european-roma-rights-center-errc-v-bulgaria?inheritRedirect=false> accessed 22 May 2023.

Agreeing with Professor R. Brillat who states that: "Positive obligations may be found in the case- law of the European Court of Human Rights[1100]", they are also found in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1101]. In particular, the recognition of positive state obligations regarding the right to life (Article 2 of in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1102]), the prohibition of torture and inhuman or degrading treatment (Article 3 of in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1103]), and the right to private and family life (Article 8 in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1104]) has led to the indirect recognition of certain social rights (health or housing rights) by the ECtHR[1105]. Back to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1106] which requires that an investigation be conducted if a person makes a well-founded claim of torture. It might be considered as a positive commitment. Another example is about "the social protection rights, namely the right to social security, and the right to social assistance which owe their inclusion in the scope of Article 1 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms[1107], at the same time to the implementation of the obligation of non - discrimination under Article 14, to autonomous interpretation of the concept of "possession" and to the implementation of positive obligation's doctrine[1108]".

[1100] Brillat R, 'Division of social human rights into fundamental rights and welfare/development rights' in *Reform of the European Social Charter* (2011) P.47.

[1101] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1102] Ibid, Article 2.

[1103] Ibid, Article 3.

[1104] Ibid, Article 8.

[1105] Palmer E, 'Protecting Socio -Economic Rights through the European Convention on Human Rights, Trends and Developments in the European Court of Human Rights' in *2 Erasmus Law Review* (2009) P.397, 398.

[1106] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1107] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1108] Akandji-Kombe J.F, 'Positive obligations, and protection of social rights in the European Human Rights System' <https://anescracse.files.wordpress.com/2014/10/jean-francois-akandji-kombc3a9-positive-obligations-and-theprotection-of-social-rights-in-the-european-human-rights-system.pdf> accessed 27 April 2023.

The specific scope of a state's positive obligations depends on the subjective law in question and is determined by the European Court of Human Rights in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1109] and its Protocols.

Moreover, a separate type of positive obligation is a duty in the case of the relevant request the authorized person to consider the question of whether there has been a violation belonging to him subjective right guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms 1954[1110] and its Protocols, and upon detection thereof to correct the violation and pay the person compensation. In this case, the violation may also consist in non-fulfillment of positive obligations to perform active actions, without which the use of the good is almost impossible. However, this obligation of the state is separately and explicitly guaranteed as an independent right by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1954[1111], and it is not considered a positive obligation, although it is one. The positive obligations involve the assertion of economic and social rights, on the one hand, and how it contributes to a better guarantee of the latter, on the other hand.

It is important to add C. Dröge's reference to the following: "The European Court of Human Rights has increased its comparative approach by referring to the international human rights systems, such as:

-the European Social Charter 1961[1112],

-the International Covenant on Civil and Political Rights 1966[1113],

-the Convention on the Rights of the Child 1989[1114], or

[1109] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1110] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1111] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1112] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1113] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[1114] Convention on the Rights of the Child (adopted 20 November 1989 by the General Assembly) Resolution № 44/25 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 4 May 2023.

-the Inter-American Convention, seeking common standard when interpreting a Convention norm in the sense of positive obligations[1115]". The European Social Charter 1961 has sometimes served the Court to show that some positive obligations of an economic and social nature do not belong to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1116] but to the Charter system[1117]".

✓ Positive - negative obligations. Analyzing Article 5 of the European Social Charter of 1961[1118] ("The right to organize"), the European Committee of Social Rights concluded that:

"[T]wo obligations of this provision have a negative and positive aspects:
-the negative obligation requires the absence, in the municipal law of each contracting state, of any legislation or regulation or any administrative practice such as to impair the freedom of employers or workers to form or join their respective organizations;
-under the positive obligation, the contracting state is obliged to take adequate legislative or other measures to guarantee the exercise of the right to organize and to protect workers' organizations from any interference on the part of employers[1119]".

Next article – Article 11 of the Revised European Social Charter 1996[1120] which guarantees the right to protection of health. The right to protection of health includes both positive and negative obligations of States. In accordance with the negative obligation, a State is obliged not to interfere with the health of an individual, unless there are grounds for this provided for. "The nation of the protection of health incorporates an obligation that the State refrain from interfering directly or indirectly with the enjoyment of the right to health[1121]".

[1115] Droge C, 'Positive Verpflichtungen der Staaten in der Europäischen Menschenrechtskonvention' (Springer; 2003rd edition, 2003) <https://www.mpil.de/files/pdf2/beitr159.pdf> accessed 5 May 2023.

[1116] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1117] Droge C, 'Positive Verpflichtungen der Staaten in der Europäischen Menschenrechtskonvention' (Springer; 2003rd edition, 2003) <https://www.mpil.de/files/pdf2/beitr159.pdf> accessed 5 May 2023.

[1118] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1119] European Committee of Social Rights, 'Statement of interpretation' (31 May 1969) <https://hudoc.esc.coe.int/eng?i=I_Ob_-21/Ob/EN> accessed 26 May 2023.

[1120] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1121] European Committee of Social Rights, 'Digest of the case-law' (December 2018) <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80> accessed 27 May 2023.

In Article 15 of the European Social Charter of 1961 ("The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement") the European Committee of Social Rights sets out 2 requirements for employers:

1) "a positive (compulsory redeployment)",
2) "a negative (ban on firing workers because of their disabilities) requirement[1122]".

✓ Negative obligations. A negative obligation is the obligation of state bodies and officials to refrain from actions that prevent a person from enjoying a good, the subjective right to which is guaranteed, for example, by European Convention for the Protection of Human Rights and Fundamental Freedoms[1123] and its Protocols.

In the work of A. Eide, it is written that in order to "respect" economic, social, and cultural rights the State should "abstain [] from action[1124]". In general, the term "negative obligation" is rarely used by the European Court on Human Rights. Instead, it uses the term "interference", which is somewhat different in meaning from the expression "negative obligation". The material scope of this intervention is not limited.

v.Cost free and expensive state obligations

Based on the International Covenant on Economic, Social and Cultural Rights 1966[1125], it follows that maximum use must be made of the resources available in a country in order to realise the rights of the second generation. In order to prove this, the European Committee of Social Rights stated the following:

"When the achievement of one of the rights in the [European] Social Charter 1961, [the Revised European Social Charter 1996[1126] is exceptionally complex and particularly expensive

[1122] European Committee of Social Rights, 'Statement of interpretation; XIV-2_Ob_V1-11/Ob/EN (30 November 1998) <https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-11/Ob/EN> accessed 26 May 2023.

[1123] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1124] CHR, 'Report of Eide A. on the Right to Adequate Food as a Human Right' UN Doc. E/CN.4/Sub.2/1987/23 (1987) para.67-69.

[1125]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 (ICESCR) <https://www.refworld.org/docid/3ae6b36c0.html >accessed 16 May 2023.

[1126] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources[1127]".

The Revised European Social Charter 1996[1128] establishes an obligation without imposing any significant financial burden on the state in the following articles:

- Article 17 – "the right of children and young persons to social, legal, and economic protection[1129]".
- Article 19 – "the right of migrant workers and their families to protection and assistance[1130]".
- Article 20 – "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex[1131]".
- Article 21 – "the right to information and consultation in collective redundancy procedures[1132]".
- Article 23 – "the right to protection against poverty and social exclusion[1133]".

Moreover, Article 20 of the European Social Charter 1961[1134] deals with the obligations of States. The ratification of the European Social Charter 1961[1135] implies financial obligations of the state and harmonization of national legislation in accordance with the provisions of the Charter. However, the case-law of the European Committee of Social Rights proved cost free obligations of rights of the second generation. For example, in a case of *International Federation of Human Rights Leagues (IFHRL) v. France*[1136], the European Committee of Social

[1127]European Committee of Social Rights, 'Conclusion. Slovenia' (09 December 2011) <https://hudoc.esc.coe.int/eng?i=2011/def/SVN/31/1/EN> accessed 27 May 2023.

[1128] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1129] Ibid, Article 17.

[1130] Ibid, Article 19.

[1131] Ibid, Article 20.

[1132] Ibid, Article 21.

[1133] Ibid, Article 23.

[1134] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1135] Ibid.

[1136] *International Federation of Human Rights Leagues (FIDH) v. France* (European Committee of Social Rights) № 14/2003 (03 March 2003) < https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-14-2003-international-federation-of-human-rights-leagues-fidh-v-france> accessed 3 May 2023.

Rights stated that the right to health requires states to take positive steps to improve public health, including by providing access to preventive health care services and making them accessible to all, without discrimination. In another case, in a case of *International Federation of Journalists (IFJ) v. Turkey*[1137], the European Committee of Social Rights made the conclusion that the right to housing requires states to take positive steps to provide affordable housing for those who cannot afford it.

In comparison with the Revised European Social Charter 1996, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1138] establishes a framework that protects the enjoyment of economic, social, and cultural rights without imposing significant financial burdens on the state through the following articles:

Article 2 – "the right to life[1139]".

Article 3 – "the prohibition of torture, inhuman or degrading treatment or punishment[1140]".

Article 8 – "the right to respect for private and family life[1141]".

Article 14 – "the prohibition of discrimination in the enjoyment of Convention rights[1142]".

Article 17 – "the prohibition of abuse of rights[1143]".

In addition, there is also a case-law of the European Court of Human Rights on this issue. States have an obligation to provide access to education without any discrimination, regardless of an individual's economic or social status. In a case of *Z.A. and Others v. Russia*[1144], the European Court of Human Rights concluded that the state's failure to provide education to children who were refugees or asylum seekers violated their right to education under Article 2 of Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental

[1137] *International Federation of Journalists (IFJ) v. Turkey* (European Committee of Social Rights) <https://www.article19.org/resources/international-federation-of-journalists-v-turkey/ > accessed 4 May 2023.

[1138] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1139] Ibid, Article 2.

[1140] Ibid, Article 3.

[1141] Ibid, Article 8.

[1142] Ibid, Article 14.

[1143] Ibid, Article 17.

[1144] *Z.A. and others v. Russia* (2017) № 61411/15, 61420/15, 61427/15, 3028/16 <https://www.asylumlawdatabase.eu/en/content/ecthr-za-and-others-v-russia-nos-6141115-6142015-6142715-302816-articles-3-and-5-§§-1-28> accessed 24 May 2023.

Freedoms[1145]. In another case, in a case of *Kucheruk and Others v. Ukraine*[1146], the European Court of Human Rights found that the state's failure to provide alternative housing to a group of families who had been evicted from their homes violated their right to respect for their home and family life, protected under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1147]. Considering the access to social security benefits, in a case of *Kjartan Ásmundsson v. Iceland*[1148], the European Court of Human Rights held that the state's refusal to provide disability benefits to an individual with multiple sclerosis violated his right to social security under Article 1 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1954[1149]. In a case of *Demir and Baykara v. Turkey*[1150], the European Court of Human Rights found that the state's failure to protect the right to form and join trade unions violated the applicants' right to freedom of association under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1151].

v. Progressive and immediate state obligations

The European Social Charter 1961[1152] provides for unconditional acceptance of fundamental obligations by the state for a flexible system of selecting articles that are acceptable

[1145] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023; European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1146] *Kucheruk and Others v. Ukraine* (2007) 2570/04 ECHR 712<https://policehumanrightsresources.org/kucheruk-v-ukraine-application-no-2570-04> accessed 25 May 2023.

[1147] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1148] *Kjartan Ásmundsson v. Iceland* (2004) № 60669/00, Resolution CM/ResDH (2011)223<https://hudoc.echr.coe.int/ENG#{%22itemid%22:[%22001-108131%22]}> accessed 16 May 2023.

[1149] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1150] *Demir and Baykara v. Turkey* (2008) App.34503/97 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-89558%22]%7D> accessed 18 May 2023.

[1151] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1152] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

at the current stage of the country's economic development. It is assumed that the State should gradually expand the scope of its obligations. States must commit to accepting a minimum of 10 articles or 45 numbered paragraphs under the European Social Charter 1961[1153], and a minimum of 16 articles or 63 numbered paragraphs under the Revised European Social Charter 1996[1154].

Certain rights enshrined in the Revised European Social Charter 1996[1155] must be implemented:

- immediately upon entry into force of the (revised) Charter in the State concerned (this relates in particular to negative obligations and obligations to comply), whereas
- other rights may be implemented gradually.

Let start with immediate obligations. In contrast to the progressive obligations, the immediate obligations are defined through the work of the European Committee of Social Rights. Considering issues raised from Article 16 ("The right of the family to social, legal and economic protection") of the European Social Charter 1961[1156], the European Committee of Social Rights supported its own conclusion[1157] by recommendations of the Committee of Ministers of the Council of Europe. The European Committee of Social Rights stated that there must be "immediate actions" by which the authorities should ensure adequate access of Roma to housing[1158]". Except Roma, migrant workers also face some difficulties. Analysing the immediate assistance offered to migrant workers and its conditions under the paragraph 2 of Article 19 ("The right of migrant workers and their families to protection and assistance") of the European Social Charter 1961, the European Committee of Social Rights cited its previous *Conclusions IV, (1975) Statement of Interpretation of Article 19 §2,* which provided definition for "reception". It means "the period of weeks which follows immediately from the migrant workers' arrival, during which migrant workers and their families most often find themselves in situations of particular difficult[1159]". It is worth noting that the reception is one of the periods

[1153] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1154] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1155] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1156] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1157] European Committee of Social Rights, 'Conclusion. Bosnia and Herzegovina' (5 December 2019) <https://hudoc.esc.coe.int/eng?i=2019/def/BIH/16/EN> accessed 26 May 2023.

[1158]Committee of Ministers of the Council of Europe, 'Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina, outside the reference period' CM/Res CMN (2019)8 <https://hudoc.esc.coe.int/eng?i=2019/def/BIH/16/EN> accessed 27 May 2023.

[1159]European Committee of Social Rights, 'Conclusion. Armenia' (5 December 2019) < https://hudoc.esc.coe.int/

for migrants during which the state, represented by Armenia, must take immediate measures to fulfil its obligations under Article 19 of the Revised European Social Charter of 1996. In addition, except two previous categories, there are homeless people. Ways of decreasing homelessness were described in *Conclusion for Greece* in 2019 by the European Committee of Social Rights. the European Committee of Social Rights paid attention to "introduction of emergency measures (a provision of an immediate shelter"[1160]) for fulfilment of obligations under the paragraph 2 of Article 31 of the Revised European Social Charter 1996. Similar statements were found in *Conclusion for Italy* in 2019, where the European Committee of Social Rights clarified the security requirements for the previous article which include also "immediate surroundings[1161]".

One of the central immediate obligations that is in the core of all social rights protected in the European Social Charter 1961[1162] is the non-discrimination requirement. Furthermore, the immediate effect of non-discrimination clause has been recognized by the European Court of Human Rights. As civil and political rights instruments also contain norms that may provide protection in the socio-economic sphere, there are number of social rights that have been found having immediate effect. The obligation to provide for certain level of conditions in places of detention has proved to have immediate effect in European Framework (Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[11631164]).

Next category of obligations is progressive, or gradually implemented. The Convention of the International Labour Organizations № 102 of 1952[1165] guarantees minimum and most

eng?i=2019/def/ARM/19/2/EN > accessed 15 May 2023.Similar conclusions were adopted for Austria, Belgium, Estonia, Finland, France, Georgia, Greece, and other countries in 2019. For example, European Committee of Social Rights, 'Conclusion. Austria' (5 December 2019) < https://hudoc.esc.coe.int/eng?i=2019/def/AUT/19/2/EN > accessed 15 May 2023; European Committee of Social Rights, 'Conclusion. Belgium' (5 December 2019) < https://hudoc.esc.coe.int/eng?ii=2019/def/BEL/19/2/EN > accessed 27 May 2023.

[1160]European Committee of Social Rights, 'Conclusion. Greece' (5 December 2019) <https://hudoc.esc.coe.int/eng?i=2019/def/GRC/31/2/EN > accessed 15 May 2023.

[1161] European Committee of Social Rights, 'Conclusion. Italy' (5 December 2019) <https://hudoc.esc.coe.int/eng?i=2019/def/ITA/31/2/EN> accessed 15 May 2023.

[1162] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1163] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1164] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.33 <http://dspace.ut.ee/bitstream/handle/10062/1232/kontkontson.pdf> accessed 25 April 2023.

[1165]ILO Convention № 102: Social Security (Minimum Standards) of 1952 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102> accessed 26 April 2023.

progressive standards and of social security. The terms "progressive realization" are also contained in the UN human rights treaties such as the Convention on the Rights of the Child 1989 (Article 4) [1166] and the Convention on the Rights of Persons with Disabilities 2006 (Article 4 (2))[1167].According to most scholars, progressive obligations of states are inherent in the realization of the rights guaranteed in the European Social Charter 1961 and the Revised European Social Charter 1966.

The European Committee of Social Rights has clarified the way in which a gradual implementation is in conformity with the Revised European Social Charter 1996[1168]:"In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights (...) are likely to remain ineffective. In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely[1169]".

The rights that may be implemented gradually include rights which implementation is particularly complex, often necessitating structural measures and entailing substantial financial costs. For example, the European Social Charter 1961[1170] have a requirement of progressive realization in relation to right to social security (Article 12(3))[1171]. The Revised European Social Charter 1996[1172] includes in Article 11[1173] the right to health but makes no explicit reference to

[1166] Convention on the Rights of the Child (adopted 20 November 1989 by the General Assembly) Resolution № 44/25 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 4 May 2023.

[1167] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006 on the sixty-first session of the General Assembly by Resolution A/RES/61/106) < https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> accessed 7 May 2023.

[1168] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1169] *ATD Fourth World v. France* (European Committee of Social Rights) № 33/2006 (01 February 2006) §§ 65–66 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-33-2006-international-movement-atd-fourth-world-v-france?inheritRedirect=false> accessed 5 May 2023.

[1170] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1171] Ibid, Article 12 (3).

[1172] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1173] Ibid, Article 11.

MCOs or obligations of immediate effect, rather the European jurisprudence includes the phrase "take appropriate measures", which is suggestive of the doctrine of progressive realization[1174].

Considering case-law, the European Committee of Social Rights in some of its conclusions and statements of interpretations directly showed necessity of progressive obligations. For example, in *Statement of Interpretation* in 2013*,* the European Committee of Social Rights stated that Article 3 (para.4) of the Revised European Social Charter 1996 requires "progressive development of occupational health services for all workers[1175]". Another example is related to Article 7 (para.3) of the European Social Charter 1961 ("Prohibition of employment during compulsory education") in *Statement of Interpretation* in 1965-1967. "The obligations incumbent upon the governments under the paragraph 3 of Article 7 of the European Social Charter 1961 are becoming difficult to respect as the period of compulsory schooling is extended, which tends moreover to make this provision somewhat progressive in character[1176]". In *Statement of Interpretation* in 1969, the European Committee of Social Rights stated that "Article 13 of the European Social Charter 1961 ("The right to social and medical assistance") "is thus progressive in that it binds the states accepting it to set up an effective system of assistance, but also to ensure that such assistance gradually becomes unnecessary, until it completely disappears – the ultimate aim[1177]".

vii.Vague and precise state obligations

The concepts of vague and precise state obligations refer to the level of detail and specificity of the obligations. Precise obligations are obligations that are clearly defined and specific, setting out in detail the actions that states must take in order to fulfil their human rights obligations. For example, a precise obligation might require a state to provide access to healthcare services for all its citizens, or to prohibit discrimination based on race, gender, or religion. In contrast, vague obligations are more general in nature and do not provide specific guidance on how states should fulfil their obligations. Vague obligations might require states to take "appropriate measures" or to "respect" certain rights, without specifying exactly what

[1174] Shields K, 'The Minimum Core Obligations of Economic, Social and Cultural Rights: The Rights to Health and Education' (University of Edinburgh 2017) P.18 <https://www.researchgate.net/publication/323787361_The_Miniimum_Core_Obligations_of_Economic_Social_and_Cultural_Rights_The_Rights_to_Health_and_Education> accessed 20 April 2023.

[1175]European Committee of Social Rights, 'Statement of interpretation' 2013_163_01/Ob/EN (2013) <https://hudoc. esc.coe.int/eng?i=2013_163_01/Ob/EN> accessed 21 April 2023.

[1176]European Committee of Social Rights, 'Statement of interpretation', I_Ob_-29/Ob/EN (1969) <https://hudoc.esc.coe.int/eng?i=I_Ob_-29/Ob/EN> accessed 22 April 2023.

[1177]European Committee of Social Rights, 'Statement of interpretation', I_Ob_-29/Ob/EN (1969) <https://hudoc.esc.coe.int/eng?i=I_Ob_-29/Ob/EN> accessed 22 April 2023.

those measures should be or how they should be implemented. Precise obligations are generally considered to be more effective at promoting compliance by states because of clear guidance on what actions states must take, making it easier to hold them accountable for failing to fulfil their obligations. Vague obligations, on the other hand, may be more difficult to enforce, as they leave more room for interpretation and may be subject to differing opinions on what constitutes compliance.

It is well known that two obligations (vague and precise) are inherent in the rights of the first and second generations because of their unified, inseparable and universal nature. Social rights which included in the rights of the second generation require precise obligations from states.

D.J. Harris and J. Darcy stated the point of view that: "Several concrete obligations are already spelt out clearly in some of the provisions (for example, the labor-related rights) [of the European Social Charter 1961][1178]". It is even possible to consider that "[the European Social] Charter [1961[1179]] is more precise than the [European] Convention [for the Protection of Human Rights and Fundamental Freedoms 1950[1180]] since it contains not only the rights in part I but also, in respect of each right, a list of … obligations in Part II[1181]", for example:

-Article 11 of the European Social Charter 1961[1182] guarantees the right to protection of health,

-Article 13 of the European Social Charter 1961[1183] - the right to social and medical assistance, and

-Article 16 of the European Social Charter 1961[1184] - the right to social security.

The right to health requires States to:

-"to remove as far as possible the causes of ill health;

[1178] Harris D.J, Darcy J, 'The European Social Charter' in *The procedural aspects of international law monograph series* (2nd ed. Transnational Publishers, Ardsley, NY 2001) P. 373.

[1179] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1180] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1181] Brillat R, 'Division of social human rights into fundamental rights and welfare/development rights' in *Reform of the European Social Charter* (2011) P.47.

[1182] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1183] Ibid, Article 13.

[1184] Ibid, Article 16.

-to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

-to prevent as far as possible epidemic, endemic and other diseases[1185]".

These obligations are relatively precise, as they clearly set out the specific actions.

However, the European Committee of Social Rights cited from the Report of the International Labour Organization (2019) which is called "Ending forced labour by 2030" the following information:

"Another common weakness …is a lack of precision and clarity in terms. It is important to ensure that precise provisions are available for the investigatory authorities and the courts[1186]".

Moreover, in many of its conclusions, the European Committee of Social Rights has repeatedly stressed the need for precise provisions. In particular, they are:

-*Conclusion for Montenegro of 2015*, 2015/def/MNE/17/1/EN,

-*Conclusion for Moldova of 2017,* 2017/def/MDA/12/4/EN, Art.12-4),

-meanings (*Conclusion for Romania of 2021*, 2020/def/ROU/1/3/EN, Art.1-3),

-information (*Conclusion for Slovak Republic of 2017*, 2017/def/SVK/3/3/EN, Art. 3-3),

-information for remedies (*Conclusion for Montenegro of 2016*, 2016/def/MNE/1/2/EN, Art.1-2),

-circumstances (*Conclusion for Andorra of 2017*, 2017/def/AND/23/EN, Art.23),

-terms (*Conclusion for Turkey of 2016*, 2016/def/TUR/24/EN, Art. 24),

-data (*Conclusion for Turkey of 2015*, 2015/def/TUR/31/2/EN, Art. 31-2).

In some conclusions, the European Committee of Social Rights required the establishment of precise legislative rules in order to implement the provisions of the European Social Charter 1961[1187]. For example, in the *Conclusion for Georgia* in 2015, the European Committee of Social Rights decided that Georgia violated article 17 ("The Right of children and young persons to social, legal, and economic protection) of the European Social Charter of 1961 by not providing "a precise legislative basis for schools[1188]". The nature of obligation for Georgia is positive and precise. In another conclusion, the *Conclusion for Italy* in 2017, the European Committee of Social Rights had asked, "whether in each region there is a precise legal threshold below which a person is considered in need[1189]". The obligation to

[1185] Ibid, Article 11.

[1186]European Committee of Social Rights, 'Conclusion. Austria' (29 January 2021) <https://hudoc.esc.coe.int/eng?i=2020/def/AUT/1/2/EN> accessed 5 April 2023.

[1187] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1188]European Committee of Social Rights, 'Conclusion. Georgia' (4 December 2015) <https://hudoc.esc.coe.int/eng?i=2015/def/GEO/17/1/EN> accessed 23 May 2023.

[1189]European Committee of Social Rights, 'Conclusion. Italy' (8 December 2017) <https://hudoc.esc.coe.int/eng?i=2017/def/ITA/13/1/EN> accessed 21 May 2023.

establish this legal threshold for Italy is precise and its absence in the next report of Italy will be considered as a violation of Article 13 of the European Social Charter of 1961. In the Conclusion *for Netherlands (Europe),* the European Committee of Social Rights stated that precise "conditions and extent for deductions from wages" were not in the legislation[1190]". Considering article 7 of the European Social Charter of 1961, in next conclusion, in the *Conclusion[1191] for Ukraine and Armenia* the European Committee of Social Rights stated that Ukraine and Armenia did not provide a sufficiently precise definition for light work, and their actions did not satisfy §1 of the Article.

Another important point is a requirement of precise measures. For instance, in the *Conclusion for Greece in* 2018, the European Committee of Social rights needed more information from Greece about precise administrative measures such as "supervising the application of the legislation and regulations on occupational health and safety; administrative measures that labour inspectors are entitled to take; the outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings[1192]".

In contrast, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1193] provides more vague obligations on rights of the second generation. While European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1194] does not explicitly reference social, economic, and cultural rights, the European Court of Human Rights has interpreted certain articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1195] as imposing obligations on states to protect these rights. For example, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1196](The right to respect

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[1190]European Committee of Social Rights, 'Conclusion. Netherlands' (5 December 2014) <https://hudoc.esc.coe.int/eng?i=2014/def/NLD/4/5/EN> accessed 22 May 2023.

[1191] European Committee of Social Rights, 'Conclusion. Ukraine' (5 December 2019) <https://hudoc.esc.coe.int/eng?i=2019/def/UKR/7/1/EN> accessed 5 May 2023; European Committee of Social Rights, 'Conclusion. Armenia' (5 December 2019) <https://hudoc.esc.coe.int/eng?i=2019/def/ARM/7/3/EN> accessed 23 May 2023.

[1192]European Committee of Social Rights, 'Conclusion. Greece' (6 February 2018) <https://hudoc.esc.coe.int/eng?i=XXI-2/def/GRC/3/2/EN> accessed 24 May 2023.

[1193] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1194] Ibid.

[1195] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1196] Ibid, Article 8.

for private and family life) has been interpreted as imposing an obligation on states to ensure access to adequate housing, and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1197] (The right to life) has been interpreted as imposing an obligation on states to take measures to protect citizens from environmental harm. However, these obligations are vaguer than those set out in the European Social Charter 1961[1198], as they are based on the European Court of Human Rights' interpretation of the Convention rather than specific provisions of the text.

To sum up, while the European Social Charter 1961[1199]contains more precise obligations, while the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1200] contains more vague obligations that have been interpreted by the European Court of Human Rights.

viii. Justiciable and non-justiciable state obligations

Judicial obligations refer to obligations that can be enforced through the court system, while non-judicial obligations cannot be enforced through the court system.

Examples of judiciable state obligations include:

1. Protection of fundamental rights. A state has a legal obligation to protect the fundamental rights of its citizens, such as economic, social, cultural rights, and civil and political rights.
2. Contractual obligations. The state is bound by contractual obligations, and if it fails to fulfil them, the aggrieved party can approach the court to seek remedy.
3. Compliance with international treaties. If a state has signed an international treaty or convention, it is legally bound to comply with its provisions. If the state fails to fulfil its obligations under the treaty, it can be held accountable in the court of law.

The European Social Charter 1961[1201], and the Revised European Social Charter 1996[1202] have the following judiciable obligations.

[1197] Ibid, Article 2.

[1198] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1199] Ibid.

[1200] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1201] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1202] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

The European Social Charter 1961	*Revised European Social Charter 1996*
The obligation to ensure the right to work and the right to just and favourable conditions of work, including the right to safe and healthy working conditions. The obligation to ensure the right to social security, including the right to social insurance and assistance. The obligation to ensure the right to education, including the right to free and compulsory primary education and the right to access higher education based on merit.	The obligation to ensure the right to fair remuneration, including the right to equal pay for work of equal value and the right to minimum wage. The obligation to ensure the right to health, including the right to medical care and the right to access to essential medicines. The obligation to ensure the right to adequate housing, including the right to affordable and decent housing. The obligation to ensure the right to protection against poverty and social exclusion, including the right to access to social assistance and services.

In contrast, examples of non-judiciable state obligations include:

1. Moral obligations. Some state obligations are based on moral principles and cannot be enforced through the court system. For example, the state has a moral obligation to provide access to education and healthcare, but these obligations cannot be enforced through the court system.
2. Political obligations. The state has political obligations to its citizens, such as the obligation to create a democratic and inclusive society. These obligations cannot be enforced through the court system.
3. Policy decisions. The state has the discretion to make policy decisions that are not subject to judicial review. For example, a decision to increase the tax rate or to provide subsidies to certain industries cannot be challenged in court unless it violates a constitutional provision or a legal principle.

ix. Derogable and non- derogable state obligations

Derogable obligations refer to the obligations that can be suspended in certain situations, such as in times of national emergency or war. In contrast, non-derogable obligations are those that cannot be suspended under any circumstances. The derogation of social rights is in Article F of the Revised European Social Charter 1996. According to it: “In time of war or other public

emergency threatening the life of the nation any Party may take measures derogating from its obligations under this [Revised European Social] Charter [1996] to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law[12031204]".

In the case-law of the European Committee of Social Rights and the European Court of Human Rights, the distinction between derogable and non-derogable obligations has been crucial in determining the extent of state obligations to protect economic, social, and cultural rights. Both bodies have recognized that some economic, social, and cultural rights' obligations are non-derogable and must be fulfilled under all circumstances.

For example, the European Committee of Social Rights has identified several non-derogable state obligations related to the protection of ESCR, including:

-the right to work,
-the right to health,
-the right to education,
-the right to social security, and
-the right to housing.

These obligations are essential for ensuring the full realization of economic, social, and cultural rights and must be fulfilled by States under all circumstances.

x. Thin and thick state obligations

In the case-law of the European Committee of Social Rights and the European Court of Human Rights, both bodies have recognized the importance of both types of obligations to ensure the full realization of economic, social, and cultural rights. For example, there are some cases on thin state obligations against discrimination in:

- ✓ Access to healthcare. In a case of *Stec and Others v. the United Kingdom*[1205], the European Court of Human Rights held that the United Kingdom's failure to provide non-contributory disability benefits to a group of women violated their right to non-discrimination

[1203] Alston P, 'Assessing the Strengths and Weaknesses of the European Social Charter's Supervisory System' in Grainne de Burca, B. de Witte, and L. Ogertschnig (eds), *Social rights in Europe* (Oxford University Press, New York, 2005) P.45.

[1204] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1205] *Stec and Others v. the United Kingdom* (2006) № 65731/01 and 65900/01 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-73198%22]%7D> accessed 15 April 2023.

under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1206].

✓ Access to education. In a case of *D.H. and Others v. the Czech Republic*[1207], the European Court of Human Rights held that the Czech Republic violated the right to education of Roma children by segregating them into separate schools.

In contrast, thick obligations are in the following cases:

✓ Access to social security benefits. In a case of *Confederation Générale du Travail v. France*[1208], the European Committee of Social Rights held that France had failed to comply with its obligations under the European Social Charter 1961[1209] by not providing sufficient social security benefits to certain groups of workers.

✓ Access to adequate housing. In a case of *Winterstein and Others v. France*[1210], the European Court of Human Rights held that the forced eviction of a group of Roma people from an informal settlement violated their right to respect for their home under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1211].

✓ Access to healthcare: In the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*[1212], the European Court of Human Rights held that Romania had violated the right to life and the prohibition of inhuman or degrading treatment under the

[1206] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1207] *D.H. and Others v. the Czech Republic* (2007) № 57325/00 [GC] https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22002-2439%22]%7D> accessed 15 April 2023.

[1208] *Confédération générale du travail (CGT) v. France* (European Committee of Social Rights) № 154/2017, (28 July 2017) <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-154-2017-confederation-generale-du-travail-cgt-v-france> accessed 16 April 2023.

[1209] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1210] *Winterstein and others v. France* (2013) № 27013/07 <https://hudoc.echr.coe.int/fre#%7B%22itmid%22:[%22001-127539%22]%7D> accessed 26 May 2023.

[1211] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1212] *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (2014) № 47848/08< https://www.escr-net.org/caselaw/2015/centre-legal-resources-behalf-valentin-campeanu-v-romania-application-no-4784808> accessed 17 May 2023.

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1213] by failing to provide adequate medical care to a man with multiple disabilities

xi. Table 'State obligations'

Type of obligation	Case-law of the ECSR
Positive obligation	-*C.G.S.P. v. Belgium*, № 25/ 2004, 18.03.2004, Article 6 (§ 1) of the ESC, -*Confederazione Generale Italiana de Lavoro (CGIL) v. Italy*, № 91/2013, 12.10. 2015, Article 11, or with Article E and 11 of the Revised Social Charter 1996, -*International Association Autism-Europe (IAAE) v. France,* № 13/2002, 27.07.2002, -*International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, № 45/2007, 30.03.2009, P.50, 61, -*International Commission of Jurists (ICJ) v. Portugal,* № 1/1998, 12.10.1998, §32, -*World Organisation against Torture (OMCT) v. Ireland,* № 18/2003, 28. 07. 2003.
Positive-negative obligation	-*Digest of the case-law*, December 2018, -*Statement of interpretation*, 31.05.1969, -*Statement of interpretation*, XIV-2_Ob_V1-11/Ob/EN, 30.11. 1998.
Expensive obligation	- *Conclusion* of the ECSR, 09.12.2011, State: Slovenia.

[1213] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

Progressive obligation	-*Statement of interpretation,* 2013_163_01/Ob/EN, year: 2013, progressive development of health services, Article 3 (para.4) of the Revised European Social Charter 1996, -*Statement of interpretation*, I_Ob_-29/Ob/EN, year:1969, Article 7 (para.3) of the European Social Charter 1961, -*Statement of interpretation*, I_Ob_-47/Ob/EN, year: 1969, progressive character of Article 13 of the European Social Charter 1961.
Immediate obligation	- *Conclusion*, Decision date: 05.12.2019, State: Armenia. - *Conclusion*, Decision date: 05.12.2019, State: Austria; - *Conclusion*, Decision date: 05.12.2019, State: Belgium; -*Conclusion,* Decision date: 05.12.2019, State: Greece, access to immediate shelter; - *Conclusion*, Decision date: 05.12.2019, State: Italy, immediate surroundings.
Precise obligation	The European Committee of Social Rights has stressed the need for precise provisions. In particular, they are in: -*Conclusion,* Decision date: 2017, State: Andorra, 2017/def/AND/23/EN, Art.23, circumstances, -*Conclusion*, Decision date: 05.12. 2019, State: Armenia, absence of definition for light work, -*Conclusion*, Decision date: 04.12.2015, State: Georgia, Article 17 ("The Right of children and young persons to social, legal, and economic protection) of the European Social Charter of 1961, -*Conclusion*, Decision date: 06.02.2018, State: Greece, requirement for precise measures,

	-*Conclusion,* Decision date:08.12.2017, State: Italy, Article 13 of the European Social Charter of 1961, -*Conclusion,* Decision date: 2017, State: Moldova, 2017/def/MDA/12/4/EN, Art.12-4, -*Conclusion,* Decision date: 2015, State: Montenegro, 2015/def/MNE/17/1/EN, -*Conclusion,* Decision date: 2016, State: Montenegro, 2016/def/MNE/1/2/EN, Art.1-2, information for remedies, -*Conclusion*, Decision date: 05.12. 2014, State: Netherlands (Europe), precise conditions for wages, -*Conclusion,* Decision date: 2021, State: Romania, 2020/def/ROU/1/3/EN, Art.1-3, meanings, -*Conclusion,* Decision date: 2017, State: Slovak Republic, 2017/def/SVK/3/3/EN, Art. 3-3, information, -*Conclusion,* Decision date: 2016, State: Turkey, 2016/def/TUR/24/EN, Art. 24, terms, -*Conclusion,* Decision date: 2015, State: Turkey, 2015/def/TUR/31/2/EN, Art. 31-2, data, -*Conclusion*, Decision date: 05.12.2019, State: Ukraine.
Thick obligation	-*Confédération générale du travail (CGT) v. France,* № 154/2017, 28.07.2017. ECtHR shows this type of obligation in the following cases: -*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*¸ № 47848/08, 14.07.2014, -*Winterstein and others v. France*, № 27013/07, 17.10.2013.

3.3. Features of collective complaint procedure

The paragraph 3.3. discusses the system of collective complaints, namely: the purpose of its creation, a list of subjects who have the right to file a complaint, the content of the complaint, several stages of filing the complaint, and the used terminology. Special attention is also paid to the advantages of the system of the collective complaint procedure, existing problems, factors that contribute to greater use of the system of collective complaints, and suggestions for improving the mechanism.

The European Social Charter 1961, the Revised European Social Charter 1996 and Additional Protocols created and developed a mechanism to monitor the implementation of its provisions by states which consists of two parts:

- ✓ national reporting procedures,
- ✓ collective complaints procedure. Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995[1214], introducing a system of collective complaints, entered into force on 1 July 1998.

Year	Complaints	Sessions	c. on merits	Dec. on dmissibility	Average processing time
2019	15	7	20	11	8,8 months (for 11 admissibility decisions), 27,2 months (for 20 decisions on merits).
2018	15	7	9	14	5,7 months (for 14 admissibility decisions), 24,8 months (for 9 decisions on merits).
2016	21	7	5	3	3,5 months (for the 3 decisions on admissibility); 22.4

[1214] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (adopted 9 November 1995) EST 1995 <https://rm.coe.int/168007cdad> accessed 15 April 2023.

					months for the 5 decisions on the merits).
2015	5	7	4	9	6.3 months (for the 11 decisions on admissibility) and 20.7 months (for the 5 decisions on the merits)
2014	10	7	8	3	6.6 months and the average duration of the merits stage was 14.9 months.
2013	15	7	9	18	5.6 months and the average duration of the merits stage was 12.2 months.
2012	13	7	15	9	5.6 months and the average duration of the merits stage was 12.2 months.
2011	12	7	4	11	4.3 months and the average duration of the merits stage was 12.8 months.
2010	4	7	6	3	4.5 months (as in 2009) and the average duration of the merits stage was 10.8 months (same as in 2009).

Table 2. Registered complaints

Country	2011	2012	2013	2014	2015	2018	2019
Belgium	2		1	1			1
Bulgaria							
Croatia					1		
Cyprus			1				
Czech R.			1	1	1		1
Finland	2	1		3		2	
France	4	3	2		3	4	7
Greece	3	5		1	1	2	
Ireland		1	3	2		1	1
Italy		1	3	2		6	4
Netherlands		1	1				
Norway	1		1				
Portugal							1
Slovenia			1				
Spain							
Sweden		1	1				

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints[1215] was adopted in 1995. According to paragraph 2 of the Explanatory Report to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995:

«The introduction of a system of this type is designed to increase the efficiency of supervisory machinery based solely on the submission of governmental reports. In particular, this system should increase participation by management and labor and non-governmental organizations. The way in which the machinery as whole functions can only be enhanced by the greater interest that these bodies may be expected to show in the Charter. The procedure provided for in the Protocol will also be shorter than that for examining reports. The system of collective complaints is to be seen as a complement to the examination of governmental reports,

[1215] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (adopted 9 November 1995) EST 1995 <https://rm.coe.int/168007cdad> accessed 15 April 2023.

which naturally constitutes the basic mechanism for the supervision of the application of the Charter[1216]».

i. Object, subjects, and stages of the collective complaint procedure

Firstly, it is important to note that the object of the system of collective complaints procedure «is different in nature from the procedure of examining national reports, is to allow the Committee to make a legal assessment of the situation of a State in the light of the information supplied by the complaint and the adversarial procedure to which it gives rise[1217]".

Secondly, there are four types of organizations that are eligible to make complaints under the system (Article 1 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995[1218]):

- International organization of employers and trade unions (European Trade Union Confederation, the International Organization of Employers, and the Union of the Confederation of Industry and Employers of Europe). It has been argued that "the International Confederation of Free Trade Unions should be included in this category of complainant, even though it does not currently take part in meetings of the Governmental Committee[1219]".

- Other international non-governmental organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee. There are the following requirements for INGO[1220]: "must hold consultative status with the Council of Europe; consider itself particularly competent in any of the matters governed by the Charter; express their wish to be included on a special list of INGOs

[1216] Council of Europe, 'Explanatory Report to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints' EST 158 (9 November 1995) para.2 <https://rm.coe.int/16800cb5ec> accessed 1 April 2023.

[1217] *International Commission of Jurists (ICJ) v. Portugal* (European Committee of Social Rights) № 1/1998, (12 October 1998) §32 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-1-1998-international-commission-of-jurists-icj-v-portugal> accessed 5 May 2023.

[1218] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (adopted 9 November 1995) EST 1995 <https://rm.coe.int/168007cdad> accessed 15 April 2023.

[1219] Lochner K, 'The Social Partners' Opinion, in Council of Europe, The Social Charter of the 21st Century' in *Colloquy Organized by the Secretariat of the Council of Europe* (1997) P.130-133.

[1220] Council of Europe, 'Explanatory Report to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints' EST 158 (9 November 1995) para.2 <https://rm.coe.int/16800cb5ec> accessed 1 April 2023.

entitled to submit complaints for four years[1221]". However, D.J. Harris and J. Darcy criticize "the restriction of international NGOs that may make complaints to those on the list and argue that if the intention was by this means to exclude badly prepared or propagandistic complaints, this would be better done through admissibility criteria rather than a list of approved NGOs[1222]".

- "Representative of national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint[1223]". In paragraphs 22-23 of Explanatory Report to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995[1224] there are some traits for representatives:

- "to be very well informed of the situation in their country[1225]",
- "must be representative[1226]",
- "the number of members and the organization's actual role in national negotiations should be considered[1227]". In in the process of determining the status and category of the applicants the European Committee of Social Rights has taken the view that the representativeness of a trade union is "an autonomous concept, beyond the ambit of national considerations as well [as] the domestic collective relations context[1228]".

- Other representative national NGOs with "particular competence in the matters governed by the Charter[1229]". "Presumably the kinds of factors the European Committee of

[1221] Ibid, para.20.

[1222] Harris D.J, Darcy J, 'The European Social Charter' (2nd ed.2001) P. 357.

[1223] De Torres A.U, 'The Horisontal Effect of Social Rights in the Light of the European Social Charter and European Committee of Social Rights' Case Law' *in* C. Izquierdo-Sans, C. Martínez-Capdevila, M. Nogueira-Guastavino, *Fundamental Rights Challenges: Horizontal Effectiveness, Rule of Law and Margin of National Appreciation* (Springer Nature, 17 Jun 2021) P.78.

[1224] Council of Europe, 'Explanatory Report to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints' EST 158 (9 November 1995) para.22-23 <https://rm.coe.int/16800cb5ec> accessed 1 April 2023.

[1225] Ibid.

[1226] Ibid.

[1227] Ibid.

[1228] *Syndicat national des professions du tourisme v. France,* (European Committee of Social Rights) № 6/1999, (30 September 1999) para. 6 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-6-1999-syndicat-national-des-professions-du-tourisme-v-france> accessed 6 May 2023.

[1229] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (09 November 1995) EST 1995 <https://rm.coe.int/168007cdad> accessed 7 May 2023.

Social Rights will look for when it comes to making an assessment about representativeness (which it has not yet had to do) are likely to be:

1) the number of members (although an organization could have a lot of members but nevertheless such members could still be a small proportion of the total potential membership, e.g., a pensioner's organization),

2) the size of an organization in terms of its income/turnover and number of staff; the degree to which it is recognized/consulted by public authorities; and the relationship of all these qualities to other national NGOs working in the same field[1230]". Compared with the reporting mechanism, there is an increased involvement of the social partners and non-governmental organizations. In contrast to applications to the European Court of Human Rights, authors of the complaint are "not direct victims, rather they are sort of whistle-blowers, they use the "force of law" and enable the establishment of a close link between activist demands and a quasi-court system[1231]".

Lastly, in general, the procedure for handling collective complaints is like the judicial procedure and combines three consecutive stages. At the first stage, the issue of admissibility of the complaint should be resolved. In the second stage, the complaint is considered on the merits. At the third stage, a decision is made regarding the complaint filed.

ii. Selected terminology used by the European Committee of Social Rights

The European Committee of Social Rights as a body of the Council of Europe responsible for monitoring the implementation of the European Social Charter 1961[1232] and other legal documents, uses some key terms and concepts:

1) Social rights. These are rights that guarantee access to social protection, social services, and social benefits, including the right to work, the right to education, the right to health care, and the right to social security.

2) Collective bargaining is the process of negotiation between employers and employees (or their representatives) to establish working conditions, salaries, and other employment-related issues.

[1230] Birk R, 'The Collective Complaint: A New Procedure in the European Social Charter' in C. Engels and M. Weiss eds), *Labour Law and Industrial Relations at the Turn of the Century* (1998) P.261, 266–268.

[1231] Liora I, 'L'arme du droit, Paris' (Les Presses de Sciences Po, 2009) 142p.

[1232] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

3) Equal treatment is the principle that all individuals should be treated equally, regardless of their gender, race, ethnicity, religion, or other personal characteristics.

4) Minimum wage is the lowest amount of pay that an employer is required to pay their employees by law.

5) Social dialogue is the process of negotiation and consultation between employers, employees, and their representatives to address issues related to employment and working conditions.

6) Social exclusion is the situation in which individuals or groups are excluded from participating fully in society and are deprived of access to basic social rights and services.

7) Social protection is the system of social benefits, services, and support that is designed to protect individuals and families from poverty, social exclusion, and other risks and vulnerabilities.

8) Unsatisfactory application. M. Novitz, one of the authors whose writings on the European Social Charter 1961[1233] is that economic and social rights are unjustifiably much more weakly protected by the Council of Europe than civil and political rights, argues that: "the difference in terminology between the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1234] and the European Social Charter 1961[1235] indicates the "inferior status of social rights" protected under the European Social Charter 1961[1236] because a "violation" is implicitly a "much more serious matter" than "unsatisfactory application[1237]".

The use of such language was discussed by A. Bruto da Costa in his dissenting opinion in Complaint № 1/1998, where "Mr. da Costa considered that the approach of the European Committee of Social Rights was not in conformity with the idea of "satisfactory application"; there is a degree of merit in this argument, as the idea of "satisfactory application" can be deemed to be concerned with the overall approach of the state party to the issue in question and not necessarily with assessing "violations" of Charter provisions out of the context of overall policy and approach to the protected right(s) in question; although the choice of terminology in

[1233] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1234] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1235] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1236] Ibid.

[1237] Novitz M, 'Are Social Rights Necessarily Collective Rights? A Critical Analysis of the Collective Complaints Protocol to the European Social Charter' in *EHRLR* (2002) P. 53.

the Charter is probably not a case of semantics, the language utilized by the European Committee of Social Rights in practice is noteworthy; in particular, the use of "violation" and "breach" lends further weight to the idea of the justiciability of economic and social rights[1238]", which again refers to the nature of rights of the second generation and its balance with civil and pollical rights.

The terminology used by the European Committee of Social Rights is important in the collective complaint procedure as it provides a clear framework for evaluating complaints related to social and economic rights violations. The use of standardized terms and concepts helps to ensure consistency in the interpretation and application of the European Social Charter 1961[1239], which is the basis for the European Committee of Social Rights 's work. It also helps to ensure that complaints are evaluated consistently and fairly, and that member states are held accountable for upholding their commitments to protect social and economic rights. In contrast, the European Court of Human Rights primarily uses language and terminology related to civil and political rights, such as "right to a fair trial", "freedom of expression", and "prohibition of torture". While there is some overlap in the language and terminology used by both institutions, the ECSR's focus on social and economic rights and the ECtHR's focus on civil and political rights mean that they have different areas of expertise and use different language and terminology to reflect this.

iii. Advantages and disadvantages of the collective complaint procedure

There are some advantages of the collective complaint procedure.

1) Access to the Committee. The collective complaint procedure provides an avenue to bring complaints about violations of their social and economic rights to the European Committee of Social Rights, and have their case heard by an independent international body with expertise in social and economic rights.

2) The collective complaint procedure contributes to strengthening the protection of social rights by ensuring that states parties to the European Social Charter 1961[1240] comply with their obligations under the Charter and helps to identify gaps in the implementation of social rights and encourages states to take action to address these gaps. Comprehensive written

[1238] Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P. 430.

[1239] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1240] Ibid.

proceedings "will allow the European Committee of Social Rights to provide the state party with greater guidance as to the measures that need to be taken to ensure compliance[1241]".

3) An opportunity for civil society organizations, trade unions, and other groups to engage in social dialogue with states parties to the European Social Charter 1961[1242].By working together, these groups can identify problems, propose solutions, and build consensus on how to address violations of social rights. For example, it is an opportunity for NGOs to persuade the European Committee of Social Rights 1961[1243] towards the progressive development of standards, and several strategies to supplement the reporting system.

4) The collective complaint procedure can foster cooperation between states by promoting the sharing of best practices and encouraging states to learn from each other. It can also encourage states to work together to address transnational issues related to social rights.

5) Promoting transparency and accountability. The collective complaint procedure promotes transparency and accountability by requiring states parties to provide information about their compliance with the European Social Charter and respond to complaints filed against them. This can help to identify areas where states need to improve their implementation of social rights and hold them accountable for any violations.

6) Showing the difference in standards. In accordance with opinions of Robin R. Churchill and U. Khaliq, "collective complaint procedure will bring into sharper focus the issue of the difference in standards and the obligations imposed upon states by different treaties in relation to certain economic and social rights and the mechanisms available for their enforcement[1244]".

In contrast, there are some disadvantages of the collective complaint procedure:

1) The decisions of the European Committee of Social Rights are not legally binding. It is unrealistic to expect the collective complaint procedure to have any stronger sanctions against states. In addition, there is a lack of the right to an individual petition and insufficient staff of the Secretariat.

[1241] *Syndicat national des professions du tourisme v. France,* (European Committee of Social Rights) № 6/1999, (30 September 1999) para. 6 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-6-1999-syndicat-national-des-professions-du-tourisme-v-france> accessed 26 May 2023.

[1242] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1243] Ibid.

[1244] Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P.454.

2) Absence of standards' combability. The European Committee of Social Rights should try to ensure compatibility between the standards it defines for the European Social Charter 1961[1245], the Revised European Social Charter 1996, not only under the collective complaint procedure but also under the reporting procedure, and other relevant treaties. Ensuring such compatibility is more likely to mean that its findings will not be ignored because similar breaches under other treaties are more likely to be enforceable, especially in the case of EU law. However, "there is a risk that the European Committee of Social Rights may need to water down its approach to the obligations imposed by certain Charter provisions, thus to some extent defeating the object of the exercise[1246]".

3) Incompatibility of functions the European Committee of Social Rights has. The Independent Expert on the Draft Optional Protocol to the ICESCR has noted that: "[I]t is a hard assignment for one body, first to engage the State party in constructive, fruitful dialogue ... on the steps it has taken ... a non-confrontational, consultative exercise — and then to behave as a quasi-judicial investigative and settlement body; It should opt for one or the other[1247]". The European Committee of Social Rights "acts in a more quasi-judicial way in the complaints' procedure, especially at the admissibility stage, than in the reporting system[1248]". H. Cullen observed that: "A state may become reluctant to engage in frank constructive dialogue of its problems in the reporting phase, if it is likely to have to face that same committee in a quasi-judicial context[1249]".

4) The workload of the individuals involved. If the system is more used in the future, the burden that this will impose on members of the European Committee of Social Rights, in addition to their duties under the reporting system, will become more difficult to manage.

iv. Factors which influence the degree of use of the collective complaint procedure

[1245] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1246] Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P. 456.

[1247] CHR, 'Report of the Independent Expert on the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on the 58th Session', 'Item 10 of the Provisional Agenda' UN Doc. ECN.4/2002/57(12 February 2002) para.10 <http://www.hri.ca/fortherecordcanada/documentation/ commission/e-cn4-2002-57.htm> accessed 2 April 2023.

[1248] Cullen H, 'The Collective Complaints Mechanism of the European Social Charter' in *25 El Rev HR/18* (2000) P.27-28.

[1249] Ibid.

Despite advantages of the collective complaint procedure, there are some reasons of not ratification of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995[1250] which introduced the collective complaint procedure:

✓ Bureaucratic inertia or inability/unwillingness by governments.

✓ "Wait and see" approach. States wait to see how the collective complaint procedure operates in practice before taking a decision whether to ratify. K. Lochner suggested that "some states may fear that the collective complaints system will be abused, and lead to the unrestrained development of social rights, and disturb the way the [European Social] Charter has operated up until now[1251]".

✓ Limited interest and enthusiasm of European counties for the [European Social] Charter 1961, and [the Revised European Social Charter 1996[1252]].

✓ There are states that are opposed to the collective complaint procedure for reasons of principle or that simply have a poor record of accepting optional petition systems in other human rights treaties[1253].

However, there are some factors that would influence the degree of use of the collective complaint procedure. They include the following:

1) A number of states that have accepted the system. The more states accept the system, the more complaints will be. The fact that only small number of countries are bounded by the collective complaint procedure decreased the utility of the system, and to some extent undermines its legitimacy and credibility.

2) A circle of participants for filling a collective complaint (for example, Commissioner for Human Rights) should be expanded. The improvement of the procedure for consideration by the member governments of the Council of Europe of the list of national organizations, entrepreneurs, trade unions that have the right to complain to the Council of Europe. Alternative unions may also be included, as official unions are good friends with the authorities.

[1250] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (adopted 09 November 1995) EST 1995 <https://rm.coe.int/168007cdad> accessed 3 April 2023.

[1251] Lochner K, 'The Social Partners' Opinion, in Council of Europe, The Social Charter of the 21st Century' in *Colloquy Organized by the Secretariat of the Council of Europe* (1997) P.181, 183-184.

[1252] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1253] Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P. 452.

3) A degree of knowledge of the system by potential complainants. Obviously the more well known the system is, the greater the likelihood of complaints.

4) A general perceived level of compliance with the European Social Charter 1961, the Revised European Social Charter 1996. The more instances of non-compliance that are revealed, the more likely it is that complaints will be made.

5) A number of complaints will to some degree be influenced by the suitability of provisions of the Charter to be subject to complaints.

6) Willingness of potential complainants to bear the costs and effort of making a complaint.

7) The speed of the collective complaint procedure. The period taken to reach a decision on admissibility is about four months on average, while the complete disposal of a complaint takes about 18 months. It should be noted that the quicker that complaints are processed, the more attractive the collective complaints system is likely to be perceived. In addition, it should be an exception to the procedure for reviewing national reports of the Government Committee and transfer its functions to the European Committee and the Committee of Ministers. As a result, reports will be considered at shorter intervals.

8) The perceived effectiveness of the collective complaint procedure by potential complainants. As an example, such perceptions will depend, in part, on "the outcome of the complaints already made under the system[1254]". Moreover, the collective complaint procedure provides a unique opportunity for individuals and groups to hold states accountable for their obligations under the Charters (the European Social Charter 1961, the Revised European Social Charter 1996). The effectiveness of the collective complaint procedure depends on:

- the accessibility of the procedure. In this regard, the procedure has been criticized for its high threshold for admissibility, which may limit access to the procedure for many complainants.

- promoting state compliance with the social rights protected under the Charters (the European Social Charter 1961, the Revised European Social Charter 1996). The procedure has led to several positive outcomes, including changes in legislation and policies, compensation for victims, and improved access to social rights.

- independence, impartiality, and expertise of the European Committee of Social Rights.

- limitations. For example, the procedure is not well-known among potential complainants, and there is a lack of support and guidance for individuals and groups who wish

[1254] Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P.422.

to lodge complaints. In addition, the collective complaint procedure does not provide for punitive measures against states that are found to have violated the Charters.

9) Elimination of social problems, namely gross violations of social norms, is a complex task that requires addressing the root causes. Social security, health care, and education, play a critical role in reducing social problems. Governments should ensure/implement that: a) social protection systems are comprehensive, accessible, and affordable for all individuals and groups; b) implement policies and programs that promote inclusive economic growth and reduce inequality; c) policies and programs that address discrimination and promote equality, including affirmative action, anti-discrimination laws, and programs to support marginalized groups; d) support and encourage civil society organizations to participate in the procedure and in promoting social justice; e) public education campaigns and provide information and support to potential.

10) Amending the Protocol on Collective Complaints so that the Committee of Ministers can accept recommendations addressed to states if the European Committee of Social Rights finds a violation of the provisions of the European Social Charter 1961 and the Revised European Social Charter 1996.

To sum up, in order to improve the collective complaint procedure within the European Social Charter 1961 and the Revised European Social Charter 1966, the following steps could be taken:

1) Enhance awareness and accessibility. Increasing awareness about the collective complaint procedure and making it more accessible to potential complainants can help to ensure that those whose rights have been violated can make use of this mechanism. It might involve providing information in multiple languages, creating online resources, and conducting outreach to potential complainants.

2) Streamline the procedure. Simplifying and streamlining the procedure for submitting and processing complaints can help to make it more efficient and effective by creating standardized forms for complaints, clarifying the criteria for admissibility, and providing clear guidance on the evidence required to support complaints.

3) Strengthen implementation and enforcement. It is important to strengthen the implementation and enforcement of the Charter's provisions by increasing the resources allocated to the monitoring and implementation of the Charter, providing training to judges and other officials responsible for implementing the Charter's provisions, and enhancing cooperation with other international and regional human rights bodies.

4) Increase the role of civil society. It can help to ensure that the concerns of those whose rights have been violated are heard and addressed. This could involve providing funding and support to civil society organizations to facilitate their participation in the procedure and creating mechanisms for regular consultation with civil society organizations.

5) Enhance the scope of the procedure to cover a broader range of social and economic rights, such as the right to adequate housing or the right to a healthy environment, would help

to address a wider range of human rights violations by revising the Charter to include additional rights or creating separate procedures to address violations of specific rights.

3.4. Selected case-law of the European Commission of Human Rights and the European Court of Human Rights' indirect protection of economic, social, and cultural rights

i. Theoretical views on blurring distinctions between two groups of rights by the European Court of Human Rights

More, than half a century ago, two blocs of countries established a traditional understanding of two groups of rights: the first group includes - civil, and political rights, and the second group - economic, social, and cultural rights (for more information, see the first chapter). It has been established that the first generation' rights require negative, cost free, immediate, precise, justiciable, non-derogable state obligations, while the second generation' rights require positive, expensive, progressive, vague, non-justiciable, derogable state obligations. This was erroneous, since both groups of rights are a single, indissoluble whole. F. Cherubini, an author of an article "The first two generations of human rights: origin, evolution and recent practice" noted that: "[O]ver the years, the distinction between the two groups of rights began to "blur" due to:

- the persistence of States to be subjected to strict control mechanisms in relation to two groups of rights,

-the activities of the control bodies of various Council of Europe conventions, including the case-law of the ECtHR[1255]". However, some authors believe that blurring the distinction between civil and political rights, and economic, social, and cultural rights is not recommended, as these two categories of rights serve different purposes and require different approaches to their realization. Moreover, rather than blurring the distinction between civil and political rights, and economic, social, and cultural rights, efforts should be made to ensure that both categories of rights are respected, protected, and fulfilled. This can be done through legal and policy frameworks which recognize the indivisibility and interdependence of human rights and promote a comprehensive approach to human rights realization. It also requires building awareness and advocacy around the importance of both categories of rights and the ways in which they are interconnected.

Analyzing the European human rights protection, E. Cannizzaro and F. De Vittor, called as «the most integrated system of human rights protection … which serve as a model for the development of a more comprehensive system of protection[1256]". A. Patrick in own article

[1255] Cherubini F, 'Le prime due generazioni di diritti umani: origine, evoluzione e prassi recente' in *Studi sull'integrazione europea* (2013) P.318, 319.

[1256] Cannizzaro E, Vittor F.D, 'Proportionality in the European Convention of Human Rights', in *Research Handbook on Human Rights and Humanitarian Law* (2013) P.125.

"Longer – term future of the system of the European Convention on Human Rights and the European Court of Human Rights" called the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 as "one of the most successful mechanisms to secure better protection of individual rights in practice[1257]".

It is well known that the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1258] does not contain the second-generation rights (economic, social and cultural rights). Even in a case of *Pancenko v. Latvia*, the ECtHR declared that « [The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1259]] does not guarantee, as such, socio-economic rights, including:

- the right to charge - free dwelling,
- the right to work,
- the right to free medical assistance, or
- the right to claim financial assistance from a State to maintain a certain level of living[1260]".

However, the significant achievement made by the European Court of Human Rights is the recognition of the principle of the human rights indivisibility, which means that the violation of one right entail violations of another right. This principle is supported by such prominent scholars as: R. Arnold, R. Bernhardt, F. Edward, M.-A. Eissen, O. Jacot-Guillarmod, R.L. Marcus, F. Matscher, L.-E. Pettiti, H. Petzold, M.H. Recfesh, P. Sherman, V. Shiva[1261], H.

[1257] Patrick A. 'Longer – term future of the system of the European Convention on Human Rights and the European Court of Human Rights' <https://justice.org.uk/wp-content/uploads/2015/01/JUSTICE-Future-of-the-ECHR-Submission-January-2014-FINAL-as-submitted-1.pdf> accessed 2 April 2023.

[1258] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1259] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1260] *Pancenko v. Latvia* (1999) № 40772/98 <https://swarb.co.uk/pancenko-v-latvia-echr-28-oct-1999/> accessed 27 May 2023.

[1261] V. Shiva asserts that: "Freedom from hunger is no less a human right than freedom of speech, since without the former, the latter cannot exist; the division of rights left people without food and without freedom", Shiva V, 'Food Rights, Free Trade, and Fascism, Globalizing Rights' in *the Oxford Amnesty Lectures 1999* (ed. By M. J. Gibney) (Oxford University Press, 2003) P. 86 – 108.

Shue[1262], A. Sen[1263] and others. I cannot disagree with these authors, since the rights of both generations are a single whole, and the practice of the ECtHR proves this point of the view. The European Court of Human Rights by carrying out a broad interpretation of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1264], singles out socio-economic rights from civil and political rights.

There has been some discussion between scholars as to whether the European Court of Human Rights protects economic and social rights:

- The first group of scholars includes scholars who believe that the European Court of Human Rights protects socio-economic and cultural rights (for example, M. Baderin, R. McCorquodale, O'Cinneide, E. Palmer, M.C. Sepulveda, L. Thornton). E. Palmer considers that the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1265] protects vulnerable individuals to receive a minimum standard of living consistent with their basic human dignity[1266]". Another author, O'Cinneide, stated that the European Court of Human Rights "did protect socio-economic rights to an extent, and only where, there was a distinct relationship of dependency between and individual and the State[1267]".

- The second group of scholars includes scholars who believe that the European Court of Human Rights does not protect socio-economic and cultural rights. In particular, C. Warbrick considers that the European Convention for the Protection of Human Rights and Fundamental

[1262]H. Shue noted that "The failure of livelihoods can be just as fatal, to deprive of capacity or painful as violations of physical security; the harm or death caused may be at least as strong an obstacle to the exercise of any right as the consequences of a violation of the right to security". Shue H, 'Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy' (Princeton, NJ: Princeton University Press, 1996) P. 24–28.

[1263] Concept of the main features of A. Sena refutes the existence of any differences.

[1264] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1265] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1266] Palmer E, 'Judicial Review, Socio-Economic Rights and the Human Rights Act' (Oxford: Hart, 2007) P.50.

[1267] O' Cinneide C, 'A Modest Proposal: Destitution, State Responsibility, and the European Convention on Human Rights' in *5 European Human Rights Law Review* (2008) P. 585.

Freedoms 1950[1268] "does not protect socio-economic rights either explicitly or impliedly[1269]". J. G. Merrills warns that the European Court of Human Rights from re-interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1270] provisions which would result in socio-economic protection[1271].

I support the first group of scholars because the European Court of Human Rights protects the rights of the second generation in the process of interpreting the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1272] with different level of legal protection. Here it is worth making a small explanation. For instance, a person who's right to use own native language was violated applied for the European Court of Human Rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1273] does not contain an article on the use of the mother tongue, but this right can be protected by referring to Articles 5, 6, 8, 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1274], depending on the situation in which this right was violated. For example, an applicant was not allowed to give evidence in his/her native language or was not provided with an interpreter. The right to use one's native language and the right to a fair trial offer different legal protection. Thus, the first right will be considered as a "subsidiary mechanism" for the implementation of the second right.

[1268] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1269] Warbrick C, 'Economic and Social Interests and the European Interests and the European Convention on Human Rights' in M.A. Baderin, R. McCorquodale, *Economic, Social and Cultural Rights in Action* (Oxford, OUP, 2007), P.241.

[1270] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1271] Merrils J.G, 'The Development of International Law by the European Court of Human Rights' (2nd edition, Sheffield, Manchester University Press, 1993) P.102.

[1272] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1273] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1274] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

The most cited case is *Airey v. Ireland*. The European Court of Human Rights concluded the following:

"Whilst [the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1275]] sets forth what are essentially civil and political rights, many of them have implication of a social and economic nature. An interpretation of [the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950][1276] 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 European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1277]]. The further realization of social and economic rights is largely dependent on the situation – notably financial[1278]".

At present, the most recent examples of using or citing the case of *Airey v. Ireland* in 2020 are: *Stavropoulos and others v. Greece,* and *Makuchyan and Minasyan v. Azerbaijan and Hungary*. In the case of *Stavropoulos and others v. Greece[1279]*, the European Court of Human Rights suggested to choose only one of many available remedies, while in the second case, the European Court of Human Rights maintained its position that the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 "is intended to guarantee not rights that are practical and effective[1280]".

ii. Approaches to the interpretation used by the European Court of Human Rights

[1275] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1276] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1277] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1278] *Airey v. Ireland* (1979) App. № 6289/73, para.26 <https://www.escr-net.org/caselaw/2006/airey-v-ireland-32-eur-ct-hr-ser-1979-1979-2-ehrr-305> accessed 24 May 2023.

[1279] *Stavropoulos and others v. Greece* (2020) App. 52484/18 <https://hudoc.echr.coe.int/fre/#{%22itemid%22:[%22001-203165%22]}> accessed 25 May 2023.

[1280] *Makuchyan and Minasyan v. Azerbaijan and Hungary* (2020) App. 17247/13 <https:// https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=0067046728927091&filename=Judgment+Makuchyan+and+Minasyan+v.+Azerbaijan+and+Hungary++violation+of+the+Convention+by+Azerbaijan+after+pardon+and+release+for+an+officer+convicted+of+murdering+an+Armenian+soldier+in+Hungary.pdf> accessed 4 April 2023.

The role of interpretation is very important in order to protect the second generation' rights. In questions of interpretation is relevant to refer to the Vienna Convention on the Law of Treaties. According to Articles 31(1) and (3) (c) of the Vienna Convention on the Law of Treaties: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of treaty in their context and in the light of its object and purpose […], There shall be taken into account, together with the context any relevant rules of international law applicable in the relations between the parties[1281]".While the purpose of the application process is to determine whether the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1282] has been violated. The difference in the purposes of these processes: interpretation and application lead to a difference in the methods.

Moreover, in the process of interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1283] provisions the European Court of Human Rights uses:

-textual approaches based on the analysis of the text of the Convention (systematic, and teleological approach);

-contextual approaches that interpret the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 considering the legal and social context in which it is applied (comparative legal and dynamic approach);

-special legal interpretation of the conceptual and terminological apparatus of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 has led to the emergence of the principle of autonomy of ECHR concepts;

- means. For instance, G. Aeyal and B. Daphne underlined several means used by the European Court of Human Rights: "procedural protection and non-discrimination[1284]".

The criterion for differentiating approaches to the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is the sources of law that the European Court of Human Rights relies on when using each of these approaches. Considering these provisions, it is worth to note that the European Court of Human Rights in the question of protection of economic, social and cultural rights considers:

[1281] Articles 31(1) and (3) (c) of Vienna Convention on the Law of Treaties (adopted 23 May 1969) <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> accessed 5 April 2023.

[1282] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1283] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1284] Erez D.B, Aeyal M, 'Exploring social rights between theory and practice' (Oxford; Portland,2007). P.137.

1) The context. The European Court of Human Rights uses two groups of terms. The terms of the first group are found in the text of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and open for the judicial interpretation. The terms of the second group were introduced by the European Court of Human Rights itself.

2) Rules of International law. In case of *Sigurdur A. Sigurjonsson v. Iceland,* the most attention was paid to the following documents:

-"travaux préparatoires,

- paragraph 2 of Article 20 of the United Nations Universal Declaration of Human Rights 1948[1285],

-paragraph 2 of Article 11 of the Community Charter of the Fundamental Social Rights of Workers, adopted by the Heads of State or Government of eleven member States of the European Communities on 9 December 1989,

-Article 5 of the 1961 European Social Charter,

-practice of the Freedom of Association Committee of the Governing Body of the International Labour Office[1286]".

iii. Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

It is one of the most violated articles in the case-law of the European Court of Human Rights. It contains two fundamental elements, which are reflected in its two paragraphs:

-general obligation to protect the right to life «by law» (paragraph 1);

-prohibition of deprivation of life, except in special cases (paragraph 2)[1287].

The legal literature provides many classifications of state obligation. For example, there are seven groups of obligations: positive and negative, cost free and expensive, derogable and non-derogable, judiciable and non-judiciable, thin and thick, vague and precise, progressive and immediate.

[1285]Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[1286] *Sigurdur A. Sigurjonsson v. Iceland* (1993) App. № 16130/90, para.35 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-9686%22]}> accessed 5 May 2023.

[1287] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

Based on the case - law of the European Court of Human Rights positive obligations include:

1) the obligation to establish legal norms, including effective criminal laws and procedures, standards of evidence required to establish state responsibility for unlawful deprivation of life;

2) the obligation to bring to justice those responsible for unlawful deprivation of life;

3) the obligation to protect persons whose lives are at risk: persons requesting protection from the authorities; persons exposed to environmental pollution; persons who are on the verge of suicide or murder by third parties in conclusion.

K. Taylor underlined that the European Court of Human Rights have "a very broad discretion in the area of socio-economic rights protections under the Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950"[1288]. Indeed, the author is right because the Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, protecting the right to life, also covers the right to health/medical assistance. States also have positive, negative and procedural obligations to protect this mentioned right.

✓ Positive obligations under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 require:

- effective independent judicial system,

- legislative and administrative framework for protecting patients' rights. In a case of *Calvelli and Giglio v. Italy*, in which a newborn died two days after birth, the European Court of Human Rights stated that States have an obligation "to adopt rules requiring hospitals, public or private, to take appropriate measures to protect the lives of their patients[1289]". In another case, *Pereira Henriques v. Luxembourg*, the European Court of Human Rights affirmed "the obligation to enact appropriate legislation and implement appropriate enforcement mechanisms to protect human life also applicable in the circumstances of the case (paragraphs 56-57)[1290]";

-measures to protect lives of patients (*Trocellier v. France*[1291]).

Counties are required to take measures in order to ensure that physicians consider the predictable consequences of a planned medical procedure and inform their patients in advance.

[1288] Taylor K, 'Article 2' in A. Lester, D. Pannick (eds.) in *Human Rights Law & Practice* (3rd edition, London; Lexis Nexis, 2009) P.150.

[1289] *Calvelli e Giglio v. Italia* (2002) App. 32967/96 <https://hudoc.echr.coe.int/fre#{%22itemid%22: [%22002-5597%22]}> accessed 6 April 2023.

[1290] *Pereira Henriques v. Luxembourg* (2006) App. 60255/00<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%2 2002-5597%22]}> accessed 7 April 2023.

[1291] *Trocellier v. France* (2006) App. 75725/01 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR &id=001-80880&filename=TROCELLIER%20v.%20FRANCE.docx&logEvent=False> accessed 8 April 2023.

The the European Court of Human Rights also stressed the importance of providing access to information related to health risks. Examples of such cases are *Cypris v. Turkey, Nenheva and others v. Bulgaria, Pentiacova and others v. Moldova*.

In a case of *Cypris v. Turkey*, the Grand Chamber of the European Court of Human Rights observed that: "[U]nder this article [2] states have to make the health care available to the population[1292]". In next case, LCB v. United Kingdom, it was stated that Article 2 of the European Court of Human Rights may not be expressed directly, but in more common words. "States take appropriate steps to safeguard the lives of those within its jurisdiction[1293]". Restrictions on access to medical care for Greek and Maronite Cypriots in the enclave and the failure to provide or allow adequate medical services resulted in a violation of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1294].

The range of people to whom medical care is applied is wide. This range may include children, the elderly, patients, and prisoners. This list of persons is not exhaustive. In relation to kids a case of *Nencheva and others v. Bulgaria* is a good case-example. 15 children and adolescents died between 15 December 1996 and 14 March 1997 in a home for young people with physical and mental disabilities in the village of Djurkovo from the effects of cold and lack of food, medicine and basic necessities. The shelter manager, observing the problems, tried several times unsuccessfully to warn all government agencies that were directly responsible for funding the shelter and from which action could be expected. The European Court of Human Rights noted that: "Specific information about the risk to children resulting from inadequate heating, nutrition and medical treatment was received as early as 10 September 1996"[1295]. It was on this day that the shelter Manager, with the support of mayor Lucky, began notifying the authorities and requesting appropriate assistance. As of September, the highest-level officials in the Ministry of employment and social policy and other government agencies were aware of the risk to children's health and life. The manager stressed "the seriousness of the conditions of detention in the house and the difficulty of providing the necessary assistance and asked for help from numerous public and humanitarian structures[1296]". The court concluded that "The

[1292] *Cypris v. Turkey,* (2001) App. 25781/94 para. 219 <https://hudoc.echr.coe.int/Eng#{%22itemid%22:[%22001-59454%22]}> accessed 9 April 2023.

[1293] *LCB v. United Kingdom* (1998) App. 23413/93, para. 36 <https://swarb.co.uk/lcb-v-united-kingdom-echr-9-jun-1998/ > accessed 10 April 2023.

[1294] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1295] *Nencheva and others v. Bulgaria* (1996/1997) App. 48609/06< https://archive.crin.org/en/library/legal-database/nencheva-v-bulgaria.html> accessed 27 May 2023.

[1296] Ibid.

respondent state had breached its obligation to protect the lives of vulnerable children in its care, including medical care"[1297].

The European Court of Human Rights ruled that: "A contentious issue under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 may also arise in cases where it is proved that the authorities of a Contracting State created a danger to the life of a person by refusing medical assistance"[1298]. For example, in a case of *Pentiacova and Others v. Moldova*, applicants stated that: "[A] number of patients have died in recent years and cite[d] the case of Gheorghe Lungu, but [did] not provide any evidence of the cause of death[1299]". The European Court of Human Rights did not connect the cause of the patients' death with disadvantages of provided medical services.

Next category of people is people who are in custody. In a case oof *Anguelov v. Bulgaria*, the applicant's son had been ill-treated, had not received timely medical care in custody, and had died as a result of injuries inflicted by police officers. The European Court of Human Rights concluded that: "[T]he conduct of the police officers and the lack of any response on the part of the authorities constituted a violation of the state's obligation to protect the lives of persons in custody[1300]".

✓Procedural obligations.

Generally, according to the Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1301] this type of obligation is as follows:

- the obligation to conduct an effective investigation;
- the obligation to investigate based on information received about non- legal deprivation of life;
- the duty to investigate the use of force that is potentially can lead to death;
- the duty to investigate and fight terrorism;
- the duty to conduct a timely investigation;
- the obligation to provide evidence;
- the duty to ensure public control over the investigation;
- the duty to ensure the independence of the investigation;
- the obligation to explain the reasons for refusal to initiate criminal proceedings.

[1297] Ibid.

[1298] Ibid.

[1299] *Pentiacova and Others v. Moldova* (2005) App.14462/03 <https://www.google.com/search?client=safari&rls=en&q=Pentiacova+and+Others+v.+Moldova&ie=UTF-8&oe=UTF-8> accessed 8 April 2023.

[1300] *Anguelov v. Bulgaria* (2007) App. 51343/99<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-101552&filename=001-101552.pdf&TID=thkbhnilzk> accessed 9 April 2023.

[1301] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

In many cases, the cause of applicants' death is the negligence of doctors and untimely high-quality investigation. In a case of *Šilih v. Slovenia*[1302], the applicants' 20-year-old son died in hospital after being injected with drugs to which he was very allergic. The applicants complained that the death of the son was caused by the doctor's negligence, as a result, the European Court of Human Rights found a violation of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in its procedural aspect, primarily due to the excessive length of the civil proceedings, which had not yet been completed 13 years later. In another case, *McGlinchey v. United Kingdom*[1303], a drug addict received a completely inadequate treatment while she was in a prison hospital.

The case of *Dodov v. Bulgaria*[1304] is about the absence of responsibility for the disappearance from a nursing home of the applicant's mother, who suffered from Alzheimer's disease. The European Court of Human Rights found a direct link between the inability of nursing home staff to control her and her disappearance. Faced with a controversial case of negligent threat to human life, the legal system failed to provide the adequate and timely response required by the state's procedural obligations under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

✓Negative obligations. States are required to refrain from acts of a life-threatening nature, or which place the health of individuals at grave risk. For example, police must not use lethal force or force which, while not resulting in death, gives rise to serious injury. In a case of *Ilhan v. Turkey* the applicant's brother had been beaten by police when they apprehended him at his village and that he was not provided with the necessary medical treatment for his life-threatening injuries. The European Court of Human Rights did not find the violation of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 because the "use of force applied by the gendarmes when they apprehended the brother had not been lethal[1305]". So, in order to prove the violation of this mentioned article using force by the police should rise to the degree required to constitute a breach of Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 covers a wide range of disputable situations. As a rule, applies

[1302] *Šilih v. Slovenia* (2009) App. 71463/01 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-92142%22]%7D> accessed 1 April 2023.

[1303] *McGlinchey v. United Kingdom* (2003) App. 50390/99 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22003-741378-753326%22]%7D> accessed 2 April 2023.

[1304] *Dodov v. Bulgaria* (2008) App. 59548/00 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-2232398-2392876&filename=0032232398-2392876.pdf> accessed 3 April 2023.

[1305] *Ilhan v. Turkey* (2000) App. 22277/93 <https://hudoc.echr.coe.int/Eng#{%22itemid%22:[%22001-58734%22]}> accessed 4 April 2023.

only in the case of actual death of a person, when it is possible to raise the question of whether the death was the result of:

- failure of the state to take appropriate positive steps to protect life by enacting laws and special protective measures, provide medical assistance, medical care;
- failure to conduct a thorough investigation and punish the perpetrators, or, on the contrary, to put in place another appropriate procedure to correct the situation;
- illegal use of force by state-representatives.

In conclusion, Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 plays a crucial role in protecting economic, social, and cultural rights of individuals. This article recognizes the fundamental right to education and requires that states ensure that everyone has access to it without discrimination. It also guarantees the right to work, to just and favourable working conditions, and to join trade unions. Additionally, it protects the right to social security and to adequate standards of living, including housing, food, and clothing. These rights are essential for ensuring human dignity, and the fulfilment of these rights is crucial for creating a just and equal society. The importance of Article 2 lies in its recognition of the interconnectedness of civil and political rights and economic, social, and cultural rights, which are all necessary for the full realization of human rights.

iv. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

iv.i. The right to basic needs

The fight against poverty is one of the most important challenges facing our world. The prohibition of extreme poverty is closely linked to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 because the article states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment[1306]". Extreme poverty, defined as a lack of necessities such as food, shelter, and medical care, can be considered a form of inhuman or degrading treatment. The prohibition of extreme poverty can be seen as an extension of the protection afforded by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1307]. States have a duty to take measures to prevent and alleviate poverty and to ensure that everyone can enjoy their basic human rights. The European Court of Human Rights has also recognized that the right to live in dignity, which is closely linked to the prohibition of extreme poverty, is a fundamental aspect

[1306] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1307] Ibid.

of Article 3the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

In a case of *M.S.S. v. Belgium and Greece*, the applicant is an Afghan who fled from Kabul in 2008 to the EU. The primary country of arrival was Greece, from where he visited Belgium where he applied for asylum. However, Belgium recognized Greece as the responsible state for granting asylum and sent him there. "He spent several months in detention, in conditions of utmost poverty, without means of subsistence, without food, without hygiene[1308]". The applicant could not have the basic needs. The European Court of Human Rights solved the question: "Does a situation of maximum poverty raise a difficulty under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1309]? "by stating that "it has not excluded the chance that the State's responsibility is engaged under Article 3 of [the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1310]] when an applicant, wholly enthusiastic about State support, found herself faced with official indifference during a situation of significant deprivation or want incompatible with human dignity[1311]".

In a case of Z. *and others v. in the United Kingdom*, the European Court of Human Rights held that: "Public authorities should intervene to alleviate the suffering of the individuals concerned[1312]". The case concerned a family with four children who were in complete desolation, without food and in a dirty apartment. The European Court of Human Rights stated that: "The State authorities had committed a violation of Article 3 by omission, since the state of neglect and ill-treatment to which the four children had been subjected had reached the threshold of inhuman and degrading treatment[1313]". The reason for this statement is clear. It is explained in a case of *Van Volsem v. Belgium*, "[w]henever a person finds himself or herself in terrible conditions that threaten his or her life and from which he or she cannot escape, the state is obliged to provide him or her with any appropriate form of assistance[1314]". Moreover, I would like to pay attention to some additional/ restrictive criteria:

[1308] *M.S.S. v. Belgium and Greece* (2011) № 30696/09 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-628%22]}> accessed 28 April 2023.

[1309] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1310] Ibid.

[1311] *M.S.S. v. Belgium and Greece* (2011) № 30696/09 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-628%22]}> accessed 28 April 2023.

[1312] *Z. and others v. in the United Kingdom (*2001) App. 29392/95 <https://swarb.co.uk/z-and-others-v-the-united-kingdom-echr-10-may-2001/> accessed 29 April 2023.

[1313] Ibid, para.74-75.

[1314] *Van Volsem v. Belgium* (1990) App. 1464/89.

- Firstly, it is necessary to consider the complexity and sensitivity of decisions made by social services.

- Secondly, it is important to respect and preserve family life. When making decisions, social workers should take into account the interests of children and parents.

- Thirdly, it is the responsibility of parents to provide food, clothing, and hygiene items. If parents are unable to meet the minimum requirements for children, this responsibility falls on social workers acting on behalf of the state.

The history of these cases can be described as an attempt to guarantee human dignity even to those who, due to extreme poverty, must endure daily harsh living conditions. In general, "these cases remain exceptional, but can be of great significance[1315]".

iv.ii. The right to an adequate pension

Except for the right to have basic necessities, there is another right to analyze - the right to an adequate pension. Samples of cases within which the European Court of Human Rights has protected this right are *Larioshina v. Russia, and Budina v. Russia*. The applicants appealed against the insufficient amount of pension to satisfy their basic needs. Despite the very fact that their arguments were insufficient and also the complaints were declared inadmissible, a step was taken to shield this right. As an example, a pension of Budina was 2250 rubles (28.12 euros) per month in 2007. The European Court of Human Rights stated that: "State responsibility could arise for "treatment" where an applicant wholly passionate about State support found herself faced with official indifference when in an exceedingly situation of great deprivation or want incompatible with human dignity[1316]". During own speech, Jean-Paul Costa considered that: "[S]uch applications would have been dismissed as manifestly ill-founded within the past, but that such might not necessarily be the case within the future[1317]". To shield this right, applicants must provide the evidence showing that a level of pension and social benefits are insufficient to shield them from damage to their physical or psychological state or from a situation of degradation incompatible with human dignity.

In order to compare approaches, the European Committee of Social Rights considers the «threshold of worthiness» methodology. In order to comply with Article 4.1 (The right of

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[1315] Tomuschat C, 'I diritti sociali nella Convenzione europea dei diritti dell'uomo' in *Studi sull' integrazione europea* (2007) P. 231 - 254.

[1316] *Budina v. Russia* (2009) App. 45603/05 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-1453%22]}> accessed 7 April 2023.

[1317] 'Social and Economic Rights and the ECHR'<http://echrblog.blogspot.com/2008/10/social-and-economic-rights-and-echr.html> accessed 8 April 2023.

workers to remuneration that will enable them to enjoy a decent standard of living in their families) of the European Social Charter 1961 the European Committee of Social Rights indicated that: "Any salary that is less than 68 per cent of the national average salary, including compensatory measures, does not reach the "threshold of dignity" and is contrary to the norms of the European Social Charter 1961". It proves that: "[O]n the basis of relatively vague provisions, the decision-making authorities can develop clear rules that can be enforced in court, and that violations can be identified even when the basis is provisions that are sufficiently vague[1318]".

iv.iii. The right to housing

Next right to consider is the right to housing. The right to housing is protected by many articles, for example, Articles 2, 3, 6, 8, 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1319]. The protection of this right has own features.

Many cases relate to eviction. In a case of *Winterstein and others v. France*[1320], applicants had an eviction from the land where they have been living for long time without legal permission. Caravans belonging to travelers are "homes", since the French government did not challenge this in *Stenegri and Adam v. France*[1321], and questions of title or planning permission should only be considered in the context of Article 8 (paragraph 2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. According to Article 1 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, "caravans, sheds, and bungalows of … travelers, even if built without permission on third-party land, should be considered property[1322]". It means that the principle that the eviction of vulnerable groups should only be subject to several conditions, including the alternative place of relocation.

[1318] CESCR, 'Guidelines for national human rights institutions' in 'Economic, social, and cultural rights' <https://www.ohchr.org/en/treaty-bodies/cescr/guidelines-civil-society-ngos-and-nhris > accessed 8 April 2023.

[1319] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1320] *Winterstein and others v. France* (2013) № 27013/07< https://hudoc.echr.coe.int/fre#%7B%22itmid%22:[%22001-127539%22]%7D > accessed 18 May 2023.

[1321] *Stenegri and Adam v. France* (2007) App.40987/05.

[1322] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

"The forced eviction ... of travelers from land they occupied without permission, as well as the demolition of their caravans and sheds, raise two issues:

1) the destruction of their homes may affect Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and the same principles apply when they are intimidated or forced to leave the land on which they live;

2) there is no judicial remedy that can provide them with adequate compensation, namely alternative housing, although this is an obligation under both the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the European Social Charter 1961.The offer of alternative housing must have been made before the decision to evict was made and was a precondition for the legality of this decision[1323]".

It can be assumed that the deprivation of housing, namely eviction, humiliates the human dignity of the applicants – people become homeless. Accordingly, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 allows for the right to housing.

Within a case of *Moldovan and other v. Romania*[1324] applicants claimed that State officials had been involved in the destruction of their homes and not providing alternative dwellings, including police officers and a deputy mayor. Romanian Government considered that there was no obligation under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 to provide a home to persons who were in difficulties. They relied in this connection on the cases of *Buckley v. the United Kingdom*[1325] and *Chapman v. the United Kingdom*[1326]. The European Court of Human Rights considered that the applicants' living conditions and its detrimental effect on their health and well-being, combined with the length of the amount during which they would had to measure in such conditions must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them feelings of humiliation and debasement. It had been amounted to "degrading treatment" within the meaning of Article 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

In a case of *V.M. and others v. Belgium*[1327], the applicants (a family of seven of Roma origin and Serbian citizenship) argued that their exclusion from the reception center was

[1323] *Winterstein and others v. France* (2013) № 27013/07<https://hudoc.echr.coe.int/fre#%7B%22itmid%22:[%22001-127539%22]%7D > accessed 18 May 2023.

[1324] *Moldovan and other v. Romania* (2005) App. 41138/98 and 64320/01 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-69670%22]%7D> accessed 19 May 2023.

[1325] *Buckley v. the United Kingdom* (1996) App. 20348/92 < https://swarb.co.uk/buckley-v-the-united-kingdom-echr-25-sep-1996/ > accessed 20 May 2023.

[1326] *Chapman v. the United Kingdom* (2001) App. 27238/95 <https://www.escr-net.org/caselaw/2008/chapman-v-united-kingdom-application-no-2723895> accessed 21 May 2023.

[1327] *V.M. and others v. Belgium* (2011) App.60125/11 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5550203-6993031&filename=Grand%20Chamber%20judgment%20V.M.%20and%20Others%20v

contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Their vulnerable situation has been given insufficient attention and subjected to conditions of extreme poverty. Living conditions after being removed from the reception center were difficult, although asylum seekers should have been guaranteed special protection for children. The European Court of Human Rights further referred to the jurisprudence of the Court of Justice of the European Union, in particular, *Cimade and Gisti*[1328], as well as *Saciri*[1329]. The Directive on conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service 2004 stipulates that "Member States must provide asylum-seekers with material assistance sufficient to ensure a decent standard of living and adequate to the applicants' health and able to ensure their existence; these member States should also consider the situation of persons with special needs, as well as the best interests of the child[1330]". Finally, The European Court of Human Rights considered that: "The arguments for a violation of Article 13, combined with Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, were justified, and that the remedy must guarantee accessibility, quality, and promptness[1331]". The case required prompt consideration of the applicants' appeal. Thus, considered cases can be called house-related cases. State should protect people in poor conditions, provide housing or alternative help by acting quickly.

iv.iv. The right to medical care

Next right which is protected by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is the right to health/healthy or medical care. In the question of providing and protecting this care, it is better to pay attention to how it is provided and a range of people who receive this mentioned care.

Firstly, the care is provided with or without personal consent. There are cases when care can be provided to "patients without their personal consent, which include:

.%20belgium%20-%20struck%20out%20of%20the%20list%20.pdf > accessed 22 May 2023.

[1328] *Cimade and Gisti* (Case C-179/11) [2011] < https://curia.europa.eu/juris/documents.jsf?num=> accessed 23 May 2023.

[1329] *Saciri* (C-79/13) [2014] https://curia.europa.eu/juris/document/document.jsf?text=&docid=148395&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=683433> accessed 24 May 2023.

[1330] European Union, 'Council Directive on the condition of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service' 2004/114/EC (13 December 2004<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:En:PDF> accessed 23 May 2023.

[1331] *V.M. and others v. Belgium* (2011) App.60125/11 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5550203-6993031&filename=Grand%20Chamber%20judgment%20V.M.%20and%20Others%20v.%20belgium%20-%20struck%20out%20of%20the%20list%20.pdf > accessed 22 May 2023.

1) providing medical care to persons who are incapacitated or have limited legal capacity;

2) providing medical care to minors;

3) providing medical care to persons in an unconscious state;

4) providing medical care to patients in fainting States or with other unstable psycho-emotional conditions (this also includes the elderly);

5) providing medical care to persons under the influence of sedatives or other medications that affect mental abilities and attentiveness;

6) in some cases, providing medical care to persons with disabilities, depending on the type of physical restrictions[1332]".

Secondly, people who are deprived of their liberty and need treatment are very often victims of violations of their rights, as patients. "Persons deprived of their liberty have the same rights as other patients, namely the right to treatment, the right to abortion and medical testing[1333]". These people are representatives of vulnerable groups with special needs: prisoners with mental disorders, the elderly, and prisoners with incurable diseases. "These vulnerable sub-groups of prisoners may need special attention to ensure and exercise their rights[1334]".

Detainees should be provided with medical assistance. For example, there is a case of *Hurtado v. Switzerland*. The applicant, Mr. Hurtado, was arrested at Yverdon-les-Bains by six officers. They had thrown a stun grenade before entering the flat, forcing the applicant to the ground and handcuffing and hooding him, then they proceeded to beat him until he lost consciousness. X-rays taken on 16 October revealed a fracture of the anterior arch of a rib. Mr. Hurtado applied to the Commission on 30 October 1990. He alleged that he had suffered inhuman and degrading treatment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. In its report of 8 July 1993 (made under Article 31), it was expressed that: "There had been no violation of Article 3 of [the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950] on account of the circumstances of the applicant's arrest (twelve votes to four), but that that provision had been violated inasmuch as he had had to wear soiled clothing (fifteen votes to one) and because he was not given immediate medical treatment (unanimously)[1335]". The

[1332] WMA Declaration of Lisbon on the rights of the patient (Adopted by the 34th World Medical Assembly, Lisbon, Portugal, September/October 1981 and amended by the 47th WMA General Assembly, Bali, Indonesia, September 1995and editorially revised by the 171st WMA Council Session, Santiago, Chile, October 2005 and reaffirmed by the 200th WMA Council Session, Oslo, Norway, April 2015) <https://www.wma.net/en/30publications/10policies/l4/> accessed 26 May 2023.

[1333] Lines R, 'The right to medical services for persons deprived of their liberty under international human rights, international journal health of persons deprived of their liberty' (№ 1, March 2008) P. 4(3-53) <https://www.ahrn.net/library_upload/uploadfile/file3102.pdf> accessed 26 May 2023.

[1334]UNODC, 'Guidelines for persons deprived of their liberty with special needs' (2009)<https://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf> accessed 25 May 2023.

[1335]*Hurtado v. Switzerland* (1998) App. 17549/90<https://hudoc.echr.coe.int/app/conversion/docx/?library=EC

applicant was offered a peaceful settlement of the dispute. To sum up, both detainees and those in custody must be provided with medical assistance.

In another case, *D. v. United Kingdom,* the applicant from St. Kitts, who was serving his sentence in prison in the UK, fell ill with diseases such pneumocystis carinii pneumonia (PCP), HIV (human immunodeficiency virus) and immunodeficiency syndrome (AIDS). After six years of imprisonment, the Government of the UK decided to send him back to home. The European Court of Human Rights, "bearing in mind the critical stage now reached in the applicant's fatal illness", decided that "the implementation of this decision would amount to inhuman treatment by the respondent state in violation of Article 3[1336] [of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950]".

Thus, in a case of *Kudla v. Poland*, the European Court of Human Rights concluded that: "State must ensure that a person detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance[1337]".

There are several cases against the Russian Federation[1338]. For example, in a case of *Kolesnikovich v. Russia*, the applicant was not provided with adequate medical care during his detention in a pre-trial detention facility. "Prior to his detention, the applicant was repeatedly treated in civilian hospitals, but his health deteriorated during his detention[1339]". The European

HR&id=00157868&filename=CASE%20OF%20HURTADO%20v.%20SWITZERLAND.docx&logEvent=False > accessed 26 May 2023.

[1336]*D. v. United Kingdom* (1997) App. 30240/96, para. 52 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-9007%22]}> accessed 1 March 2023.

[1337]*Kudla v. Poland* (2000) App. 30210/96, para. 94 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-58920%22]%7D> accessed 2 March 2023.

[1338]Case-law of the ECtHR stating a violation of the provisions of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in connection with the failure to provide the applicants with health/medical care and adequate conditions of detention in places of deprivation of liberty. *G. v. Russia* (2016) App. 42526/07 <https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_42526-07?access_token=92eb2f7e5be7e7102eef30b05230dcc2af35a497 > accessed 3 March 2023; *Badretdinov and others v. Russia* (2016) App. 28625/13, 49945/13, 67302/13, 43672/14; *Shamraev and others v. Russia* (2016) App. 24056/13, 29927/13, 61878/13<https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-165372&filename=CASE%20OF%20SHAMRAYEV%20AND%20OTHERS%20v.%20RUSSIA.pdf&logEvent=False> accessed 4 March 2023; *Rudenkov and others v. Russia* (2016) App. 10727/07 <https://swarb.co.uk/rudenkov-and-others-v-russia-echr-22-sep-2016/>accessed 7 March 2023; *Laveikin v. Russia* (2017) App. 18046/12, 11771/14, 2507/14, 2788/14, 3069/14, 3361/14, 5779/14, 42337/14, 51543/14, 51955/14.

[1339]*Kolesnikovich v. Russia* (2016) App. 44694/13, para.72<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-161532%22]}> accessed 8 March 2023.

Court of Human Rights noted that «[A]fter the applicant's detention, the authorities immediately became aware of his numerous health problems [by] finding that there was no contraindication to the applicant's detention; [they] only drew attention to his health problems after his condition deteriorated to such an extent that the applicant could no longer take part in the hearing[1340]". In some cases, the authorities "did not provide him with prescribed medications[1341]". The European Court of Human Rights stressed that:

"[T]he circumstances of this case show that the applicant's treatment was not aimed at reducing the frequency of relapses. His treatment was not prudent and therefore not effective. The authorities did not create the conditions necessary to comply with the prescribed treatment they did not ensure that the applicant was provided with the necessary medicines under the supervision and supervision of the prison medical staff and that the prescribed regime was observed, which is an important element of effective treatment of the disease[1342]".

The European Court of Human Rights also noted that "[H]ospitalization was necessary for making a correct diagnosis and prescribing proper treatment. It took several months for the applicant to be transferred from the pre-trial detention facility to a hospital located in the same city[1343]"."The failure by the authorities to provide the necessary medical assistance to the applicant in his serious condition constitutes inhuman and degrading treatment within the meaning of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950"[1344].

In another case, *Makshakov v. Russia*, the European Court of Human Rights considered that: "[T]he right to medical care should include the availability of drug therapy at the initial stage of treatment and drug therapy at the last stages[1345]", and "access to adequate sanitation facilities[1346]".

[1340] *Kolesnikovich v. Russia* (2016) App. 44694/13, para.72<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-161532%22]}> accessed 8 March 2023.

[1341] Ibid, para.74.

[1342] Ibid, para.76-77.

[1343] Ibid, para.78.

[1344] Ibid, para. 80.

[1345] *Makshakov v. Russia* (2016) App. 52526/07 <https://hudoc.echr.coe.int/fre#{%22display%22:[2],%22tabview%22:[%22related%22],%22itemid%22:[%22001-118149%22]}> accessed 6 March 2023.

[1346] *Dolgov and Silaev v. Russia* (2010) App.11215/10, 11215/10, 55068/12.

In order to prevent the violation of Article 3 of the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 the Government should provide for detainees:

-"qualified medical care"[1347], "medical follow-up[1348]"(it should be "high-quality and sufficient[1349]");

-"monitoring detainee's conditions, including measuring weight[1350]",

- provision of medicines,

- transfer to a hospital. "The issue of hospitalization of a person in a closed medical institution should be considered in a simplified judicial procedure[1351]". In a case of *Winterwerp v. Netherlands* [1352] the European Court of Human Rights decided that: "[T]he hospitalization of a person in a closed medical institution in civil proceedings must follow the law and in accordance with the established procedure; the person must have a specific, diagnosed mental illness and require immediate hospitalization for treatment; without proper hospitalization, the patient is compensated for damages[1353]".

Particular attention should be paid to the possibility of prisoners continuing to serve their sentences. The European Court of Human Rights considers the following factors: "[T]he detainee's condition, quality of the treatment he/she receives, desirability of continuing the detention considering his/her health[1354]".

Thus, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 states that: "No one shall be subjected to torture or to inhuman or

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[1347] *Farbtuhs v. France* (2004) App. 4672/02 <https://www.cilvektiesibugids.lv/en/case-law/farbtuhs-v-latvia> accessed 7 March 2023.

[1348] *Neumerzhitsky v. Ukraine* (2005) App. 54825/00 <https://hudoc.echr.coe.int/fre#%7B%22display%22:[2],%22itemid%22:[%22002-3914%22]%7D>accessed 8 March 2023.

[1349] *Tobegin v. Russia,* App. 78774/13.

[1350] *McGlinbey v. United Kingdom* (2003) App. 50390/99 <https://www.hr-dp.org/contents/598> accessed 9 March 2023.

[1351] *X v. United Kingdom* (1981) App. 8160/78 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-74270&filename=001-74270.pdf> accessed 17 May 2023.

[1352] *Winterstein and others v. France* (2013) № 27013/07< https://hudoc.echr.coe.int/fre#%7B%22itmid%22:[%22001-127539%22]%7D > accessed 18 May 2023.

[1353] *Gajcsi v. Hungary* (2003) App. 34503/03 <https://hudoc.echr.coe.int/fre#{%22itemid%22: [%22001-77036%22]} > accessed 18 May 2023.

[1354] *Celik & Yildiz v. Turkey* (2005) App. 51479/99.

degrading treatment or punishment[1355]". The European Court of Human Rights has interpreted the provision as providing a minimum level of protection for economic, social and cultural rights. This article requires States Parties to ensure that individuals have access to basic necessities such as food, shelter, and medical care. If a state fails to provide these necessities, it can be found to have violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

v. Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

v.i. The right to psychiatric care

Article 5 of the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 provides protection for the right to liberty and security. It states that: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law[1356]". Deprivation of liberty can have a significant impact on an individual's ability to access and enjoy economic, social and cultural rights, such as the right to work, education, and healthcare.

The right to psychiatric care is an important aspect of the right to health, which is recognized as a fundamental human right under international human rights law. In situations where individuals with mental health conditions are deemed a danger to themselves or others, States Parties may deprive them of their liberty and place them in psychiatric institutions for treatment. However, this deprivation of liberty must be carried out in accordance with the law and the individual's right to receive appropriate medical treatment must be respected.

In a case of *Aerts v. Belgium*, the applicant who could not control himself did acts of violence and was punished by having a detention on the ground. The European Court of Human Rights declared that: "The detention of such persons is considered lawful if it is carried out in a hospital, clinic or other appropriate institution[1357]".

In another case, *Winterwerp v. the Netherlands*, the European Court of Human Rights established that: "The detention of a mentally ill person must be based on a legal framework

[1355] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1356] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1357] *Aerts v. Belgium* (1998) App. 61/1997/845/1051, para.46,49 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-6833%22]}> accessed 1 March 2023.

and that the person must be provided with appropriate medical treatment; individuals placed in psychiatric institutions have the right to be informed of the reasons for their detention and to have their detention reviewed by a court[1358]". Lastly, in *Ashingdane v. the United Kingdom*, the European Court of Human Rights held that: "Individuals detained in psychiatric institutions must have access to legal counsel and be able to challenge their detention before a court[1359]".

Overall, countries have an obligation to ensure that individuals with mental health conditions are provided with appropriate medical treatment, and that any deprivation of their liberty is carried out in accordance with the law and with full respect for their human rights.

v.ii.The right to use own language

Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 guarantees that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. There are few cases involving violations of Article 5 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. There are 413 cases (in 20 cases, the Russian Federation is the Respondent), of which only 176 (in 17 cases, the Russian Federation is the Respondent) were found to have violated this article. Number of cases involving violations of Article 5 in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 - 14.

The European Court of Human Rights found a violation of paragraph 2 of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in *Ladent v. Poland*[1360]. An applicant, a French national, was not informed in a timely manner and in a language that he understood of the reasons for his arrest at the Slubitsy border crossing (Poland) and the charges against him until his release. A similar case is *Tabesh v. Greece*[1361], in which an Afghan citizen detained pending deportation was notified of the reasons for his arrest in Arabic, which he did not understand. The European Court of Human Rights declared the complaint inadmissible because the applicant had not exhausted domestic remedies.

[1358] *Winterstein and others v. France* (2013) № 27013/07< https://hudoc.echr.coe.int/fre#%7B%22itmid%22:[%22001-127539%22]%7D > accessed 18 May 2023.

[1359] *Ashingdane v. the United Kingdom* (1985) App. 8225/7< https://www.globalhealthrights.org/ashingdane-v-the-united-kingdom/> accessed 19 May 2023.

[1360] *Ladent v. Poland* (2008) App.11036/03 <https://hudoc.echr.coe.int/fre#{%22display%22:[2],%22itemid%22::[%22002-2097%22]}> accessed 9 May 2023.

[1361] *Tabesh v. Greece* (2009) App. 8256/07 <https://www.asylumlawdatabase.eu/en/content/ecthr-tabesh-v-greece-application-no-825607-26-november-2009> accessed 10 May 2023.

In another case, *Rahimi v. Greece*[1362], the applicant complained of language difficulties and violations of Article 5 (2) and (4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, which resulted in a complete lack of support or support appropriate to his status as an unaccompanied minor, as well as conditions of detention in a pre-trial detention facility. In particular, an information booklet describing some of the available remedies in Arabic was not clear to the applicant, whose mother tongue was Farsi. Accordingly, even assuming that these remedies were effective, the European Court of Human Rights failed to understand how the applicant could have used them. Consequently, the language issue must be considered when establishing a violation of Article 5, paragraph 4, of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and there is no need to consider this issue separately in accordance with the paragraph 2 of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

vi. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

vi.i. The right on pensions and benefits

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 concerns the right to a fair trial. It provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The European Court of Human Rights concluded that the denial or reduction of social security benefits can interfere with the right to a fair hearing under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, if such benefits are crucial for the applicant's subsistence.

For example, in a case of *Stec and Others v. the United Kingdom*, the European Court of Human Rights held that "The denial of a state pension to a woman who had contributed to the social security system for years on the grounds of her marital status was discriminatory and violated her right to a fair hearing under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1363]". Similarly, in the case of *Hirst v. the United Kingdom*, the European Court of Human Rights found that: "The denial of social security benefits to a prisoner who had been denied the right to vote was a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

[1362] *Rahimi v. Greece* (2011) App. 8687/08 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-550%22]}> accessed 11 May 2023.

[1363] *Stec and Others v. the United Kingdom,* (2006) App. 65731/01 and 65900/01 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-73198%22]%7D> accessed 13 May 2023.

1950[1364]". In another case, *Burdov v. Russia*[1365], the applicant appealed against the failure to comply with court decisions to collect compensation from the state for participation in the liquidation of the consequences of the Chernobyl disaster. The European Court of Human Rights recognized a violation of the right to respect for one's property and stated that lack of funds could not justify interference with the applicant's right.

Therefore, the connection between Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the right to pensions and benefits lies in the fact that the denial or reduction of such benefits can interfere with the right to a fair hearing under Article 6, if they are crucial for the applicant's subsistence.

vi.ii. The right to use own language

Paragraphs "a" and "c" of part 3 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 aprovides that: "Everyone charged with a criminal offence has the following minimum rights: to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require[1366]".The number of cases involving violations of paragraphs "a, e" of part 3 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is approximately 309 (in 4 cases, the Respondent is the Russian Federation), of which only 114 (in 4 cases, the Respondent is the Russian Federation) were found to violate this article. The number of cases involving violations of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is 9.

In *Brozicek v. Italy*, an applicant, a Czechoslovak national, informed the relevant Italian judicial authorities that: "His lack of Italian language' knowledge made it difficult for him to understand the contents of the court notice which stated the following: a criminal case had been opened against the applicant on charges of resisting the police, assault and causing bodily harm

[1364] *Hirst v. the United Kingdom* (2005) <App. 2 https://en.wikipedia.org/wiki/Hirst_v_United_Kingdom_(No_2) > accessed 12 May 2023.

[1365] *Burdov v. Russia* (2002) App. 59498/00.

[1366] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1367]". The European Court of Human Rights found that Italian judicial authorities were obliged to take measures to comply with the requirements of Article 6 (3) (a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, unless they were able to establish that the applicant had sufficient knowledge of the Italian language. However, there was no such evidence in the case file.

In another case, *Lagerblom v. Sweden*[1368], an applicant was a Finnish national who settled in Sweden in the 1980s. In February of 1993, he was charged with a criminal offense, and later - in May of 1994 - was convicted. During the proceedings, "the applicant wanted to be represented by a lawyer who understood Finnish, and, as a result, he did not have a lawyer of his own choice; an appointed lawyer did not know or understand Finnish and was unable to perform his duties at the proper level; the European Court of Human Rights explained that Article 6 (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 gives an accused the right to be defended by a lawyer "of his own choice", but it cannot be considered absolute; it is necessarily subject to certain restrictions when it comes to free legal aid. When appointing a defense lawyer, the courts must consider the wishes of the accused, but they may not be considered if there are appropriate and sufficient grounds to believe that this is necessary in the interests of justice; the competent national authorities are required to intervene if the failure of the public defender to provide effective representation is obvious or otherwise sufficiently brought to their attention; however, the state cannot be held responsible for every lack of a lawyer appointed for the purpose of legal aid[1369]". The European Court of Human Rights noted that: "The applicant's knowledge of Swedish was sufficient to communicate with his lawyer, and the applicant was provided with interpretation[1370]". For these reasons, the European Court of Human Rights held that there was no violation of Article 6, paragraph 3, of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

A similar case is *Isop v. Austria*, an applicant, an Austrian citizen of Slovenian origin, used his native language - Slovenian language to file a complaint against a citizen of Hafner. Although the applicant understood and spoke German, but he did not realize that his command of German language was sufficient for the successful completion of the complaint. The European Commission of Human rights concluded that: "The refusal of national courts to accept a complaint in Slovenian and the expiration of the deadline for filing a similar complaint

[1367] *Brozicek v. Italy* (1989) App. 10964/84 < https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57612%22]}> accessed 19 May 2023.

[1368] *Lagerblom v. Sweden* (2003) App. 26891/95 <https://www.refworld.org/cases,ECHR,3f2641934.html> accessed 18 May 2023.

[1369] *Kamasinki v. Austria* (1989) App. 9783/82 <https://www.inimoigustegiid.ee/en/case-law/kamasinski-v-austria> accessed 17 May 2023.

[1370] Ibid.

in German did not violate a paragraph 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1371]".

Article 6 (3) (e) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 applies to all court hearings, from the first instance to the appeal. "The accused must be given the necessary assistance to ensure a fair trial, and the test is whether enough has been done to enable the accused to fully understand and respond to the case before him – in other words, to participate effectively in the trial[1372]". Moreover, member-states have "a positive obligation, even if the applicant does not request an interpreter or in some cases waives this right, to ensure the proper administration of justice[1373]". Thus, the right to use own language is implemented within the framework of procedural rights. National minorities are protected under Articles 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 only to the extent necessary to ensure due process law. Positive obligations are imposed on States to implement these rights.

vii. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

vii.i. The right to choose medical treatment

The right to choose medical treatment is a fundamental aspect of an individual's autonomy and privacy, as it allows them to make decisions about their own body and health. This right is protected under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, which obliges states to respect an individual's choices regarding their medical treatment, subject to certain limitations.

The European Court of Human Rights recognized the importance of this right in the context of the right to health. For example, in a case of *D. v. the United Kingdom*, the European Court of Human Rights held that: "The State had a positive obligation to ensure that a prisoner had access to appropriate medical treatment[1374]". Similarly, in a case of *V.C. v. Slovakia*, the European Court of Human Rights held that: "The State had a positive obligation to ensure that

[1371] *Isop v. Austria* (2009) App.808/60 <https://swarb.co.uk/isop-v-austria-echr-8-mar-1962/> accessed 5 March 2023.

[1372] *C v. France* (1992) App. 17276/90.

[1373] *Hermi v. Italy* (2006) App18114/02 <https://hudoc.echr.coe.int/ENG#{%22itemid%22:[%22002-3109%22]}> accessed 6 March 2023.

[1374] *D. v. United Kingdom* (1997) App. 30240/96, para. 52 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-9007%22]}> accessed 1 March 2023.

a Roma woman had access to healthcare services, as she had been denied access to medical treatment based on her ethnicity[1375]".

In another case of *Csoma v. Romania* the applicant was prescribed some medication for the purpose of abortion which threatened the applicant' life. The European Court of Human Rights clarified that: "The applicant had not chosen the type of medical treatment because it had been subjected[1376]" to a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Next, in *Sentges v. the Netherlands*[1377], an applicant accessed to the offered by government heathy assistant, however, he refused it under the Health Insurance Act and the Exceptional Medical Expenses Act. The European Court of Human Rights by no means wished to underestimate the difficulties encountered by the applicant, the application was dismissed.

In the most recent case of *F.G. v. Sweden*, an applicant, who had been diagnosed with a severe form of multiple sclerosis, sought access to medical cannabis as a last resort for his treatment, as he had exhausted all other treatment options. However, under Swedish law, medical cannabis was only available in very limited circumstances and only for patients with certain medical conditions. The European Court of Human Rights found that: "The Swedish authorities had violated the applicant's right to respect for private life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 by refusing him access to medical cannabis[1378]". The European Court of Human Rights noted that: "The applicant's situation was exceptional, and that medical cannabis had been prescribed in many other countries for patients with severe forms of multiple sclerosis; Swedish authorities had failed to provide convincing reasons for denying the applicant access to medical cannabis and had not carried out a proper balancing exercise between the competing interests at stake, such as the need to protect public health and the applicant's right to respect for private life[1379]". This case-law confirms the importance of access to healthcare services as an essential component of the right to health and the right to respect for private life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950,

[1375] *V.C. v. Slovakia* (2011) App. 18968/07 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-107364%22%5D%7D > accessed 2 March 2023.

[1376] *Csoma v. Romania* (2013) App. 8759/05 < https://www.inimoigustegiid.ee/en/case-law/csomavromania#:~:text=The%20Court%20found%20that%20by,the%20Convention%20had%20been%20violated> accessed 3 March 2023.

[1377] *Sentges v. the Netherlands* (2003) App. 27677/02, para.35 <https://www.globalhealthrights.org/wp-content/uploads/2013/02/ECtHR-2003-Sentges-v-Netherlands.pdf> accessed 4 March 2023.

[1378] *F.G. v. Sweden* (2016) App. 43611/11 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-161829%7D> accessed 5 March 2023.

[1379] Ibid.

particularly in cases where traditional treatments have proven ineffective or where there are exceptional circumstances.

The right to choose medical treatment is not absolute, and States may interfere with an individual's right to choose medical treatment if it is necessary to protect the health and safety of others or to prevent crime. In such cases, the interference must be proportionate and necessary in a democratic society.

vii.ii. The right to health

The right to health is recognized as a fundamental human right in various international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights 1966[1380] and the Convention on the Rights of the Child[1381]. This right includes access to healthcare services, goods and facilities, as well as the underlying determinants of health, such as food, water, sanitation, housing, and a healthy environment. There are several ways in which Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and the right to health are connected. For example, the right to health can be seen as a component of the right to respect for private life, as access to healthcare services is essential for individuals to enjoy their right to physical and mental health. The right to health can also be linked to the right to family life, as access to healthcare services is necessary to ensure the well-being of family members.

The case-law of the European Court of Human Rights has confirmed the connection between Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and the right to health. The first case to consider is *Powell and Rayner v. the United Kingdom*, in which the European Court of Human Rights held that: "The lack of medical treatment for a prisoner amounted to a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1382]". Similarly, in the case of *Pretty v. the United Kingdom*, the European Court of Human Rights

[1380] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 ICESCR <https://www.refworld.org/docid/3ae6b36c0.html> accessed 16 May 2023.

[1381] Convention on the Rights of the Child (adopted 20 November 1989 by the General Assembly) Resolution № 44/25 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 4 May 2023.

[1382] *Powell and Rayner v. the United Kingdom* (1989) App. 9310/81 <https://simplestudying.com/powell-and-rayner-v-united-kingdom> accessed 5 May 2023.

recognized that: “The right to respect for private life included the right to choose the manner and timing of one's death, which in turn can be linked to the right to health[1383]”.

Next, in *Moreno Gomez v. Spain*, as a result of constant noise from night clubs located near her home, an applicant developed a chronic sleep disorder. The European Court of Human Rights found that there was “inaction of the authorities about the night noise[1384]” and a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Also, in many other cases, applicants complain about the authorities' inaction regarding the operation of factories and their waste. In *Fadeyeva v. Russia*, the activities of the metallurgical plant near which the applicant's house was located threatened her health and well-being. The European Court of Human Rights noted that: “The authorities did not provide the applicant with assistance and did not offer any solutions that would allow her to leave the danger zone[1385]”. In *Giacomelli v. Italy*, harmful emissions from the plant threatened the applicant's health. As a result, the authorities violated the domestic law on the protection of the environment. The European Court of Human Rights found a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 on the grounds that: “for several years the applicant's right to respect for her home had been seriously damaged by the factory's activities[1386]”.

In order to protect applicants’ rights to health States should take positive obligations, inherent in effective respect for private or family life, including information about risks for health. Applicants of *McGinley and Egan v. the United Kingdom* were exposed to radiation. In these circumstances, given the applicants’ interest in obtaining access to the material in question and the apparent absence of any countervailing public interest in retaining it, the European Court of Human Rights considers that a positive obligation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 arose. “Where a government engages in hazardous activities, such as those in issue in the present case, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 requires that an effective and

[1383] *Pretty v. the United Kingdom* (2002) App. 2346/02 <https://privacylibrary.ccgnlud.org/case/pretty-vs-united-kingdom> accessed 5 May 2023.

[1384] *Moreno Gomez v. Spain* (2004) App. 4143/02 <https://hudoc.echr.coe.int/Eng#{%22itemid%22:[%22001-674 7878%22]}> accessed 6 May 2023.

[1385] *Fadeyeva v. Russia* (2005) App. 55723/00< https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-69315% 22]} > accessed 7 May 2023.

[1386] *Giacomelli v. Italy* (2006) App.59909/00 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id =00177785&filename=CASE%20OF%20GIACOMELLI%20v.%20ITALY.docx&logEvent=False> accessed 8 May 2023.

accessible procedure be established which enables such persons to seek all relevant and appropriate information[1387]".

Overall, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the right to health are closely connected, as access to healthcare services is essential for individuals to enjoy their right to physical and mental health, which in turn is essential for individuals to enjoy their right to respect for private and family life.

vii.iii. The right to establish and develop relationships with others

There have been several cases before the European Court of Human Rights that have addressed the issue of the right to establish and develop relationships with others. For example, in a case of *X, Y and Z v. the United Kingdom*, the European Court of Human Rights held that: " The local authority's decision to separate three siblings and place them in different foster homes was a violation of their right to family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1388]" and it is important "to maintain family relationships and stated that any interference with these relationships must be necessary and proportionate[1389]".

Similarly, in the case of *S.L. v. Austria*, the European Court of Human Rights held that: "Austria's refusal to allow a mother to maintain contact with her child after the child was placed for adoption violated her right to family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950; moreover, mother had a right to establish and develop a relationship with her child, and that the interference with this relationship was not necessary or proportionate[1390]".

Thus, "Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 can be considered only in the exceptional cases where the State's failure to adopt measures interferes with that individual's right to personal development and his or her right to establish and maintain relations with other human beings and the outside world; it is incumbent on the individual concerned to demonstrate the existence of a special link

[1387] *McGinley and Egan v. the United Kingdom* (1998) App. 10/1997/794/995-996, para.101<https://swarb.co.uk/mcginley-and-egan-v-united-kingdom-echr-9-jun-1998/ > accessed 7 May 2023.

[1388] *X, Y and Z v. the United Kingdom* (1997) App. 21830/93 < https://swarb.co.uk/x-y-and-z-v-the-united-kingdom-echr-22-apr-1997/> accessed 7 May 2023.

[1389] Ibid.

[1390] *S.L. v. Austria* (2003) App. 45330/99 <https://www.equalrightstrust.org/sites/default/files/ertdocs/Microsoft%20Word%20-%20S.L.%20v.%20Austria%20_criminal%20conduct_.pdf> accessed 7 May 2023.

between the situation complained of and the needs of his or her private life[1391]".Moreover, the right to establish and develop relationships with others is an important aspect of the right to respect for private and family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The European Court of Human Rights has consistently emphasized the importance of maintaining personal relationships, and any interference with these relationships must be necessary and proportionate.

vii.iv. The right to healthy environment

C. Tomuschat in his article which is called "I diritti sociali nella Convenzione europea dei diritti dell'uomo" concluded that the European Court of Human Rights "does not contain the right to clean and safe environment, and "is fully aware of the delicate function it performs as a body for dealing with environmental disputes, and finds violations only in extreme circumstances, when the national authorities show serious disregard for the protection of the public interest, a key component of which is the individual rights recognized by the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1392]". Moreover, according to L. Wildhaber, "Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 has strongly evolved both in the moral and scientific and technological sense since the 1950s, which allowed to include the right to a favorable environment in their content[1393]". This author is right, since the protection of the right to a healthy environment is protected and is associated with the applicants ' right to health. There are some cases of Spain, Italy, Turkey, Romania, Ukraine on the issue of interconnection of the right to health and the right to healthy environment.

For the first time, the European Court of Human Rights recognized, in fact, the right to a favorable environment under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in the case of *Powell and Rayner v. United Kingdom* in 1990. Applicants lived near the Heathrow airport in London. Frequent flights caused quite serious noise. In accordance with Civil Aviation Act of Great Britain (CAA) 2012, "no one is liable for any inconvenience or infringement of rights if the flights are performed at the correct

[1391] *Niemietz v. Germany* (1992) App. 13710/88, para. 29<https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22 001-57887%22]} > accessed 7 May 2023; *Sentges v. the Netherlands* (2003) App. 27677/02, para.35 <https://www .globalhealthrights.org/wp-content/uploads/2013/02/ECtHR-2003-Sentges-v-Netherlands.pdf> accessed 8 May 2023; *Zehnalova and Zehnal v. the Czech Republic* (2002) App.38621/97 <https://hudoc.echr.coe.int/app/convers ion/pdf/?library=ECHR&id=001-23341&filename=001-23341.pdf > accessed 9 May 2023.

[1392] Tomuschat C, 'I diritti sociali nella Convenzione europea dei diritti dell'uomo' in *Studi sull' integrazione europea* (2007) P. 231 - 254.

[1393]Wildhaber L, 'Rethinking the European Court of Human Rights' <https://academic.oup.com/book/7439/chapte r-abstract/152338281?redirectedFrom=fulltext> accessed 8 March 2023.

altitude and in accordance with the instructions[1394]".The European Court of Human Rights pointed out that: "Article 8 of the Protection of Human Rights and Fundamental Freedoms 1950 could have been applied because the quality of life of the applicants and the extent to which they enjoyed the comforts of their homes were adversely affected by the noise from airlines using Heathrow airport[1395]". The case became the starting point for the European Court of Human Rights' protection of the right to a favorable environment within the framework of the right to private and family life, which later resulted in several decisions on this issue.

In another case of *Lopez Ostra v. Spain*, a factory engaged in processing leather industry waste polluted the environment with emissions of gases, smoke and toxic substances with an unbearable smell, which affected the health of people living nearby. In particular, an applicant's daughter suffered from nausea, vomiting and anorexia, which were caused by contamination of the living environment. The European Court of Human Rights found a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 due to the fact that "The Spanish authorities failed to strike the necessary balance between the interests of the city's economic well-being and applicants; in order to balance the proportionality can be used[1396]".E. Cannizzaro and F. De Vittor suppose that: "Proportionality can be a tool which applies to the overall process of values - balancing underlying the dynamic of human rights in contemporary international law[1397]".In this case, it is safe to say that the respondent-state violated three rights: the right to health, the right to environmental protection which are second-generation rights, and the right to respect for private and family life.

Next case is *Guerra and others v. Italy*. Several tons of substances containing toxic arsenic were released into the atmosphere as a result of an accident caused by a factory malfunction.150 people were hospitalized with acute arsenic poisoning. The applicants complained about the lack of practical measures to reduce the level of pollution, and major accidents that occur during the operation of the factory. The European Court of Human Rights recalled that: "Severe environmental pollution could negatively affect people's well-being and ruled that Italy had failed to meet its obligations to ensure the applicants ' rights[1398]".

[1394] Civil Aviation Act of Great Britain (CAA) 2012 <https://www.gov.uk/government/organisations/civil-aviation-authority> accessed 7 March 2023.

[1395] *Powell and Rayner v. the United Kingdom* (1989) App. 9310/81 <https://simplestudying.com/powell-and-rayner-v-united-kingdom> accessed 5 May 2023.

[1396] *Lopez Ostra v. Spain* (1994) App. 16798/90 <https://www.escr-net.org/caselaw/2008/lopez-ostra-vs-spain-application-no-1679890> accessed 6 May 2023.

[1397] Cannizzaro E, Vittor F.D, 'Proportionality in the European Convention of Human Rights', in *Research Handbook on Human Rights and Humanitarian Law* (2013) P.125.

[1398] *Guerra and others v. Italy* (1998) App. 14967/89 <https://leap.unep.org/countries/national-case-law/case-guerra-and-others-v-italy > accessed 7 May 2023.

Another activity that causes environmental harm is gold mining. In a case of *Taşkın and others v. Turkey*, the operation of a gold mine that irrigated the ore with cyanides resulted in a risk to human health, contamination of ground water and destruction of the local ecosystem. The European Court of Human Rights noted that: "The order to close the mine was issued only 10 months after the court decision and 4 months after it was handed over to the competent authorities[1399]". In a second case of gold mining, *Tatar v. Romania*[1400] happened the following. In January 2000, an accident at a gold mine using sodium cyanide resulted in the release of 100,000 cubic meters of cyanide-contaminated wastewater into the environment. The applicants, including a father and a son, whose house was located next to the mine, claimed that the technological process at the mine was dangerous to the health of people living in nearby houses, as well as a threat to the environment and caused the second applicant's health to deteriorate (asthma). The European Court of Human Rights considered that: "The applicants failed to establish a causal link between the second applicant's exposure to sodium cyanide and his asthma, while Romanian authorities failed to meet their obligations to properly assess the risks associated with the company's activities and to take appropriate measures to protect people's right to privacy and housing and, in their right to live in a healthy and protected environment[1401]". Moreover, "the precautionary principle, according to which the lack of certainty as to current scientific and technical knowledge could not justify any delay on the part of the state in taking effective and proportionate measures[1402]".

The decision of the European Court of Human Rights in a case of *Grimkovskaya v. Ukraine*, issued in 2011, also deserves an attention. The street with the applicant's house located on it became part of the M04 motorway: these changes resulted in an increase in the level of noise, vibration and harmful emissions into the atmosphere in the area. Natalia Grimkovskaya provided documents confirming the deterioration of her health and the health of her family, as well as the condition of the residential building. The European Court of Human Rights pointed to Ukraine's violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 since the balance between the public interests of ensuring proper transport links and the private rights of individuals was not observed. In particular, "the state had failed to take measures such as an environmental investigation for compliance with environmental standards, as well as to find out the opinions of residents of the street along which the highway was being built; local authorities have taken insufficient measures to prevent negative consequences from the operation of the highway on the environment and to ensure the right of citizens to a favorable environment [1403]".

[1399] *Taşkın and others v. Turkey* (2004) *App.* 46117/99< http://www.srenvironment.org/node/1919> accessed 9 March 2023.

[1400] *Tatar v. Romania* (2009) App. 657021/01 <https://hudoc.echr.coe.int/fre-press#{%22itemid%22:[%22003-2615810-2848789%22]} > accessed 9 March 2023.

[1401] Ibid.

[1402] Ibid.

[1403] *Grimkovskaya v. Ukraine* (2011) App. 38182/03 para.67 <https://hudoc.echr.coe.int/Eng#{%22itemid%22:[%

The legal positions expressed by the European Court of Human Rights should be considered in order to better ensure the rights to healthy environment. Violations of human rights often come from the imperfection of environmental legislation and inadequate implementation of the existing provisions. The dialogue between public authorities and the public on environmental issues, providing complete and reliable information, striving to improve the situation and find compromises are fundamental tasks for any country in the world. The fact that the environment is being degraded by human exposure does not meet the condition of being a victim of a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. "Applicants cannot resist threats to the environment which can lead to heavy losses for their lives, while only the state can fairly balance all the interests at stake[1404]".

vii.v. The right on maternity benefits to fathers

The right to maternity benefits for fathers is connected to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 because it concerns the protection of family life and the relationship between fathers and their children. Maternity benefits for fathers are benefits that allow fathers to take time off work to care for their newborn children and provide financial support during this time. These benefits are designed to promote the well-being of both the child and the family, by ensuring that fathers can participate fully in their child's upbringing and care.

Some argue that the denial of maternity benefits to fathers violates their right to family life and their right to equal treatment under the law, as it places an unequal burden on mothers to take care of their children and limits the ability of fathers to participate in caregiving activities. In recent years, several European countries have implemented policies that provide paternity leave or parental leave that can be shared between mothers and fathers, in order to address these concerns and promote gender equality in caregiving responsibilities.

In a case of *Weller v. Hungary*, the applicant – father appealed against the refusal to pay maternity benefits which were intended to support newborns and families. The European Court of Human Rights found: "The difference in treatment to be unlawful, since the respondent-state had failed to provide any objective and reasonable justification for the non-payment of maternity benefits to the child's father[1405]".

22001-105746%22]}> accessed 10 March 2023.

[1404] Tomuschat C, 'I diritti sociali nella Convenzione europea dei diritti dell'uomo' in *Studi sull' integrazione europea* (2007) P. 231 - 254.

[1405] *Weller v. Hungary* (2009) *App.* 44399/05 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR

To sum up, the right to maternity benefits for fathers is an important issue related to family life and the protection of human rights, particularly the right to respect for family relationships as guaranteed by Article 8 of the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

vii.vi. The right to protection of reputations

The connection between the right to protection of reputations and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is that reputational interests are considered a fundamental aspect of an individual's private life. Any interference with an individual's reputation must be in accordance with the law, necessary in a democratic society, and proportionate to the legitimate aim pursued. This means that individuals have the right to have their reputation protected from unjustified attacks, particularly from the media and public figures.

In a case of *Von Hannover v. Germany*, the European Court of Human Rights held that "A public figure's right to privacy includes the right to control the publication of photographs of themselves taken in private, and the protection of personal identity, which encompasses an individual's right to control the use of their image[1406]". In another case, *Axel Springer AG v. Germany*, the European Court of Human Rights held that: "The right to freedom of expression under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 must be balanced against the right to protection of reputation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1407]", and emphasized the importance of the media's responsibility to report on matters of public interest and the public's right to receive information, but also recognized the need to protect the reputation of individuals from unjustified attacks.

In a case of *George Nikolashvili*[1408], the applicant complained about the placement of photos of him in several police stations. The essence of the complaint was that at the time of posting the applicant's image in the police stations, he was not subject to criminal prosecution, which means that he was an "ordinary person". The applicant claimed that marking a

&id=001-91993&filename=CASE%20OF%20WELLER%20v.%20HUNGARY.docx&logEvent=False> accessed 9 May 2023.

[1406] *Von Hannover v. Germany* (2004) App. 59320/00 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-61853%22]%7D > accessed 1 February 2023.

[1407] *Axel Springer AG v. Germany* (2012) App. 39954/08 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-109034%22]%7D> accessed 2 February 2023.

[1408] *Giorgi Nikolaishvili v. Georgia* (2009) App. 37048/04 <https://hudoc.echr.coe.int/fre#{%22display%22:[2],%22languageisocode%22:[%22ENG%22],%22itemid%22:[%22001-90590%22]}> accessed 3February 2023.

photograph of him with the word "wanted in connection with a murder case" damaged his reputation, damaged his social identity and damaged his psychological health, violating the applicant's right to privacy, which is protected by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The European Court of Human Rights considered the right to reputation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, pointing out that "reputation is part of an individual's identity and psychological health[1409]".

To sum up, the right to protection of reputations is an important aspect of the right to respect for private life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The European Court of Human Rights has recognized the importance of protecting reputations in various cases and has emphasized the need to balance this right against the right to freedom of expression.

vii.vii. The right to receive information

The connection between the right to receive information and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is that they are often in tension with each other. The right to receive information is essential for a functioning democracy, but it can also interfere with an individual's right to privacy and reputation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. As a result, there must be a careful balancing of these competing interests to ensure that both rights are protected.

In a case of *Sunday Times v. United Kingdom*, European Court of Human Rights held that: "Freedom of expression includes the freedom to impart and receive information, and that this right is crucial to the functioning of a democratic society[1410]". In a case of *Handyside v. United Kingdom*, the European Court of Human Rights stated that: "The right to receive information is a corollary of the right to freedom of expression, and that any restrictions on this right must be strictly necessary and proportionate to the legitimate aim pursued[1411]".However, the right to receive information is not absolute, and the European Court of Human Rights has also recognized the importance of protecting an individual's right to privacy and reputation. In a case of *Von Hannover v. Germany*, the European Court of Human Rights held that: "The

[1409] *Fayed v. the United Kingdom* (1994) App. A N 294-B, P.67; ECtHR: *Chauvy and others v. France* (2004) App. 64915/01, P.70; *Gunnarsson v. Iceland* (2005) App. 4591/04.

[1410] *Sunday Times v. United Kingdom* (1979) App. 6538/74 <https://globalfreedomofexpression.columbia.edu/cases/the-sunday-times-v-united-kingdom/ > accessed 5 February 2023.

[1411] *Handyside v. United Kingdom* (1976) App. 5493/72 <https://globalfreedomofexpression.columbia.edu/cases/handyside-v-uk/> accessed 6 February 2023.

publication of photographs of a public figure taken in a private setting could be a violation of her right to privacy under Article 8[1412]". Moreover, the right to receive information about the risks to which the employee is exposed in the workplace is considered in *Vilnius and others v. Norway*[1413].

vii.viii. The right to use own language

The right to respect for private and family life, contained in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, includes the right to a name, the right to change one's civil status and acquire a new identity, as well as protection from wiretapping, collection of private information by state security services, and publications that violate privacy. This right also allows members of a national minority to lead a traditional lifestyle. The number of cases involving violations of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is 9,010 (in 714 cases, the Russian Federation is the respondent), of which only 6,042 (in 633 cases, the Russian Federation is the respondent) have found a violation of this article. The number of cases involving violations of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is 536, in which only 34 cover legal issues related to the spelling of names of members of minorities.

Examples of cases involving misspellings of names and surnames in a minority language are *Guzel Erages against Turkey*, *Kemal Tashkin and others v. Turkey*, *Kuhareca against Latvia*» and others. In the first case of *Guzel Erdagez v. Turkey*, an applicant filed a claim to correct the spelling of her name, claiming that her name was "Gezel" and not "Guzel". Referring to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the applicant believed that she was the victim of discriminatory treatment based on her language and her belonging to the Kurdish national minority. The European Court of Human Rights, having found a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, considered that: "Turkish law did not clearly indicate to what extent and how the authorities used their discretion when it came to imposing restrictions and correcting names[1414]".In contrast to the previous case, in a

[1412] *Von Hannover v. Germany* (2004) App. 59320/00 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-61853%22]%7D > accessed 7 February 2023.

[1413] *Vilnius and others v. Norway* (2013) App. 52806/09, 22703/10 <https://hudoc.echr.coe.int/eng/?i=001-58781 > accessed 8 February 2023.

[1414] *Guzel Erdagez v. Turkey* (2008) App. 37483/02 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-89158%22]}> accessed 9 February 2023.

case of *Kemal Tashkin and others v. Turkey*[1415], applicants who were of Kurdish origin appealed against the refusal to allow their names to be written using letters not in the Turkish alphabet. The entry in civil status certificates of surnames and names whose civil status documents were drawn up by other States in accordance with their rules, using letters that are not in the Turkish alphabet, was based on Convention (№ 14) on the recording of surnames and forenames in civil status registers[1416] signed at Berne on 13 September 1973. The European Court of Human Rights did not find any violation and recognized that the refusal of the national authorities was based on a law requiring the use of the Turkish alphabet in all official documents.

Similarly, in a case of *Kuhareca v. Latvia*[1417], on 25 January 1999 the regional office of the citizenship and migration Department of the Ministry of internal Affairs of Latvia issued the applicant a passport with her surname written as "Kuhareca". This surname was designated the same in Ukrainian and Russian ("Kukharets"). The applicant complained of unjustified interference with privacy and infringement of the right to preserve and develop her cultural and ethnic heritage. Grammatical correction of a surname may constitute an interference with the exercise of the right to privacy and family life, but such interference does not violate the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 if it is "provided for by law, pursues one or more legitimate goals" and is "necessary in a democratic society". The European Court of Human Rights declared the complaint inadmissible and used a restrictive approach, giving States "ample opportunities to assign, recognize, and use names and surnames; main factors of broad discretion of States are historical, linguistic, religious, and cultural[1418]".

Moreover, the right of prisoners to freedom of correspondence in their native language is regulated by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. In a case of *Senger v. Germany*, the decision of the authorities to prohibit the sending of letters in Russian to a prisoner constituted an intervention necessary to prevent riots and crimes, because both the applicant and the authors of the letters had dual German and Russian citizenship and that they had no good reason to write in Russian. The European Court of Human Rights ruled that: "Restricting Turkish prisoners to use the Kurdish language when making phone calls to their relatives amounts to a violation of their right to

[1415] *Kemal Tashkin and others v. Turkey* (2010) App. 30206/04 (2 February 2010) <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-67401&filename=001-67401.pdf&TID=soudeazyxk > accessed 10 February 2023.

[1416] Convention on the recording of surnames and forenames in civil status registers (adopted 13 September 1973) № 13 <https://deedpolloffice.com/change-name/law/ICCS-Convention-14> accessed 12 February 2023.

[1417] *Kuhareca v. Latvia* (2012) App. 71557/01 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-82241&filename=001-82241.pdf > accessed 11 February 2023.

[1418] *Bulgakov v. Ukraine* (2007) App. 59894/00 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00182241&filename=CASE%20OF%20BULGAKOV%20v.%20UKRAINE.docx&logEvent=False> accessed 12 February 2023.

respect for family life[1419]". It was important "to maintain meaningful contact with their families[1420]". In another case of *Mehmet Nuri Ozen and others v. Turkey*, the European Court of Human Rights noted that: "In the absence of any legal framework explaining how to process correspondence written in a language other than Turkish, the prison authorities have developed a practice of requiring pre-translation at the prisoner's own expense; this practice, as applied, is incompatible with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, since it automatically excludes from the scope of this provision all categories of correspondence that prisoners may wish to engage in[1421]".

viii. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

viii.i. The right to publish newspapers and printed materials in minority languages

The number of cases involving violations of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 totals 4,907 (in 238 cases, the Russian Federation is the respondent), of which only 176 (in 176 cases, the Russian Federation is the respondent) were found to have violated this article. The number of cases in violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is 6.

One of the elements of the right to freedom of expression is the right to publish newspapers and printed materials in a minority language. It was considered in such cases as *Mesut Yurtsever and others v. Turkey* and *Association Ekin v. France*. In the first case, the European Court of Human Rights concluded that: "The ban on publishing Kurdish-language Newspapers in Turkish prisons constituted a violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1422]. In another case, *Association Ekin v. France*, the applicant (an organization for the protection of Basque culture

[1419] *Senger v. Germany,* (2009) App. 32524/05 <https://hamoked.org/files/2010/110420.pDf > accessed 13 February 2023.

[1420] *Nusret Kaya and Others v. Turkey* (2014) App. 43750/06, 43752/06, 32054/08, 37753/08, 60915/08 (22 April 2014) <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-142739&filename=CASE%20OF%20NUSRET%20KAYA%20AND%20OTHERS%20v.%20TURKEY%20%5BExtracts%5D.docx&logEvent=False > accessed 14 February 2023.

[1421] *Mehmet Nuri Özen and Others v. Turkey* (2011) App.15672/08 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4738701-5759892&filename=003-4738701-5759892.pdf > accessed 15 February 2023.

[1422] *Mesut Yurtsever and Others v. Turkey* (2005) App. 14946/08 (20 January 2005) https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00181789&filename=CASE%20OF%20MESUT%20YURTSEVER%20v.%20TURKEY.docx&logEvent=False > accessed 15 February 2023.

and the Basque way of life) published a book on the historical, cultural, linguistic and socio-political aspects of the Basque conflict in four languages. Ministerial decree of 29 April 1988 prohibited the distribution, distribution and sale of this book in France on the grounds of encouraging separatism and the use of violence. "Acts adopted in some cases led to unexpected results, and in other cases bordered on arbitrariness, depending on the language of publication or place of origin[1423]". The European Court of Human Rights recognizing a violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, held that: "The ban imposed by the decree does not meet an urgent social need, is not proportionate to the legitimate goal pursued, and cannot be considered necessary in a democratic society[1424]".

viii.ii. The right to radio and television broadcasting in minority languages

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is closely connected to the right to radio and television broadcasting in minority languages, as it allows individuals to receive and impart information and ideas in their own language. In a case of *Sárközi and Kis v. Hungary*, the European Court of Human Rights held that: "The refusal of the Hungarian authorities to grant a broadcasting license to a local radio station in Romani language violated the applicants' right to freedom of expression under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1425]". Similarly, in a case of *Fernández Martínez v. Spain*[1426], the European Court of Human Rights held that the Spanish government's refusal to grant a broadcasting license to a television channel in Catalan language constituted a violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. In a case of *Radio ABS v. Austria*, the non-profit Association appealed against the refusal to grant it a license to create and operate radio stations and allocate a frequency for broadcasting programs in minority languages. The European Court of Human Rights recognized that: "The challenged refusal constitutes an interference with the exercise of one's freedom to disseminate information and ideas[1427]".

[1423] *Association Ekin v. France* (2001) App. 39288/98 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-68342-68810&filename=003-68342-68810.pdf > accessed 16 February 2023.

[1424] Ibid.

[1425] *Sárközi and Kis v. Hungary* (2007) App. 40354/04 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00183452&filename=CASE%20OF%20SARK%C3%96ZI%20v.%20HUNGARY.docx&logEvent=False > accessed 17 February 2023.

[1426] *Fernández Martínez v. Spain* (2014) App. 56030/07 <https://www.lawpluralism.unimib.it/en/oggetti/680-fernandez-martinez-v-spain-no-56030-07-e-ct-hr-grand-chamber-12-june-2014> accessed 17 February 2023.

[1427] *Radio ABS v. Austria* (1997), App.19736/92 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58104&filename=001-58104.pdf&TID=ihgdqbxnfi> accessed 17 February 2023.

Thus, the European Court of Human Rights has emphasized the importance of protecting linguistic diversity and ensuring that minority languages are not marginalized in the media landscape. The right to radio and television broadcasting in minority languages is an important aspect of this protection, and it is closely linked to the right to freedom of expression under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

viii.iii. The right to hold cultural events in minority languages

In *Ulusoy and others v. Turkey*, the European Court of Human Rights found that: "The ban on the Kurdish production of a play in municipal buildings was a violation of freedom of expression[1428]". In some cases, the applicants appealed with a reference to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in conjunction with other articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Considering the right to education, in a case of *Irfan Temel and others v. Turkey*, the applicants - students of various faculties of Afyon Kochatepe University in Afyon (Turkey), were disciplined only for submitting petitions stating their views on the need for education in Kurdish language and requesting the introduction of Kurdish language courses as an optional module. The European Court of Human Rights considered that: "Neither the opinions expressed in the petitions nor the form in which they were expressed could be interpreted as activities that would lead to language-based polarization within the meaning of Article 9 (d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1429]". "A restriction is compatible with Article 2 of Protocol № 1 to the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 only if there is a reasonable proportionality between the means used and the goal to be achieved[1430]". The suspension of students cannot be considered reasonable or proportionate. Thus, the European Court of Human Rights found a violation of Article 2 of Protocol № 1 to the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Similarly, in a case of *Egitim ve Bilim Emekchileri Sendikasi v. Turkey*, the education workers' union was dissolved on the ground that one of the provisions of its Charter promoted education in the native language. The European Court of Human Rights recognizing the violation of Articles 10 and 11 of the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, stressed that "Article 10 of the European Convention

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[1428] *Ulusoy and others v. Turkey* (2007) App. 34797/03 <https://laweuro.com/?p=19286 > accessed 18 February 2023.

[1429] *Irfan Temel and others v. Turkey* (2009) App. 36458/02 <https://www.lawpluralism.unimib.it/en/oggetti/430-irfan-temel-and-others-v-turkey-no-36458-02-e-ct-hr-second-section-3-may-2009 > accessed 19 February 2023.

[1430] Ibid.

for the Protection of Human Rights and Fundamental Freedoms 1950 makes it possible to participate in the public exchange of cultural, political and social information and ideas of all kinds (paragraph 71)[1431]". Thus, the freedom of expression thus provides for the right to receive, seek and impart information and ideas in any language and media of one's choice, without interference and regardless of state borders.

ix. Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

ix.i. The right to collective bargaining

The right to collective bargaining is a fundamental labour right that allows workers to negotiate with their employers for better working conditions, wages, and benefits as a collective group. Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 recognizes the right to freedom of assembly and association, including the right to form and join trade unions for the protection of workers' interests. Also, it protects the right to engage in collective bargaining, which is seen as an integral part of the right to form and join trade unions. In practice, this means that workers have the right to negotiate with their employers on issues such as pay, working hours, and other conditions of employment through their union representatives. In the case of *Demir and Baykara v. Turkey* (2008), the European Court of Human Rights held that: "The Turkish government's failure to recognize and negotiate with trade unions constituted a violation of the right to collective bargaining[1432]". More recently, in a case of *RMT v. UK*, the European Court of Human Rights upheld the right to collective bargaining for trade unions, stating that: "The government's restrictions on the right to strike were disproportionate and did not strike the appropriate balance between the interests of the trade unions and the public interest[1433]".

Overall, the European Court of Human Rights has established that the right to collective bargaining is an important aspect of the right to form and join trade unions and is protected under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The European Court of Human Rights has consistently held that restrictions on the right to collective bargaining are only permissible when they are proportionate and strike an appropriate balance between the interests of the trade unions and the public interest.

[1431] *Eğitim ve Bilim Emekçileri Sendikası v. Turkey* (2012) App. 20641/05 <https://www.legal-tools.org/doc/8bcfbd/pdf/> accessed 20 February 2023.

[1432] *Demir and Baykara v. Turkey* (2008) App. 34503/97 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-89558%22]%7D> accessed 21 February 2023.

[1433] *RMT v. UK* (2014) App. 31045/10 <https://etuclex.etuc.org/cases/national-union-rail-maritime-and-transport-workers-v-united-kingdom> accessed 22 February 2023.

ix.ii. The right to form a trade union

Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 forms the case-law of the European Court of Human Rights related to socio-economic and trade Union rights. Based on it under this article, certainly related to labor rights include the right to form a trade union which is "a special (positive) aspect of freedom of association[1434]". In a case of *Osmani and Others v. North Macedonia*, the ECtHR held that: "The government's refusal to register the trade union was a disproportionate interference with the workers' right to form and join a trade union and engage in collective bargaining[1435]". The right to form a trade union is a fundamental human right protected under Article 11 the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Recent case-law has affirmed that the right to form a trade union is an essential aspect of the right to freedom of association and is critical for the protection of workers' rights and interests.

ix.iii. The right to join and not to join a trade union

The essence of the right to join trade unions for the key is that employees should be able to freely instruct trade unions to represent their interests to the employer or take measures in support of the data-interests. If employees are restricted in this plan, freedom to belong to a trade union becomes an "illusion". "The role of the state is precisely to prevent allow the establishment of restrictions or barriers for members trade unions that would prevent them from using your trade union to represent their interests before employer[1436]".

Next, it is the right not to join a trade union. In most cases, the person's right to refuse joining the association is infringed upon or excluded forced upon him. A decisive step towards full and unconditional recognition of the negative aspect of freedom of association was taken by the European Court of Human Rights in *Sigurdur A. Sigurjonsson v. Iceland*[1437]. The

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[1434] *Young, James and Webster v. the United Kingdom* (1981) App. 7601/76; 7806/77, para. 52 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-57608&filename=CASE%20OF%20YOUNG%2C%20JAMES%20AND%20WEBSTER%20v.%20THE%20UNITED%20KINGDOM.docx&logEvent=False> accessed 22 February 2023.

[1435] *Osmani and Others v. North Macedonia* (1999) App. 50841/99 <https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_50841-99 > accessed 23 February 2023.

[1436] *Wilson, National Union of Journalists and Others v. the United Kingdom,* (2005) App. 30668/96, 30671/96 and 30678/96 <https://opil.ouplaw.com/view/10.1093/law:ihrl/2986echr02.case.1/law-ihrl-2986echr02 > accessed 24 February 2023.

[1437] *Sigurdur A. Sigurjonsson v. Iceland* (1993) App. № 16130/90, para.35 <https://hudoc.echr.coe.int/fre#{%22it

European Court of Human Rights focused on the analysis of the case under consideration and the established international practice. An applicant was required by law to join the Frami association in order to retain the taxi license, otherwise it could be revoked, and the applicant could be awarded a fine. In order to substantiate the applicant's negative right to association, the European Court of Human Rights turned to the practice of other states, the laws of most of which not only do not provide for the obligation to join a private association, but, on the contrary, enshrined guarantees of the right not to join an association. This position was supported by international practice:

- United Nations Universal Declaration of Human Rights 1948[1438],
- Community Charter of the Fundamental Social Rights of Workers 1989[1439],
- Recommendations of the Parliamentary Assembly of the Council of Europe,
- decisions of the Committee of Independent Experts and the Governmental Committee of the European Social Charter in relation to Iceland,
- practice of the Committee on Freedom of Association of the International Labor Organization. In the light of the above circumstances, Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 should be seen as including a negative right of association.

In a case of «*Young, James and Webster v. the United Kingdom*», which raised this issue, the European Court of Human Rights stated: "Article 11 allowing any form of coercion in union membership would encroach on the very existence freedom, which it is designed to guarantee[1440]", and found that: "the compulsion to enter membership in a particular trade union may not always contradict the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1441]".

emid%22:[%22002-9686%22]} > accessed 25 February 2023.

[1438] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[1439] Government of the European Community, 'Community Charter of the Fundamental Social Rights of Workers (adopted 9 December 1989) <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/community-charter-of-the-fundamental-social-rights-of-workers> accessed 26 February 2023.

[1440] *Young, James and Webster v. the United Kingdom* (1981) App. 7601/76; 7806/77, para. 52 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00157608&filename=CASE%20OF%20YOUNG%2C%20JAMES%20AND%20WEBSTER%20v.%20THE%20UNITED%20KINGDOM.docx&logEvent=False> accessed 22 February 2023.

[1441] *Young, James and Webster v. the United Kingdom* (1981) App. 7601/76; 7806/77, para. 52 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00157608&filename=CASE%20OF%20YOUNG%2C%20JAMES%20AND%20WEBSTER%20v.%20THE%20UNITED%20KINGDOM.docx&logEvent=False> accessed 22 February 2023.

ix. iv. The right to leave a trade union

In order to identify violations of the right not to join a trade union, in principle, as follows from the ruling on the case in question and from the dissenting opinions of the judges, argumentation is important. In the case of preliminary closed shop agreements, it is more complex, since it includes two points:

- proof of coercion until the requirement for mandatory membership is accepted, and
- proof of coercion in connection with the threatening material consequences that non-compliance with this requirement may entail.

Approximately the list of circumstances is as follows:

- how many times and to which employer the applicant applied for a job before acceptance of the mandatory trade union agreement membership.
- is it possible to search for an alternative job on profession at an accessible distance;
- whether it is possible to apply to an employer who is not a member of the participating in closed shop agreements;
-what are the consequences of dismissal (reliable prospects for a new job, whether there is a threat-loss of livelihood, dismissal without compensation and recovery options).

"The negative aspect of freedom of association includes in addition to the right not to join a trade union, there is a second element: to leave the union[1442]". The question of the Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 has not yet been brought before the European Court of Human Rights, although the case of Mr. Rasmussen is essentially about this. Business, which would directly affect the right to withdraw from trade unions were not considered. However, indirect references to this right lead to the conclusion that it is recognized as an aspect of trade union freedom.

ix.v. The right to retain a membership of a trade union

This right was considered in a case of Swedish *Engine Drivers ' Union v. Sweden.* An applicant stated that for several years the union had only entered into collective agreements with major trade union federations and independent trade unions to which the applicant did not belong. Such actions weakened the union and undermined its existence. The European Court of Human Rights agreed that: "The policy of the union placed the applicant in a less favorable position compared to other trade unions, which caused him to withdraw from it and made it less attractive to join a trade union; however, it was consistent and could not in itself be considered

[1442] *Gustafsson v. Sweden* (1996) App. 15573/89, para.45 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00157993&filename=CASE%20OF%20GUSTAFSSON%20v.%20SWEDEN.docx&logEvent=False > accessed 25 February 2023.

incompatible with freedom of trade unions; the right of employees to remain a member of a trade union was preserved regardless of the actions of the union[1443]". Moreover,), the right to retain a membership of a trade union has also been repeatedly affirmed as an essential aspect of the right to freedom of association in such cases as *Young, James, and Webster v. the United Kingdom*, *Demir and Baykara v. Turkey*, and *Sigurður A. Sigurjónsson v. Iceland.*

ix.vi. The right to strike in solidarity

Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 protects the right to freedom of assembly and association, which includes the right to strike. The right to strike is a fundamental right that allows workers to collectively withhold their labour as a means of putting pressure on employers to address their grievances, including better working conditions, wages, and benefits.

The right to strike in solidarity was considered is such cases as: *Demir and Baykara v. Turkey, Enerji Yapi-yol Sen v. Turkey*, *National Union of Railway, Maritime and transport workers v. United Kingdom* and other cases. In a case of *Demir and Baykara v. Turkey*, the European Court of Human Rights held that: "A complete ban on strikes by civil servants, including those in essential public services, violated Article 11[1444]". In a case of *Enerji Yapi-Yol Sen v. Turkey*, the European Court of Human Rights held that: "The right to strike in solidarity was an essential aspect of the right to freedom of association, and that the workers' actions were a legitimate exercise of this right[1445]".In conclusion, the right to strike in solidarity with other workers is an essential aspect of the right to freedom of association protected under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The European Court of Human Rights has consistently held that restrictions on the right to strike must be narrowly construed and proportionate to the legitimate aim pursued.

x. Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

[1443] *Swedish Engine Drivers' Union v. Sweden* (1976) App. 5614/72<https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00157527&filename=CASE%20OF%20SWEDISH%20ENGINE%20DRIVERS > accessed 19 May 2023.

[1444]*Demir and Baykara v. Turkey* (2008) App.34503/97 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-89558%22]%7D> accessed 18 May 2023.

[1445] *Enerji Yapi-Yol Sen v. Turkey* (2009) App. 68959/01 <:https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-2712212-2963054&filename=003-2712212-2963054.pdf > accessed 18 May 2023.

While Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 does not itself provide for specific economic, social, and cultural rights, it is often invoked in conjunction with other provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 that protect these rights, such as Article 1 of Protocol № 1 (the right to property)[1446], Article 8 (the right to respect for private and family life), and Article 10 (the right to freedom of expression) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

In a case of *Willis v. the United Kingdom*, an applicant appealed against the refusal of the authorities to pay widow's benefits in connection with the death of his wife, who was the main breadwinner of the family and paid all the necessary contributions to the insurance funds, from which these amounts are paid in turn. The European Court of Human Rights found that: "The refusal to award the widow's allowance and the maternal widow's allowance was only due to the applicant's gender and concluded that the Respondent state's decision violated the property protection rule in conjunction with the prohibition of discrimination under Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1447]". In a case of *Stec and Others v. the United Kingdom*, European Court of Human Rights held that: "Article 14 of the the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 was applicable in conjunction with Article 1 of Protocol № 1, and that the denial of social security benefits to a group of women based on their marital status constituted discrimination in the enjoyment of their property rights[1448]". Similarly, in a case of *J.D. and A v. United Kingdom*, the European Court of Human Rights held that: "Article 14 was applicable in conjunction with Article 8, and that the denial of social housing to a transgender woman on the basis of her gender identity constituted discrimination in the enjoyment of her right to respect for private and family life[1449]".

In conclusion, while Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 does not provide for specific economic, social, and cultural rights, it protects these rights by prohibiting discrimination in the enjoyment of the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The court examined whether the distinction was made for a legitimate purpose and whether the requirement of proportionality was met.

[1446] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms, (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1447] *Willis v. the United Kingdom* (2002) App. 36042/97 <https://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20Willis%20v%20UK%20_health_.pdf > accessed 19 May 2023.

[1448] *Stec and Others v. the United Kingdom* (2006) App. 65731/01 and 65900/01< https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-73198%22]%7D> accessed 20 May 2023.

[1449] *J.D. and A v. United Kingdom* (2000) App. 34369/97 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-196897%22]} > accessed 21 May 2023.

xi. Article 1 of the Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952

Article 1 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 protects the peaceful enjoyment of one's possessions, including those of an economic, social, or cultural nature. It states that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties[1450]".

Since there is no definition of this right, the European Court of Human Rights uses a broad interpretation. As a result, a certain idea has been formed about the content of the concept of ownership/property which includes:

1) an amount of overpaid tax (*Janville v. France*);
2) business reputation[1451];
3) "creating your own clientele, the right to lease real estate, future income, obtaining a license to carry out relevant economic activities, a property claim, if it is sufficiently defined to be enforced[1452]";
4) "private law assets that are not physical property, such as shares, or monetary claims based on a contract or tort[1453]".

[1450] Protocol № 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms, (adopted 20 March 1952) ETS 9 <https://www.refworld.org/docid/3ae6b38317.html> accessed 17 May 2023.

[1451] *Van Mechelen and others v. the Netherlands* (1997) App. 55/1996/674/861-864< https://www.refworld.org/cases,ECHR,3ae6b6778.html > accessed 22 May 2023.

[1452] *Petrushko v. the Russian Federation* (2005) App. 36494/02 <https://hudoc.echr.coe.int/appp/conversion/docx/?library=ECHR&id=00168407&filename=CASE%20OF%20PETRUSHKO%20v.%20RUSSIA.docx&logEvent=False > accessed 21 May 2023.

[1453] *Stran Greek refineries and Stratis Andreadis v. Greece* (1994) App. 13427/87 <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=00157913&filename=CASE%20OF%20STRAN%20GREEK%20REFINERIES%20AND%20STRATIS%20ANDREADIS%20v.%20GREECE.docx&logEvent=False > accessed 22 May 2023.

Moreover, the European Court of Human Rights created certain standards to ensure freedom of economic activity:

- ✓ the principle of a fair balance between the requirements of the general interest and the protection of the right of the owner[1454];
- ✓ the principle of the need for state intervention[1455];
- ✓ the principle of proportionality of private and public interests[1456];
- ✓ the principle of legal certainty[1457].

Considering social rights, the rule on the right to respect for property does not restrict the parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in the freedom to determine the form of social security or pension system, as well as in the choice of the type and several benefits. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 protects:

1) the right to receive pensions and benefits in *Béláné Nagy v. Hungary*[1458], and *Stec and Others v. the United Kingdom*[1459].

2) a ban on reduction of pension. The reduction of pensions is a violation of the right to respect for property if it is significant and imposes an "excessive burden" on applicants. The excess burden is usually determined by calculating the degree of reduction in pensions or benefits. However, exceptional financial difficulties in the state, the existence of a legitimate goal (are sufficient reasons for reducing pensions. Moreover, as follows from a case of *Sali v. Sweden*, "restrictions imposed by the state for receiving benefits may be justified for the legitimate purpose of ensuring the long-term stability of the insurance system[1460]".

[1454] European Court of Human Rights, 'Annual Report' (2009) <https://www.echr.coe.int/Documents/Annual_report_2009_ENG.pdf > accessed 23 May 2023.

[1455] *Olsson v. Sweden* (1988) App. 10465/83 <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-45480&filename=OLSSON%20v.%20SWEDEN.pdf&logEvent=False > accessed 24 May 2023.

[1456] *Shestakov v. Russia* (2002) App. 48757/99 (18.06.2002) <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-22555&filename=001-22555.pdf> accessed 25 May 2023.; *Buffalo SRL in Liquidation v. Italy* (2003), App. 38746/97 <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/hurcd14&sectIon=85> accessed 26 May 2023.

[1457] *Kruslin v. France* (1990) App. 11801/85 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57626&filename=001-57626.pdf > accessed 27 May 2023.

[1458] *Béláné Nagy v. Hungary* (2015) App. 53080/13 <https://hudoc.echr.coe.int/fre#{%22display%22:[2],%22itemid%22:[%22002-10372%22]} > accessed 28 May 2023.

[1459] *Stec and Others v. the United Kingdom* (2006) App. 65731/01 and 65900/01< https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-73198%22]%7D> accessed 20 May 2023.

[1460] *Sali v. Sweden* (2006) App. 67070/01 <https://hudoc.echr.coe.int/fre#{%22display%22:[2],%22tabview%22:[%22related%22],%22languageisocode%22:[%22ENG%22],%22itemid%22:[%22001-77331%22]}> accessed 20 May 2023.

Thus, this article recognizes the importance of economic, social, and cultural rights as an integral part of human rights and sets out the principle of the right to property and protects the individual and their right to possess and enjoy their economic, social, and cultural rights, subject only to limitations that are necessary in a democratic society and in the public interest.

xii. Article 2 of the Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952

The right to education is related as to cultural as well as to social right. The number of cases involving a violation of article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 is 418 (in 56 cases, the Russian Federation is the respondent), of which only 228 (in 27 cases, the Russian Federation is the respondent) were found to have violated this article. Number of cases in violation of Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 - 109.

In the field of the right to education in the mother tongue, the most cited case is one concerning certain aspects of legislation on the use of languages in education in Belgium. The State did not allow the applicants' children (residents of the Dutch-speaking area of Alsemberg, Birsel, Antwerp, Ghent, Louvain and Vilvoord) to attend French lessons, obliging the applicants to enroll their children in local schools. The applicants alleged that Belgian linguistic legislation violated:

- Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952,
- Article 8 in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

The European Court of Human Rights noted that Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, in conjunction with article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952, does not guarantee a child or a parent the right to receive education in the language of their choice. The goal “is to ensure that the right to education is guaranteed by each Contracting party to every person within its jurisdiction without discrimination on the basis of, for example, language[1461]”. Moreover, “to interpret these two provisions as granting every person under the jurisdiction of a state the right to receive

[1461] *The Belgian Linguistic Case* (1968) App. 474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-223-Belgian-Linguistic-case-full-case.pdf > accessed 20 May 2023.

education in a language of their own choice would lead to absurd results, since anyone could apply for any language of instruction in any territory of the Contracting Parties"[1462].

In another case, *Catan and others v. Moldova and Russia*, the applicants (Moldovans, students of three Moldovan-language schools and their parents) claimed that the ban of the Moldovan Republic of Transdniestria on the use of Latin script in education and the related harassment of persons studying in schools using Moldovan as the language of instruction violated Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952, Articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The reason for this persecution was the policy of russification of the transnistrian authorities. The European Court of Human Rights, recognizing a violation of Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952, explained the following: "By undertaking in the first sentence of Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 not to deny the right to education, the Contracting States guarantee to any person under their jurisdiction the right of access to educational institutions[1463]".Although the text of article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 does not specify the language in which education is to be conducted, the right to education would be meaningless if it did not imply for the benefit of its beneficiaries the right to education in the national language or in one of the national languages, as the case may be. Consequently, Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 guarantees the right to education in the native (national) language. It is important to note that this decision contradicts an earlier court decision.

In the light of the right to education, a case of *D. H. and others v. Czech Republic* is unique, as it is the first time that the European Court of Human Rights directly applied the principle of indirect discrimination, which was later used by the European Commission to pressure European countries to adopt legislation prohibiting indirect discrimination. In this case, the applicants were Czech children of Roma origin who were placed in special schools for children with mental disabilities between 1996 and 1999. They appealed against segregation based on race, origin and language, which constituted a violation of the right to education recognized in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, considered in connection with Article 2 of Protocol № to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952. In 2007, the Grand Chamber found a violation of these articles and ruled that the European Court of Human Rights deals with specific acts of discrimination against individuals, structural mechanisms and institutionalized practices that violate the human rights of racial or ethnic groups. The Member-State was charged with proving the non-discriminatory nature of the systematic transfer of Roma children to special schools for the retarded. The European Court

[1462] Ibid.

[1463] *Catan and others v. Moldova and Russia* (2012) App.43370/04, 8252/05, 18454/06.

of Human Rights stated that: "Obligation to protect the identity of minorities under Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is intended not only to protect the interests of minorities themselves, but also to preserve cultural diversity that is of value to the entire community[1464]". Moreover, the European Court of Human Rights modeled a strategy for minorities to challenge other forms of indirect discrimination in other contexts. Considering discrimination against Roma, a collective approach is particularly important in the broader context. In the following cases, the European Court of Human Rights required the state to provide temporary positive support to minority students seeking to assimilate into the dominant language practice in schools.

Next case is *Orsusz v. Croatia*, the applicants, 14 Croatian citizens of Roma origin from Orehovica, Podturen and Trnovci, requested that they be enrolled in Croatian public schools where subjects were taught in the Croatian language. However, they were refused due to lack or insufficient knowledge of the Croatian language. This segregation has deprived them of their right to education in a multicultural environment and has caused them serious educational, psychological and emotional damage feelings of alienation and lack of self-esteem. In their complaint, applicants relied on Article 3, Article 6 (paragraph 1), Article 14 and Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952. The European Court of Human Rights, finding violations of Article 6 (paragraph 1) and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952, read in conjunction with Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952, held that Croatia had an obligation "to take appropriate positive measures to assist applicants in acquiring the necessary language skills as soon as possible, in particular through special language lessons[1465]". During this transition period, Roma students could be placed in special classes conducted in the Romani language, with only "additional instruction in Croatian[1466]".

In subsequent cases, the European Court of Human Rights elaborated on the conditions of negative language freedom in school settings. In a case of *Cyprus v. Turkey*, applicants, Greek Cypriot parents residing in Northern Cyprus, alleged that: "Turkish Cypriot authorities had abolished secondary schools, violating the right to education of the applicants' children in accordance with their cultural, ethnic traditions and in the Greek language[1467]". Instead, the authorities provided secondary education in the South in accordance with the Greek Cypriot linguistic tradition in the enclave". The European Court of Human Rights considered that: "The

[1464] *D.H. and Others v. the Czech Republic* (2007) № 57325/00 [GC] https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22002-2439%22]%7D> accessed 15 April 2023.

[1465] *Orsusz v. Croatia* (2012) App. 15766/03 <https://hudoc.exec.coe.int/ENG#%22EXECIdentifier%22:[%22004-10085%22]}> accessed 16April 2023.

[1466] Ibid.

[1467] *Cypris v. Turkey,* (2001) App. 25781/94 para. 219 <https://hudoc.echr.coe.int/Eng#{%22itemid%22:[%22001-59454%22]}> accessed 9 April 2023.

complete lack of secondary school facilities for the individuals concerned could not be compensated by the fact that the authorities allowed students to attend schools in the South, considering the restrictions associated with their return to the North[1468]". The actions of the authorities are not sufficient to fulfil the obligation set out in Article 2 of Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952. Having assumed responsibility for providing primary education in Greek, the failure of the Turkish Cypriot authorities to consistently provide it at the secondary school level should be seen as a denial of the essence of the right in question[1469]. The European Court of Human Rights ruled that: "The possibility of attending private schools using a minority language as the language of instruction should be realistic, meaning that students should be able to return home after completing their education[1470]".

Thus, Article 2 of the Protocol № 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1952 protects the right to education and guarantees the right of parents to ensure the education and teaching of their children in conformity with their religious and philosophical convictions.

xiii. Protocol № 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 2000

The main feature of this protocol is the general prohibition of discrimination. It contains a provision according to which the prohibition of discrimination applies to all other rights and freedoms contained in the legislation of the state party, which is a fundamentally new provision. The Protocol is of particular importance in relation to those States parties where inter-ethnic conflicts exist in one form or another.

An example of the use of Protocol № 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 2000 to protect economic, social, and cultural rights can be seen in a case of *Sampanis and Others v. Greece*[1471]. A group of people who were living in extreme poverty and were homeless challenged a Greek law that made it a criminal offense to beg. The European Court of Human Rights found that the law was discriminatory and violated Protocol № 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 2000, as it targeted a specific group of people who were in a

[1468] Ibid.

[1469] Ibid.

[1470] Ibid.

[1471] *Sampanis and Others v. Greece* (2008)App.32526/05<https://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20Sampanis%20and%20Others%20v%20Greece.pdf> accessed 10 April 2023.

vulnerable socio-economic position. Another example is the case of *E.B. v. France*[1472], in which a mother and daughter who were living in a hotel and receiving social assistance challenged the French government's refusal to provide them with emergency accommodation. The European Court of Human Rights found that the government had discriminated against the mother and daughter based on their social status, in violation of Protocol № 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 2000.

Next case is *Sidabras and Dziautas v. Lithuania*[1473], applicants claim that their dismissal from their jobs and the current ban on their finding employment in line with their academic qualifications as, respectively, a sports instructor and a lawyer, or another job in the public service and many private businesses, unjustifiably discriminates against them on account of their KGB past. The applicants allege that since the end of their KGB careers they have been loyal to the idea of Lithuanian independence. They were nonetheless subjected to measures under the Act simply because of their former employment. In the applicants' view, there are no valid grounds for imposing on them any prohibition on engaging in a trade or profession.

In these cases, Protocol № 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 2000 was used to protect economic, social, and cultural rights by prohibiting discrimination based on socio-economic status.

xiv. New perspectives to the protection of rights of the second generation by the European Court of Human Rights

The European Court of Human Rights developed several features in economic, social, cultural rights:

1). Balance of interests. In most cases, the European Court of Human Rights tries to balance interests of private and public, strictly follow the established practice, but at the same time guarantees minimal guarantees in the field of protection of rights of the second generation. The goal is to find the fair balance:

-if the applicant's rights were violated by active actions of the state, then a fair balance can be found by comparing the importance of these interests. The law enforcement method is based on the concept of "margin of appreciation";

-if the applicant's rights were violated by the state's inaction, then the general political interests of the state correspond to his / her interest in protecting his / her rights. If the European Court of Human Rights finds that there are positive obligations which have not been fulfilled by the state, then an applicant wins the case. The European Court of Human Rights noted that:

[1472] *E.B. v. France* (2008) App. 43546/02 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-2311%22]} > accessed 11 April 2023.

[1473] *Sidabras and Dziautas v. Lithuania* (2015) App. 55480/00, 59330/00< https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-155358%22]} > accessed 12 April 2023.

"when we are talking about rights, the effects of social or economic, it is necessary, as well as in relation to the protection of civil and political rights, to establish a fair balance between the public interest and the protection of the fundamental rights of individuals[1474]".

2) Broader scope of discretion[1475]. In cases concerning the deportation of citizens in need of medical treatment, as well as in several other cases concerning the implementation by the State of its positive obligations towards the applicants, the European Court of Human Rights pointed out that: "The need to protect socio-economic rights should not impose an excessive burden on the State[1476]".In cases involving state intervention in the implementation of socio-economic rights the European Court of Human Rights has repeatedly stated that: "Such intervention by the state would be contrary to the Convention only if the citizens had imposed an excessive burden (for example, in the case of taxation of severance tax of 98% or reduction of pension to 60%)[1477]".

3) Concept of positive obligations. The concept of positive obligations is at the heart of the enforcement method for determining whether the inaction of national authorities violates the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. F. Cherubini[1478] refers to a case of *Oneryildiz v. Turkey*. In this case, the European Court of Human Rights defined two categories of positive obligations of States, one of which is essential and the other of a case-law nature. "The State must take all positive actions, in the first case, to prevent a violation of the right or, in any case, to guarantee its implementation; secondly, to address a violation that has already occurred by establishing adequate internal measures[1479]".

4) Different aspects of rights of the first generation. The European Court of Human Rights gave rights of the first generation social, cultural and economic aspects. It is a surprising

[1474] *A. S. v. Switzerland* (2015) App. 39350/13, § 31 <https://www.refworld.org/cases,ECHR,5592b8064.html> accessed 12 April 2023.

[1475] *R. Sz. v. Hungary* (2013) App. 41838/11, § 38 <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001121958&filename=CASE%20OF%20R.Sz.%20v.%20HUNGARY.pdf&logEvent=False> accessed 13 April 2023.

[1476] *Stefanetti and Others v. Italy* (2014) App. 21838/10, 21849/10, 21852/10 <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-142400&filename=001-142400.pdf > accessed 14 April 2023.

[1477] *R. Sz. v. Hungary* (2013) App. 41838/11, § 38 <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001121958&filename=CASE%20OF%20R.Sz.%20v.%20HUNGARY.pdf&logEvent=False> accessed 13 April 2023.

[1478] Cherubini F, 'Le prime due generazioni di diritti umani: origine, evoluzione e prassi recente' in *Studi sull'integrazione europea* (2013) P. 321.

[1479] *Öneryıldız v. Turkey* (2004) App. 48939/9<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-67614%22]%7D> accessed 13 May 2023.

fact that some rights declared in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 contain all three aspects: economic, social and cultural.

5) Interdependence and indivisibility. The European Court of Human Rights acknowledged that socio-economic, cultural, and environmental rights are just as important as civil and political rights, and that they are all interconnected and interdependent. A significant achievement of the European Court of Human Rights is the recognition of the principle of indivisibility of rights in case of *Airey v. Ireland*. This case expanded the interpretation of articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and included certain second-generation rights in the "protection zone" of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. Based on the case-law of the European Court of Human Rights, The European Court of Human Rights assigns to the rights of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 positive obligations of States, which are closely and inextricably intertwined with the negative obligations of States, forming a whole complex. This once again proves the unified nature of rights.

6) Ongoing fight against discrimination. Many authors emphasize the contribution of the European Court of Human Rights in the fight against discrimination, in recognizing the need to enforce court decisions on the payment of pensions and benefits, as well as ensuring that it is possible in principle to apply to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 for protection of rights not expressly provided for in it. In many cases, the European Court of Human Rights used a technique to protect second-generation rights by linking an article of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 to Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

7) Other approaches (textual, contextual) and special legal interpretation. The European Court of Human Rights pays attention to the context and rules of international law. It seems to me that the European Court of Human Rights provides different level of legal protection to the rights of second generation in comparison with the rights of first generation. The economic, social and cultural rights are protected only to the extent necessary for implementation of the civil and political rights. The rights of the second generation do not have autonomous relevance but are linked to the claimed civil and political rights and the factual situation encompassed, by Articles 2, 3, 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, respectively.

8) Vertical and horizontal case-law consolidation. It was vertically, when the European Court of Human Rights considered new dimensions of protection as regards classical first-generation rights, the right in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. In contract, it was horizontally, when the European Court of Human Rights considered other rights which originally were not thought in connection to the second-generation rights, such in Articles 3 and 5 of the European Convention for the

Protection of Human Rights and Fundamental Freedoms 1950 in connection to right to health care.

Does protecting the rights of the second generation overburden the competence of the European Court of Human Rights? It is well known that consideration of purely civil and political rights is the primary competence of the court. Protecting the rights of the second generation does not necessarily overburden the competence of the European Court of Human Rights. The European Court of Human Rights developed a rich body of case law that recognizes the importance of social and economic rights and interpreted the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in a way that gives effect to these rights while also considering the limitations on states' resources and the need to balance competing interests. The European Court of Human Rights does face challenges in adjudicating cases related to economic, social, and cultural rights, particularly when it comes to determining whether a particular right is sufficiently concrete and precise to be justiciable under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. In some cases, the European Court of Human Rights declined to find a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 because it concluded that the alleged violation relates to a policy choice that is better left to the national authorities. Thus, it is an essential aspect of the European Court of Human Right's mandate to protect all human rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The European Court of Human Right must continue to engage in a robust and nuanced analysis of these rights, considering the competing interests at play and ensuring that the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 is interpreted and applied in a way that is consistent with the principles of the rule of law and democratic governance.

What is the future of the European Court of Human Rights? According to an opinion of the retired President of the European Court of Human Rights, Guido Raimondi: “The European Court of Human Rights is striving to become more and more effective. The European Court of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 will have a decent future if the application of the Convention in the contracting States also takes an appropriate place.

There are two very important mechanisms:

- Supreme courts of Member - States, which are an instrument of exchange and cooperation between the Strasbourg court and national courts.

- Protocol № 16 has been adopted, which provides an institutional framework for cooperation between European Court of Human Rights and national courts. It allows national courts to request an advisory opinion on the interpretation and application of the European Convention on Human Rights in specific cases. Indeed, there is a positive trend, namely, the

dynamic and continuous exchange and consolidation of humanitarian values developed by our judicial practice and the practice of national courts[1480]".

To sum up, the future of the European Court of Human Rights is likely to be shaped by several factors, including ongoing developments in human rights law and the changing political landscape in Europe:

✓ Increasing workload. The European Court of Human Rights is already facing a significant backlog of cases. It is likely that the Court's workload will continue to increase in the coming years and put pressure to find new ways to streamline its processes and ensure that cases are handled in a timely and efficient manner.

✓ Emerging human rights issues. The European Court of Human Rights may be called upon to address new and emerging human rights issues, such as the impact of technology on privacy and freedom of expression, or the rights of refugees and asylum-seekers in the context of mass migration.

✓ Tensions with national authorities. The European Court of Human Rights faced criticism and pushback from some national authorities in recent years, particularly in countries where there are concerns about the rule of law and democratic governance.

✓ Evolving standards and norms. The European Court of Human Rights will continue to play a key role in shaping the development of human rights law in Europe and will need to adapt to evolving standards and norms in this area.

The future of the European Court of Human Rights is likely to be shaped by a complex mix of internal and external factors. However, its fundamental mission to protect human rights in Europe and it will continue to play a crucial role in upholding the rule of law and promoting respect for human dignity in the region. Taking into the consideration of the progressiveness of the European Court of Human Rights, it also should be noted that the protection of second-generation rights falls within the competence of other bodies within the European Union, whose competence will be discussed in the next paragraphs.

[1480] Raimondi G, 'It is necessary to develop an atmosphere of trust between the ECHR and national courts' <http://rapsinews.ru/international_publication/20191105/304988860.html> accessed 20 May 2023.

Table 'Case-law of the European Court of Human Rights for certain economic, social, and cultural rights'

Article of the ECHR	Type of right	Case-law of the ECtHR
2	Right to health Right to medical assistance	*Anguelov v. Bulgaria,* App. 51343/99 (15 February 2007), *Calvelli e Giglio v. Italia*, App. 32967/96 (17 January 2002), *Cypris v. Turkey,* App. 25781/94 (10 May 2001), para. 219, *Dodov v. Bulgaria,* App. 59548/00 (17 January 2008), *Ilhan v. Turkey,* App. 22277/93 (27 June 2000), *LCB v. United Kingdom,* App. 23413/93 (9 June 1998), para. 36, *McGlinchey v. United Kingdom,* App. 50390/99 (29 April 2003), *Nencheva and others v. Bulgaria,* App. 48609/06 (1996/1997), *Pentiacova and Others v. Moldova,* App.14462/03 (4 January 2005), *Pereira Henriques v. Luxembourg,* App. 60255/00 (9 May 2006), *Šilih v. Slovenia,* App. 71463/01 (9 April 2009), *Trocellier v. France,* App. 75725/01 (5 October 2006).
3	Right to basic needs	

		M.S.S. v. Belgium and Greece, App. 30696/09 (21 January 2011), para 254, *Van Volsem v. Belgium*, App. 1464/89 (9 May 1990). *Z. and others v. in the United Kingdom,* App. 29392/95 (10 May 2001).
	Right to an adequate pension	*Budina v. Russia*, App. 45603/05 (18 June 2009).
	Right to housing	*Buckley v. the United Kingdom*, App. 20348/92 (25.09.1996), *Chapman v. the United Kingdom,* App. 27238/95 (18.01.2001), *Moldovan and other v. Romania,* App. 41138/98 and 64320/01 (12.07.2005), *Stenegri and Adam v. France*, App.40987/05 (22 May 2007), *V.M. and others v. Belgium,* App. 60125/11 (29.11.2011), *Winterstein and others v. France,* App. № 27013/07 (17.10.2013).
	Right to medical care	*Badretdinov and others v. Russia*, App. 28625/13, 49945/13, 67302/13, 43672/14 (19.07.2016), *Celik & Yildiz v. Turkey,* App. 51479/99 (10 November 2005), *D. v. United Kingdom*, App. 30240/96 (20 February 1997) para. 52,

		Dolgov and Silaev v. Russia, App.11215/10, 11215/10, 55068/12, *Farbtuhs v. France,* App. 4672/02 (2 December 2004), *G. v. Russia*, App. 42526/07 (21.06.2016); *Gajcsi v. Hungary,* App. 34503/03 (16.09.2003), *Hurtado v. Switzerland,* App. 17549/90 (28 January 1998), *Kolesnikovich v. Russia,* App. 44694/13 (22.03.2016), para.72, *Kudla v. Poland*, App. 30210/96 (26 October 2000), para. 94, *Laveikin v. Russia,* App. 18046/12, 11771/14, 2507/14, 2788/14, 3069/14, 3361/14, 5779/14, 42337/14, 51543/14, 51955/14 (10.01.2017), *Makshakov v. Russia,* App. 52526/07 (24 May 2016), *McGlinbey v. United Kingdom,* App. 50390/99 (29 April 2003), *Neumerzhitsky v. Ukraine,* App. 54825/00 (5 April 2005), *Rudenkov and others v. Russia,* App. 10727/07 (22.09.2016), *Shamraev and others v. Russia,* App. 24056/13, 29927/13, 61878/13 (30.06.2016), *Tobegin v. Russia,* App. 78774/13, *Ustinov and others v. Russia* (04.05.2017), *X v. United Kingdom*, App. 8160/78 (12 March 1981), *Winterwerp v. Netherlands,* App. 6301/73 (24.10.1979).

5	Right to physical care	*Aerts v. Belgium,* App. 61/1997/845/1051 (30 July 1998), para.46,49, *Ashingdane v. the United Kingdom,* App. 8225/78 (1985). *Winterwerp v. Netherlands,* App. 6301/73 (24.10.1979).
	Right to use own language	*Ladent v. Poland,* App.11036/03 (18 March 2008) *Rahimi v. Greece,* App. 8687/08 (18 March 2011), *Tabesh v. Greece,* App. 8256/07 (26 November 2009).
6	Right on pensions and benefits	*Burdov v. Russia*, App. 59498/00 (7 May 2002), *Hirst v. the United Kingdom,* App. 2 (2005); *Stec and Others v. the United Kingdom,* App. 65731/01 and 65900/01 (12 April 2006).
	Right to use own language	*Brozicek v. Italy,* App. 10964/84 (19 December 1989), *C v. France,* App. 17276/90 (13 May 1992), *Hermi v. Italy,* App18114/02 (18 October 2006), *Isop v. Austria*, App.808/60 (3 March 2009), *Lagerblom v. Sweden,* App. 26891/95 (14 April 2003);

8	Right to choose medical treatment	*Csoma v. Romania,* App. 8759/05 (15 January 2013), *D. v. the United Kingdom,* App.30240 (02.05.1997), *F.G. v. Sweden,* App. 43611/11 (23 March 2016), *Sentges v. the Netherlands,* App. 27677/02 (8 July 2003), para.35, *V.C. v. Slovakia,* App. 18968/07 (08.11.2011).
	Right to health	*Fadeyeva v. Russia,* App. 55723/00 (09 June 2005), *Giacomelli v. Italy,* App.59909/00 (2 November 2006), *McGinley and Egan v. the United Kingdom,* App. 10/1997/794/995-996 (9 June 1998), para.101, *Moreno Gomez v. Spain,* App. 4143/02 (16 November 2004), *Powell and Rayner v. the United Kingdom,* App. 9310/81 (19 January 1989), *Pretty v. the United Kingdom,* App. 2346/02 (2002).
	Right to establish and develop relationships with others	*Niemietz v. Germany*, App. 13710/88 (15 December 1992), para. 29, *S.L. v. Austria,* App. 45330/99 (09.01.2003), *Sentges v. the Netherlands,* App. 27677/02 (8 July 2003), para.35,

		X, Y and Z v. the United Kingdom, App. 21830/93 (12 April 1997), *Zehnalova and Zehnal v. the Czech Republic,* App.38621/97 (14 May 2002).
	Right to healthy environment	*Grimkovskaya v. Ukraine,* App. 38182/03 (21 July 2011), para.67, *Guerra and others v. Italy,* App. 14967/89 (19 February 1998), *Lopez Ostra v. Spain,* App. 16798/90 (9 December 1994), *Powell and Rayner v. the United Kingdom*, App. 9310/81 (19 January 1989), *Taşkın and others v. Turkey,* App. 46117/99 (10 November 2004), *Tatar v. Romania,* App. 657021/01 (27 January 2009).
	Right on maternity benefits to fathers	*Von Hannover v. Germany,* App. 59320/00 (24 June 2004).
	Right to protection of reputations	*Axel Springer AG v. Germany,* App. 39954/08 (07.02.2012), *Chauvy and others v. France,* App. 64915/01 (2004-VI) para.70, *Fayed v. the United Kingdom*, App. A N 294-B (21 September 1994) para.67, *Giorgi Nikolaishvili v. Georgia,* App. 37048/04 (13 January 2009),

		Gunnarsson v. Iceland, App. 4591/04 (20 October 2005).
	Right to receive information	*Handyside v. United Kingdom,* App. 5493/72 (December 7, 1976), *Sunday Times v. United Kingdom,* App. 6538/74 (April 26, 1979), *Vilnius and others v. Norway*, App. 52806/09, 22703/10 (5 December 2013), *Von Hannover v. Germany,* App. 59320/00 (24 June 2004).
	Right to use own language	*Bulgakov v. Ukraine,* App. 59894/00 (11.09.2007), *Guzel Erdagez v. Turkey,* App. 37483/02 (21 October 2008), *Kemal Tashkin and others v. Turkey,* App. 30206/04 (2 February 2010), *Kuhareca v. Latvia,* App. 71557/01 (October 2012), *Mehmet Nuri Özen and Others v. Turkey,* App.15672/08 (11 January 2011), *Nusret Kaya and Others v. Turkey,* App. 43750/06, 43752/06, 32054/08, 37753/08, 60915/08 (22 April 2014), *Senger v. Germany,* App. 32524/05 (3 February 2009).
10	Right to publish newspapers and printed materials in	*Association Ekin v. France,* App. 39288/98 (2001),

	minority languages	*Mesut Yurtsever and Others v. Turkey,* App. 14946/08 (20 January 2005).
	Right to radio and television broadcasting in minority languages	*Fernández Martínez v. Spain,* App. 56030/07 (12.06.2014), *Radio ABS v. Austria,* App.19736/92 (20 October 1997), *Sárközi and Kis v. Hungary,* App. 40354/04 (27.11.2007).
	Right to hold cultural events in minority languages	*Eğitim ve Bilim Emekçileri Sendikası v. Turkey,* App. 20641/05 (25 September 2012), *Irfan Temel and others v. Turkey,* App. 36458/02 (3 March 2009), *Ulusoy and others v. Turkey,* App. 34797/03 (3 May 2007).
11	Right to collective bargaining	*Demir and Baykara v. Turkey,* App. 34503/97 (12 November 2008), *RMT v. UK,* App. 31045/10 (2014).
	Right to form a trade union	*Osmani and Others v. North Macedonia,* App. 50841/99 (1999), *Young, James and Webster v. the United Kingdom,* App. 7601/76; 7806/77 (13 August 1981), para. 52.
	Right to join and not to join a trade union	*Sigurður A. Sigurjónsson v. Iceland,* App. 264 (30.06.1993), para. 35,

		Wilson, National Union of Journalists and Others v. the United Kingdom, App. 30668/96, 30671/96 and 30678/96 (May 2005), *Young, James and Webster v. the United Kingdom,* App. 7601/76; 7806/77 (13 August 1981), para. 52.
	Right to leave a trade union	*Gustafsson v. Sweden*, App. 15573/89 (25 April 1996), para.45.
	Right to retain a membership of a trade union	*Swedish Engine Drivers' Union v. Sweden,* App. (06.02.1976).
	Right to strike in solidarity	*Demir and Baykara v. Turkey,* App.34503/97(12.11.2008), *Enerji Yapi-Yol Sen v. Turkey,* App. 68959/01 (21 April 2009).
14		*J.D. and A v. United Kingdom,* App. 34369/97 (06.04.00), *Stec and Others v. the United Kingdom,* App. 65731/01 and 65900/01 (12 April 2006).
1 of the Protocol 1		*Béláné Nagy v. Hungary,* App. 53080/13 (10 February 2015), *Buffalo SRL in Liquidation v. Italy,* App. 38746/97 (03.07.2003), *Kruslin v. France,* App. 11801/85 (24.04.1990);

		Olsson v. Sweden, App. 10465/83 (24 March 1988), *Petrushko v. the Russian Federation,* App. 36494/02 (24.02.2005), *Sali v. Sweden,* App. 67070/01 (10 October 2006), *Shestakov v. Russia,* App. 48757/99 (18.06.2002), *Stec and Others v. the United Kingdom,* № 65731/01 and 65900/01 (12.04.2006), *Stran Greek refineries and Stratis Andreadis v. Greece,* App. 13427/87 (04.12.1994), *Van Mechelen and others v. the Netherlands,* App. 55/1996/674/861-864 (23.04.1997).
2 of the Protocol 1		*Belgian Linguistic Case,* App. 474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 (23.07.1968), *Catan and others v. Moldova and Russia,* App.43370/04, 8252/05, 18454/06 (19 October 2012), *Cypris v. Turkey,* App. 25781/94 (10 May 2001), *D. H. and others v. Czech Republic,* App. 57325/00 (13 November 2007), *Orsusz v. Croatia,* App. 15766/03 (19 October 2012).
Protocol № 12		*E.B. v. France,* App. 43546/02 (22.01.2008); *Sampanis and Others v. Greece,* App. 32526/05 (05.06.2008),

		Sidabras and Dziautas v. Lithuania, App. 55480/00, 59330/00 (23.06.2015).

Cuadro 'Jurisprudencia del Tribunal Europeo de Derechos Humanos sobre determinados derechos económicos, sociales y culturales'

Artículo del Convenio Europeo de Derechos Humanos	Tipo de derecho	Jurisprudencia del Tribunal Europeo de Derechos Humanos
2	Derecho a la salud Derecho a la asistencia médica	*Anguelov v. Bulgaria,* App. 51343/99 (15 February 2007), *Calvelli e Giglio v. Italia*, App. 32967/96 (17 January 2002), *Cypris v. Turkey,* App. 25781/94 (10 May 2001), para. 219, *Dodov v. Bulgaria,* App. 59548/00 (17 January 2008), *Ilhan v. Turkey,* App. 22277/93 (27 June 2000), *LCB v. United Kingdom,* App. 23413/93 (9 June 1998), para. 36, *McGlinchey v. United Kingdom,* App. 50390/99 (29 April 2003), *Nencheva and others v. Bulgaria,* App. 48609/06 (1996/1997), *Pentiacova and Others v. Moldova,* App.14462/03 (4 January 2005), *Pereira Henriques v. Luxembourg,* App. 60255/00 (9 May 2006), *Šilih v. Slovenia,* App. 71463/01 (9 April 2009), *Trocellier v. France,* App. 75725/01 (5 October 2006).

3	Derecho a las necesidades básicas	*M.S.S. v. Belgium and Greece*, App. 30696/09 (21 January 2011), para 254, *Van Volsem v. Belgium*, App. 1464/89 (9 May 1990). *Z. and others v. in the United Kingdom,* App. 29392/95 (10 May 2001).
	Derecho a una pensión adecuada	*Budina v. Russia*, App. 45603/05 (18 June 2009).
	Derecho a la vivienda	*Buckley v. the United Kingdom*, App. 20348/92 (25.09.1996), *Chapman v. the United Kingdom,* App. 27238/95 (18.01.2001), *Moldovan and other v. Romania,* App. 41138/98 and 64320/01 (12.07.2005), *Stenegri and Adam v. France*, App.40987/05 (22 May 2007), *V.M. and others v. Belgium,* App. 60125/11 (29.11.2011), *Winterstein and others v. France,* App. № 27013/07 (17.10.2013).
	Derecho a la atención médica	*Badretdinov and others v. Russia*, App. 28625/13, 49945/13, 67302/13, 43672/14 (19.07.2016), *Celik & Yildiz v. Turkey,* App. 51479/99 (10 November 2005),

		D. v. United Kingdom, App. 30240/96 (20 February 1997) para. 52, *Dolgov and Silaev v. Russia,* App.11215/10, 11215/10, 55068/12, *Farbtuhs v. France,* App. 4672/02 (2 December 2004), *G. v. Russia*, App. 42526/07 (21.06.2016), *Gajcsi v. Hungary,* App. 34503/03 (16.09.2003), *Hurtado v. Switzerland,* App. 17549/90 (28 January 1998); *Kolesnikovich v. Russia,* App. 44694/13 (22.03.2016), para.72; *Kudla v. Poland*, App. 30210/96 (26 October 2000), para. 94, *Laveikin v. Russia,* App. 18046/12, 11771/14, 2507/14, 2788/14, 3069/14, 3361/14, 5779/14, 42337/14, 51543/14, 51955/14 (10.01.2017); *Makshakov v. Russia,* App. 52526/07 (24 May 2016), *McGlinbey v. United Kingdom,* App. 50390/99 (29 April 2003), *Neumerzhitsky v. Ukraine,* App. 54825/00 (5 April 2005), *Rudenkov and others v. Russia,* App. 10727/07 (22.09.2016), *Shamraev and others v. Russia,* App. 24056/13, 29927/13, 61878/13 (30.06.2016), *Tobegin v. Russia,* App. 78774/13. *Ustinov and others v. Russia* (04.05.2017). *X v. United Kingdom*, App. 8160/78 (12 March 1981),

		Winterwerp v. Netherlands, App. 6301/73 (24.10.1979).
5	Derecho al cuidado físico	*Aerts v. Belgium,* App. 61/1997/845/1051 (30 July 1998), para.46,49, *Ashingdane v. the United Kingdom,* App. 8225/78 (1985), *Winterwerp v. Netherlands,* App. 6301/73 (24.10.1979).
	Derecho a usar su propio idioma	*Ladent v. Poland,* App.11036/03 (18 March 2008), *Rahimi v. Greece,* App. 8687/08 (18 March 2011), *Tabesh v. Greece,* App. 8256/07 (26 November 2009).
6	Derecho a las pensiones y beneficios	*Burdov v. Russia*, App. 59498/00 (7 May 2002), *Hirst v. the United Kingdom,* App. 2 (2005), *Stec and Others v. the United Kingdom,* App. 65731/01 and 65900/01 (12 April 2006).
	Derecho a usar su propio idioma	*Brozicek v. Italy,* App. 10964/84 (19 December 1989), *C v. France,* App. 17276/90 (13 May 1992), *Hermi v. Italy,* App18114/02 (18 October 2006);

		Isop v. Austria, App.808/60 (3 March 2009), *Lagerblom v. Sweden,* App. 26891/95 (14 April 2003);
8	Derecho a elegir atención médica tratamiento	*Csoma v. Romania,* App. 8759/05 (15 January 2013), *D. v. the United Kingdom,* App.30240 (02.05.1997), *F.G. v. Sweden,* App. 43611/11 (23 March 2016), *Sentges v. the Netherlands,* App. 27677/02 (8 July 2003), para.35, *V.C. v. Slovakia,* App. 18968 /07 (08.11.2011).
	Derecho a la salud	*Fadeyeva v. Russia,* App. 55723/00 (09 June 2005), *Giacomelli v. Italy,* App.59909/00 (2 November 2006), *McGinley and Egan v. the United Kingdom,* App. 10/1997/794/995-996 (9 June 1998), para.101, *Moreno Gomez v. Spain,* App. 4143/02 (16 November 2004), *Powell and Rayner v. the United Kingdom,* App. 9310/81 (19 January 1989), *Pretty v. the United Kingdom,* App. 2346/02 (2002).
	Derecho a establecer y	

	desarrollar relaciones con otros	*Niemietz v. Germany*, App. 13710/88 (15 December 1992), para. 29, *S.L. v. Austria,* App. 45330/99 (09.01.2003); *Sentges v. the Netherlands,* App. 27677/02 (8 July 2003), para.35, *X, Y and Z v. the United Kingdom,* App. 21830/93 (12 April 1997), *Zehnalova and Zehnal v. the Czech Republic,* App.38621/97 (14 May 2002).
	Derecho a un medio ambiente saludable	*Grimkovskaya v. Ukraine,* App. 38182/03 (21 July 2011), para.67, *Guerra and others v. Italy,* App. 14967/89 (19 February 1998), *Lopez Ostra v. Spain,* App. 16798/90 (9 December 1994), *Powell and Rayner v. the United Kingdom*, App. 9310/81 (19 January 1989), *Taşkın and others v. Turkey,* App. 46117/99 (10 November 2004), *Tatar v. Romania,* App. 657021/01 (27 January 2009);
	Derecho a prestaciones por maternidad a los padres	*Von Hannover v. Germany,* App. 59320/00 (24 June 2004).
	Derecho a la protección de reputaciones	*Axel Springer AG v. Germany,* App. 39954/08 (07.02.2012),

		Chauvy and others v. France, App. 64915/01 (2004-VI) para.70, *Fayed v. the United Kingdom*, App. A N 294-B (21 September 1994) para.67, *Giorgi Nikolaishvili v. Georgia,* App. 37048/04 (13 January 2009), *Gunnarsson v. Iceland,* App. 4591/04 (20 October 2005).
	Derecho a recibir información	*Handyside v. United Kingdom,* App. 5493/72 (December 7, 1976), *Sunday Times v. United Kingdom,* App. 6538/74 (April 26, 1979), *Vilnius and others v. Norway*, App. 52806/09, 22703/10 (5 December 2013), *Von Hannover v. Germany,* App. 59320/00 (24 June 2004).
	Derecho a usar su propio idioma	*Bulgakov v. Ukraine,* App. 59894/00 (11.09.2007), *Guzel Erdagez v. Turkey,* App. 37483/02 (21 October 2008), *Kemal Tashkin and others v. Turkey,* App. 30206/04 (2 February 2010), *Kuhareca v. Latvia,* App. 71557/01 (October 2012), *Mehmet Nuri Özen and Others v. Turkey,* App.15672/08 (11 January 2011), *Nusret Kaya and Others v. Turkey,* App. 43750/06, 43752/06, 32054/08, 37753/08, 60915/08 (22 April 2014),

		Senger v. Germany, App. 32524/05 (3 February 2009).
10	Derecho a publicar periódicos y materiales impresos en lenguas minoritarias	*Association Ekin v. France,* App. 39288/98 (2001), *Mesut Yurtsever and Others v. Turkey,* App. 14946/08 (20 January 2005).
	Derecho a la radio y la televisión radiodifusión en minoría idiomas	*Fernández Martínez v. Spain,* App. 56030/07 (12.06.2014), *Radio ABS v. Austria,* App.19736/92 (20 October 1997), *Sárközi and Kis v. Hungary,* App. 40354/04 (27.11.2007).
	Derecho a celebrar eventos culturales en lenguas minoritarias	*Eğitim ve Bilim Emekçileri Sendikası v. Turkey,* App. 20641/05 (25 September 2012), *Irfan Temel and others v. Turkey,* App. 36458/02 (3 March 2009), *Ulusoy and others v. Turkey,* App. 34797/03 (3 May 2007).
11	Derecho a la negociación colectiva	*Demir and Baykara v. Turkey,* App. 34503/97 (12 November 2008), *RMT v. UK,* App. 31045/10 (2014).

	Derecho a fundar un sindicato	*Osmani and Others v. North Macedonia,* App. 50841/99 (1999), *Young, James and Webster v. the United Kingdom,* App. 7601/76; 7806/77 (13 August 1981), para. 52.
	Derecho a unirse y no unirse a un sindicato	*Sigurður A. Sigurjónsson v. Iceland,* App. 264 (30.06.1993), para. 35, *Wilson, National Union of Journalists and Others v. the United Kingdom,* App. 30668/96, 30671/96 and 30678/96 (May 2005), *Young, James and Webster v. the United Kingdom,* App. 7601/76; 7806/77 (13 August 1981), para. 52.
	Derecho a abandonar un sindicato	*Gustafsson v. Sweden*, App. 15573/89 (25 April 1996), para.45.
	Derecho a conservar la afiliación a un sindicato	*Swedish Engine Drivers' Union v. Sweden,* App. (06.02.1976).
	Derecho de huelga en solidaridad	*Demir and Baykara v. Turkey,* App.34503/97(12.11.2008), *Enerji Yapi-Yol Sen v. Turkey,* App. 68959/01 (21 April 2009).

14		*J.D. and A v. United Kingdom,* App. 34369/97 (06.04.00), *Stec and Others v. the United Kingdom,* App. 65731/01 and 65900/01 (12 April 2006).
1 del Protocolo 1		*Béláné Nagy v. Hungary,* App. 53080/13 (10 February 2015), *Buffalo SRL in Liquidation v. Italy,* App. 38746/97 (03.07.2003), *Kruslin v. France,* App. 11801/85 (24.04.1990), *Olsson v. Sweden,* App. 10465/83 (24 March 1988), *Petrushko v. the Russian Federation,* App. 36494/02 (24.02.2005), *Sali v. Sweden,* App. 67070/01 (10 October 2006), *Shestakov v. Russia,* App. 48757/99 (18.06.2002), *Stec and Others v. the United Kingdom,* № 65731/01 and 65900/01 (12.04.2006), *Stran Greek refineries and Stratis Andreadis v. Greece,* App. 13427/87 (04.12.1994), *Van Mechelen and others v. the Netherlands,* App. 55/1996/674/861-864 (23.04.1997).
2 of del Protocolo 1		*Belgian Linguistic Case,* App. 474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 (23.07.1968),

		Catan and others v. Moldova and Russia, App.43370/04, 8252/05, 18454/06 (19 October 2012), *Cypris v. Turkey,* App. 25781/94 (10 May 2001), *D. H. and others v. Czech Republic,* App. 57325/00 (13 November 2007), *Orsusz v. Croatia,* App. 15766/03 (19 October 2012).
Protocolo № 12		*E.B. v. France,* App. 43546/02 (22.01.2008); *Sampanis and Others v. Greece,* App. 32526/05 (05.06.2008), *Sidabras and Dziautas v. Lithuania,* App. 55480/00, 59330/00 (23.06.2015).

Conclusion of Chapter 3

In Chapter 3 the main legal documents (conventions, charters) adopted at the European level for the protection of economic, social and cultural rights were analyzed. It is well known that the protection of these rights requires the knowledge of the European Human Rights System which rests on legal documents:

✓ the European Social Charter 1961. Part 1 of the ESC starts with the following statement: "The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realized[1481]". This part contains a political declaration and must be accepted irrespective of whether the corresponding provision of Part 2 has been accepted[1482]. The binding character of the European Social Charter 1961 is indirect, it requires the incorporation of national legislation and legal practice[1483]. Similar point of view was proposed in paragraph 53 of the case of *Autism-Europe v. France,* "States have an obligation to take not only legal action, but also practical action to give full effect to the rights recognized in the (revised) Chapter[1484]". Article A of Part 3 defines the extent of the hardcore article that must be accepted – six of articles 1,5,6,7,12,13, 16,19 and 20[1485] and total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs[1486].

The European Social Charter 1961 is in several ways a "weaker" human rights instrument than the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, because ratification or accession to the Charter is not a prerequisite for membership in

[1481] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1482] Council of Europe, 'Explanatory Report to the European Social Charter (Revised)' (adopted 03 May 1996) EST 163 para. 12-16 <https://rm.coe.int/16800ccde4> accessed 7 May 2023.

[1483] Mikkola M, 'Social Rights as Human Rights in Europe' in *EJSS* (№ 2/3, 2000) P.261.

[1484] *International Association Autism-Europe (IAAE) v. France* (European Committee of Social Rights) № 13/2002 (27 July 2002) §53 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france> accessed 26 May 2023.

[1485]Part III, Art. A. para.1. b. European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1486]Part III, Art. A., para 1.c. European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

the CoE, State Parties do not have to accept all rights contained in the treaty[1487] and monitoring of their compliance only works through a "quasi-judicial"[1488] mechanism with limited powers.

✓ The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The general framework for the economic, social, and cultural rights protection has been established by the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, whereas the aim of the European Social Charter in substantial regulation of fundamental rights in the areas of employment, social protection and health care[1489]. The Convention does not contain economic, social, and cultural rights in the traditional definition of the term. The reasons for this deliberative step were not expressly explained by the drafters. S. Greer explained the "almost exclusive emphasis on civil and political rights in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950" as a deliberate choice to contrast with "Soviet-style communism" in other parts of Europe[1490]. "It can be seen as linked to the discussions about two separate human rights treaties on the United Nations level, rather than one document reflecting the Universal Declaration of Human Rights, arising around the same time[1491]". Lack of these rights was remedied by the first Protocol to the Convention (including the protection of property and the right to education) and in particular European Social Charter/Revised European Social Charter. The European Court of Human Rights has noted that The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1492]: "[…] comprises more than mere reciprocal engagement between the contracting States. It created, over above a network of mutual bilateral undertakings, objective obligations which […] which benefit from "collective enforcement[1493]".

[1487] R. B. Churchil, U. Khaliq, pointed out the singularity of this possibility among international human rights treaties, which they explained with the considerable differences in the level of economic and social progress of the Council of Europe Member States. Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P.429.

[1488] Brillat R, 'The Supervisory Machinery of the European Social Charter: Recent Developments and their impact' in Grainne de Burca; B. De Witte, L. Ogertschnig (eds), *Social Rights in Europe* (Oxford University Press, New York, 2005) P. 35.

[1489] Mikkola M, 'Social Rights as Human Rights in Europe' in *EJSS* (№ 2/3, 2000) P.259-260.

[1490] Greer S, 'Europe' in D. Moeckli and others (eds) in *International human rights law* (Oxford University Press, Oxford and New York 2014) P.418.

[1491] Nowak M, 'Introduction to the International Human Rights Regime' (The Raoul Wallenberg Institute human rights library (Nijhoff, Leiden 2003) P.23.

[1492] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

[1493] *Ireland v. United Kingdom* (2018) №5310/71 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-181585%22]%7D > accessed 27 May 2023.

✓ The Charter of Fundamental Rights of the European Union 2000. The rights declared in these documents have a variable position. Moreover, the obligations of States to protect these rights arising from these documents and their comparison with the obligations of States to protect civil and political rights deserve special attention.

To improve the mechanism of protection of social rights, the following documents were adopted, namely:

1) Additional protocol of 1988[1494]to the European Social Charter 1961. By adopting it the list of rights was expanded: the right to equal opportunities with regard to employment and occupation, the right of elderly people to social protection, as well the following rights were added: the right to protection from poverty and social exclusion, the right to housing, the right to protection in case of termination of employment, the right to protection from sexual harassment in the workplace and from other forms of aggressive acts, the right of workers with family responsibilities to equal opportunities and equal treatment, the right of workers' representatives in enterprises.

2) Protocol 1991 to the European Social Charter 1961, which clarifies the functions of the Committee of Independent Experts and the Government Committee, strengthens the political role of the Committee of Ministers of the Council of Europe and PACE, as well as the active participation of social partners and NGOs.

3) Revised European Social Charter 1996. As in the case of the European Social Chatter 1961, the rights enshrined in Part II of the RESC can be applied selectively. Paragraph 1b of Article A (Obligations) of Part III establishes the framework of the fundamental articles of the Revised European Social Charter, including art. 1, 5, 6, 7, 12, 13, 16, 19, and 20. Compared with the European Social Chatter 1961, two new articles are added here because of their special importance - 7 (the right of children and youth to protection) and 20 (the right to equal opportunities and equal treatment in the field of employment and professional activity without discrimination based on sex). Accordingly, the number of fundamental articles to be adopted by the Parties has increased to six.

The following bodies participate in the monitoring procedure:

✓ the European Committee of Social Rights, consisting of nine experts who are elected by the Committee of Ministers, and an observer from the International Labor Organization. The Committee reviews reports submitted by Contracting parties and makes a legal assessment of compliance by these States with their obligations;

✓ the Government Committee consisting of representatives of the governments of the Contracting parties under the Charter. It is assisted by representatives of social partners who have an observer status. The Government Committee prepares decisions for the Committee of

[1494] Entered into force on September 4, 1992.

Ministers and selects, on the basis of socio-economic policy considerations, those situations for which recommendations should be made to the relevant Contracting parties;

- ✓ the Committee of Ministers that adopts resolutions for the entire control cycle and sends recommendations to States to change their laws or customs to bring them into compliance with compliance with the Charter.
- ✓ The Parliamentary Assembly of the Council of Europe and its bodies, including the monitoring Committee, The Bureau of the Assembly, as well as through special reports and other forms of work;
- ✓ Commissioner for Human Rights of the Council of Europe.

Based on the unified, universal and inseparable nature of human rights (the first and second generations: civil, political; economic, social and cultural rights), this Chapter 3 showed how the European Committee of Social Rights in its own decisions, conclusions and statements of interpretations protects social rights, declared in the European Social Charter of 1961 and the Revised European Social Charter of 1966.

Conclusión del Capítulo 3

En el Capítulo 3 se analizaron los principales documentos jurídicos (convenios, cartas) adoptados a nivel europeo para la protección de los derechos económicos, sociales y culturales. Es bien sabido que la protección de estos derechos requiere el conocimiento del Sistema Europeo de Derechos Humanos que se basa en documentos legales:

✓ La Carta Social Europea de 1961. La parte 1 del Carta Social Europea comienza con la siguiente declaración: "Las Partes aceptan como objetivo de su política, que se perseguirá por todos los medios apropiados, tanto de carácter nacional como internacional, el logro de condiciones en las que puedan realizarse efectivamente los siguientes derechos y principios[1495]". Esta parte contiene una declaración política y debe aceptarse independientemente de que se haya aceptado la disposición correspondiente de la Parte 2[1496]. El carácter vinculante de la Carta Social Europea de 1961 es indirecto, requiere la incorporación de la legislación y la práctica jurídica nacionales[1497]. Un punto de vista similar se propuso en el párrafo 53 del caso *Autismo-Europa v. Francia*, "Los Estados tienen la obligación de tomar no solo acciones legales, sino también acciones prácticas para dar pleno efecto a los derechos reconocidos en el Capítulo (revisado)[1498]". El artículo A de la parte 3 define el alcance del artículo principal que debe aceptarse: seis de los artículos 1, 5, 6, 7, 12, 13, 16, 19 y 20[1499] y el número total de artículos o párrafos numerados por los que está vinculado no es inferior a dieciséis artículos o sesenta y tres párrafos numerados[1500].

La Carta Social Europea de 1961 es, en varios aspectos, un instrumento de derechos humanos 'más débil' que el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950, porque la ratificación o la adhesión a la Carta no es un requisito previo para ser miembro del Consejo de Europa, los Estados Partes no tienen que

[1495] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1496] Council of Europe, 'Explanatory Report to the European Social Charter (Revised)' (adopted 03 May 1996) EST 163 para. 12-16 <https://rm.coe.int/16800ccde4> accessed 7 May 2023.

[1497] Mikkola M, 'Social Rights as Human Rights in Europe' in *EJSS* (№ 2/3, 2000) P.261.

[1498] *International Association Autism-Europe (IAAE) v. France* (European Committee of Social Rights) № 13/2002 (27 July 2002) §53 <https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france> accessed 26 May 2023.

[1499] Part III, Art. A. para.1. b. European Social Charter (18 October 1961) ETS 35<https://rm.coe.int/168006b642> accessed 25 May 2023.

[1500] Part III, Art. A., para 1.c. European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

aceptar todos los derechos contenidos en el tratado[1501] y la supervisión de su cumplimiento solo funciona a través de un mecanismo 'cuasi judicial'[1502] con poderes limitados.

✓ El Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950. El marco general para la protección de los derechos económicos, sociales y culturales ha sido establecido por el Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950, mientras que el objetivo de la Carta Social Europea es la regulación sustancial de los derechos fundamentales en los ámbitos del empleo, la protección social y la asistencia sanitaria[1503]. La Convención no contiene derechos económicos, sociales y culturales en la definición tradicional del término. Los redactores no explicaron expresamente las razones de este paso deliberativo. S. Greer explicó el "énfasis casi exclusivo en los derechos civiles y políticos en el Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950" como una elección deliberada para contrastar con el "comunismo de estilo soviético" en otras partes de Europa[1504]. "Puede verse como vinculado a las discusiones sobre dos tratados de derechos humanos separados a nivel de las Naciones Unidas, en lugar de un documento que refleja la Declaración Universal de Derechos Humanos, que surgió casi al mismo tiempo[1505]". La falta de estos derechos fue remediada por el primer Protocolo de la Convención (incluida la protección de la propiedad y el derecho a la educación) y, en particular, la Carta Social Europea/Carta Social Europea Revisada. El Tribunal Europeo de Derechos Humanos ha señalado que el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950[1506]: "[comprises] comprende algo más que un mero compromiso recíproco entre los Estados contratantes. Creó, además de una red de compromisos

[1501] R. B. Churchil, U. Khaliq, pointed out the singularity of this possibility among international human rights treaties, which they explained with the considerable differences in the level of economic and social progress of the Council of Europe Member States. Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P.429.

[1502] Brillat R, 'The Supervisory Machinery of the European Social Charter: Recent Developments and their impact' in Grainne de Burca; B. De Witte, L. Ogertschnig (eds), *Social Rights in Europe* (Oxford University Press, New York, 2005) P. 35.

[1503] Mikkola M, 'Social Rights as Human Rights in Europe' in *EJSS* (№ 2/3, 2000) P.259-260.

[1504] Greer S, 'Europe' in D. Moeckli and others (eds) in *International human rights law* (Oxford University Press, Oxford, and New York 2014) P.418.

[1505] Nowak M, 'Introduction to the International Human Rights Regime' (The Raoul Wallenberg Institute human rights library (Nijhoff, Leiden 2003) P.23.

[1506] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 26 May 2023.

bilaterales mutuos, obligaciones objetivas que [benefit] se benefician de la 'ejecución colectiva[1507]".

Carta de los Derechos Fundamentales de la Unión Europea 2000. Los derechos declarados en estos documentos tienen una posición variable. Además, las obligaciones de los Estados de proteger estos derechos derivadas de estos documentos y su comparación con las obligaciones de los Estados de proteger los derechos civiles y políticos merecen una atención especial.

Para mejorar el mecanismo de protección de los derechos sociales, se adoptaron los siguientes documentos, a saber:

1) Protocolo adicional de 1988 a la Carta Social Europea de 1961. Al adoptarlo, se amplió la lista de derechos: el derecho a la igualdad de oportunidades en materia de empleo y ocupación, el derecho de las personas mayores a la protección social, así como los siguientes derechos: el derecho a la protección contra la pobreza y la exclusión social, el derecho a la vivienda, el derecho a la protección en caso de despido, el derecho a la protección contra el acoso sexual en el lugar de trabajo y otras formas de actos agresivos, el derecho de los trabajadores con responsabilidades familiares a la igualdad de oportunidades y la igualdad de trato, el derecho de los representantes de los trabajadores en las empresas.

2) El Protocolo de 1991 de la Carta Social Europea de 1961, que aclara las funciones del Comité de Expertos Independientes y del Comité Gubernamental, refuerza el papel político del Comité de Ministros del Consejo de Europa y de la PACE, así como la participación activa de los interlocutores sociales.

3) Carta Social Europea revisada de 1996. Como en el caso de la Charla Social Europea de 1961, los derechos consagrados en la parte II pueden aplicarse selectivamente. El apartado 1b del artículo A (Obligaciones) de la Parte III establece el marco de los artículos fundamentales de la Carta Social Europea revisada, incluido el art. 1, 5, 6, 7, 12, 13, 16, 19, y 20. En comparación con la Charla Social Europea de 1961, se añaden aquí dos nuevos artículos por su especial importancia: el 7 (el derecho de los niños y jóvenes a la protección) y el 20 (el derecho a la igualdad de oportunidades y de trato en el ámbito del empleo y la actividad profesional sin discriminación por motivos de sexo). En consecuencia, el número de artículos fundamentales que deben adoptar las Partes ha aumentado a seis.

Los siguientes organismos participan en el procedimiento de seguimiento:

- ✓ el Comité Europeo de Derechos Sociales, compuesto por nueve expertos elegidos por el Comité de Ministros, y un observador de la Organización Internacional del Trabajo. El Comité examina los informes presentados por las partes Contratantes y realiza una evaluación jurídica del cumplimiento por parte de estos Estados de sus obligaciones;

[1507] *Ireland v. United Kingdom* (2018) №5310/71 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-181585%22]%7D > accessed 27 May 2023.

- ✓ el Comité de Gobierno compuesto por representantes de los gobiernos de las partes Contratantes en virtud de la Carta. Cuenta con la asistencia de representantes de los interlocutores sociales en calidad de observadores. El Comité Gubernamental prepara decisiones para el Comité de Ministros y selecciona, sobre la base de consideraciones de política socioeconómica, aquellas situaciones para las cuales se deben hacer recomendaciones a las partes Contratantes pertinentes;
- ✓ el Comité de Ministros que adopta resoluciones para todo el ciclo de control y envía recomendaciones a los Estados para que modifiquen sus leyes o costumbres para que cumplan con el cumplimiento de la Carta;
- ✓ la Asamblea Parlamentaria del Consejo de Europa y sus órganos, incluido el Comité de seguimiento, la Mesa de la Asamblea, así como a través de informes especiales y otras formas de trabajo;
- ✓ el Comisario de Derechos Humanos del Consejo de Europa.

Partiendo de la naturaleza unificada, universal e inseparable de los derechos humanos (primera y segunda generación: derechos civiles, políticos, económicos, sociales y culturales), este Capítulo 3 mostró cómo el Comité Europeo de Derechos Sociales en sus propias decisiones, conclusiones y declaraciones de interpretaciones protege los derechos sociales, declarados en la Carta Social Europea de 1961 y la Carta Social Europea Revisada de 1966.

Chapter 4. The role of the European Union in protection of economic, social, and cultural rights

Introduction of Chapter 4

In the **Chapter 4** the role of the European Union in protection of economic, social, and cultural rights is considered. It is crucial for the further analysis for several reasons:

1. The rights of the second generation are essential for upholding human dignity and ensuring that everyone can live a life of basic human decency.

2. These rights are necessary for achieving social justice and reducing inequality. By guaranteeing access to basic services like healthcare, education, and housing, the European Union helps to level the playing field and reduce disparities between different social groups.

3. An access to basic resources and opportunities can contribute to sustainable economic growth. When people can participate fully in the economy, they can contribute to its growth and development.

4. By ensuring that everyone has equal access to political and economic opportunities, the EU helps to promote civic engagement and participation.

5. The EU has committed to protecting these rights through various international treaties and agreements, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights 1966.

Fulfilling these obligations is essential for maintaining the EU's credibility on the international stage. The Chapter 4 consists of 5 paragraphs, which include:

-Development of the EU legislation on economic, social, and cultural rights (4.1),
-The comparative analysis of the Charter of Fundamental Rights of the European Union 2000 (4.2),
- Selected case-law of the Court of Justice of the European Union with the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (4.3),
- Establishing balance between economic and social rights (4.4),
- Selected case-law of the Court of Justice of the European Union on state obligations aimed at economic, social, and cultural rights protection (4.5).

Introducción del Capítulo 4

En el capítulo 4 se considera el papel de la Unión Europea en la protección de los derechos económicos, sociales y culturales. Es crucial para el análisis posterior por varias razones:

1. Los derechos de la segunda generación son esenciales para defender la dignidad humana y garantizar que todos puedan vivir una vida de decencia humana básica.

2. Estos derechos son necesarios para lograr la justicia social y reducir la desigualdad. Al garantizar el acceso a servicios básicos como la salud, la educación y la vivienda, la Unión Europea ayuda a nivelar el campo de juego y reducir las disparidades entre los diferentes grupos sociales.

3. El acceso a recursos y oportunidades básicos puede contribuir al crecimiento económico sostenible. Cuando las personas pueden participar plenamente en la economía, pueden contribuir a su crecimiento y desarrollo.

4. Al garantizar que todos tengan el mismo acceso a las oportunidades políticas y económicas, la UE ayuda a promover el compromiso y la participación cívicos.

5. La UE se ha comprometido a proteger estos derechos a través de varios tratados y acuerdos internacionales, incluida la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966.

El cumplimiento de estas obligaciones es esencial para mantener la credibilidad de la UE en la escena internacional. El capítulo 4 consta de 5 párrafos, que incluyen:

- Desarrollo de la legislación de la UE en materia de derechos económicos, sociales y culturales (4.1),

- El análisis comparativo de la Carta de los Derechos Fundamentales de la Unión Europea de 2000 (4.2),

- Jurisprudencia seleccionada del Tribunal de Justicia de la Unión Europea con referencia al Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950 (4.3),

- Establecer un equilibrio entre los derechos económicos y sociales (4.4),

-Jurisprudencia seleccionada del Tribunal de Justicia de la Unión Europea sobre obligaciones estatales destinadas a la protección de los derechos económicos, sociales y culturales (4.5).

4.1. Development of the EU legislation on economic, social, and cultural rights

The European Union is considered "a world leader in the protection of social rights through its European Pillar of Social Rights, and the balance between the market and social protections continues to be the subject of contentious debates[1508]". Nowadays it is committed to respect the universal, indivisible, and justiciable nature of economic, social, and cultural rights in every aspect of its functioning, to implement the provisions of the Universal Declaration of Human Rights 1948[1509] and to ratify and implement the key international human rights treaties, including core labour rights conventions, as well as regional human rights instruments. "The EU will speak out against any attempt to undermine respect for universality of human rights[1510]".

The process of establishing the institution of protection in the European Union has passed through several stages:

- "1st stage covered the period from 1950, when the European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted by the Council of Europe, to 1969.
- 2nd stage began in 1969. In the decision in a case of Stauder *v. City of Ulm*, the Court of Justice of the European Communities pointed out the importance of human rights provisions and the need for their normative consolidation in EU law and continues until the adoption of the Lisbon Treaty in 2007.
- 3rd stage covered the period from the adoption of the Lisbon Treaty to the present[1511]".

In the first period, the following documents were adopted:

1) Treaty establishing the European Economic Community, 25th of March 1957. Article 7 of this Treaty stated that: "Any discrimination on grounds of nationality is prohibited[1512]". The document laid "the foundations of a new legal order, the beginning of an original integration legal system, and contained the most important achievements in the field of not only economic, but also social and legal development[1513]".

[1508] Garben S, 'The Constitutional (Im)balance between 'the Market' and 'the Social' in *the European Constitutional Law Review* (13(01),2017) P.1-39.

[1509] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

[1510] Council of the European Union, 'Conclusions on Human Rights and Democracy (ANNEX I), the EU Strategic Framework on Human Rights and Democracy (ANNEX II) and an EU Action Plan on Human Rights and Democracy (ANNEX III)' (adopted 25 June 2012) < http://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf > accessed 2 May 2023.

[1511] White S, 'Accession of the European Union to the European Convention on Human Rights' in *Amicus Curiae* – (Issue 86, 2011) P. 7.

[1512] European Union, 'Treaty establishing the European Economic Community' (adopted 25th of March 1957) < https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11957E%2FTXT > accessed 1 May 2023.

[1513] Biryukov M.M, 'European law: before and after the Lisbon Treaty: A textbook' (Moscow: Statute, 2013) P. 18-19.

2) Treaty establishing the European Atomic Energy Community.

The second period relates to the decision in the case *Stauder v. City of Ulm*. The Court of the European Communities in 1969 established that: "Fundamental human rights are an integral part of the general principles of Community law, [they] follow from their common constitutional traditions[1514]". In a case of *Internationale Handelsgesellschaft mbH v. Einfuhr - und Vorratsstelle für Getreide und Futtermittel*, the Court of the European Communities confirmed that: "Respect for fundamental human rights is an integral part of the principles of European Community law, and their protection should be ensured in the future, including by the Court of the European Communities[1515]".

The next most important document is Council Directive 75/117/EEC on the approximation of the legislation of the Member States concerning the application of the principle of equal pay for men and women of 10 February 1975 on equal pay labor[1516] (no longer in force). It defined the principle of equal pay for equal work for men and women enshrined in Article 119 of the Treaty of Rome 1957 as equal pay for the same work or for work of the same value , as well as the prohibition of discrimination on the principle of gender in all types and conditions wages (Part 1 of Article 1 of Directive 75/117), obliging member States of the EU to enter in your legal systems measures of protection for workers whose rights in relation to the principle of equal pay have been violated, in particular:

- apply to the judicial authorities (Article 2),
- cancel all provisions contained in the legislation of States that contradict the principles of non-discrimination and equal pay (Article 3),
-guarantee the recognition or possibility of recognizing all provisions of collective agreements, wage tariff schemes, individual employment contracts that do not comply with the principle of equal pay for equal work of men and women as invalid or void, as well as the possibility of changing them in accordance with the principle of non-discrimination (Article 4),
- take the necessary measures to protect workers from unlawful dismissal if they file a complaint with the court due to a violation of the principle of equal pay,
- establish victimization rules for them (Article 5)[1517].

[1514] *Erich Stauder v City of Ulm – Sozialamt* [1969] Case 29-69, ECLI:EU:C:1969:57< https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61969CJ0029 > accessed 1 May 2023.

[1515] *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] Case 11-70,ECLI:EU:C:1970:114<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011> accessed 2 May 2023.

[1516] Council of the European Union, 'Council Directive 75/117/EEC on the approximation of the legislation of the Member States concerning the application of the principle of equal pay for men and women' (adopted 10 February 1975) OJ L 45, 19.2.1975 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31975L0117 > accessed 3 May 2023.

[1517] Council of the European Union, 'Council Directive 75/117/EEC on the approximation of the legislation of the Member States concerning the application of the principle of equal pay for men and women' (adopted 10 February 1975) OJ L 45, 19.2.1975 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31975L0117 > accessed 3 May 2023.

Moreover, the Directive also prohibited the use of a professional qualification system as a base for determining the difference in wages between men and women, which is explained by the need to adopt a gender-neutral system of job certification. It defined the need to base the classification system of professions used in the EU member States for determining remuneration with the same approach criteria for both men and women, and excludes any discrimination based on sex (Paragraph 2 of Article 1 of the Directive)[1518]. Based on this, the right of equal pay for equal work of men and women had to be guaranteed to workers either by national legislation, or could be fixed in a collective labor contract, but regardless of extending the validity of such a collective agreement to all employees of the enterprise or to certain categories of employees. It was necessary to include in the current legislation a norm obliging employers to include this right in each individual employment contract. At the same time, "any conditions of individual or collective labor contracts that are clearly discriminatory and violate the principle of equal pay for men and women should be recognized as labor the legislation of any Contracting State is knowingly invalid[1519]".

In 1976, the Commission of the European Communities, in its report "Protection of fundamental rights in the light of the creation and development of Community law", stated that:

- "an important element of any democratic system is the protection and respect for human rights and fundamental freedoms that allow any citizen to develop as an individual[1520]",
- "it is impossible to imagine democracy without the recognition and protection of fundamental human rights and guarantees of citizens ' freedom, and this should fully apply to Communities[1521]",
- "international treaties contain fundamental principles that should be guided, including within the framework of the legal order of the Communities. One of the most important treaties is the European Convention, which contains a «catalog of basic human rights (paragraph 28)[1522]".

[1518] Para.2 Article 1, Council of the European Union, 'Council Directive 75/117/EEC on the approximation of the legislation of the Member States concerning the application of the principle of equal pay for men and women' (adopted 10 February 1975) OJ L 45, 19.2.1975 <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31975L0117 > accessed 3 May 2023.

[1519] Council of the European Union, 'Council Directive 76/207/EEC On the implementation of the principle of equality of men and women in matters of employment, vocational education, promotion and working conditions' (adopted 9 February 1976) OJ L 39 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31976L0207> accessed 4 May 2023.

[1520] Commission of the European Union, 'Report submitted to the European Parliament and the Council' (adopted 4 February 1976) Bulletin of the European Community, Supplement 5/76, P. 5-16 <http://aei.pitt.edu/5377/1/5377.pdf > accessed 4 May 2023.

[1521] Ibid.

[1522] Commission of the European Union, 'Report submitted to the European Parliament and the Council' (adopted 4 February 1976) Bulletin of the European Community, Supplement 5/76, P. 5-16 <http://aei.pitt.edu/5377/1/5377.pdf > accessed 4 May 2023.

In 1986, the Single European Act was adopted. It marked a significant shift in the EU's focus towards economic integration. The Act paved the way for the creation of the European Single Market, which has had significant implications for the protection of economic, social, and cultural rights. In 1991, the Maastricht Treaty was adopted, which formally established the European Union and provided a framework for the development of a common European foreign and security policy. The Treaty also included provisions on social policy, including a commitment to promote the social dimension of the EU and to ensure that the needs of the most vulnerable groups in society are considered in the development of EU policies. In 1992, the EU adopted the Treaty on European Union (TEU). The TEU provided a legal basis for the EU's action in the field of social policy and established a new category of fundamental rights. These rights included the right to move and reside freely within the EU, the right to vote and stand as a candidate in municipal and European Parliament elections, and the right to diplomatic and consular protection from the EU member state in which a citizen is not resident.

It is important to note that cultural rights in the EU began to develop from the Maastricht Treaty of 1992. Later, Article 151 of the Treaty establishing the European Community (Amsterdam consolidated version) states the following:

"1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at … supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;
- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;
- artistic and literary creation, including in the audiovisual sector.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in order to respect and to promote the diversity of its cultures[1523]".

On the 28th of March 1996 it was noted that:

✓ "The importance of respect for human rights has been emphasized in various declarations of the Member States and of the Community institutions. Reference is made to respect for human rights in:

- the preamble to the Single European Act,
- the preamble to, and in Article F (2),
- the fifth indent of Article J. 1(2),

[1523] European Union, 'Treaty establishing the European Community (Amsterdam consolidated version) (adopted 10th November 1997) O JC 340 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11997E151&fromLT> accessed 1 May 2023.

-Article K.2(1) of the Treaty on European Union.

Article F provides that the Union is to respect fundamental rights, as guaranteed by the Convention Article 130 (2) of the EU Treaty provides that Community policy in the area of development cooperation is to contribute to the objective of respecting human rights and fundamental freedoms (the paragraph 32),

✓ fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from:

- the constitutional traditions common to the Member States,

- the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they arc signatories (the paragraph 33),

✓ respect for human rights is a condition of a lawfulness of Community acts (the paragraph 34)[1524]".

Next, in accordance with Report № 1 "The impact of new communication technologies on human rights and democratic values", the participating countries undertake to develop and promote the use of new communication technologies for the production and distribution of creative works made in Europe, especially in the field of culture and education, within the framework of new communication and information services, taking into account the need to protect the holders of rights to this work, to promote cultural exchange between the countries and regions of Europe through new communication and information services in order to promote and develop European cultural diversity[1525].

In 2000 the EU adopted the Charter of Fundamental Rights of the European Union. In addition to social rights, the Charter grants EU citizens political and economic rights. The structure of the Charter is also of interest. The Charter is based on values such as human dignity, equality, freedom and solidarity, which is quite unusual for a "pragmatic" interpretation of social and human rights within the EU. The consolidation of specific social and other rights is considered as a guarantee of the protection of the proclaimed values. The increased importance of social policy at the EU level was also noted by the approval of the Strategy for Economic Growth and Social Development at the Lisbon Summit. The Nice Treaty adopted in 2001 confirmed the former set of social obligations of the Union outlined in the Maastricht and Amsterdam Treaties and designated the fight against poverty and the modernization of social systems as a new priority. The goal was set to transform Europe by 2010 into a space based on the "knowledge economy", where social cohesion will be ensured.

The third period started with the adoption of the Lisbon Treaty. The preamble of the Lisbon Treaty 2007 emphasized the importance of further cultural integration by the following: "Getting inspiration from the cultural, religious and humanistic heritage of Europe, on the basis of which universal values – inviolable and inalienable rights were formed human personality,

[1524] European Court of Justice of the EU [1996] Opinion 2/94, pursuant to Article 228 of the EC Treaty <https://curia.europa.eu/juris/liste.jsf?pro=AVIS&num=c-2/94> > accessed 5 May 2023.

[1525] Committee on Parliamentary and Public Relations of the Council of Europe, 'Report № 1' in 'The impact of new communication technologies on human rights and democratic values' (adopted 25th of March 1997) < https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7690&lang=EN> accessed 6 May 2023.

freedom, democracy, equality and the rule of law, wishing to deepen solidarity between their peoples while respecting their history, culture and traditions[1526]». Section XIII of Article 167 of the Lisbon Treaty is devoted to culture and includes the following provisions: "the EU promotes the flourishing of the cultures of the member states while respecting their national and regional diversity, while at the same time bringing to the fore the common cultural heritage; supports and complements activities in the following areas: raising the level of knowledge and improving the dissemination of the culture and history of European peoples; preservation and protection of cultural heritage of European significance; cultural exchanges of a non-commercial nature; artistic and literary creativity, including in the audio-visual sector[1527]".

Later that year, the Special Protocol was adopted on the application of the Charter of Fundamental Rights of the European Union in Poland and the Great Britain[1528]. "This protocol confirmed *expressis verbis* that the Charter does not provide for the possibility of judicial coercion in the field of economic and social rights if such rights have not been regulated in the national law of these States, and established that it is not possible for the Court of Justice of the European Union or any court in Poland or the UK to declare that the legal regulations of these States do not comply with the Charter[1529]". Poland expressed that the Charter of Fundamental Rights of the European Union did not affect family law[1530], and announced its desire to accede to such a Protocol. The Czech Republic worried that ethnic Germans who were massively deported from the Czech Republic after World War II would be able to demand the cancellation of decisions on deportation and confiscation of property, as well as demand compensation[1531].

In October 2009, the European Council confirmed that the Protocol on the Application of the Charter of Fundamental Rights in Poland and the United Kingdom would also apply to the Czech Republic[1532]. The Protocol determines that:

[1526] European Union, 'Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community' (adopted 17th of December 2007) OJ C 306.

[1527] Ibid, Article 167.

[1528] Protocol № 7 on the application of the EU Charter of Fundamental Rights to Poland and to the United Kingdom (adopted 7 June 2016) OJ C 202 <http://www.consilium.europa.eu/uedocs/cmsUpload/cg0002re01.pdf > accessed 1 May 2023.

[1529] Shishkova N, 'Charter of fundamental rights of the European union the union and issues of judicial protection' in *Nauka I Praktica* (№11, 2012) P.7.

[1530] 'No EU rights charter for Poland'<http://news.bbc.co.uk/2/hi/europe/7109528.stm> accessed 1 May 2023.

[1531] European Union, 'Treaty of Lisbon and the Czech Republic'< http://www.czech.cz/en/Discover-CZ/Facts-about-the-Czech-Republic/Politics/The-Treaty-of-Lisbon-and-the-Czech -Republic > accessed 2 May 2023.

[1532] Council of the European Union, 'Pielikumā ir pievienota Briseles Eiropadomes prezidentvalsts secinājumu pārskatīta versija' 15265/1/09 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/LV/ec/110905 .pdf > accessed 3 May 2023.

1) “The Charter of Fundamental Rights of the European Union does not give the Court of Justice of the European Union or any national court the right to assess whether the legislation and practice of the state comply with the Charter's norms[1533]”;

2) “The Charter of Fundamental Rights of the European Union does not give citizens the right to go to court in order to protect the rights provided for by the Charter, unless these rights are provided for by the Charter, unless these rights are provided for by the legal acts of the respective state[1534]”.

In 2011, the Maastricht Principles on Extraterritorial Obligations of States in Principle 28, declared that: “All States must take action, separately, and jointly through international cooperation, to fulfil economic, social [,] and cultural rights of persons within their territories and extraterritorially….’Such obligations apply under the qualifying condition to fulfil economic, social [,] and cultural rights in its territory to the maximum of its ability[1535]”.

Below is a table devoted to the rights of the second generation.

Table 1. Economic, social, and cultural rights

Treaty on the European Union	Article 36 provides for the possibility of prohibiting or limiting the import, export, or transit of which are justified on grounds of public morality, public order and public security, protection of health and life of humans, animals or plant conservation, protection of national treasures of artistic, historical or archaeological the value of the protection of industrial and commercial property.
Treaty establishing the European Community (Rome, March 25, 1957)	Article 131, which indicate that the Association agreement with third countries should serve the interests and the prosperity of the inhabitants of these countries and territories to lead them along the path of economic, social and *cultural* development to which they aspire.

[1533] Protocol № 7 on the application of the EU Charter of Fundamental Rights to Poland and to the United Kingdom (adopted 7 June 2016) OJ C 202 <http://www.consilium.europa.eu/uedocs/cmsUpload/cg0002re01.pdf> accessed 1 May 2023.

[1534] Ibid.

[1535]Cernic J.L, ‘Sovereign Financing and Corporate Responsibility for Economic and Social Rights’ in Making Sovereign Financing and Human Rights Work, (Oxford; Portland, Oregon: Hart Publishing, 2014) P.155-156.

The Charter of the European Union on Fundamental Rights Section IV «Solidarity», section II «Freedoms» section III «Equality»	•Freedom of economic activity: freedom of professional activity and the right to work (Art.15), •Freedom of entrepreneurship (Art.16), •Ownership rights (Art.17), •Labor and related rights of employees. - the right to information and consultation of employees within the enterprise, the content of which is determined by the legal acts of the EU and individual member states (Art.27), - the right to collective negotiations and collective actions (Art.28), - the right to employment assistance, which is a "soft" form of the right to work in a market economy, inextricably linked with the presence of forced unemployment in society. The content of this right forms a guaranteed access of every person to the services of free employment services financed from budgetary funds (Art.28), - the right to protection from unjustified dismissal (Art.30), - the right to adequate and fair working conditions (Art.31). • Social protection: 1. The rights of the child (Art.24). Separately, the Charter establishes guarantees of the rights of children and youth in the field of labor relations (Article 32 "Prohibition of child labor and protection of young people in the workplace"). 2. The rights of the elderly. The right of older people to "lead a decent and independent life, participate in social and cultural life" is recognized as Article 25 of the Charter. 3. The rights of persons with disabilities (Art.26). • The right to protection of the family, motherhood and childhood. The protection of the family as an independent fundamental right is recognized by the Charter of Fundamental Rights of the European Union 2000 in the most

	abstract form: “The legal, economic and social protection of the family is ensured” (§ 1 of Article 33 of the Charter). • The prohibition of dismissal due to pregnancy, the right to maternity leave and to parental leave (§ 2 of Art.33 of the Charter). • The right to social security and social assistance serves the purpose of providing material and other assistance of the society to persons who need its protection «in such cases as pregnancy, illness, accidents at work, being dependent or old age, as well as in case of loss of work» (§ 1 of Art.34 of the Charter). • The right to health care covers both preventive measures of health protection and, in fact, the treatment of diseases. The content and conditions for the realization of the right to health care are determined by the legislation and law enforcement practice of the EU member states (Art. 35 of the Charter). • The right to access services of general economic importance (for example, transport or energy services) is recognized as the main one within the entire EU and should contribute to its «social and territorial cohesion» (Art. 36 of the Charter). • The right to education is one of the fundamental cultural rights that the Charter of Fundamental Rights of the European Union recognizes for all persons as a kind of fundamental freedoms (Art. 14 of section II “Freedoms”). Its content includes several powers: - the right to education itself as an opportunity for a person to freely choose for himself how, where and in what form he will study (§ 1 of art. 14 of the Charter). - the right to access the system of vocational training and advanced training (§ 1 of art. 14 of the Charter); - The right to receive compulsory education free of charge (Section 2 of art. 14 of the Charter);

	- Freedom to establish educational institutions "in compliance with democratic principles" (§ 3 of art. 14 of the Charter); - The right of parents to choose the method of teaching their children «in accordance with their religious, philosophical and pedagogical beliefs» (§ 4 of art. 14 of the Charter). • Environmental rights. In the Charter of Fundamental Rights of the European Union (Art. 37), this right is enshrined in a milder form. The protection of the environment and the improvement of its quality are recognized not as a separate subjective right, but as a legitimate interest, the provision of which serves as a principle of the EU in all areas of its competence. Based on this norm-principle, within the framework of the EU environmental policy, the environmental rights of a person and a citizen are established and consolidated, the source of which is the current EU legislation. • Consumer rights. The place of this category of rights in the Charter (Art. 38) is like the environmental rights discussed above. The protection of the rights and legitimate interests of consumers is recognized as one of the legitimate interests, and consumers in the EU should be provided with a “high level of protection”.

In 2016 the European Commission has published a joint appeal to the European Parliament and the Council of the EU “Directions of the EU strategy for international relations in the field of culture”. This document sets out the main objectives of the EU's cultural policy and the geography of cooperation. According to the authors of the document, the main goal of cultural relations is to promote diversity. They are sure that with the help of culture, it is possible to resolve conflicts and promote the social adaptation of refugees, as well as ensure the sustainable development of developing countries. The main principles of the EU cultural strategy are as follows:

✓ Promote cultural diversity and respect human rights.

This is the fundamental principle of the strategy. The State must respect the freedom of creative expression and protect it at the legislative level. The authors believe that this is the basis of a pluralistic approach to building international relations in the field of culture.

✓ Promote mutual respect and the establishment of intercultural dialogue.

The ability to listen to each other and conduct a dialogue is the basis for uniting different cultures. According to the document, an extremely important aspect of building strong international partnerships and understanding the role of communication through the Internet is understanding local peculiarities.

✓ Guarantee respect for the complementarity of cultures and the priority of the lower level in decision-making.

The EU seeks not only to coordinate cultural relations between the participating countries, but also to cooperate with cultural organizations from third countries. The EU considers the cultural characteristics of each partner country.

✓ Promote an integrated approach to culture.

The authors are convinced that the scope of culture is not limited only to art. It also promotes education, tourism and creative industries. Culture contributes to the struggle for peace and sustainable development, and this strategy indicates ways to promote this concept.

✓ Promote a culture based on cooperation.

The European Union uses a variety of geographical models and thematic programs for the development of international relations in the field of culture. For example, the program "Creative Europe", "The European factor in the field of democracy and human rights[1536]".

In 2017, the European Pillar of Social Rights (EPSR) and its endorsement by the Interinstitutional Proclamation on the EPSR on 23 October 2017[1537]. In the sphere of EU external action, this commitment has been reaffirmed multiple times, most notably in Objective 17 of the second EU Action Plan on Human Rights and Democracy, which covers the period 2015-19 and commits the EU institutions to fostering a 'comprehensive agenda to promote' ESC rights in every aspect of its external action, in a manner that respects the indivisible and interlinked nature of human rights while clearly recognising the 'human rights dimension in areas such as social policy, health, education, access to food and water, or standard of living'[1538].

In November 2019, the European Parliament and the Council adopted the European Social Fund Plus (ESF+) regulation for the period 2021-2027, which provides funding to

[1536] European Commission of the European Union, 'Joint communication' 'Towards an EU strategy for international cultural relations" Brussels' (08.06.2016) < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0029&from=EN>accessed 3May 2023

[1537]The EPSR was proclaimed jointly by the European Parliament, the Council, and the Commission at the Gothenburg Social Summit on 17 November 2017. Relevant documents are available at <https://ec.europa.eu/commission/priorites/deeper-and-fairer- economic-and-monetary-union/european-pillar-social-rights_en> accessed 2 May 2023.

[1538] European Union, 'Action Plan for Human Rights and Democracy 2015-2019, Annex to Council Conclusion on the Action Plan on Human Rights and Democracy 2015-2019' (№10897/15, 2015).

support employment, education, social inclusion, and equal opportunities across the EU. The ESF+ includes specific provisions for promoting access to employment for disadvantaged groups, including women, youth, and persons with disabilities.

Also, in 2019, the EU also adopted the European Accessibility Act, which aims to improve the accessibility of products and services for persons with disabilities across the EU. The act sets out minimum accessibility requirements for a range of products and services, including computers and other IT equipment, banking services, and public transportation.

In April 2021, the EU introduced the Digital Services Act, which aims to regulate digital services and platforms operating within the EU. The act includes provisions related to user rights, such as the right to access information and the right to freedom of expression, as well as obligations for online platforms to address illegal content and ensure transparency in their operations.

Finally, in 2020, the EU adopted 20 principles related to employment, social protection, and inclusion, including the right to fair working conditions, the right to social protection, and the right to quality education and training. The principles are not legally binding, but they provide a framework for social policies and initiatives across the EU.

Thus, The EU has established minimum standards for labour and social protections across its member states, which help ensure that all EU citizens enjoy a basic level of economic and social rights. However, the implementation and enforcement of these standards may vary across member states, leading to different levels of protection for economic, social, and cultural rights. Moreover, the EU faced criticism in recent years for its handling of issues related to rights of the second generation, particularly in areas such as employment rights, social protections, and access to healthcare and education. Critics argue that the EU's emphasis on economic policies and market-based solutions has resulted in a lack of attention to social and cultural factors and has led to growing inequality and social exclusion. However, it is important to show that cultural rights among rights of the second generation are regulated by:

- 65 legal acts regulating the sphere of preservation of cultural values, protection of cultural human rights,

- cultural activities in general: six normative legal documents included in the block of primary legislation,

- 38 documents from the block of secondary legislation,

-21 resolutions adopted by ministers for culture within the framework of the EU Council[1539].

[1539] Tabarintseva-Romanova K.M, 'Cultural policy and diplomacy of the European Union: textbook' (Yekaterinburg: Ural Publishing House. un-ta, 2018) P.30.

The EU faces three main cross-cutting challenges in realising its commitment to respect, protect and promote human rights in its external action whether civil and political or economic, social and cultural[1540]. These challenges are:

1) challenge of delivery (the difficulties connected to the practical implementation of the EU's theoretical commitment);

2) the challenge of coherence (the extent to which EU policies and outcomes are aligned with the EU's commitment to human rights);

3) the challenge of effectiveness (the extent to which the EU's commitment can be considered a success)[1541];

4) the lack of common understanding or agreed priorities;

5) the lack of consensus among the EU member states[1542], in other words, the problem of clarity of the rights of the second generation.

4.2. The comparative analysis of the Charter of Fundamental Rights of the European Union 2000

i. The drafting process of the Charter of Fundamental Rights of the European Union 2000

In the drafting process of the Charter of Fundamental Rights of the European Union 2000[1543] different international documents served as sources for securing right of the second generation:

- European Social Charter 1961[1544], Revised European Social Charter 1996[1545]. It is worth paying attention that on 3rd and 4th of June of 1999, the Cologne European Council concluded that: "In [a process of] drawing up such a Charter [of Fundamental Rights of the European Union 2000] account should … be taken of economic and social rights as contained in the European Social Charter [1961] and the Community Charter of the Fundamental Social Rights

[1540] The EU-funded FRAME research project ran from May 2013 until April 2017 and focused on the contribution of the EU's internal and external policies to the promotion of human rights worldwide. FRAME's publications and outcome documents are available at <http://www.fp7-frame.eu/frame-archive/> accessed 26 May 2023.

[1541] FRAME, 'Project - How to better foster Human Rights among EU Policies'; FRAME, 'Final Recommendations' (2017) P. 8-11.

[1542] Sunstein S, 'Against Positive Rights' in *East European Constitutional Review* (Vol. 2, Issue 1, 2001) P. 35.

[1543]Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1544] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

[1545] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

of Workers [1989][1546], insofar as they do not merely establish objectives for action by the [European] Union[1547]".

- International Covenant on Economic, Social and Cultural rights 1966[1548];
- Conventions and other documents adopted by the International Labour Organization, in particular, Declaration of the International Labour Organization on Principles and Fundamental Rights at Work 1998[1549].

According to an opinion of one of the direct participants in the drafting process, A. R. Berejho, it is important to distinguish:

✓ subjective rights which are contained in Chapters II "Freedom" and III "Quality" respectively such as:
- freedom of trade unions,
- right to negotiate and collective action, including strike (Articles 12 and 28),
- freedom to choose a profession and the right to work (Article 15),
- prohibition of discrimination in the field of labour law (Article 21 and 23). Above-mentioned rights and freedoms are characterized by the possibility of direct reference to them in courts.

✓ "programmatic rights[1550] which embody main directions of the state's socio-economic policy, are presented in Chapter IV "Solidarity":
- social insurance and social assistance (Article 34),
- health protection (Article 35),
- environmental protection (Article 35,37)
- consumer protection (Article 38).

[1546] Government of the European Community, 'Community Charter of the Fundamental Social Rights of Workers (adopted 9 December 1989) <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/community-charter-of-the-fundamental-social-rights-of-workers> accessed 26 February 2023.

[1547] Cologne European Council, 'Conclusions of the Presidency' (adopted 3- 4 June 1999) Annex IV <https://www.europarl.europa.eu/summits/kol1_en.htm#:~:text=It%20considers%20that%20the%20key,at%20Community%20and%20national%20levels> accessed 27 February 2023.

[1548]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 (ICESCR)< https://www.refworld.org/docid/3ae6b36c0.html> accessed 16 May 2023.

[1549]ILO Declaration, 'On Principles and Fundamental Rights at Work' (June 1998) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/-declaration/documents/normativeinstrument/wcms_766594.pdf > accessed 17 May 2023.

[1550] Bereijo R. A, 'La Carta de los derechos fundamentales de la Union Europea' *in Noticias de la Union Europea* (№ 192, Enero de 2001) P. 16.

In addition, "some members of [the drafting committee] sought to convince other members that social rights could be more than purely "programmatic" provisions, even where the objectives they were setting were too vague to be expressed as self-standing "rights" that courts could guarantee in the absence of any implementation measure[1551]". However, A. R. Berejho called the above-mentioned rights negative due to the fact that "they restrict the legislator and other representatives of state power who cannot ignore these rights or contradict the principles contained in them[1552]". Moreover, K. Kont-Kontson stated that: "The adoption of the Charter of Fundamental Rights of the European Union 2000 provide[d] also additional social protection to persons without making any distinction between social and civil and political rights[1553]". It can be concluded that the previous author tended to support the idea of indivisibility of human rights. As a result, rights of the second generation are negative as rights of the first generation.

Considering another feature of rights of the second generation as well as rights of the first generation - justiciability, it was understood by members of the drafting committee that some of these provisions in the Charter of Fundamental Rights of the European Union 2000[1554] would be only justiciable in combination with legislative or other measures adopted at the European Union or member state level (for example, the right to housing requires some measures), and as means to interpret such acts, or to assess their validity: in other words, such social guarantees were not to be invoked as free-standing "subjective rights" that the individual could claim, unless some measure had been adopted to implement the said guarantee[1555]". Despite the fact that rights of the second generation required some measures for their justiciability, "the drafters of these provisions were uncomfortable with the idea of guaranteeing certain entitlements in the field of application of law of the European Union[1556]". The question arises "why?" and the answer is that it led to some disagreements and the need to include certain provisions for the protection of economic, and social rights "in accordance with community law and national legislation and practice". Similar provisions are found in almost all articles of Chapter IV "Solidarity»:

[1551] Schutter O.D, 'The European Pillar of Social Rights and the Role of the European Social Charter in the EU legal order' (2018) P.10 < https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132 > accessed 18 May 2023.

[1552] Ibid.

[1553] Kont-Kontson K, 'International State Obligations in protecting social rights: right to social security' (University of Tarty 2005) P.48.

[1554] Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1555] Schutter O.D, 'The European Pillar of Social Rights and the Role of the European Social Charter in the EU legal order' (2018) P.15 < https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132 > accessed 18 May 2023.

[1556] Schutter O.D, 'The European Pillar of Social Rights and the Role of the European Social Charter in the EU legal order' (2018) P.9 < https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132 > accessed 18 May 2023.

-the right of workers to information and consultation (Article 27),
-the right to negotiate and collective action (Article 28),
-protection in case of unjustified dismissal (Article 30),
-social insurance and social assistance (Article 34),
-health protection (Article 35).

It is important to note that two above – mentioned articles (namely, Articles 28 and 30) were considered by representatives of three countries as "an avalanche for lawsuits". For this reason, the United Kingdom decided to resume the discussion on economic and social rights during the Berlin meeting in June 2007[1557]. It proposed that including social rights into the Charter of Fundamental Rights of the European Union 2000[1558] could complicate business and increase associated costs, and, as a result, British citizens could be able to apply to the Court of Justice of the European Union in order to achieve protection of economic and social rights provided for by the Charter of Fundamental Rights of the European Union 2000.

Regarding civil and political rights and it can be noted that their protection is increasingly definitely shifting to the social and economic sphere. This phenomenon is not so much related to the principle of indivisibility as to the high level of development of the democratic systems of the member States of the European Union, which rarely allow violations of these rights and freedoms. This trend is confirmed by the following articles:
-freedom of thought, conscience and religion (Article 10);
-freedom of speech and information (Article 11);
-freedom of Association and Association (Article 12);
-prohibition of discrimination (Article 21);
-equality of men and women (Article 23);
-freedom of movement and residence (Article 45)[1559].This document contains a cautious approach to social rights, according to which the state is obliged to take measures if it guarantees a social right.

To sum up, the drafting process began in 1999. The Charter of Fundamental Rights of the European Union 2000 was initially drafted by a working group, which was chaired by former French President V. Giscard d'Estaing. The working group consisted of representatives from

[1557] Shishkova N, 'Charter of fundamental rights of the European union the union and issues of judicial protection' in *Nauka I Praktica* (№ 11, 2012) P.7.

[1558]Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1559] T. Ushakova thinks that often discrimination is accompanied by an infringement of freedom of conscience or religion, freedom of Association, or the right of equality between men and women in the field of labour law. For example, Article 23 of the Charter sets out the General requirement of equality of men and women in all spheres, highlighting, in particular, the sphere of work, employment and remuneration. This article offers a broader interpretation of equality than the similar Article 141 of the Treaty on the European community, which deals with the equality of workers and employees in respect of pay. Ushakova T, 'Khartiaya osnovnyh prav evropeyskogp sojuza: dva shaga vpered I oodin nazad v protsesse evropeyskoy integrazii' (2/2002, № 2) <http://evolutio.info/ru/journal-menu/2002-2/2002-2-ushakova > accessed 26 May 2023.

the European Parliament, the European Commission, and the member states. The first draft of the Charter of Fundamental Rights of the European Union 2000 was presented to the plenary session in December 2000.The final version was adopted on 2 October 2000, and it was officially on 7 December 2000. The Charter of Fundamental Rights of the European Union 2000 became legally binding with the entry into force of the Treaty of Lisbon in 2009. It sets out a range of individual rights and freedoms, such as the right to life, liberty and security of person, freedom of expression, and freedom of assembly, as well as economic, social, and cultural rights, such as the right to work, education, and health.

ii. Content of the Charter of Fundamental Rights of the European Union 2000

The Charter of Fundamental Rights of the European Union was adopted in Strasbourg (France) on the 18th of December of 2000. It is the first single document in the history of the European Union which contains a full list of civil, political, economic, and social rights. Four years later, it was incorporated in a form of the second part of the Treaty establishing the Constitution for the European Union[1560].

The preamble of the Charter of Fundamental Rights of the European Union 2000 proclaims that: "being aware of its spiritual and moral historical heritage, the [European] Union is based on indivisible and universal values – human dignity, freedom, equality, solidarity, democracy and the rule of law[1561]". These principles which are established in the preamble make classification of human rights of the Charter distinctive.

There are main sections in which the Charter of Fundamental Rights of the European Union 2000 is divided:

1. Dignity. It examines basic rights and guarantees that can ensure a decent existence for every person as part of a single society (for example, the right to life, the prohibition of torture, and the abolition of slavery, etc.).
2. Freedoms. There is a more negative category of human rights (the prohibition of interference in the personal life of other people or authorities). The main purpose of these rights is to regulate the level of personal freedom in modern society: everyone can have personal inviolability, while no one has the right to invade his family and personal life. Many changes were introduced regarding the protection of personal data, freedom of thought in the context of religious and scientific views. It should be noted that the rights from this category also control the freedom of entrepreneurial activity.

[1560] European Union, 'Treaty establishing the Constitution for the European Union' (adopted 29 October 2004) <https://www.cvce.eu/en/recherche/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/6732a7a6-cbe1-4cc5bd1569107f0d1ba4#:~:text=The%20Treaty%20establishing%20a%20Constitution,more%20transparent%20to%20European%20citizens> accessed 27 May 2023.

[1561]Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

3. Equality. It describes in more detail the norms that are aimed at creating and ensuring the so-called third value, which was specified in the preamble the Charter of Fundamental Rights of the European Union 2000. Most attention is paid to the rights of persons who need enhanced social protection: children, elderly, and disabled people.

4. Solidarity. It is made specifically to mitigate the contradictions between social classes because social justice is also the main goal of the Charter of Fundamental Rights of the European Union 2000. Most of all, this injustice is noticeable between hired workers and employers. According to the legislation, every worker can use the right to provide information or advice at work, and an opportunity to conduct collective negotiations. Moreover, the section contains provisions concerning health protection, social security and other rights and guarantees in the social aspect of life.

5. Citizenship. It describes basic rights that are directly related to the presence of the EU citizenship. Therefore, it applies only to those who are a citizen of the European Union.

The Charter of Fundamental Rights of the European Union 2000 as the result of the common efforts of European countries to codify international agreements in the field of human rights, has its own special features. They are the following:

✓ A completely different approach to human rights classification which is based on the key values of the world community. The Charter of Fundamental Rights of the European Union 2000 drew ideas from its predecessors (for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950) and expanded a content of some rights considering existing realities. In this regard, completely new rights are set out that were not previously found in similar documents on the topic (for example, the right to governance, the right to the integrity of the individual, rights of disabled and elderly people, the right to the environment, etc.).

✓ The Charter of Fundamental Rights of the European Union 2000 was designed for a certain subject of law, namely supranational organizations of the European Union, the EU countries themselves and their citizens, as well as citizens located on the territory of these countries.

✓ The Charter of Fundamental Rights of the European Union 2000 is a "new bill of right[1562]". Its value was equated with the documents known in history as:

-"the French Declaration of the Rights of Man and Citizen of 1789 [which] preceded the first French Constitution of 1791;

- the American Declaration of Independence of 1776 [which] preceded the US Constitution of 1787,

- the Russian Declaration of the Rights of the Working and Exploited People of 1918;

-the Constitution of Russian Soviet Federative Socialist Republic of 1918[1563]".

[1562] Kashkin S.Y, 'The law of the European Union: study' (Moscow: Yurayt, 2013) P. 8.

[1563] Kudryavtsev M, 'The concept of human rights in the Charter of the European Union on Fundamental Rights' in *International justice* (2/2013).

iii. Limits of the Charter of Fundamental Rights of the European Union 2000

The main limitation which the Charter of Fundamental Rights of the European Union 2000 has, is that it forbids "an enlargement of the powers of the [European] Union" in economic and social rights' protection in according to the paragraph 2 of Article 51 of the Charter. The latter declares that: "The Charter [of Fundamental Rights of the European Union 2000] does not extend the field of application of [European] Union law beyond the powers of the [European] Union or establish any new power or task for the [European] Union or modify powers and tasks as defined in the Treaties»[1564].

There are also other limitations of the Charter of Fundamental Rights of the European Union 2000 which relate to:

-fair and equal working conditions ("Limit the maximum working time and the right to daily and weekly rest time, as well as to annual paid leave", Article 31).

-prohibition of child labor and protection of young people in the workplace ("Limitation of the scope of use", Article 32).

-restrictions of guaranteed rights ("Any limitation on the exercise of the rights and freedoms recognized by the Charter must be provided for by law, respect the essence of those rights and freedoms. [It] must necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others"[1565], Article 52).

-degree of protection ("No provision of the Charter shall be interpreted as restricting or encroaching on human rights and fundamental freedoms recognized within their respective scope of application by the law of the Union, international law and international conventions to which the Union, the Community or all Member States are parties, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the constitutions of the Member States[1566]", Article 53).

- prohibition of abuse of rights («None of the provisions of the Charter should be interpreted as implying the right of anyone to conduct activities or perform actions aimed at destroying the rights and freedoms, or at creating broader restrictions on rights and freedoms than those provided for in the Charter[1567]", Article 54).

[1564] Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1565]Article 52. Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1566] Article 53. Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1567] Article 54. Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

Moreover, the Charter of Fundamental Rights of the European Union 2000 is:

1) Limited in enforcement. It is not directly enforceable in national courts.
2) Not covering and clarifying all fundamental rights.
3) In conflicts with national law. There may be situations where national law conflicts with the provisions of the Charter of Fundamental Rights of the European Union 2000, which can make it difficult to apply the across the European Union.
4) Not providing the same level of protection for third-country nationals, such as refugees and migrants.

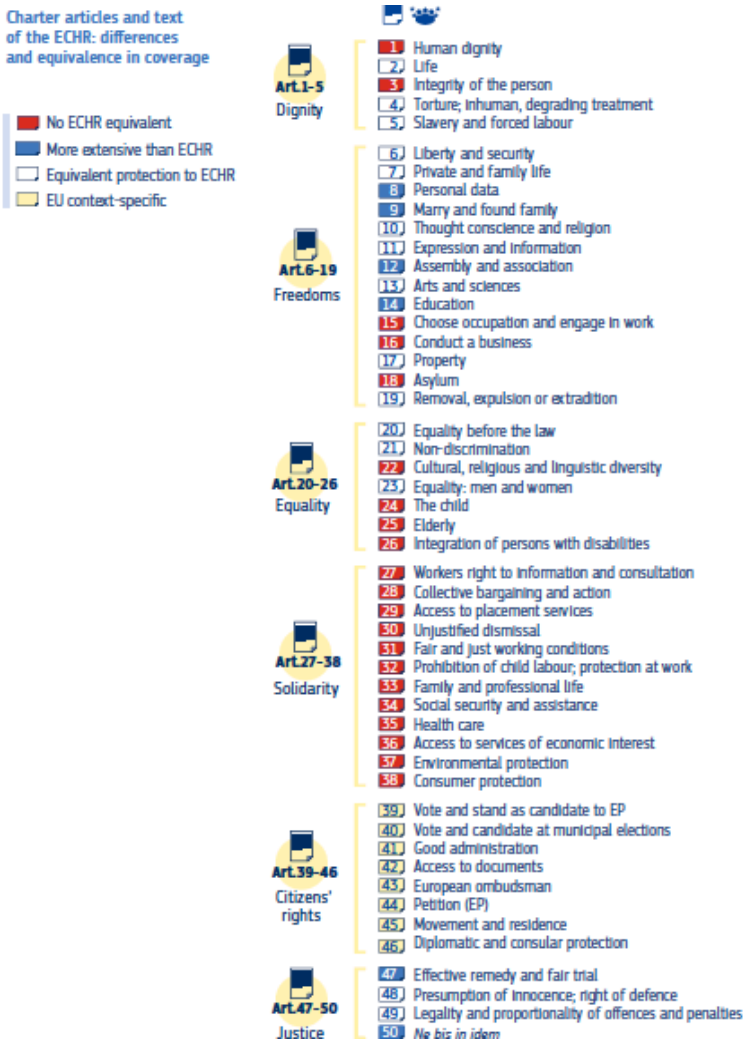
iv. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, European Social Charter 1961 and Revised European Social Charter 1966: human rights context' comparison

In accordance with Part 3 of Article 52 of the Charter of Fundamental Rights of the European Union 2000, "The Charter [of Fundamental Rights of the European Union 2000] is intended to provide the necessary link between the Charter and the [European] Convention [for the Protection of Human Rights and Fundamental Freedoms 1950, establishing the following principle: to the extent that the rights from the Charter correspond to the rights guaranteed by the Convention, their meaning and their limits, including permissible restrictions, should be the same as they are provided for in the Convention[1568]". In other words, the legislator, introducing and adopting restrictions, must comply with standards equivalent to those set out in the detailed regime of restrictions in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

The first issue for consideration is human rights' content. There is a table[1569] which demonstrates how articles of the Charter of Fundamental Rights of the European Union 2000 correspond articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

[1568] Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1569] EU Agency for fundamental rights, 'Guidance in 'Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level (2020) P.27.



It is shown that certain articles of the Charter of Fundamental Rights of the European Union 2000 such as:

- 1,3, 15,16, 18, 22, 24 – 38 do not have an equivalent in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950;
- 8,9,12,14,47, and 50 are more extensive than in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950;
- 2,4,5,6,7, 10,11,13,17,19,20,21,23,48 and 49 provide equivalent protection as in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950;
- 39 - 46 have specific EU context.

Next, there is a need to compare the Charter of Fundamental Rights of the European Union 2000 with the European Social Charter 1961, and the Revised European Social Charter 1996. One of the works which shows how these documents provide house-related rights belongs to M. Uhry. The author demonstrated house-related obligations for certain criteria such as:

- Affordable housing;
- Appeal and legal recourse to ensure the right to housing;
- Evictions;
- Homelessness;
- House of adequate quality and a healthy environment;

- Shaping of public policy and its evaluation;
- Shelter/emergency accommodation;
- Roma and travelers.

Housing-related binding obligations[1570]	**RESC**	**CFREU**
Shaping of public policy and its evaluation		
Reliable data	art.30,31	art.34.3
The legal guarantee of the right to housing; effectiveness of policy; Measurable progress; reasonable time frame; Adequate resources and *procedures*; Priority groups; the State remains accountable	art.31	art.7, 34.3
Housing of adequate quality and a healthy environment.		
Minimum quality; adequate facilities; Housing size adapted to family structure; Continuous access to utilities;	art.31	art.7, 34.3
Affordable housing		
Affordable cost for those on lowest income;	art.31, E	art.7, 34.3.
Sufficient quantity of housing	art.31	art.7, 34.3
Vulnerable households as priority groups for social housing	art.31, E	art.7, 21, 34.3
Reasonable waiting periods for social housing (and possibility of appeal)	art.31	art.7,34.3
Individual benefit housing	art.13.1, 31, E	art.7, 21, 34,
No restrictions on access to housing benefit to rights holders	art.30,31	art.7, 34.3
Appeal and legal recourse to ensure the right to housing		
Appeal, legal aid, and compensation	art.30,31	art.7,34.3
Obligation of result	art.30,31	art.7,34.3.
Evictions		
Keep down the number of evictions	art.31	art.7, 34.3

[1570] Uhry M, 'Housing-related binding obligations on States: From European and International case-law' (June 2016) P.3-14.

Statutory protection against eviction	art.31	art.7,34.3
Protective legal framework	art.30,31, E	art.7,21,34.4
Illegal occupation	art.31	art.7,34.3
Illegal occupation. No evictions at night or in winter	art.12,31	art.7, 34.2,
Help with rehousing	art.31	art.7, 34.3
Notice period preceding the eviction	art.31-2	art.34.3
Homelessness		
Definition	art.31	art.7, 34.3
Specific measures for vulnerable groups	art.12,30,31	art.7,34.2,34.3
Effect of town planning	art.31	art.4,7
Shelter/emergency accommodation		
Eligibility for emergency accommodation	art.31	art.4,7
Shelter for children	art.31	art.4,7
Regulation of emergency shelter	art.31	art.4,7
Minimum quality criteria for emergency support	art.12,13	art.4,7, 34.2
Emergency accommodation services must preserve dignity	art.31	art.4, 7
Exit from emergency accommodation	art.31	art.4, 7
Roma and travellers		
Specific facilities	art.31, E	art.4,7,21
Caravan dwellings	art.31, E	art.4,7,21
No segregational solutions	art.31, E	art.7,21, 34.3
Social policy measures must be acceptable	art.31, E	art.7,21, 34
Roma people and travellers are vulnerable groups who must benefit from measures that are in line with their way of life and their local attachments	art.31, E	art.7,21,34.3

Another category is employment rights. For example, according to Article 1 of the European Social Charter 1961, "The Contracting Parties undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment[1571]". However,

[1571] European Social Charter (18 October 1961) ETS 35 <https://rm.coe.int/168006b642> accessed 25 May 2023.

the Charter of Fundamental Rights of the European Union 2000 does not have a duty to provide a full employment.

Next, it is children' rights. The Charter of Fundamental Rights of the European Union 2000 does not say on issue of childcare services directly unlike the European Social Charter 1961 (Article 17 "The right of mothers and children to social and economic protection"). However, in Article 33 of the Charter of Fundamental Rights of the European Union 2000 provides the following: "The family shall enjoy legal, economic and social protection. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child"[1572].

It is important to note that there are certain areas, in which the Charter of Fundamental Rights of the European Union 2000 goes beyond the European Social Charter 1961, or vice versa. For example, it is the right to fair remuneration. This right is declared in Article 4 of the European Social Charter 1961). The Charter of Fundamental Rights of the European Union 2000 refers to one dimension of this right, which concerns the right to equal remuneration for women and men. "A remuneration that would be below the poverty rate and thus would not allow the worker to life a decent life, may be considered as contrary to human dignity or to constitute an inhuman or degrading treatment, in violation of Articles 1 and 4 of the Charter of Fundamental Rights of the European Union 2000 respectively[1573]".

Article 8 of the Revised European Social Charter 1996 on the right of employed women to the protection of maternity to a large extent summarizes what the Directive on safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding 1992[1574].Many authors explain this fact by the lack of the EU's relevant competence. There are areas about which the European Social Charter 1961 and the Revised European Social Charter 1996 are silent, although the case-law of the European Committee of Social Rights has compensated for this[1575].

[1572]Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1573] *M.S.S. v. Belgium and Greece* (2011) № 30696/09 para. 263 <https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-628%22]}> accessed 28 April 2023; Schutter O.D, 'The European Pillar of Social Rights and the Role of the European Social Charter in the EU legal order' (2018) P.9 < https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132 >> accessed 18 May 2023.

[1574] Council of the European Union, 'Directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding' OJ L 348, 92/85/EEC (19 October 1992) P. 1–7.

[1575] The ECSR has interpreted Article 11 CFREU (right to protection of health) as including the right to healthy environment. *Marangopoulos Foundation for Human Rights v. Greece* (European Committee of Social Rights) № 30/2005 (6 December 2006) para.195.

To sum up, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the European Social Charter 1961, and the Revised European Social Charter 1966 are crucial instruments in protecting and promoting human rights in Europe. They have played a vital role in shaping the human rights context in Europe, and their continued use and implementation will be essential in advancing the human rights agenda in the region. As such, it is imperative that member states uphold their obligations under these instruments and work towards promoting and protecting human rights for all individuals in Europe.

4.3. Selected case-law of the Court of Justice of the European Union with the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

According to Article 51(1) of the Charter states that the institutions of the Union shall "respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties[1576]". Two principles, namely:

- the principle of conferral (Article 5(1) and (2) TEU)[1577]
- the principle of subsidiarity (Article 5(3) TEU)[1578] within the European Union.

The role of the EU Court of Justice is special because it can make important decisions on the protection of fundamental human rights. In support of it, a judge F. Mancini stated that: "The reading by the Court of Justice of the European Union in the EU law of the unwritten Bill of Human Rights is actually the most outstanding contribution made to the constitutional development of Europe[1579]".

The first decisions including human rights issues did not contain references to specific articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 or the case-law of the European Court of Human Rights. Examples of such decisions include the following: *Stauder v. City of Ulm* (where it was concluded that: "The fundamental human rights enshrined in the general principles of community law and protected

[1576] Article 51, Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1577] Article 5(1) and (2), Consolidated version of the Treaty on European Union (adopted (9 May 2008) Official Journal 115 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12008M005> accessed 27 May 2023.

[1578] Article 5(3), Consolidated version of the Treaty on European Union (adopted (9 May 2008) Official Journal 115 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12008M005> accessed 27 May 2023.

[1579] Mancini F, 'The making of a constitution for Europe' in *C.M.L. Rev* (Vol.26, 4/1989) P. 611.

by the Court[1580]"), and *Internationale Handelsgesellschaft mbH v. Einfuhr-und Vorratsstelle für Getreide und Futtermittel*. In the latter case, the Court of Justice of the European Union declared that: "In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice; the protection of such rights, whilst inspired by the constitutional traditions common to the member states, must be ensured within the framework of the structure and objectives of the community[1581]".

It is worth mentioning other sources of inspiration. For example, in a case of *Nold v. Commission*, the Court of Justice of the European Union made the following conclusion: "The Court of Justice of the European Union cannot support measures that are incompatible with the fundamental rights recognized and protected by the constitutions of these States. In turn, international treaties of the Member States for the protection of human rights, in which the Member States participate or are the parties may provide guidelines that should be followed within the framework of Community law[1582]". This judgement shows that not only constitutional traditions of Member States are a possible source of fundamental human rights, but also international human rights treaties in which Member States are parties which can be as a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. According to an opinion of Russian author, A.S. Ispolinov, «in determining the list and scope of application of specific human rights at the EU level, the Court of Justice of the European Union draws inspiration from two sources the constitutional traditions of the member states and international conventions[1583]".

In the period from 1975 to 1998, the Court of Justice of the European Union cited the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 "in more than 70 of its decisions[1584]". Next case mostly clarified some international treaties to which Article 307 of the TEU applied. A case of *Attorney-General v. Burgoa*[1585] the Court of Justice of the European Union mentioned two treaties relevant to human rights' protection which were concluded before 1958: the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and the United Nations Charter. Article 307 of TEU

[1580] *Erich Stauder v City of Ulm – Sozialamt* [1969] Case 29-69,ECLI:EU:C:1969:57 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61969CJ0029 > accessed 28 May 2023.

[1581] *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] Case 11-70, E.C.R.419 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011> accessed 28 May 2023.

[1582] *J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities* [1974] Case 4-73, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61973CJ0004> accessed 28 May 2023.

[1583] Ispolinov A.S, 'Evolution of the practice of the Court of Justice of the European Union in the field of human rights (1952-2009)' in *Vestn. Mosk. Un-ta. ser. 11. Law* (4/2013) P.83.

[1584] Douglas-Scott S, 'A tale of two courts: Luxembourg, Strasbourg and the growing European human rights acquis' in *C.M.L.Rev.* (Vol.43, 3/2006) P. 645.

[1585] Para.6, *Attorney-General v. Burgoa* [1980] Case 812/79, ECR 2787.

also affected those Member States which acceded subsequently to the EU with obligations under later human rights treaties, such as:

- the International Covenant on Civil and Political Rights 1966[1586],
- the International Covenant on Economic Social and Cultural Rights 1966[15871588].

In the period from 1975 to 1998, the Court of Justice of the European Union cited the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in more than 70 of its decisions[1589].

For example, in a case of *Herbert Wachauf v. Bundesamt fur Ernahrung und Forstwirtschaft*, the plaintiff was a farmer engaged in the production of milk on leased land for this purpose. After the end of the lease term, he applied for compensation which should be paid if the milk producer decides to close its production. German legislation which establishes such an order, implemented the norms of Regulation 857/84, adopted within the framework of the Common agricultural policy[1590]. At the same time, the German legislation contained a reservation that if a milk producer working on leased land applied for such compensation, such an application must be accompanied by the written consent of the owner. In the case of the applicant, such consent was first given by the owner of the land, and then withdrawn, which served as the basis for the refusal of the authorized bodies to pay the applicant the requested compensation. In its decision, the Court of Justice of the European Union established the following: "Community norms, as a result of which, after the end of the lease term, the tenant is deprived of the right to use the results of his work and investments in the leased enterprise without any compensation, will be incompatible with the requirement to protect fundamental human rights in the Community law and order; since this requirement is also mandatory for Member States when they implement Community law norms, the Member State should, as far as possible, apply these norms in accordance with this requirement[1591]".

[1586]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[1587]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTC 171 (ICESCR) <https://www. refworld.org/docid/3ae6b36c0.html> accessed 16 May 2023.

[1588] There are several other UN-sponsored human rights treaties which, combined with the ICCPR, are considered to form the 'core' of universal human rights protection. Most or all the EU Member States are also party to these instruments: the ICESCR, the Convention on the Elimination of All Forms of Racial Discrimination (660 UNTS 195), the Convention on the Elimination of Discrimination Against Women (1249 UNTS 13), the Convention Against Torture (1465 UNTS 85), and the Convention on the Rights of the Child (1577 UNTS 3).

[1589] Douglas-Scott S, 'A tale of two courts: Luxembourg, Strasbourg, and the growing European human rights acquis' in *C.M.L.Rev.* (Vol.43, 3/2006) P. 645.

[1590] Council of the European Union, 'Regulation adopting general rules for the application of the levy referred to in Article 5c of Regulation № 804/68 in the milk and milk products sector' [1984] O.J. L 90, № 857/84, P.13–16.

[1591] Para.19. *Herbert Wachauf v. Bundesamt fur Ernahrung und Forstwirtschaft* [1989] Case 5/88, OJ L 90 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0005> accessed 28 May 2023.

In another case, *Society of unborn children Ltd v. Stephen Grogan and others* [1592] the plaintiff asked to prohibit defendants from distributing information to students about medical clinics in the UK that are engaged in abortion. Abortion in Ireland has always been prohibited. The defendants referred to the fact that the introduction of such a ban is contrary to EU law, since it represented. It would constitute an unjustified restriction on the freedom to provide services in the European Union, they also stated that this ban violates such rights as the right to freedom of speech and the right to receive and disseminate information, enshrined in the European Union cited the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The Court of Justice of the European Union indicated that:

- "Termination of pregnancy in clinics is a service in the sense of Article 60 of the EU Treaty[1593]";

- "It is obvious from the case materials that the connection between the activities of the student association and the abortion services provided in another EU country (taking into account the fact that the students themselves did not have any interaction with the clinics about which they distributed information) is too inconclusive and insignificant for the ban on the dissemination of such information to be recognized as a restriction on the freedom of providing services in the EU[1594]".

In next case, *Vereinigte Familiapress Zeitungsverlags und Vertriebs GmbH v. Heinrich Bauer Verlag*, the Austrian publishing house demanded that the German publishing house stop distributing newspaper publications published in Germany on the territory of Austria, in which readers were offered to participate in competitions with the possibility of receiving prizes if they won. It justified its demand by the fact that even though such publications are allowed in Germany, they are prohibited by Austrian law. The Austrian Court applied to the Court of Justice of the European Union with a request for a preliminary decision on whether Article 30 of the Treaty establishing the European Community can be considered as excluding the application of the provisions of the legislation of one EU Member State (Austria), on the basis of which another member State (Germany) is prohibited from distributing these publications on the territory of the former, while the dissemination of information contained in such publications is permitted by the legislation of the latter. The Court of Justice of the European Union stated that: "Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 does, however, permit derogations from that freedom for the purposes of maintaining press diversity, in so far as they are prescribed by law and are necessary

[1592] *The Society of unborn children Ltd v Stephen Grogan and others* [1991] Case 159/90, E.C.R.1991. P. I–4685 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0159 > accessed 29 May 2023.

[1593] Para.18. *The Society of unborn children Ltd v Stephen Grogan and others* [1991] Case 159/90, E.C.R.1991. P. I–4685 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0159 > accessed 27 May 2023.

[1594] Ibid.

in a democratic society (see the judgment of the European Court of Human Rights of 24 November 1993 in *Informationsverein Lentia and Others v. Austria Series* A № 276 (paragraph 26[1595]").

Later that year, 1997, in a case of *Daniele Annibaldi v Sindaco del Comune di Guidonia and Presidente Regione Lazio*[1596], the plaintiff, the owner of the land plot, disputed the legality of the refusal to allow him to plant orchids on an area of 3 hectares on the grounds that these 3 hectares, as a large part of the plaintiff's plot, were within the boundaries of an archaeological park created based on a decision of the Italian authorities. He argued that the restrictions imposed on the owners of the land by domestic legislation about the creation of the park, contradict the norms of the EU law on the functioning of the single agricultural market in the European Union and its rights to property, to conduct business and to non-discriminatory treatment of it by local authorities the Court of Justice of the European Union set out the need to respect human rights in national acts adopted on issues within the scope of the EU law. The Court of Justice of the European Union found that:

- "The creation of a single agricultural market in no way protects producers from national measures that are aimed at achieving other goals, even if these measures may have a negative effect on the conditions of agricultural production[1597]".

- "Nothing would give grounds to assume that the contested provisions of domestic legislation were aimed at implementing the provisions of EU law either in the field of agriculture, or in the field of nature protection or in the field of culture[1598]".

- "The rules on the creation of the park concerned a situation that does not fall within the scope of EU law[1599]".

In another case, *Elliniki Radiophonia Tileorassi Anonimi Etairia v. Dimotiki Etairia Pliroforissis and Sotirios Kouvelas,* the Court of Justice of the European Union extended its requirement for respect for human rights to acts of member States of the European Union adopted by way of derogation from the EU rules in cases and on the grounds permitted by the constituent treaties. The Greek court appealed to the Court of Justice of the European Union with a request to the municipal company DEP, as well as personally to the mayor of the city with a demand to prohibit the transmission of TV programs by this company, as well as to seize the equipment used for the preparation and broadcast of TV programs. In their defense, the DEP and the mayor of Thessaloniki referred to the provisions of the EEC Treaty and the norms of

[1595] *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v. Heinrich Bauer Verlag* [1997], Case C-368/95, E.C.R. 1997 I-03689 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0368 > accessed 26 May 2023.

[1596] *Daniele Annibaldi v Sindaco del Comune di Guidonia and Presidente Regione Lazio* [1997] Case C-309/96, E.C.R. 1997. P. I–7493 <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61996CJ0309> accessed 25 May 2023.

[1597] Ibid, para.20.

[1598] Ibid, para.21.

[1599] Ibid, para.22.

the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The Court of Justice of the European Union stated that:

1) "The treaties establishing the EU in principle do not prohibit the granting of a monopoly right to broadcast television programs for reasons of non-economic order, namely based on considerations of public order, public safety, and health[1600]".

2) "If an EU Member State refers to these considerations to justify its actions that restrict the freedom to provide services, such an appeal should be considered both by national courts and by the Court of Justice of the European Union in the light of the general principles of the EU law, and human rights. National rules can be regarded as permissible deviations from the requirements of EU law, only if these rules do not violate human rights[1601]".

3) "Freedom of speech to be one of the principles of the EU law, which was embodied in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[1602]".

Thus, the Court of Justice of the European Union has referred to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in its jurisprudence in several ways. Firstly, the Court has referred to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 as a source of fundamental rights protection in the European Union. In its landmark decision in the case of *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (1970), the Court of Justice of the European Union stated that the ECHR "constitutes an integral part of the legal principles which are common to the Member States[1603]" and that "the protection of fundamental rights guaranteed by the Convention must be ensured within the framework of the structure and objectives of the Community[1604]".Secondly, the Court of Justice of the European Union has made use of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 as an interpretive tool when interpreting the Charter of Fundamental Rights of the European Union. In its decision in the case of *Åkerberg Fransson* (2013), the Court of Justice of the European Union stated that: "The Charter must, as far as possible, be interpreted in light of the wording and purpose of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, since Article 52(3) of the

[1600] Para.12. *Elliniki Radiophonia Tileorassi Anonimi Etairia (ERT AE) v. Dimotiki Etairia Pliroforissis (DEP) and Sotirios Kouvelas* [1991] Case C-260/98, E.C.R. 1991 I-02925 <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61989CJ0260 > accessed 25 May 2023.

[1601] Ibid, para.43.

[1602] Ibid, para.44.

[1603] *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] Case 11-70, E.C.R.419 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011> accessed 24 May 2023.

[1604] Ibid.

Charter requires that its provisions be given the same meaning and scope as those of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950". Finally, the Court of Justice of the European Union has also referred to the case law of the European Court of Human Rights in its own jurisprudence, particularly in cases involving fundamental rights issues. In a case of *Melloni* (2013), for example, the Court of Justice of the European Union referred to the case law of the European Court of Human Rights on the ne bis in idem principle when interpreting the corresponding provision of the Charter of Fundamental Rights of the European Union 2000. These references to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 reflect the close relationship between the European Union and the Council of Europe, which created and oversees the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and the importance of human rights protection in the EU legal order.

Moreover, the parallel existence of two different practices in the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 leads to a conflict in the interpretation of the provisions of this document. To date, there is a situation in which two independent international judicial bodies are engaged in the enforcement of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 norms: the Court of the European Union and the European Court of Human Rights. It creates double standards of interpretation of the same norms. It is necessary to carry out work on generalizing the case-law of the European Court of Human Rights in order to simplify the work of national courts, and subsequently the Court of Justice of the European Union, referring to the decisions of the European Court of Human Rights in their work. On the one hand, the process of accession of the European Union to the European Convention on Human Rights 1950 should take place in stages and include amendments to the text of the Convention itself, to the rules of the European Court of Human Rights and changes in the procedure for dispute resolution and supervision of judicial decisions. On the other hand, the Charter of Fundamental Rights of the European Union may subsequently "supplant": the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 as the main document enshrining rights and freedoms, and the Court of Justice of the European Union will take the role of the main court of human rights in the European Union. At the same time, this process may be accompanied by a gradual "decline" of the European Court of Human Rights for European citizens.

4.4. Establishing balance between economic and social rights

There is a certain case-law that gives precedence to economic freedoms over social rights, but the reservation regarding these rights also comes from the States which have always shown themselves reluctant regarding an enlargement of the European Union competence in social matters. On the issue of establishing balance between economic, and social rights special attention is paid to two cases for the following reasons: 1) problems - the admission of workers from poor countries of the European Union to the labor market; 2) the use by trade unions of

the principle of proportionality in the implementation of industrial actions (strikes and other actions related to exerting pressure on the employer) and whether their actions violated the entrepreneurial rights of employers.

In the first case of *Laval*, the Swedish construction workers' union blocked the entrance to the employer's construction site, agreed with the electricians' union to turn off electricity at the construction site in order to join the social partnership agreement on the minimum wage. In the second case of *Viking*, the International Federation of Transport Workers (IFRT) issued a circular, according to which these unions were instructed to refrain from negotiations with the Finnish company Viking. The Court of Justice of the European Union has ruled in favor of employers.

In October 2008, the European Parliament adopted the Resolution effectively condemning the position of the Court of Justice of the European Union, in which stated that:

- "It is unacceptable to establish an advantage in relation to business rights in comparison with the right to unite and to hold strikes";
- "Individual States of the European Union have the right to establish more favorable working conditions[1605]". Four years later, the European Commission proposed to the European Council to adopt the Regulation of the European Union on the exercise of the right to collective action in the context of the freedom to establish enterprises and provide services in the EU countries[1606](«Monti Initiative II»). It declared that: "The freedom of enterprises and the freedom to provide services are part of the fundamental principles of EU law. The restriction of these freedoms in the acts of the European Court of Justice is possible only if it pursues legitimate goals compatible with the Treaty establishing the EU and is due to more significant reasons related to the interests of society[1607]".

To sum up, the European Union recognizes and protects both economic and social rights, and there are efforts to strike a balance between the two. Economic rights are enshrined in the EU's foundational treaties and include the principles of free movement of goods, services, capital, and labor, as well as the protection of property rights and the promotion of competition. Social rights, on the other hand, are recognized in the Charter of Fundamental Rights of the European Union 2000 and include the right to work, the right to fair working conditions, the right to social security and social assistance, and the right to access healthcare and education. The EU has implemented several policies and initiatives aimed at balancing economic and social rights, such as the European Social Fund and the European Globalization Adjustment

[1605] European Parliament, 'Resolution on challenges to collective agreements in the EU' № 2008/2085 (22 October 2008).

[1606] European Commission of the European Union, 'Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services' (adopted 21 March 2012) COM (2012) <http://ec.europa.eu/social/BlobServlet?docld=7480& langld=en> accessed 24 May 2023.

[1607]European Trade Union Confederation, 'Protocol on the relation between economic freedoms and fundamental social rights in the light of social progress' <http://etuc.Org/a/5175> accessed 25 May 2023.

Fund. These initiatives provide funding to support employment, education, and training programs, as well as to help workers who have been affected by economic restructuring. Additionally, the European Union has established minimum standards for labor and social protections across its member states, which help ensure that all EU citizens enjoy a basic level of economic and social rights. The European Union also encourages social dialogue between employers, workers, and other stakeholders, which helps to promote a more balanced approach to economic and social policy.

4.5. Selected case-law of the Court of Justice of the European Union on state obligations aimed at economic, social, and cultural rights protection

i. Positive and negative state obligations

The European Union has traditionally rooted its human rights obligations within its own legal order[16081609]. "The development of positive obligations under the European law is a topic that is almost completely uncharted in the existing literature, although there is some literature focusing on the positive obligations imposed on Member States by the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 in general"[1610].

"Positive obligations are very rarely explicitly articulated in the various instruments: therefore, they are either implied judicial creations[1611]" or – in the case of the European Union – they are laid down in secondary legislation. Put simply, "positive obligations impose on States the duty to do something – to "take action"[1612] – or provide something to individuals or to protect them from other individuals: they are obligations "to take positive steps or measures to protect" the rights of individuals[1613]"."They can encompass procedural/institutional duties to undertake specific acts (for example, investigations), obligations to amend domestic laws (for example, in order to criminalize specific actions and in this way protect individuals from other

[1608] The first reference to human rights in one of the Community treaties was: Single European Act (1986) (OJ 1987 L 169/1.

[1609] European Union, 'Action Plan for Human Rights and Democracy 2015-2019, Annex to Council Conclusion on the Action Plan on Human Rights and Democracy 2015-2019' (№10897/15, 2015).

[1610] Mowbray A, 'The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights' (Hart, 2004); Xenos D, 'The Positive Obligations of the State under the European Convention of Human Rights' (Routledge, 2012); Pitkänen M, 'Fair and Balanced Positive Obligations – Do They Exist?' in *5 European Human Rights Law Review* (2012) P.538; Campbell A.L, 'Positive Obligations under the ECHR: Deprivation of Liberty by Private Actors' in *10 Edinburgh Law Review* (2006) P.399.

[1611]Pitkänen M, 'Fair and Balanced Positive Obligations – Do They Exist?' in *5 European Human Rights Law Review* (2012) P.539.

[1612] *Gül v. Switzerland* (1996) App. 23218/93 <https://www.refworld.org/cases,COECOMMHR,3ae6b6268.html > accessed 25 May 2023.

[1613] Starmer K, 'European Human Rights Law: The Human Rights Act 1998 and the European Convention on Human Rights' (Legal Action Group, 1999) P.194.

individuals or to extend certain rights to specific groups), requirements to deploy police and security personnel, and duties to take steps to protect individuals from the actions of other individuals.

Moreover, the concept of "positive action" became part of the official vocabulary of the Community only in 1981, when the Commission invited Member States to "adopt affirmative action programs to neutralize or overcome non-legal obstacles that hinder the realization of equal employment opportunities in the field of gender equality"[1614].In 1984 the Council of Ministers adopted a Recommendation to promote a wide variety of "good practices" in order to "increase the participation of women in various activities and sectors professional life, where they are currently underrepresented, especially in new sectors, and at higher levels of responsibility, in order to achieve a better use of all human resources[1615]".The economic explanation prevailed, "positive actions" were understood mainly as "an economic tool for managing human resources, and not as a means aimed at realizing equality as a human right: the appearance of women in the labor market was a way to guarantee the optimal use of human resources[1616]".

Certain positive obligations could be imposed on the EU legislator, for instance, in the preparation of directives (which should be sufficiently detailed to ensure that fundamental rights shall not be violated by the Member States in the adoption of implementation measures). For example, in two cases such as *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources and Others* and *Kärntner Landesregierung and Others*, the Court of Justice of the European Union stated that: "Directive 2006/24[1617] does not lay down clear and precise rules governing the extent of the interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union 2000, [and] entails a wide-ranging and particularly serious interference with those fundamental rights in the legal order of the European Union, without such an interference being precisely circumscribed by provisions to ensure that it is limited to what is strictly necessary[1618]".

[1614] Commission of the European Communities 'New Community program for the promotion of equal opportunities for women 1982–1985'COM (9 December 1981).

[1615] Katrougalos G.S, 'Constitution, law and rights in the welfare state… and beyond' (Athens, 1998) 265 p.

[1616] Charpentier L, 'The metamorphosis of affirmative action: From human rights to human resources' (in French), (1997); Brewster C, 'European HRM. Reflection of, or challenge to, the American concept?' in *Human resource management in Europe. Perspective for the 1990s* (1994) P.57.

[1617] Council of the European Union, 'Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC' 2006/24/EC (15 March 2006) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF#:~:text=This%20Directive%20aims%20to%20harmonise,to%20ensure%20that%20the%20data html > accessed 25 May 2023.

[1618] Para. 65. *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others* [2014] case 293/12, 594/12, EU:C:238.

Another case is *National Pensions Office v. Jonkman.* Based on the facts of this case, Belgian law distinguished the determination of pensions between air hostesses and other members of cabin crew. The Court of Justice of the European Union obliged that: "EU member states and national courts were required to take the general or particular measures necessary to ensure that Community law is complied with in that state (paragraph 38)",[1619] and declared that: "Observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favored category; in such a situation, a national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature and apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category[1620]".

In confirmation of second rights positive obligations within the European Union, Robin R. Churchill and U. Khaliq underlined that: "the Court of Justice of the European Union is competent to adjudicate on the compliance of Member States with obligations imposed by Community law dealing with issues such as health and safety at work, equal pay and treatment, and conditions of employment"[1621]. However, it is important to note that the Court of Justice of the European Union is also reluctant to impose positive obligations on the EU institutions based on the Charter of Fundamental Rights of the European Union 2000 by stating the following: "Furthermore, a provision of a community act could, in itself, not respect fundamental rights if it required, or expressly or impliedly authorised, the Member States to adopt or retain national legislation not respecting those rights[1622]".

It is well known that positive obligations are needed to protect rights of the second generation, however, considering the principle of indivisibility, rights of the first generation, civil and political rights, require also positive obligations. For example, let analyse some civil and political rights and their state obligations:

- ✓ The right to be heard and the right to protection.

It is a part of the general principles of EU law[1623], which are confirmed in Article 41 of the Charter of Fundamental Rights of the European Union 2000. The Court of Justice of the European Union found that: "This provision is subject to general application and confirmed its

[1619] Para. 38. *National Pensions Office v. Jonkman; National Pensions Office v. Vercheval; Permesaen v. National Pensions Office* [2007] case 231/06, C-233/06.

[1620] Ibid. para.39.

[1621] Churchill R.B, Khaliq U, 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?' in *EJIL 15* (2004) P.422.

[1622] Para. 23, *European Parliament v. Council of the European Union* [2006] Case 540/03, EU:C:429.

[1623] *Krombach v. Bamberski* [2000] case 7/98, P. 42; *Soprope – Organizacoes de Calcado Lda v. Fazenda Publica* [2008] case 349/07, P. 36, in which the Court of Justice of the European Union stated that: "Respect for the rights to protection is a general principle of Community law that applies when the authorities must decide to apply any measure that will negatively affect a person"; para. 71-72, *Fulman and Mahmoudian v. Council (Fulmen and Mahmoudian v. Council)* [2012] case T-439/10, T 440/10.

importance and very broad scope of application within the EU legal order in the sense that this right should be applied in all processes that end with the adoption of any measure that negatively affects a person, including national procedures for determining the right to international protection[1624]".

- ✓ The right to respect for private and family life and protection of personal data.

M. Taylor concluded that for better protection of above-mentioned rights "it could be necessary to reinterpret control in the cyber age to determine what would trigger human rights obligations, [and] consider a form of virtual control[1625]". More concretely, P. Margulies proposed "virtual control test to determine state responsibility[1626] which qualifies as exercising control"[1627].

Example of a case is *Maximillian Schrems v. Data Protection Commissioner*». This case relates to the interpretation, in the light of Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union 2000, and Articles 25(6) and 28 of Directive 95/46/EC[1628] of the European Parliament and of the Council of 24 October 1995 on the protection of individuals about the processing of personal data and on the free movement of such data (paragraph 1)[16291630]. The European Commission noted that: "A number of legal bases under US law allow large-scale collection and processing of personal data that is stored or otherwise processed [by] companies based in the [United States]' and that '[t]he large-scale nature of these programs may result in data transferred under Safe Harbour being accessed and further processed by US authorities beyond what is strictly necessary and proportionate to the protection of national

[1624] Para.85, *M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General* [2012] case 277/11. In paragraph 87 of the judgement the Court of Justice of the European Union stated that: "The right to be heard guarantees everyone the opportunity to effectively convey their views within the framework of administrative proceedings and before making any decision that may negatively affect their interests" (Ibid).

[1625] Peters A, 'Surveillance Without Borders? The Unlawfulness of the NSA-Panopticon, Part II' (EJIL: Talk! 2 November 2013) <http://www.ejiltalk.org/surveillance-without-borders-the-unlawfulness-of-the-nsa-panopti con-part-ii/ > accessed 25 May 2023.

[1626] Margulies P, 'Sovereignty and Cyber Attacks: Technology's Challenge to the Law of State Responsibility in *14 Melb J Int'l L* (2013) P.514-515.

[1627] Ibid.

[1628] European Parliament and the Council, Directive on the protection of individuals about the processing of personal data and on the free movement of such data', 95/46/EC)24 October 1995) OJ 1995 L 281, P. 31, paragraph 1 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML> accessed 27 May 2023.

[1629]*Maximillian Schrems v. Data Protection Commissioner* [6 October 2015] Case 362/14 <https://curia.europa .eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=EN&mode=lst&dir=&occ=fir st&part=1&cid=242804 > accessed 26 May 2023.

[1630] European Parliament and the Council, Directive on the protection of individuals about the processing of personal data and on the free movement of such data', 95/46/EC)24 October 1995) OJ 1995 L 281, P. 31, paragraph 1 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML> accessed 27 May 2023.

security as foreseen under the exception provided in [Decision 2000/520][1631]". The EU Court of Justice stated that:

"It is clear from the express wording of Article 25(6) of Directive 95/46 that it is the legal order of the third country covered by the Commission decision that must ensure an adequate level of protection. Even though the means to which that third country has recourse, in this connection, for the purpose of ensuring such a level of protection may differ from those employed within the European Union in order to ensure that the requirements stemming from Directive 95/46 read in the light of the Charter are complied with, those means must nevertheless prove, in practice, effective in order to ensure protection essentially equivalent to that guaranteed within the European Union[1632]". Thus, the level of protection provided by the third country should be checked.

✓ The right to equal treatment. In a case of *Commission of the European Communities v. Austria*[1633] the European Commission sought a declaration that: "An Austrian law which imposed additional conditions on students with secondary education diplomas obtained outside Austria that were not imposed upon students with diplomas from Austria for entry into higher or university education, was discriminatory based on nationality[1634]". The Court of Justice of the European Union stated that: "The principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result; although the law applies without distinction to all students, it is liable to have a greater effect on nationals of other Member States than on Austrian nationals, and therefore the difference in treatment introduced by that provision results in indirect discrimination[1635]" and continued that: "Austrian legislation aimed to restrict access to Austrian universities for holders of diplomas awarded in other Member States; excessive demand for access to specific courses could be met by the adoption of specific non-discriminatory measures such as the establishment of an entry examination or the requirement of a minimum grade[1636]". The Court of Justice of the European Union found a violation of Article12.

[1631] Para. 22. *Maximillian Schrems v. Data Protection Commissioner* [6 October 2015] Case 362/14 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=242804 > accessed 26 May 2023.

[1632] Para.76. *Maximillian Schrems v. Data Protection Commissioner* [6 October 2015] Case 362/14 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=242804 > accessed 26 May 2023.

[1633] *Commission of the European Communities v. Republic of Austria* [2005] Case 147/03 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003CJ0147> accessed 26 May 2023.

[1634] 'Economic and social rights in the courtroom: A Litigator's Guide to Using Equality and Non-Discrimination Strategies to Advance Economic and Social Rights' (Equal Rights Trust, 2014) P. 80.

[1635] *Commission of the European Communities v. Republic of Austria* [2005] Case 147/03 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003CJ0147> accessed 27 May 2023.

[1636] Ibid.

Positive obligations "should be contrasted with negative obligations that, simply, require States to abstain from undue interference with the rights granted to individuals by the law[1637]". In practice, there is no line dividing there two groups of obligations. Thus, "it is not surprising that the EU institutions do not explicitly draw any distinction between the two while the European Court of Human Rights in its rulings does draw a distinction, albeit only when it is obvious which type of obligation is involved in the case[1638]".

ii.Cost free and expensive state obligations

One way the Court of Justice of the European Union protects economic, social and cultural rights through cost-free state obligations is by ensuring that EU member states comply with EU law in areas such as employment, health, and social policy. For example, the Court of Justice of the European Union has held that EU member states must ensure that workers are given paid annual leave and that their working hours do not exceed certain limits. In these cases, the state obligation is to comply with existing EU law, which does not necessarily require additional costs.

However, the Court of Justice of the European Union may also protect economic, social and cultural rights through more expensive state obligations. For example, the Court of Justice of the European Union has held that EU member states must ensure that their national laws provide for adequate compensation to workers who are dismissed without notice. This can require the state to provide compensation or create a compensation scheme, which may involve significant costs.

In addition, the Court of Justice of the European Union has recognized the importance of ensuring that access to justice is not a barrier to the protection of economic, social and cultural rights. This can involve ensuring that individuals have access to legal aid or other forms of assistance to bring cases before the courts. In some cases, the Court of Justice of the European Union has held that member states must provide legal aid to individuals seeking to enforce their economic, social and cultural rights.

iii. Progressive and immediate state obligations

It is well known that progressive obligations relate to economic, social, and cultural rights, while immediate obligations to civil and political rights. However, this subparagraph intends to prove the opposite.

[1637] Tryfonidou A, 'Positive State Obligations under European Law: A Tool for Achieving Substantive Equality for Sexual Minorities in Europe' in *Erasmus Law Review* (Issue 3, 2020) <https://www.elevenjournals.com/tijdschrift/ELR/2020/3/ELR-D-20-00014 > accessed 28 May 2023.

[1638] *Orlandi and Others v. Italy* (2017) App. 26431/12, 26742/12, 44057/12 and 60088/12, para. 198.

Firstly, there are progressive obligations for civil and political rights in the issues of prohibition of discrimination. In a case of *YS v. NK AG*[1639] the subject matter was Article 267 of the Treaty on the Functioning of the European Union 1958. The Court of Justice of the European Union referred to:

- the Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security[1640],

- the Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation[1641].

When referring to the document itself, namely the Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, the term of "progressive" is revealed through the following articles:

- "… the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application… (Preamble)[1642]",

- "Member States shall take the measures necessary to ensure that any laws, regulations and administrative provisions… (Article 5)[1643]",

- "Member States shall introduce into their national legal systems such measures… (Article 6)[1644]",

- "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within six years of its notification. They shall immediately inform the Commission thereof[1645]".

In contrast to civil and political rights, economic, social, and cultural rights require immediate obligations. On the example of environmental rights, in a case of *Scientific and Technological Committee and Others v. Potocnik and others, Members of the Commission*, J. Potocnik, S. Dimas and A. Piebalgs did not take immediate action in defense of the life of the population of the EU from the time of receipt of the three documents reporting the risks

[1639] *YK v. NK AG* [2019] case 223/19 <https://curia.europa.eu/juris/showPdf.jsf?text=progressive%2B%2Bobligations%2Bfreedom&docid=219855&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=603181> accessed 28 May 2023.

[1640] Council of the European Communities, 'Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security 79/7/EEC OJ L 6 (19 December 1978).

[1641] European Parliament and the Council, 'Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation'2006/54/EC, L 204 (26 July 2006).

[1642] Council of the European Communities, 'Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security 79/7/EEC OJ L 6 (19 December 1978).

[1643] Ibid, Article 5.

[1644] Ibid, Article 6.

[1645] Council of the European Communities, 'Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security 79/7/EEC OJ L 6 (19 December 1978).

connected with the technique of storing CO2 in geological strata[1646], even though it was a violation.

iv. Vague and precise state obligations

The Court of Justice of the European Union, considering the direct action and the primary legislation, explained that: "Obligations must be precise, clear and unconditional and that they do not call for additional measures, either national or European[1647]". In cases related to the protection of the environmental law of the European Union, the Court of Justice of the European Union in a case of *Commission of the European Communities v. Grand Duchy of Luxemburg*, ruled that: "In order to comply with paragraph 3 of Annex III 1 to the Directive, to establish a balance between, on the one hand, the projected nitrogen needs of agricultural crops and, on the other hand, the supply of nitrogen for agricultural crops, in particular, by adding nitrogen compounds from chemical fertilizers, national regulations must include provisions "provisions that are sufficiently precise to fulfill the obligation[1648]"". Moreover, "parts of positive and negative obligations can apply to the Charter of Justice of the European Union to determine the reach of the EU's fundamental rights obligations more precisely[1649]".

v. Justiciable and non-justiciable state obligations

As it was noted by E. Hughes and K. Boyle in their recent article, enforcement and adjudication of economic, social, and cultural rights is something that already occurs in each of the devolved jurisdictions and at the national level, under the aegis of different mechanisms. For example, economic, social, and cultural rights are justiciable through the common law, under the dynamic interpretation of civil and political rights, statutory schemes, and the EU law, through:

- equality,

[1646] *Scientific and Technological Committee and Others v. Potocnik and Others, Members of the Commission* [2007] Case T 125/07<https://curia.europa.eu/juris/document/document.jsf?text=immediate%2B%2Bobligations%2B&docid=61506&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=617510#ctx1> accessed 28 May 2023.

[1647] 'The direct effect of European law'< https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14547> accessed 28 May 2023.

[1648] *Commission of the European Communities v. Grand Duchy of Luxemburg* 2001] Case 266/00 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CC0526&from=BG> accessed 29 May 2023.

[1649] Taylor M, 'The EU's human rights obligations in relation to its data protection laws with extraterritorial effect, International Data Privacy Law' (Volume 5, Issue 4, November 2015) P. 246–256.

- non-discrimination and through access to supranational complaints mechanisms[1650].

"Most of the rights in Title IV are considered as general principles of the EU law under Article 6(3) of the TEU, which means that they can be enforced in national courts without invoking the Charter[1651]".

Thus, economic, social, and cultural rights are justiciable under provisions of the Charter of Fundamental Rights of the European Union 2000. The example is Articles 14, 31, 34 (3) of the Charter of Fundamental Rights of the European Union 2000. The social rights provision is deemed to set out objective norms which may be given effect through the EU "legislative or executive acts" but "become significant for courts only when such acts interpreted or reviewed" and do not "give rise to direct claims for positive action by the Union's institutions or Member states authorities[1652]".

vi. Derogable and non- derogable state obligations

Non-derogable state obligations are those obligations that cannot be suspended, waived, or limited by a state under any circumstances. These obligations are usually considered to be non-negotiable and are essential to the protection of economic, social, and cultural rights. For example, the obligation to protect individuals from torture, slavery, and other forms of cruel, inhuman, or degrading treatment or punishment is a non-derogable obligation under international human rights law. The Court of Justice of the European Union upholds these non-derogable obligations in its interpretation and application of EU law, including in cases involving economic, social, and cultural rights.

Derogable state obligations are those obligations that may be suspended or limited by a state in certain circumstances. These obligations are subject to derogation, which is the process of suspending or limiting an obligation due to a public emergency or other exceptional circumstances. The Court of Justice of the European Union has held that EU member states must ensure that any derogation from economic, social, and cultural rights 'obligations is limited to what is strictly necessary and proportionate to the emergency. The Court of Justice of the European Union has also emphasized the need for judicial review of derogations to ensure that they comply with international human rights law. Overall, the Court of Justice of the European Union protects economic, social and cultural rights through both non-derogable and derogable state obligations.

[1650] Boyle K, 'Human Rights Reform: Adjudication and Enforcement of Economic, Social and Cultural Rights?' (July, 2018)<https://www.europeanfutures.ed.ac.uk/human-rights-reform-adjudication-and-enforcement-of-economic-social-and-cultural-rights/> accessed 27 May 2023.

[1651] Douglas-Scott S, 'The European Union and Human Rights after the Treaty of Lisbon' <https://www.corteidh.or.cr/tablas/r27635.pdf/ > accessed 27 May 2023.

[1652] European Commission, 'External Evaluation of the European Instrument for Democracy and Human Rights (2014- mid 2017)' (Volume 1- Main Report) P.19 <https://ec.europa.eu/europeaid/sites/devco/files/eidhr-evaluation-final-report-exec- sum_en.pdf > accessed 27 May 2023.

vii. Thin and thick state obligations

In cases involving the right to education, The Court of Justice of the European Union has held that EU member states have a thick obligation to ensure that education is accessible, available, and of good quality. This includes ensuring that education is affordable, that there are enough schools and teachers to meet the needs of the population, and that the curriculum is relevant and of high quality. In addition, The Court of Justice of the European Union has also recognized the importance of thin state obligations in protecting economic, social and cultural rights. For example, in cases involving the right to freedom of expression, The Court of Justice of the European Union has held that the state has a thin obligation to refrain from interfering with the exercise of this right, including by protecting journalists from threats or attacks.

Conclusion of Chapter 4

Chapter 4 identified the integral set of norms related to economic, social, and cultural rights that has developed within the framework of the European Union, analysed the case-law of the Court of Justice of the European Union on the issue of state obligations required for protection of economic, social, and cultural rights. It is well known that the European Union is primarily focused on economic integration and promoting the free movement of goods, services, capital, and people across its 27 member states. While the EU has adopted various directives and regulations that address ESCR, such as workers' rights and consumer protection, its primary focus is on economic issues rather than social or cultural ones. The protection of economic, social, and cultural rights in the European Union is based on several legal instruments and mechanisms. Here are some key features of ESCR protection in the EU:

1. The Charter of Fundamental Rights of the European Union 2000[1653], which has legal force, recognizes the right to work, the right to fair working conditions, the right to social security and social assistance, the right to education, and the right to access healthcare. The Charter also includes provisions protecting the rights of children, elderly persons, and persons with disabilities.

2. EU legislation. The EU has adopted a range of legislative measures to protect economic, social, and cultural rights. For example, the Working Time Directive[1654] sets minimum standards for working hours, rest periods, and annual leave, while the Employment Equality Directive prohibits discrimination in employment on the grounds of age, disability, sexual orientation, religion, and other factors. For example, the EU commitment in human rights protection is shown in many legal documents. For example, the Council of the European Union adopted: the Council Conclusions on Human Rights and Democracy (ANNEX I), the EU Strategic Framework on Human Rights and Democracy (ANNEX II), the EU Action Plan on Human Rights and Democracy (ANNEX III).

3. EU funds. The EU provides funding to support economic, social, and cultural rights through various programs and initiatives. For example, the European Social Fund[1655]provides financial assistance to member states to support job creation, training, and social inclusion, while the European Regional Development Fund supports the development of infrastructure and services in disadvantaged regions.

[1653]Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1654]'Working Time Directive' <https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205> accessed 7 May 2023.

[1655] 'European Social Fund'<https://ec.europa.eu/esf/home.jsp> accessed 6 May 2023.

4. The Court of Justice of the European Union. It is responsible for interpreting EU law and ensuring its consistent application across the EU. It has played a significant role in developing EU law, including through its case - law on issues such as equal pay for equal work, working conditions, and discrimination[1656]. Global principles and concepts in the field of human rights protection emerge from *Taricco* and *M.A.S.* judgements. They include the principle of indivisibility between civil and political rights and economic, social and cultural rights, and the link between tax fraud and human rights. There are different points of view on the case-law of the Court of Justice of the European Union such as:

- "Seriousness of the statements of the Court of Justice of the European Union about its commitment to the ideas of protecting human rights[1657]". The Court "has a purely instrumentalist approach, where arguments about human rights serve exclusively pragmatic purposes for it and are used by it to defend its doctrines or to expand its jurisdiction. In any case, according to critics, the interests of protecting the freedoms of the internal market prevail in the decisions of the Court of Justice of the European Union over the protection of human rights[1658]". J. H. Weler and N. Lockhart noted that: "Even if the protection of the integrity of the rule of law became the main motive for the Court to move from Stork to Staudler in its practice, this development was an inevitable continuation of the Van Gend en Loos decision. In turn, this development was associated with other strong motives, such as the protection of the individual in a political system suffering from a deep democratic deficit, as well as with a changed historical climate and awareness of the importance of protecting human rights at the international level[1659]".

- Judicial activism. X. Rasmussen[1660] stated that: "The texts of the constituent agreements did not contain even the slightest hint of such a Court decision and such an interactive creativity of the Court is truly amazing[1661]".

The Court of Justice of the European Union has historically given limited attention to economic, social, and cultural rights protection. However, there has been a gradual recognition of these rights in its case-law over time. In recent years, the Court has taken a more active role

[1656] For example, there are some cases on the discrimination issues in labour rights' protection: C-303/06, OJ C 223 of 30.08.2008; case C-13/05, OJ C 224 of 16.09.2006; case C-300/06. OJ C 22 of 26.01.2008.

[1657] Coppel J, O'Neill A, 'The European Court of Justice: Taking rights seriously' in *C.M.L.Rev* (Vol.29, 1995) P. 669.

[1658] Dogan Y, 'The Fundamental Rights Jurisprudence of the European Court of Justice: protection for human rights within the European legal order' in *Ankara L. Rev.* (Vol. 546, № 1, 2009) P. 53–81.

[1659]Weler J.H, Lockhart N, 'Taking rights seriously» seriously: European Court of justice and its fundamental rights jurisprudence - part I' in *C.M.L.Rev.* (Vol. 32, 1995) P. 70.

[1660] Rasmussen H, 'On Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policymaking' (1986) P. 4; Tridimas T, 'The Court of Justice and Judicial Activism' in *Eur.L.Rev* (Vol. 21, 1996) P. 199.

[1661] Ibid. P.400.

in protecting these rights through its judgments, acknowledging their importance in ensuring human dignity and social justice. Nonetheless, there is still room for improvement in the Court's approach to economic, social, and cultural rights protection, and ongoing developments in its case-law will continue to shape the extent of their protection within the EU legal framework.

5. EU agencies: The EU has established several agencies to support the implementation and enforcement of economic, social, and cultural rights. For example, the European Agency for Safety and Health at Work[1662] provides guidance and support to member states to promote safe and healthy working conditions, while the European Agency for Fundamental Rights[1663] conducts research and provides advice on human rights issues across the EU.

The European Union has a comprehensive legal and institutional framework for protecting economic, social, and cultural rights, which includes legal instruments, legislative measures, funding programs, courts, and agencies. The EU's approach to economic, social, and cultural rights protection emphasizes the importance of social justice, equal opportunities, and social inclusion, and seeks to ensure that everyone has access to decent living standards and the opportunity to participate fully in society.

To sum up, the activities of the European Union should be aimed at creating a reliable legal framework that ensures the functioning of an effective mechanism guaranteeing respect for human rights in the EU. Considering the complexity of the legal system of the European Union and the strict division of competence between the Member States and the EU, a single information center for individuals should be created, where it would be possible to get advice on the necessary actions to prevent human rights violations and restore the violated right. This will significantly reduce the burden of existing structures for drawing up conclusions on the inadmissibility of complaints on various grounds and will speed up the process of protecting violated rights. In addition, an important factor in ensuring the protection of human rights is the provision of specialized bodies with the necessary competence to prevent violations and restore violated rights.

While both the Council of Europe and the European Union promote economic, social, and cultural rights, the Council of Europe has a more comprehensive approach to protecting these rights and is responsible for promoting them across a wider geographical area. The European Union, on the other hand, focuses primarily on economic integration and addressing social and cultural issues within its member states.

[1662] 'European Agency for Safety and Health at Work' < https://osha.europa.eu/en> accessed 5 May 2023.

[1663]'European Agency for Fundamental Rights' <https: // european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/fra_en> accessed 6 May 2023.

Conclusión del Capítulo 4

El capítulo 4 identificó el conjunto integral de normas relacionadas con los derechos económicos, sociales y culturales que se ha desarrollado en el marco de la Unión Europea, analizó la jurisprudencia del Tribunal de Justicia de la Unión Europea sobre la cuestión de las obligaciones estatales requeridas para la protección de los derechos económicos, sociales y culturales. Es bien sabido que la Unión Europea se centra principalmente en la integración económica y en la promoción de la libre circulación de bienes, servicios, capitales y personas en sus 27 Estados miembros. Si bien la UE ha adoptado varias directivas y reglamentos que abordan los DESC, como los derechos de los trabajadores y la protección del consumidor, su enfoque principal se centra en cuestiones económicas en lugar de sociales o culturales. La protección de los derechos económicos, sociales y culturales en la Unión Europea se basa en varios instrumentos y mecanismos jurídicos. Estas son algunas de las características clave de la protección de derechos económicos, sociales y culturales en la UE:

1. La Carta de los Derechos Fundamentales de la Unión Europea de 2000[1664], que tiene fuerza legal, reconoce el derecho al trabajo, el derecho a condiciones laborales justas, el derecho a la seguridad social y la asistencia social, el derecho a la educación y el derecho al acceso a la asistencia sanitaria. La Carta también incluye disposiciones que protegen los derechos de los niños, las personas mayores y las personas con discapacidades.

2. Legislación de la UE. La UE ha adoptado una serie de medidas legislativas para proteger derechos económicos, sociales y culturales. Por ejemplo, la Directiva sobre el tiempo de trabajo[1665] establece normas mínimas para las horas de trabajo, los períodos de descanso y las vacaciones anuales, mientras que la Directiva sobre igualdad en el empleo prohíbe la discriminación en el empleo por motivos de edad, discapacidad, orientación sexual, religión y otros factores. Por ejemplo, el compromiso de la UE en la protección de los derechos humanos se muestra en muchos documentos legales. Por ejemplo, el Consejo de la Unión Europea adoptó: las Conclusiones del Consejo sobre Derechos Humanos y Democracia (ANEXO I), el Marco Estratégico de la UE sobre Derechos Humanos y Democracia (ANEXO II), el Plan de Acción de la UE sobre Derechos Humanos y Democracia (ANEXO III).

3. Fondos de la UE. La UE proporciona fondos para apoyar los derechos económicos, sociales y culturales a través de diversos programas e iniciativas. Por ejemplo, el Fondo Social Europeo[1666] proporciona asistencia financiera a los Estados miembros para apoyar la creación

[1664]Charter of Fundamental Rights of the European Union (adopted 18 December 2000) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> accessed 26 May 2023.

[1665]'Working Time Directive' <https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205> accessed 7 May 2023.

[1666] 'European Social Fund'<https://ec.europa.eu/esf/home.jsp> accessed 6 May 2023.

de empleo, la formación y la inclusión social, mientras que el Fondo Europeo de Desarrollo Regional apoya el desarrollo de infraestructuras y servicios en regiones desfavorecidas.

4. El Tribunal de Justicia de la Unión Europea. Es responsable de interpretar la legislación de la UE y de garantizar su aplicación coherente en toda la UE. Ha desempeñado un papel importante en el desarrollo del Derecho de la UE, incluso a través de su jurisprudencia sobre cuestiones como la igualdad de remuneración por igual trabajo, las condiciones de trabajo y la discriminación . Los principios y conceptos globales en el campo de la protección de los derechos humanos surgen de los juicios de *Taricco y M. A. S.* Incluyen el principio de indivisibilidad entre los derechos civiles y políticos y los derechos económicos, sociales y culturales, y el vínculo entre el fraude fiscal y los derechos humanos. Existen diferentes puntos de vista sobre la jurisprudencia del Tribunal de Justicia de la Unión Europea, tales como:

- "Seriedad de las declaraciones del Tribunal de Justicia de la Unión Europea sobre su compromiso con las ideas de protección de los derechos humanos[1667]". La Corte "tiene un enfoque puramente instrumentalista, donde los argumentos sobre los derechos humanos le sirven exclusivamente para fines pragmáticos y son utilizados por ella para defender sus doctrinas o para ampliar su jurisdicción. En cualquier caso, según los críticos, los intereses de proteger las libertades del mercado interior prevalecen en las decisiones del Tribunal de Justicia de la Unión Europea sobre la protección de los derechos humanos[1668]". J. H. Weler y N. Lockhart señaló que: "Incluso si la protección de la integridad del estado de derecho se convirtió en el motivo principal para que la Corte pasara de Stork a Staudler en su práctica, este desarrollo fue una continuación inevitable de la decisión Van Gend en Loos. A su vez, este desarrollo se asoció con otros motivos fuertes, como la protección del individuo en un sistema político que sufre un profundo déficit democrático, así como con un clima histórico cambiado y la conciencia de la importancia de proteger los derechos humanos a nivel internacional[1669]".

- Activismo judicial. X. Rasmussen declaró que: "Los textos de los acuerdos constitutivos no contenían ni el más mínimo indicio de tal decisión judicial y tal creatividad interactiva de la Corte es realmente sorprendente[1670]".

Históricamente, el Tribunal de Justicia de la Unión Europea ha prestado poca atención a la protección de los derechos económicos, sociales y culturales. Sin embargo, ha habido un reconocimiento gradual de estos derechos en su jurisprudencia a lo largo del tiempo. En los

[1667] Coppel J, O'Neill A, 'The European Court of Justice: Taking rights seriously' in *C.M.L.Rev* (Vol.29, 1995) P. 669.

[1668] Dogan Y, 'The Fundamental Rights Jurisprudence of the European Court of Justice: protection for human rights within the European legal order' in *Ankara L. Rev.* (Vol. 546, № 1, 2009) P. 53–81.

[1669] Weler J.H, Lockhart N, 'Taking rights seriously» seriously: European Court of justice and its fundamental rights jurisprudence - part I' in *C.M.L.Rev.* (Vol. 32, 1995) P. 70.

[1670] Rasmussen H, 'On Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policymaking' (1986) P. 4; Tridimas T, 'The Court of Justice and Judicial Activism' in *Eur.L.Rev* (Vol. 21, 1996) P. 199, 400.

últimos años, la Corte ha asumido un papel más activo en la protección de estos derechos a través de sus sentencias, reconociendo su importancia para garantizar la dignidad humana y la justicia social. No obstante, todavía hay margen de mejora en el enfoque del Tribunal con respecto a la protección de los derechos económicos, sociales y culturales, y los desarrollos en curso de su jurisprudencia continuarán configurando el alcance de su protección dentro del marco legal de la UE.

5. Agencias de la UE. La UE ha establecido varias agencias para apoyar la implementación y el cumplimiento de los derechos económicos, sociales y culturales. Por ejemplo, la Agencia Europea para la Seguridad y la Salud en el Trabajo proporciona orientación y apoyo a los Estados miembros para promover condiciones de trabajo seguras y saludables, mientras que la Agencia Europea de los Derechos Fundamentales realiza investigaciones y asesora sobre cuestiones de derechos humanos en toda la UE.

La Unión Europea cuenta con un amplio marco jurídico e institucional para la protección de los derechos económicos, sociales y culturales, que incluye instrumentos jurídicos, medidas legislativas, programas de financiación, tribunales y organismos. El enfoque de la UE para la protección de los derechos económicos, sociales y culturales enfatiza la importancia de la justicia social, la igualdad de oportunidades y la inclusión social, y busca garantizar que todos tengan acceso a niveles de vida dignos y la oportunidad de participar plenamente en la sociedad.

En resumen, las actividades de la Unión Europea deben estar dirigidas a crear un marco jurídico fiable que garantice el funcionamiento de un mecanismo eficaz que garantice el respeto de los derechos humanos en la UE. Teniendo en cuenta la complejidad del sistema jurídico de la Unión Europea y la estricta división de competencias entre los Estados miembros y la UE, debería crearse un centro de información único para las personas, donde sería posible obtener asesoramiento sobre las acciones necesarias para prevenir las violaciones de los derechos humanos y restaurar el derecho violado. Esto reducirá significativamente la carga de las estructuras existentes para elaborar conclusiones sobre la inadmisibilidad de las quejas por diversos motivos y acelerará el proceso de protección de los derechos violados. Además, un factor importante para garantizar la protección de los derechos humanos es la provisión de organismos especializados con la competencia necesaria para prevenir violaciones y restaurar los derechos violados.

Si bien tanto el Consejo de Europa como la Unión Europea promueven los derechos económicos, sociales y culturales, el Consejo de Europa tiene un enfoque más integral para proteger estos derechos y es responsable de promoverlos en un área geográfica más amplia. La Unión Europea, por otro lado, se centra principalmente en la integración económica y en abordar cuestiones sociales y culturales dentro de sus Estados miembros.

Chapter 5. External and internal challenges facing economic, social, and cultural rights

Introduction of Chapter 5

In today's interconnected world, the pursuit of economic, social, and cultural rights is confronted with a myriad of external and internal challenges. As societies grapple with pressing global issues, such as the Covid-19 pandemic, climate change, and illegal immigration, the approach to addressing these challenges becomes crucial in safeguarding and advancing these fundamental rights. The interplay between these issues creates complex and multifaceted obstacles that require comprehensive and nuanced responses. This essay explores the external and internal challenges that emerge from the convergence of these three problems, delving into their impact on economic, social, and cultural rights. By examining the intricate relationships between Covid-19, climate change, and illegal immigration, we can gain a deeper understanding of the underlying issues and the need for holistic approaches to ensure the protection and fulfillment of these rights.

The first challenge arises from the global health crisis triggered by the Covid-19 pandemic. The rapid spread of the virus has had far-reaching consequences on economies, social structures, and cultural practices worldwide. The measures implemented to contain the virus, such as lockdowns and travel restrictions, have severely impacted economic activities, leading to widespread unemployment, loss of livelihoods, and increased poverty. This has undermined individuals' ability to access adequate food, housing, healthcare, education, and other essential elements of a dignified life, thus compromising their economic, social, and cultural rights. Additionally, the pandemic has exacerbated existing inequalities, with marginalized communities and vulnerable groups disproportionately bearing the brunt of its socio-economic repercussions. These challenges necessitate a comprehensive and inclusive approach that not only addresses the immediate health crisis but also upholds the rights of all individuals and communities affected by the pandemic.

Climate change poses another significant challenge to economic, social, and cultural rights. The warming of the planet, caused primarily by human activities, has resulted in an array of environmental and socio-economic disruptions. Rising temperatures, extreme weather events, and shifting rainfall patterns have detrimental effects on agriculture, water resources, and infrastructure, disrupting food production, increasing water scarcity, and undermining people's ability to live and practice their cultural traditions in their traditional homelands. Such adverse impacts exacerbate poverty, exacerbate inequalities, and contribute to forced migration and displacement, which in turn pose threats to economic, social, and cultural rights. Addressing climate change requires concerted efforts to mitigate greenhouse gas emissions, adapt to the changing climate, and ensure a just transition that safeguards the rights of affected communities. By incorporating a rights-based approach into climate action, we can strive for sustainable development that respects and protects economic, social, and cultural rights while fostering environmental stewardship.

Illegal immigration presents a complex challenge to the protection of economic, social, and cultural rights, with both internal and external dimensions. In regions characterized by poverty, political instability, and lack of opportunities, individuals often resort to irregular migration in search of better lives and economic prospects. The risks and hardships faced during the migration journey, coupled with the host countries' restrictive policies and xenophobia, result in violations of migrants' rights. Economic, social, and cultural rights are particularly vulnerable in the context of migration, as migrants often face exploitation, discrimination, and limited access to essential services. Simultaneously, the arrival of large numbers of migrants strains the resources and infrastructure of host countries, leading to social tensions and political backlash. Addressing the challenges of illegal immigration requires a comprehensive and rights-based approach that ensures the human dignity and well-being of migrants, while also acknowledging the legitimate concerns of host communities. Creating pathways for legal migration, promoting social integration, and combating discrimination are essential elements in safeguarding economic, social, and cultural rights in the context of migration.

Introducción del Capítulo 5

En el mundo interconectado de hoy, la búsqueda de los derechos económicos, sociales y culturales se enfrenta a una miríada de desafíos externos e internos. A medida que las sociedades lidian con problemas globales apremiantes, como la pandemia de Covid-19, el cambio climático y la inmigración ilegal, el enfoque para abordar estos desafíos se vuelve crucial para salvaguardar y promover estos derechos fundamentales. La interacción entre estos problemas crea obstáculos complejos y multifacéticos que requieren respuestas integrales y matizadas. Este ensayo explora los desafíos externos e internos que surgen de la convergencia de estos tres problemas, profundizando en su impacto en los derechos económicos, sociales y culturales. Al examinar las intrincadas relaciones entre Covid-19, el cambio climático y la inmigración ilegal, podemos obtener una comprensión más profunda de los problemas subyacentes y la necesidad de enfoques holísticos para garantizar la protección y el cumplimiento de estos derechos.

El primer desafío surge de la crisis sanitaria mundial provocada por la pandemia de Covid-19. La rápida propagación del virus ha tenido consecuencias de gran alcance en las economías, las estructuras sociales y las prácticas culturales de todo el mundo. Las medidas implementadas para contener el virus, como los cierres y las restricciones de viaje, han afectado gravemente las actividades económicas, lo que ha provocado un desempleo generalizado, la pérdida de medios de vida y el aumento de la pobreza. Esto ha socavado la capacidad de las personas para acceder a alimentos, vivienda, atención médica, educación y otros elementos esenciales para una vida digna, comprometiendo así sus derechos económicos, sociales y culturales. Además, la pandemia ha exacerbado las desigualdades existentes, y las comunidades marginadas y los grupos vulnerables son los más afectados de manera desproporcionada por sus repercusiones socioeconómicas. Estos desafíos requieren un enfoque integral e inclusivo que no solo aborde la crisis de salud inmediata, sino que también defienda los derechos de todas las personas y comunidades afectadas por la pandemia.

El cambio climático plantea otro desafío importante para los derechos económicos, sociales y culturales. El calentamiento del planeta, causado principalmente por las actividades humanas, ha dado lugar a una serie de trastornos ambientales y socioeconómicos. El aumento de las temperaturas, los fenómenos meteorológicos extremos y los cambios en los patrones de lluvia tienen efectos perjudiciales en la agricultura, los recursos hídricos y la infraestructura, interrumpen la producción de alimentos, aumentan la escasez de agua y socavan la capacidad de las personas para vivir y practicar sus tradiciones culturales en sus países de origen tradicionales. Tales impactos adversos exacerban la pobreza, exacerban las desigualdades y contribuyen a la migración y el desplazamiento forzados, que a su vez plantean amenazas a los derechos económicos, sociales y culturales. Abordar el cambio climático requiere esfuerzos concertados para mitigar las emisiones de gases de efecto invernadero, adaptarse al clima cambiante y garantizar una transición justa que salvaguarde los derechos de las comunidades afectadas. Al incorporar un enfoque basado en los derechos en la acción climática, podemos

luchar por un desarrollo sostenible que respete y proteja los derechos económicos, sociales y culturales al tiempo que fomenta la administración ambiental.

La inmigración ilegal presenta un desafío complejo para la protección de los derechos económicos, sociales y culturales, con dimensiones internas y externas. En regiones caracterizadas por la pobreza, la inestabilidad política y la falta de oportunidades, las personas a menudo recurren a la migración irregular en busca de mejores vidas y perspectivas económicas. Los riesgos y dificultades a los que se enfrentan durante el viaje migratorio, junto con las políticas restrictivas y la xenofobia de los países de acogida, dan lugar a violaciones de los derechos de los migrantes. Los derechos económicos, sociales y culturales son particularmente vulnerables en el contexto de la migración, ya que los migrantes a menudo enfrentan explotación, discriminación y acceso limitado a servicios esenciales. Al mismo tiempo, la llegada de un gran número de migrantes pone a prueba los recursos y la infraestructura de los países de acogida, lo que genera tensiones sociales y reacciones políticas. Abordar los desafíos de la inmigración ilegal requiere un enfoque integral y basado en los derechos que garantice la dignidad humana y el bienestar de los migrantes, al tiempo que reconoce las preocupaciones legítimas de las comunidades de acogida. La creación de vías para la migración legal, la promoción de la integración social y la lucha contra la discriminación son elementos esenciales para salvaguardar los derechos económicos, sociales y culturales en el contexto de la migración.

5.1.Coronavirus disease

i.Main challenges and most affected economic, social, and cultural rights

COVID -19, also known as the coronavirus, is a highly infectious disease caused by the SARS-CoV-2 virus. The virus was first identified in December 2019 in Wuhan, China, and it quickly spread to other parts of the world, leading to the ingoing global pandemic. The World Health Organization declared the outbreak a pandemic on March 11,2020. Since then, the virus has inflicted millions of people and caused hundreds of thousands of deaths worldwide. COVID -19 pandemic has had a profound impact on economic, social, and cultural rights. The measures taken to control the spread of the virus, such as lockdowns and restrictions on travel and gatherings, have disrupted economic activity and led jobs losses and financial hardship for many people. In some cases, these measures have also led to a decline in GDP and an increase in government debt. The pandemic has also exacerbated existing inequalities, disproportionately affecting marginalized groups. In addition, the close of schools and other social services has disrupted access to education and other essential services. The full extent of the impact of COVID-19 on economic, social, and cultural rights is still unfolding and will likely be felt for many years to come.

The major challenges include:

1) Health. The virus is highly contagious and can lead to severe illness and death, especially among older people and those with underlying health conditions. Healthcare systems have been strained as they try to provide care for patients with COVID-19 and other medical needs.

2) Economic: The pandemic has caused widespread job losses and economic downturn, as many businesses have been forced to shut down or operate at reduced capacity.

3) Social: The measures put in place to prevent the spread of the virus, such as social distancing and lockdowns, have disrupted people's daily lives and created isolation and loneliness for many.

4) Educational. The closure of schools and universities has disrupted education for students, and the shift to online learning has created challenges for both students and educators.

5) Political: The pandemic has highlighted and exacerbated existing political divisions and tensions, as different governments have implemented different policies and strategies to address the crisis.

There have been a variety of legal measures implemented in response to the COVID-pandemic, including measures to restrict people's movement, and to provide emergency financial support to individuals and businesses. In many cases, these measures have been necessary to protect public health and prevent the spread of the virus. However, it is important

that any legal measures taken in response to the pandemic are proportionate and do not violate individual's human rights.

According to the Amnesty International Report 2020/2021 'Human Rights in the modern world', "many countries have not mitigated the socio-economic consequences of the COVID-19 pandemic for the most vulnerable groups of the population (for example, in Brazil, financial assistance to low-income people was insufficient, in Guatemala, residential areas and communities were left without access to water, and people could not properly maintain hygiene during the pandemic); at the peak of the pandemic, the authorities of Mexico and Ecuador cut budgets, not providing sufficient protection for the basic socio-economic needs of disadvantaged people and groups[1671]".

In order to curb the spread of coronavirus infection, restrictions were imposed on such socio-economic rights as:

-freedom of entrepreneurship,

- the right to access cultural values and use cultural institutions,

- the right to health protection and medical assistance.

Additional difficulties have arisen regarding the implementation of such rights as:

- the right to work,

- the right to education,

- the right to social security and others.

Let us focus in more detail on those of rights that caused the largest number of complaints and affected the lives of many people, perhaps each of us.

✓ The right to work and fair wages. At the end of March, April and the beginning of May 2020, many enterprises switched to remote work, however, vital for the functioning of cities (for example, hospitals) continued to work in the usual format. The Report of the Director General of the International Labour Conference, 109th session, 2021 contains the following data:

-the total number of hours worked globally during the year is down nearly 9% since the last quarter of 2019, equivalent to 255 million full-time job losses (four times worse than the 2008 financial crisis). The region of North and South America suffered the most, where the loss of working time was 13.7%, and in all other regions from 7.7% to 9.2%. "The losses were particularly acute in lower-middle-income countries, where they reached 11.3%,

- labor income in 2020 decreased by 8.3%,

- the drop in the global income of informal workers was estimated at 60%,

- the number of workers living in moderate to extreme poverty increased by 108 million in 2020, offsetting five years of continuous progress[1672]".

[1671]Amnesty International, Report 2020/2021' in 'Human Rights in the modern world' <https://www.amnesty.org/download/Documents/POL1032022021RUSSIAN.PDF> accessed 7 May 2023.

[1672]ILO Conference, 'Director General of the International Labour Conference' (109th session, 2021) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_795023.pdf> accessed 8 May 2023.

✓ The right to education. The question arose ‘What to do with the education?’. In order to switch to distance learning, it was necessary to set up and establish a smooth system for such a transition. Students began to study from home, mainly on the Microsoft Teams, Zoom, Discord platforms.

However, this gave rise to several problems:

- not everyone had the necessary equipment (computer, camera,),

-‘housing issue’: often the whole family was at home and worked or studied remotely (for example, for three people in a one-room apartment),

-there were difficulties with a stable Internet connection in the villages,

- additional costs were required to solve these problems.

-a high level of psychological problems and depression among young people, a feeling of disillusionment with the institutions of public life.

Many students studying on a commercial basis expressed dissatisfaction with the requirement to pay for periods of study in such conditions in full: they wanted to be recalculated, since distance learning is twice as cheaper. Of course, these circumstances make it difficult to realize the right to education, including its accessibility.

✓ The right to access to cultural values and to use cultural institutions. In the cultural sphere, the pandemic has also brought global changes:

-theatres, museums, galleries, and other cultural institutions were closed,

-many cultural institutions were forced to transfer their activities to the notorious electronic format,

-the film industry has completely stopped: cinemas are closed, film projects are suspended, premieres of films and TV series have been postponed to indefinite dates, film festivals, exhibitions and competitions have been cancelled or postponed.

✓ The right to medical care. Citizens complained about the lack of personal protective equipment in pharmacies (masks, gloves, antiseptics), about the difficulty of passing an antibody test (either geographically very far away or expensive). In addition, there were also long-term delays in calling doctors at home (due to the congestion of the healthcare system, hospitals, ambulances), and difficulties with visiting polyclinics and hospitals, as well as providing timely and qualified medical care.

The pandemic has become an obstacle to the realization of many rights by citizens, including socio-economic ones. But the state did its best to reduce the risk of infection of citizens by introducing the necessary restrictions on rights. When the number of infections began to decline, the authorities gradually began to lift some restrictions, for example, it was possible to get a public service not online, but by contacting in person.

Measures taken by States to overcome the post-pandemic period include:

- “measures designed to eliminate the disproportionate consequences of the pandemic and the crisis for certain people who have been historically disadvantaged due to their ethnic, racial, gender, legal and socio-economic status,

- a thorough study of all other options and an assessment of the impact on human rights, as well as priority allocation of resources to the most disadvantaged people[1673]".

A. Matheson, the Director of the National Institute for Human Rights, stated at the International Scientific and Practical Conference 'Law and Human Rights, Government and Society, Government and personality in a pandemic' that: "it is the duty of the state to protect people during a crisis. It is absolutely clear that the measures initiated by the authorities to protect people's health and lives are being taken in an unpredictable situation, …it is important to keep democratic principles in mind when taking and implementing measures…they must be well-founded, reasonable, proportionate and really necessary[1674]".

ii. Legal and organizational measures of economic, social, and cultural rights restrictions

There are three levels:

✓ At The international level the United Nations General Assembly adopted Resolution № 74/270 of April 2, 2020, which noted the central role of the United Nations, the need to respect human rights, and condolences to families and countries. The United Nations Secretary-General A. Gutierrez, in the Report 'COVID-19 and Human Rights: We are all in this together' (April 2020), put human rights at the centre of the global response to the pandemic and formulated "six priorities:

- It is necessary to consider not only health issues, but also economic and social impacts.
- The virus does not discriminate, but its impact discriminates, so an inclusive response is needed.
- Everyone should be involved in an open, transparent, and accountable response.
- The threat is a virus, not people; emergency measures should be temporary, proportionate and aimed at protecting people.
- No country should fight alone: global threats require a global response.
- When we cope, we must become better than we were before. At the end of the report, several general recommendations were made[1675]".

Moreover, The United Nations Secretary-General A. Gutierrez, presented the Resolution № 2532 (2020) on July 1, 2020, which pointed out that: "a climate of violence and instability in conflict situations can exacerbate a pandemic, and a pandemic can in turn exacerbate the negative impact of conflict and threaten the maintenance of peace and security; tt demanded an

[1673]Amnesty International, Report 2020/2021' in 'Human Rights in the modern world' <https://www.amnesty.org/download/Documents/POL1032022021RUSSIAN.PDF> accessed 7 May 2023.

[1674] Glushkova S.I, Khoroltseva E, Stalnova M.A, 'Discussions on Law and Human Rights, Public Authorityand Society, State and Personality in the Context of the Pandemic' (A Review of the Conference Proceedings) in *Bulletin of the Humanities University* (№ 1(32), 2021).

[1675]UN, 'COVID-19 and Human Rights We are all in this together' (April 2020) <https://www.un.org/sites/un2.un.org/files/ un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf> accessed 8 May 2023.

immediate cessation of hostilities in all situations on its agenda and called for a humanitarian pause of at least 90 days for parties to conflicts to ensure the delivery of humanitarian aid and medical evacuations". It has been noted that "the UNSC could take on the function of global coordination and the introduction of mandatory measures that WHO can only recommend closing borders, providing aid, combating misinformation, distributing vaccines[1676]".

At the regional level, for example, in the Eastern Europe, the Caucasus, and Central Asia the following recommendations were "proposed:

1. Ensure that moratoria on environmental inspections and monitoring during the lockdown that are aimed to help relieve businesses from additional administrative and financial burden, as well as fossil fuel subsidies, are well-justified, targeted, and temporary and are lifted as soon as the health situation improves.
2. Incorporate environmental conditions in specific support provided to the agriculture and aviation industries to incentivise firms to transition towards cleaner technologies and fuels, with performance requirements related to environmental, social and governance criteria.
3. Ensure strong links between the provision of financial support, including from development partners to strengthen economic recovery measures, and incorporation of green measures by the recipients in their operations.
4. Maintain, and where possible, increase commitments to fund green measures, and ensure that funding for environmental agencies and ministries returns at least to pre-pandemic levels soon after health emergencies are addressed. This is particularly relevant for schemes supporting the adoption of greener technologies which tend to demonstrate societal benefits in the medium to long term, and often beyond the remits of their initial mandate.
5. Share good practices on effective greening of economic stimulus packages among the countries in the region and beyond.
6. Ensure that social and economic resilience to future shocks, including impacts from climate change, is made a strategic priority"[1677].

At the domestic level, for example, in Italy the government adopted Decree № 6 on February 23, 2020, authorizing the Government to take measures aimed at containing the virus[1678]. On the basis of this decree: "meetings were banned; the movement of people was restricted (except for the purchase of products, visits to doctors and work necessities), the police were given the right to stop people attending and demand written explanations; retail trade (except for the sale of essential goods), banking, financial and insurance services were

[1676] Pobjie E, 'COVID-19 as a threat to international peace and security: The role of the UN Security Council in addressing the pandemic. – EJIL Talk!' (July 27, 2020) <https://www.ejiltalk.org/covid-19-as-a-threat-to-international-peace-and-security- the-role-of-the-un-security-council-in-addressing-the-pandemic> accessed 8 May 2023.

[1677] 'COVID-19 and greening the economies of Eastern Europe, the Caucasus and Central Asia' <https://www.oecd.org/coronavirus/policy-responses/covid-19-and-greening-the-economies-of-eastern-europe-the-caucasus-and-central-asia-40f4d34f/> accessed 7 May 2023.

[1678] Decreto-legge, 'Misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19' <https://www.gazzettaufficiale.it/eli/id/2020/02/23/20G00020/sg> accessed 9 May 2023.

discontinued; restaurants, museums, theatres, hairdressers, gyms, schools and universities are closed; sports and cultural events are cancelled; religious and civil ceremonies are prohibited; the work of churches is restricted; visits to prisons are suspended; it is recommended that employees be transferred to remote work or given paid leave. The violation of the relevant rules was recognized as a crime punishable by imprisonment for up to three months or a fine of up to 206 euros; persons who received a positive test and did not comply with quarantine could be prosecuted in accordance with art. 438 or 452 (up to lifetime imprisonment)[1679]".

In Spain, the government has implemented some of the measures which include:

- The State of Alarm. This was declared on March 14, 2020, and allowed the government to take several extraordinary measures to address the pandemic, including imposing travel restrictions, closing certain businesses and public spaces, and imposing curfews. The State of Alarm was initially declared for 15 days but has been extended several times and is currently in effect until May 9, 2021.
- Mask mandates. The use of masks has been mandatory in various settings in Spain, including on public transportation, in enclosed public spaces, and in certain outdoor settings.
- Quarantine and isolation: People who have tested positive for COVID-19, or who have been in close contact with someone who has tested positive, are required to quarantine or isolate themselves in order to prevent the spread of the virus.
- Testing and tracing. Spain has implemented a system for testing and tracing cases of COVID-19. This includes testing people who have symptoms or who have been in close contact with someone who has tested positive and tracing the contacts of positive cases in order to identify and isolate any additional cases.
- Vaccination. Spain has a national vaccination plan in place and has been rolling out vaccines to its population. The vaccination campaign is being carried out in phases, with priority being given to certain groups such as healthcare workers and older adults.

In India "a huge number of migrants were forced to get home on foot, there was a threat of starvation, in other countries, the authorities have used the pandemic as an excuse to persecute opponents[1680]".

In another country, in the Russian Federation, the main support measures for social rights which were provided by the Government for the period of coronavirus are presented in Table.

[1679] Spadaro A, 'Do the containment measures taken by Italy in relation to COVID-19 comply with human rights law? EJIL Talk!'(March 16, 2020) <https://www.ejiltalk.org/do-the-containment-measures-taken-by-italy-in-relation-to-covid-19-comply- with-human-rights-law>; Dzehtsiarou K, 'COVID-19 and the European Convention on Human Rights. – Strasbourg Observers' (March 27, 2003)<https://strasbourgobservers.com/2020/03/27/covid-19-and-the-european-convention-on-human-rights/#more-4563> accessed 5 May 2023; Startceva O, 'The Right to a Fair Trial in the Context of COVID-19 in Russia' in *Legal Dialogue* (May 28, 2020) < https://legal-dialogue.org/the-right-to-a-fair-trial-in-the-context-of- covid-19-in-russia> accessed 2 May 2023.

[1680] Bennoune K, 'Lest We Should Sleep: COVID-19 and Human Rights' in *American Journal of International Law*. (Vol. 114, Issue 4, 2020) P. 666–676.

Table 'Measures of social support of the population for the period of coronavirus in 2020'

Category of population	Social support measures
Families with children	✓ Increase of childcare allowance up to 1.5 years for non-working parents. ✓ Additional payments in the amount of 5000, 10000 rubles for families with children under 3 years old, from 3 to 7 years old, from 3 to 16 years old.
Unemployed	✓ Increase in the maximum unemployment benefit and in connection with the loss of work. ✓ Increase in the availability of social support measures. ✓ The possibility of registering the unemployed remotely.
Disabled people	✓ Automatic extension of disability if such an extension occurred during the pandemic period
Elderly people	✓The right to go on sick leave and receive the necessary payments in this regard. ✓Benefits for payment of housing and communal services. ✓Pension indexation.

As of January 1, 2021, 153 decisions were made to allocate funds from the government's reserve fund to prevent the impact of the deteriorating economic situation on the development of economic sectors, prevention, and elimination of the consequences of the pandemic, protection of citizens' health and assistance to the sick, as well as to support citizens in a pandemic. The largest amount of the reserve fund was allocated to[1681]:

✓ An additional transfer to balance the Pension Fund in order to compensate for the reduction in insurance premiums due to anti-crisis decisions of the government and the negative impact of the pandemic on the salary fund - 941.4 billion rubles.

✓ Social support for families with children - 569.3 billion rubles.

✓ Transfers to regions for medical care for patients with coronavirus - 378.2 billion rubles.

✓ Incentive payments to doctors and civil servants directly working with COVID-19 - 231.7 billion rubles.

✓ Special social benefits, including payments to the unemployed - 155.5 billion rubles.

[1681] 'Schetnaya palata ocenila velichinu raskhodov na bor'bu s pandemiej' < https://www.rbc.ru/economics/24/02/2021/6034d7659a7947b5e4403bdd> accessed 8 May 2023.

On the territory of the regions of the Russian Federation, additional measures have been taken to support the population. For example, in Ugra, a one-time cash payment was provided for those citizens whose income for each family member was less than the established subsistence minimum: for non-working pensioners in the amount of 3,000 rubles, and for pregnant women – 5,000 rubles. In Moscow, a social payment in the amount of 2000 rubles was introduced for those pensioners who observed the self-isolation regime without violations during the pandemic. "The Ulyanovsk region also introduced monthly regional payments to families with children aged 3 to 7 years in the amount of 7000 rubles per child. Similar payments have been introduced in several other regions of Russia[1682]".

Another measure of support for citizens was a moratorium on fines for non-payment of housing and communal services. It was in effect until January 1, 2021, and if fines and penalties for late payment of utilities will not be accrued. A moratorium was also imposed on the recovery of movable property of debtors - individuals (valid until July 1, 2021). In other words, "bailiffs in the specified period do not have the right to walk around the apartments and describe the property. In addition, small and medium-sized businesses, as well as pensioners affected by the pandemic, will be able to use debt instalments[1683]".

The main problems of the realization of the social rights of citizens to measures of social support of the population can be identified[1684]:

- ✓ Legal illiteracy, financial illiteracy of the population, which did not allow some categories of the population to apply for support measures in a timely manner.
- ✓ Information illiteracy, which did not allow many to pass the remote registration of payments.
- ✓ The unpreparedness of the health and social security system for sudden and sufficiently high payments to register the population as needy.

Next category of rights is cultural rights. There are some examples[1685] of organizational measures in different counties. In the Republic of Korea, the Ministry of Culture, Sports, and Tourism has issued a handbook on cultural life in self-isolation, which collects data from resources devoted to art, education, and sports. As part of its large-scale cultural strategy #culturadigital, the Ministry of Culture of Colombia has launched a series of TV shows about

[1682] Institut social'noj politiki NIU VSHE, 'Obzor mezhdunarodnoj praktiki podderzhki ekonomiki i naseleniya v usloviyah bor'by s pandemiej koronavirusa v Armenii, Velikobritanii, Germanii, Danii, Ispanii, Italii, Kazahstane, Kitae, Niderlandah, SSHA, Finlyandii, Francii, Shvecii, Yuzhnoj Koree, Yaponii' in *Obshchaya redakciya O.V. Sinyavskoj* (2020) <https://www.eg-online.ru/news/419705/> accessed 6 May 2023.

[1683] 'Schetnaya palata ocenila velichinu raskhodov na bor'bu s pandemiej' <https://www.rbc.ru/economics/24/02/2021/6034d7659a7947b5e4403bdd> accessed 7 May 2023.

[1684] Bandurin A.P, 'Problemy zashchity konstitucionnyh prav i svobod grazhdan Rossii v period pandemii' in *Gumanitarnye, social'no-ekonomicheskie i obshchestvennye nauki* (№ 10, 2020) P. 75 - 80.

[1685] 'Website of the Department of International and Regional Cooperation of the Russian Federation'< https://ach.gov.ru> accessed 10 May 2023.

folk dances of various regions of the country. In Mexico, the Ministry of Education has launched a 'Homeschooling' program which uses UNESCO videos that talk about World Cultural Heritage sites, natural heritage, and creativity. Broadcasts organized through television and the Internet are designed to teach viewers about history, natural sciences, ethics, and social studies.

The Governments of different counties find public support for their initiatives in the field of culture. They turn to citizens for help, announce the search for ideas and startups, determine a list of problems that need to be solved with the help of crowdsourcing hold competitions and allocate grants to young artists. In the United Arab Emirates, the Dubai Department of Culture and Art and the public-private partnership organization Art Dubai Group launched Idea-thon, an initiative to find ideas on how to stimulate the development of creative industries.

The Ministry of Culture of Ireland, in cooperation with the social network Facebook, allocates grants in the amount of 1 thousand euros to artists who are ready to present their work on online platforms. The Government of Mexico is supporting a competition organized by the Veracruz Institute called "Stay at Home, we will see you soon" for students and specialists in graphic design, illustration and fine arts. The condition of the competition is the creation of works that emphasize the importance of social solidarity.

Despite the active development of the digital industry during the pandemic and its close intertwining with the sphere of culture, informatization is still at a low level in many countries. UNESCO[1686] estimates that 3.6 billion people in the world do not have access to the Internet. Therefore, traditional media, such as local radio, television, and the print press, must also remain a vital part of the Government response. In Guatemala, Radio Faro Cultural and public radio stations broadcast special cultural radio broadcasts for the population, as well as information about the pandemic. In addition, telephone surveys replace online research when collecting data on the support and development of culture.

Thus, Governments should be also transparent about the basis for any such measures and should consult with relevant stakeholders, including civil society organizations, to ensure that they are effective and fair.

iii. Selected case-law of regional and domestic courts on the issue of economic, social, and cultural rights' protection

The COVID-19 pandemic has had a significant impact on the protection of cultural rights, including the obligations of states in this area. The pandemic has led to the closure of cultural institutions and events, which has limited access to cultural goods and services, including museums, theatres, and concerts. Additionally, the economic impact of the pandemic has led to budget cuts and reduced funding for cultural initiatives.

[1686] UNESCO < https://www.unesco.org/en> accessed 11 May 2023.

One example of the impact of the pandemic on cultural rights can be seen in the case of *Moreno Baldivieso Estudio De Abogados v. Bolivia* before the Inter-American Court of Human Rights. In this case, the Court considered whether the closure of a cultural centre in Bolivia due to budget cuts violated the right to cultural participation under the American Convention on Human Rights.The Court found that the closure of the cultural centre did indeed violate the right to cultural participation, as the state had failed to take adequate measures to protect and promote cultural rights in the face of budgetary constraints. States have a positive obligation to take proactive measures to ensure that cultural institutions and activities are accessible to all, even in times of economic hardship.

Another example can be seen in the case of *Centro de Estudios Legales y Sociales (CELS) v. Argentina* before the Inter-American Commission on Human Rights. In this case, the Commission considered whether the closure of cultural spaces during the pandemic violated the right to cultural participation and the right to freedom of expression. The closure of cultural spaces did indeed violate these rights, as it limited access to cultural goods and services and restricted the ability of individuals to express themselves through cultural activities. The Commission held that states have an obligation to take measures to ensure that cultural institutions and activities remain accessible, even in times of crisis. In terms of specific types of obligations, states have a duty to take measures to protect and promote cultural rights, including the right to participate in cultural life, the right to access cultural goods and services, and the right to freedom of artistic expression. This includes providing funding for cultural initiatives, ensuring that cultural institutions are accessible to all, and taking steps to protect cultural heritage.

At the domestic level it is necessary to consider labour rights' protection in Russian courts in the following regions:

✓ Chelyabinsk region. The limited liability company 'Center of Industrial Equipment' (Chelyabinsk region) sent an employee to remote work, then suspended him from work for him to apply for dismissal from work at his own request. Later the company cancelled the order on suspension from work and dismissed the employee under subparagraph 'a' of paragraph 6 of part one of Article 81 of the Labour Code of the Russian Federation for absenteeism. The Kopeysky City Court of the Chelyabinsk Region reasoned that illegal suspension from work cannot be a truancy[1687]. The decision of the Kopeysky City Court of the Chelyabinsk Region of 17.06.2020 in case № 2–1722/20 by the ruling of the IC on civil cases of the Seventh Cassation Court of General Jurisdiction of May 11, 2021, in case № 8G-4926/2021[88-6140/2021], the court decision was left unchanged.

✓ Magadan oblast. The Magadan Regional Universal Library named after A.S. Pushkin suspended a librarian who refused vaccination. The Magadan City Court found that: "When issuing the order for dismissal, the employer was guided by his own, not quite correct

[1687] Decision of the Kopeysky City Court of the Chelyabinsk Region, Case № 2-1722/2(17.06.2020).

understanding of the resolution of the chief sanitary doctor for the Magadan Region dated on 23rd of July 2021 № 1, order of the Ministry of Culture and Tourism of the Magadan Region dated August 06, 2021 № 148, paragraph 8 of part 1 of Article 76 of the Labour Code of the Russian Federation, as well as paragraph 4 Paragraph 2 of Article 5 of Federal Law № 157-FZ of 17th of September 1998 'On immunoprophylaxis of infectious diseases". The actions of the employer in the form of suspension from work due to the librarian's refusal to be vaccinated are nothing but pressure on the employee. Consequently, the suspension of a librarian violates the current legislation regarding the voluntary nature of vaccination and the suspension order is illegal. The rights of the employee have been restored by the Magadan City Court[1688].

✓ Pskov region. From the practice of the prosecutor's office, the following example should be given. On October 7, 2021, the Prosecutor's office of the city of Pskov submitted a submission on the elimination of violations to the chief physician of the Pskov Ambulance Station in connection with the issuance of 27 illegal orders on the suspension of workers who refused vaccinations against coronavirus, considering the following. The Resolution of the Chief State Sanitary Doctor for the Pskov region dated 28th of June 2021 № 15 'On preventive vaccinations for certain groups of citizens for epidemic indications[1689]' provides for the need to ensure vaccination against a new coronavirus infection of citizens working in the healthcare sector. By 30.07.2021, healthcare organizations had to organize vaccination of at least 60% of such workers. The corresponding vaccination rates in the Pskov Ambulance Station were met. Nevertheless, the head of the Pskov Ambulance Station issued 27 illegal orders to suspend 139 employees who had no contraindications for vaccination and refused vaccinations against coronavirus. This suspension caused losses in the wages of employees. After the issuance of the prosecutor's office's submission, the employees of the institution were allowed to work, and the employer began to recalculate wages.

✓ Republic of Sakha. The state autonomous Institution 'Medical Center of Yakutsk' suspended an employee of the department of palliative medical care for children from work without pay until the provision of medical documents on medical withdrawal from immunization according to COVID-19 or on receipt of the first component of the vaccine. The Yakut City Court of the Republic of Sakha noted that vaccination does not apply to persons who have contraindications to preventive vaccination against COVID-19. Contraindications must be confirmed by a medical report. In the medical book of the employee there was a record of a permanent medical withdrawal from vaccinations. In this regard, vaccination requirements do not apply to him. In this case, the employer does not have the right to suspend the employee from work, even if his specialty is in the list of mandatory professions subject to vaccination for epidemic indications, since the employer violated the employee's labour rights, the Yakut

[1688] Decision of the Magadan City Court, Case № 2-2731/2021 (29th of October 2021).

[1689] Resolution of the Chief State Sanitary Doctor for the Pskov Region, 'On preventive vaccinations for certain groups of citizens for epidemic indications' (28th of June 2021) № 15 <http://60.rospotrebnadzor.ru/content/постановление-15-от-28062021-о-проведении-профилактических-прививок-отдельным-группам> accessed 19 May 2023.

City Court of the Republic of Sakha[1690] declared illegal the order of suspension from work without pay.

✓ Sakhalin region. In the case № 2-677/2021[1691] the limited liability company "VGK Service" suspended the employee from work from July 20, 2021, until the vaccination or improvement of the epidemiological situation in the region and the cancellation of regulations of the Chief State Sanitary Doctor. According to paragraph 6.2 of the Resolution of the Chief Sanitary Doctor for the Sakhalin Region № 204 dated June 18, 2021[1692], employers needed to organize preventive vaccinations with the first component or single-component vaccine by 20th of July 2021, and with the second component of the vaccine against a new coronavirus infection that has passed state registration in the Russian Federation by 20th of August 2021. The employee disputed the legality of the Resolution, arguing that he did not write a written consent or refusal of vaccination and falls under 40% of employees at the enterprise who may not be vaccinated. The Uglegorsk City Court of the Sakhalin region pointed out that the establishment of a different vaccination period by the employer is possible, if it does not violate the employee's labour rights, and obliged the employer to allow the employee to work, collected wages for the time of forced absenteeism.

✓ Smolensk region. In the case № 2–1710/2021[1693] the autonomous association "United Wagon Repair Company" suspended a locksmith for the repair of heating network equipment from work without payment of wages due to the refusal of vaccination against a new coronavirus infection before vaccination. After vaccination, 60% of the company's employees, suspended employees were allowed to work. The Decree of the Government of the Russian Federation № 825 (adopted on 15th of July 1999)[1694] approved the list of works, the performance of which is associated with a high risk of infectious diseases and requires mandatory preventive vaccinations. The work on the repair of heating networks in the boiler room does not belong to this list. A locksmith does not perform a labour function in public transport for the repair of heating network equipment. Since there were no grounds provided by law for the suspension of a locksmith from work, the Zadneprovsky District Court of Smolensk recognized the order

[1690] Decision of the Yakut City Court of the Republic of Sakha (Yakutia) Case № 14RS0 № 58 (September 23rd, 2021).

[1691] Decision of the Uglegorsk City Court of the Sakhalin region case № 2-677/2021 (September 22nd, 2021).

[1692] Resolution of the Chief State Sanitary Doctor for the Sakhalin Region, 'On additional measures for the prevention of a new coronavirus infection (COVID-19) in the Sakhalin Region' (June 18th, 2021, № 204) <https://rg.ru/documents/2021/06/18/sakhalin-post204-reg-dok.html > accessed 1 March 2023.

[1693] Decision of the Zadneprovsky District Court of Smolensk, Case № 2-1710/2021 (19th of November 2021).

[1694] Decree of the Government of the Russian Federation, 'On approval of the list of works, the performance of which is associated with a high risk of infectious diseases and requires mandatory preventive vaccinations' of 15.07.1999 (№ 825 (ed. of 24.12.2014)) <https://legalacts.ru/doc/postanovlenie-pravitelstva-rf-ot-15071999-n-825/> accessed 11 May 2023.

in this part as illegal, the employer was obliged to pay average earnings for the time of forced absenteeism.

2.Climate Change

i. Definition

Climate change refers to long-term changes in the Earth's climate, including average temperature and precipitation patterns. These changes are primarily driven by human activities, such as the burning of fossil fuels and deforestation, which release large amounts of greenhouse gases into the atmosphere. These gases trap heat and cause the Earth's temperature to rise, leading to a wide range of impacts, including more frequent and severe natural disasters, changes in precipitation patterns, and rising sea levels. For example, rising sea levels can have a significant impact on economic, social, and cultural rights. As sea levels rise, low-lying coastal areas are at increased risk of flooding, which can lead to the displacement of communities and the loss of cultural sites and artifacts. Moreover, rising sea levels have already caused the loss of some small island nations, and have put others at risk of disappearing. In addition, the displacement of communities can lead to the loss of cultural traditions and practices, as well as social and economic disruption. Considering impacts on social rights, rising sea levels force people to leave their communities, houses and find new ways to support themselves and their families. The displacement of communities can result in the loss of social connections, and supportive networks. Regarding impact on economic rights, it is worth noting that natural disasters as a result of climate change can damage infrastructure and disrupt transportation and communication networks, further undermining economic activity. Affected communities need support to recover and rebuild their economies.

It is well known that climate change is a global problem that requires urgent action to reduce greenhouse gas emissions and mitigate its impacts. As a consequence of the climate change, natural disasters such as droughts, floods, and hurricanes become more frequent and severe, people's access to essential resources such as food, water, and shelter can be disrupted. This can lead to economic hardship, social disruption, and cultural loss. In addition, the effects of climate change can disproportionately impact marginalized and disadvantaged groups, exacerbating existing inequalities. International, governmental, and non-governmental organizations, countries and their parliaments as law-making bodies have a responsibility to promote and protect economic, social, and cultural rights, and addressing climate change is an important step of this responsibility.

ii. Legal and policy doctrines

There are several legal and policy doctrines that have been developed to address the issue of climate change and to guide the development of policies and regulations aimed at reducing

greenhouse gas emissions and mitigating the impacts of climate change. Some of the key climate change doctrines include:

1. The Precautionary Principle is a principle of risk management that states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is not harmful falls on those taking the action.

In the context of climate change, the Precautionary Principle suggests that we should take action to reduce greenhouse gas emissions and mitigate the impacts of climate change, even in the absence of complete scientific certainty about the extent and severity of the risks associated with climate change. This is because the potential consequences of inaction or delay in addressing climate change could be catastrophic and irreversible.

The Precautionary Principle is often invoked in discussions about environmental policy, particularly in the areas of climate change, toxic chemicals, and genetically modified organisms. It is intended to protect human health and the environment from potential harm by encouraging caution in the face of scientific uncertainty.

2. The Polluter Pays[1695]Principle. This principle holds that those who cause pollution or other environmental harm should be responsible for paying the costs of addressing that harm, rather than society as a whole. The UNFCCC preamble states that "States... they are responsible for ensuring that activities within their jurisdiction or control do not cause damage to the environment of other States[1696]". The UNFCCC has defined a list of obligations for the parties in terms of reducing greenhouse gas emissions and adapting to climate change. Article 14 of the UNFCCC defines: "In the event of a dispute between two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute by negotiation or by any other peaceful means of their choice[1697]".

3. The Public Trust Doctrine is a legal principle that holds that certain natural resources, such as air, water, and certain land areas, are held in trust by the government for the benefit of the public. This doctrine is based on the idea that certain natural resources are essential to the common good and should be protected for the benefit of present and future generations.

It has been invoked to argue that the government has a legal duty to protect the public from the negative impacts of climate change and to take action to prevent further harm to the environment. This includes a duty to regulate greenhouse gas emissions and to take other steps to address the causes of climate change.

[1695]United Nations Conference, 'Declaration on the Human Environment' UN Doc. A/CONF/48/14/ Rev. 21st (Stockholm, 1972); United Nations, 'Principle and Declaration on Environment and Development' UN Doc. A/CONF/151/26/Rev.1 (Rio de Janeiro, June 3–14, 1992).

[1696] United Nations Framework Convention on Climate Change (New York, 9 May 1992) < https://unfccc.int/process-and-meetings/theconvention/status-of-ratification/status-of-ratification-of-theconvention> accessed 3 May 2023.

[1697] Ibid.

The Public Trust Doctrine has been used in a number of legal cases related to climate change, including lawsuits brought by individuals, environmental groups, and governments against companies or governments that are alleged to have contributed to climate change or failed to take sufficient action to address it. The doctrine has also been used to justify government regulations and policies designed to mitigate the impacts of climate change.

4. The Intergenerational Equity Doctrine. This doctrine holds that present generations have a responsibility to protect the environment for future generations, and that decisions made by current generations should not compromise the ability of future generations to meet their own needs.

5. The Common But Differentiated Responsibilities Doctrine: This doctrine recognizes that different countries have different levels of responsibility for addressing climate change, based on their historical contributions to the problem and their current capacity to address it. It holds that developed countries, which have contributed significantly to the problem of climate change, have a greater responsibility to take action to address it than developing countries, which have contributed less. Some lawyers believe that it hides the recognition of responsibility for climate change for developed countries[1698].

The preamble of the Paris Agreement (2015) refers to the obligations of States to "promote and take into account their respective obligations in the field of human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations, and the right to development, as well as gender equality, empowerment women's rights and opportunities and intergenerational justice[1699]".

iii. International, regional, and domestic efforts on climate change

Analysing the international level, the United Nations, and its activities on climate change, it is important to note some examples of the UN's work:

✓ The UN Framework Convention on Climate Change (UNFCCC), which is an international treaty that sets out a framework for action on climate change and serves as the basis for international negotiations on the issue. It was adopted in 1992 to address the issue of climate change. The main objective of this document is to stabilize greenhouse gas concentrations in the atmosphere to prevent dangerous levels of global warming. The UNFCCC is a "framework" convention because it provides a general framework for international

[1698] Mayer B, 'Climate change reparations and the law and practice of state responsibility' in *Asian journal of international law* (№ 1, Vol.2017) P. 185–216.

[1699] Paris Agreement (adopted by 196 Parties at the UN Climate Change Conference in Paris, France, on 12 December 2015) <https://unfccc.int/process-and-meetings/the-parisagreement/the-paris-agreement> accessed 13 May 2023.

cooperation on climate change, but it does not include specific targets or commitments for reducing greenhouse gas emissions. One of the main challenges in implementing the UNFCCC is the lack of binding targets for reducing greenhouse gas emissions. The UNFCCC includes voluntary commitments for reducing emissions, but these commitments are not legally binding and are often difficult to enforce. As a result, many countries have not made significant progress in reducing their emissions, and global emissions continue to rise.

Another challenge is the lack of financial resources to support the implementation of the UNFCCC. The UNFCCC includes provisions for developed countries to provide financial support to developing countries to help them adapt to the impacts of climate change and transition to low-carbon economies. However, the amount of financial support that has been provided has been insufficient to meet the needs of developing countries. In addition, there are often conflicts of interest between different countries and regions when it comes to addressing climate change. For example, some countries may be more concerned about protecting their economic interests, while others may be more focused on protecting the environment. These conflicts can make it difficult to reach agreement on effective solutions to climate change. The challenges of implementing the UNFCCC are significant, but there is still hope that global efforts to address climate change can be successful. The UNFCCC provides a valuable framework for international cooperation on climate change, and with continued efforts and political will, it is possible to make progress in reducing greenhouse gas emissions and mitigating the impacts of climate change.

The 27th Conference of the Parties on Climate Change was held in Egypt from November 6 to 18, 2022. While the COP-26 in Glasgow set a goal to increase the ambition of global climate targets, especially in the field of reducing greenhouse gas emissions, the consolidated UN report emphasizes that the commitments of States are still insufficient. The 27th Conference was devoted to the possibility of limiting global warming within 1.5 C, as well as solidarity and cooperation between developed and developing countries. The conclusions of volumes I-III of the sixth Report of the Intergovernmental Panel on Climate Change (IPCC) indicate that the increase in average global temperature is obvious, that it is accelerating and that the warming manifestations already observed are almost entirely caused by anthropogenic activities. Such rapid warming increases the number of threats to international prosperity and security. Sea level rise, the intensification and increase in the frequency of extreme weather events, reduced crop yields and the spread of pathogens are described by the IPCC as direct consequences of climate change. However, the IPCC stresses that there is still a small opportunity to limit global warming to 1.5 C if states quickly and significantly reduce their emissions by 2030 and achieve carbon neutrality by the middle of the century.

✓ The Paris Agreement**,** which is an international treaty that was adopted under the UNFCCC and aims to limit global warming to well below 2 degrees Celsius and pursue efforts to limit it to 1.5 degrees Celsius. There are several disadvantages of the Paris Agreement. Firstly, many developing countries lack the financial resources and technical capacity to implement the necessary measures to address climate change. Secondly, the Paris Agreement does not address the issue of climate change adequately. The targets set in the agreement are not ambitious enough to prevent dangerous levels of global warming, and many global experts

believe that the world is not on track to meet these targets. Thirdly, the Paris Agreement has been criticized for not adequately addressing the needs of vulnerable communities and countries. Many developing countries are already facing the impacts of climate change, and the Agreement does not provide sufficient support to help these communities adapt and cope with these impacts.

Moreover, the Paris Agreement affirms the principle that 'climate action should respect, protect and promote human rights', and it includes specific references to the rights of indigenous peoples and the rights of those who are vulnerable to the impacts of climate change. However, the Paris Agreement does not include specific provisions for protecting economic, social, and cultural rights and guidance on how countries can protect these rights in the context of climate change. Instead, it focuses on mitigating greenhouse gas emissions and adapting to the impacts of climate change. Overall, while the Paris Agreement recognizes the importance of protecting economic, social, and cultural rights, it does not provide specific provisions for doing so. More work is needed to ensure that the implementation of the Paris Agreement is consistent with the protection of these rights. The implementation of the Paris Agreement can have an impact on economic, social, and cultural rights. Efforts to reduce greenhouse gas emissions and transition to low carbon economies can create new economic opportunities and support sustainable development. This can have a positive impact on the rights of second generation. At the same time, it also might have a negative impact. If efforts to reduce greenhouse gas emissions are not implemented in a way that is equitable and inclusive, they can have negative impacts on vulnerable groups. The relationship between the Paris Agreement and ESC rights is complex and depends on the implementation of the agreement.

The main difference with the UNFCCC and the Paris Agreement is that the first document is a framework convention that provides a general framework for international cooperation on climate change, while the Paris Agreement is a more specific treaty that includes voluntary commitments for reducing greenhouse gas emissions, The UNFCCC was adopted in 1992, while the Paris Agreement was adopted in 2015. The UNFCCC was ratified by almost all counties, while the Paris Agreement has been ratified by a smaller number of countries. There is no mechanism to force countries to ratify the Paris Agreement. One way to encourage counties to ratify the Paris Agreement is to provide incentives for counties to do so (for example, financial support, other benefits). This could make it more attractive for countries to ratify the agreement. Another way is to put pressure on countries that have not yet ratified the agreement. It might include public pressure through media campaigns, or diplomatic pressure through discussions with the country's government.

✓ The Sustainable Development Goals (SDGs), which are a set of 17 global goals adopted by the UN that aim to end poverty, protect the planet, and ensure peace and prosperity for all. Climate change is a key issue that is addressed in the SDGs. Goal 13 of the SDGs specifically focuses on climate action, and it includes targets for reducing greenhouse gas emissions, improving resilience to the impacts of climate change, and providing financial support for developing countries to address climate change. The SDGs recognize that climate change is a global challenge that requires urgent action, and that addressing climate change is essential for achieving sustainable development; the impacts of climate change disproportionately affect vulnerable communities and countries, and that it is important to

support these communities in adapting to the impacts of climate change and transitioning to low-carbon economies. The SDGs provide a comprehensive framework for addressing climate change and promoting sustainable development. By focusing on both the environmental and social dimensions of sustainability, the SDGs provide a holistic approach to tackling climate change and achieving a sustainable future.

Moreover, the SDGs include goals and targets that focus on promoting human rights, reducing inequality, and supporting vulnerable communities. For example, Goal 10 of the SDGs focuses on reducing inequality, and the Goal 16 focuses on promoting peaceful and inclusive societies. By focusing on climate change and ESC rights, the SDGs provide a holistic approach to tackling climate change and achieving sustainable future.

✓ The Office of the United Nations High Commissioner. In 2008, the Office of the UN High Commissioner for Human Rights was authorized to conduct a "detailed analytical study of the relationship between climate change and human rights" within the framework of UN Human Rights Council Resolution № 7/23 "Human rights and climate change[1700]".As part of it, "the Maldives in 2008 they presented a detailed report on their territory, confirming the impact of climate change on almost all guaranteed human rights - the right to life, the right to own property and housing, the right to access to food and water, the right to work[1701]". In 2019 "the Human Rights Committee adopted a historic ruling on the claim of a resident of the island state of Kiribati to New Zealand[1702]". The applicant tried to obtain refugee status in New Zealand, arguing that in a few years his island will be covered by water, and it will be impossible to live there. The New Zealand authorities rejected this request, considering that over time the Kiribati authorities will be able to find a solution to this problem. The Office of the United Nations High Commissioner for Human Rights took the side of New Zealand, but in its decision recorded a new legal precedent, the consequences of which have yet to be assessed. In the decision it was stated: "If a person's life is in immediate danger due to climate change leading to natural disasters, and he crosses the border of another state, he cannot be deported back, since his life is in danger, as well as in the event of war or a threat of reprisal at home[1703]".

✓ The UN Climate Change Secretariat, which is the UN body responsible for supporting the implementation of the UNFCCC and the Paris Agreement. The Secretariat also facilitates the work of the various bodies and committees established under these agreements.

Through these and other initiatives, the UN is working to raise awareness about climate change, support the implementation of international agreements, and provide a platform for international cooperation on addressing this global challenge.

[1700]HRC, Resolution 'Human rights and climate change' № 7/23 (2008) <https://ap.ohchr.org/documents/R/HRC/resolutions/A_HRC_RES_7_23.pdf > accessed 7 May 2023.

[1701]HRC, 'Submission of Maldives under Resolution HRC 7/23' (25 September 2008) <https://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Maldives_Submission.pdf> accessed 2 March 2023.

[1702] Ria news website <https://ria.ru/20200126/1563870448.html> accessed 3 March 2023.

[1703]OHCHR<https://tbinternet.ohchr.org/layout/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f127%2fD%2f2728%2f2016&Lang=en> accessed 4 March 2023.

✓ The International Chamber of Commerce. In 2019 it issued a report on the specifics of the arbitration process in cases related to climate issues[1704].

At the regional level, the European Union called for the creation of a robust work programme to mitigate the effects of climate change at COP-27 and took the most concrete, operational, and mandatory measures. At the meeting in December 2020, a commitment was made to reduce net greenhouse gas emissions in the EU by at least 55% by 2030 compared to 1990. This target should make it possible to achieve the goal of climate neutrality by 2050. In the first half of 2022 it was possible to implement various components of the "Green Pact for Europe" (European Green Deal), within which these obligations are implemented, in particular the main regulatory documents of the legislative package known as 'Fit for 55'. In order to reach a political agreement on regulatory documents as soon as possible, trilateral meetings of the legislative bodies of the European Union began to be held in order to ensure that from 2023 implementation of the new EU regulatory framework in the field of climate. As a result of the energy crisis, intensified due to the war in Ukraine, the RePower EU strategy was adopted, aimed at increasing the energy independence of the European Union while accelerating the pace of its program of transition to sustainable energy.

Another question at the regional level is "Has the Council of Europe addressed the global climate change in connection to economic, social, and cultural rights? If so, when? How? Is it sufficient? What is the main action of the Council of Europe in protecting, promoting, and ensuring economic, social, and cultural rights?[1705].

The analysis of the activity of the Council of Europe is conducted through the double approach:

1) by specific rights such as public health, the right to cultural heritage and preserving one's way of living, for example, Suomi people. It was mentioned already in the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions 'Winning the Battle Against Climate Change (SEC (2005)180 that "climate change has a range of complex inter-linkages with health. These include direct impacts, such as temperature-related illness and death, and the health impacts of extreme weather events. It also includes other impacts that follow more indirect pathways such as those that give rise to water- and food-borne diseases; vector-borne diseases; or food and water shortages. It can also include wider effects on health and well-being"[1706].

2) by considering vulnerable groups as women, old people, persons with disabilities, minority groups, migrants, Roma and travellers. For example, in the Workshop on Human Rights approach in Disasters: Inclusion of Vulnerable Groups in Disaster Risk Reduction (18-

[1704] International Chamber of Commerce, 'Resolving Climate Change Related Disputes through Arbitration and ADR' (2019) <https://iccwbo.org/climatechange-disputes-report> accessed 5 March 2023.

[1705] <www.coe.int> accessed 8 March 2023.

[1706] European Commission of the European Union, 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions' in 'Winning the Battle Against Climate Change' (SEC (2005)180 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005DC0035> accessed 9 March 2023.

19 September 2019, Baku)[1707] there are only examples of efforts of the Council of Europe such as publication in relation to: disabled people - "Major Hazards and People with Disabilities", Toolkit for good practice on major hazards and people with disabilities; migrants, displaced persons, asylum seekers, refugees – "Migrants and Disaster Risk Reduction: Practices for inclusion". Is it enough for solving a problem of a climate change? In the article "Europe's young people call for equal access to social rights[1708]" young people underlined the destructive effects of climate change on the livelihoods of many other young people and said that the protests and the interconnections between human rights and environmental problems are not taken seriously by authorities.

At the domestic level, one of the examples of a country that carries out activities in climate change is France. It works in all areas within the framework of climate diplomacy and supports multilateral coalitions (States, local governments, civil society, the private sector), such as:

- the International Solar Alliance,
- the Coalition of High Goals for the Benefit of Nature and People,
- the Alliance for the Conservation of Tropical Forests.

The One Planet Summits, established on the initiative of the President of the French Republic in 2017, have become a platform for financial obligations of states, territorial entities, international organizations, enterprises, private banks, and insurance companies. France is one of the main donors of the Partnership for a Just Transition to Sustainable Energy concluded with the Republic of South Africa on COP-26. It allowed South Africa to decarbonize its economy in exchange for financial and technical support from several countries.

France has also pledged to increase its public funding to support climate in emerging economies from 3 billion euros in 2015 to 5 billion euros in 2020. This goal was achieved and exceeded already in 2019. Since then, the country has extended the commitment made at COP21 and increased its size to 6 billion euros per year for the period 2021-2025, with a third of its funds allocated for adaptation to climate change. France has announced a twofold increase in its contribution to the implementation of the CREWS initiative, raising it to 8 million euros per year. $100 million has already been raised to create early warning systems in vulnerable countries.

The French Development Agency (AFD), which is the operator of the Ministry of Europe and Foreign Affairs, uses a significant part of France's climate financing, taking into account the needs of the most vulnerable countries as much as possible. This is the first development bank to ensure that its work fully complies with the provisions of the Paris Agreement, since it has stopped financing any projects that run counter to climate activities. France's activities are also manifested in the form of large contributions to multilateral climate finance funds.

[1707] Council of Europe, 'Concept Note on the workshop on inclusion of vulnerable people' APCAT (2019) 10 (30 September 2019) < https://publicsearch.coe.int/Pages/result_details.aspx?ObjectId=090000168097fe1a> accessed 6 May 2023.

[1708]'Europe's young people call for equal access to social rights'< https://www.coe.int/en/web/portal/-/europe-s-young-people-call-for-equal-access-to-social-rights#50347929_8610431_True> accessed 11 March 2023.

France is one of the largest donors to the Green Climate Fund, which is the main financial mechanism of the Paris Agreement, and the Global Environment Facility. French funding is used for specific projects in different countries. It covers the financing of solar power plants, the modernization of electric networks, the construction of environmentally friendly public transport and the improvement of water supply, as well as the conservation of forests and the deployment of disaster risk early warning systems.

Moreover, there are some examples of direct references to the term "climate" in constitutions. After 2015, clarifications were made to the Constitution of Kenya (2010) (specifically, "everyone's right to a healthy and clean environment[1709]"), and the Constitution of the Dominican Republic (2010) ("the extraction of hydrocarbons and non-renewable natural resources shall be carried out in compliance with the principles of sustainable development[1710])[1711]".There are also examples of direct references to the term "climate" in constitutions (for example, in Article 127 of the Constitution of Venezuela (1999)[1712]). According to the Grantham Research Institute at the London School of Economics and Columbia University Law School, "6 each of the 197 countries- members to the UNFCCC has adopted at least one climate law, which includes acts to reduce greenhouse gas emissions, improve energy efficiency, develop renewable energy, adapt to climate change, and others. There are 1,821 climate laws worldwide[1713]".

iv. Specialised judicial bodies and environmental disputes

Over the past decades, the number of specialized environmental courts and tribunals has increased in the world. They are specialized judicial bodies that have jurisdiction over cases involving environmental disputes and violations of environmental laws and regulations. Some of the key features of environmental courts include:

1) Specialization. Environmental courts are typically composed of judges who have specialized training in environmental law and are knowledgeable about the technical and scientific issues involved in environmental cases.

[1709] Constitution of Kenya (2010) < http://kenyalaw.org/kl/index.php?id=398> accessed 1 March 2023.

[1710] Dominican Republic's Constitution (2010) <https://www.constituteproject.org/constitution/Dominican_Republic_2010.pdf> accessed 2 March 2023.

[1711] May J, 'Constitutional Environmental Rights Worldwide' in *Principles of Constitutional Environmental Law* (№ 11-35, 2011) P. 329.

[1712] Constitution of Venezuela (1999) <https://www.constituteproject.org/constitution/Venezuela_2009.pdf> accessed 5 March 2023.

[1713] 'Policy brief Global trends in climate change legislation and litigation: 2018 snapshot'< http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2018/04/Global-trendsin-climate-change-legislation-and-litigatio-2018snap shot-3.pdf> accessed 8 March 2023.

2) Jurisdiction. Environmental courts have the authority to hear cases involving a wide range of environmental issues, including air and water pollution, waste management, and other environmental disputes.

3) Powers. Environmental courts have the power to impose fines and other penalties on individuals or organizations found to be in violation of environmental laws and can order remediation or other corrective measures to address environmental harm.

4) Education and outreach. Environmental courts often play a role in promoting environmental education and awareness and may engage in public outreach efforts to raise awareness of environmental issues and the importance of protecting the environment.

5) Policy development. Environmental courts can also help to shape environmental policy and legislation through their decisions and other efforts and may provide guidance on how to address environmental issues and improve environmental protection.

In 2009 there were about 350 of them in 41 countries of the world[1714], and now there are 500 environmental courts in China[1715].The establishment of environmental courts in China is a relatively recent development. The Hangzhou Environmental Protection Court is often cited as a model for other environmental courts in the country. Established in 2003, it was the first environmental court in China, and has played a leading role in shaping environmental law and policy in the country. Additional courts have been established in other cities across the country in the years since. The aim of these courts is to provide a specialized forum for the resolution of environmental disputes, and to strengthen the legal system's ability to protect the environment and ensure compliance with environmental regulations. Environmental courts in China are responsible for hearing cases brought by individuals, organizations, and government agencies, and can impose fines and other penalties on individuals or organizations found to be in violation of environmental laws. These courts also play a role in promoting environmental education and awareness, and in helping to shape environmental policy and legislation in China.

In Italy, the region of Lombardy has an Environmental Court that is responsible for hearing cases involving environmental disputes. The Italian Supreme Court has jurisdiction over cases involving environmental issues and can hear appeals of decisions made by lower courts on environmental matters. The Italian Council of State, which is the highest administrative court in the country.

In Spain, environmental cases are generally heard by ordinary courts, although some specialized environmental courts have been established in certain regions. For example, the Balearic Islands and Catalonia have established environmental courts to hear cases related to environmental disputes and violations of environmental laws and regulations. At the national level, the Spanish Audiencia Nacional, a specialized court with jurisdiction over serious crimes

[1714]Pring G, Pring C, 'Greening justice creating and improving environmental courts and tribunals'<http://www.law.du.edu/ documents/ect-study/greeningjustice-book.pdf > accessed 2 March 2023.

[1715]Solntsev A.M, 'Review of the XIV International Colloquium held by the Academy of Environmental Law of the International Union for Conservation of Nature' in *Electronic supplement to the Russian Law Journal* (2016) <http://intlaw.rudn.ru/files/about /lecturers/solntsev/Oslo_review.pdf> accessed 3 March 2023.

and cases of national importance, also has the authority to hear cases involving environmental issues. The Audiencia Nacional is responsible for hearing cases involving violations of Spain's environmental laws, as well as cases involving environmental damage that affects multiple regions of the country. Spain also has a number of administrative tribunals that are responsible for hearing cases related to environmental disputes and violations of environmental regulations.

In the United States, there are no specialized environmental courts at the national level, but some states have established environmental courts or divisions within their court systems to hear cases related to environmental issues. Generally, environmental cases are typically heard in federal or state courts. For example, New York City has an Environmental Control Board that is responsible for hearing cases involving environmental violations and issuing penalties. Other states, such as Vermont and Oregon, have established specialized environmental divisions within their court systems to handle cases related to environmental disputes and violations of environmental laws and regulations. In federal court, environmental cases may be heard by the United States District Courts, which are the general trial courts of the federal court system, or by specialized courts such as the United States Court of Appeals for the Federal Circuit, which has jurisdiction over cases involving federal agencies and regulations. The United States Supreme Court, the highest court in the country, also has the authority to hear cases involving environmental issues.

It is difficult to say which environmental court is the most advanced, as the level of development and specialization of environmental courts can vary greatly from country to country. Some factors that could be considered when evaluating the advancement of an environmental court might include:

- the level of legal expertise and experience of its judges,
- the range of cases it is able to hear and decide,
- the resources it has available to support its work,
- the effectiveness of its decisions in addressing environmental issues and promoting compliance with environmental laws and regulations.

Climate litigation includes:

- cases in which one party has justified harm and formulated a claim for compensation for damage caused by anthropogenic emissions of greenhouse gases;
- cases with a lack of adaptation to climate change[1716];
- cases that address the implementation of provisions of the UNFCCC or the Paris Agreement[1717].

[1716] International Bar Association, 'New Model Statute for citizens to challenge governments failing to act on climate change' (2020) <https:// www.ibanet.org/Article/NewDetail.aspx?ArticleUid=8BF63EC4-B06A-40F2-B1DE-5817E6A5782F> accessed 9 March 2023.

[1717]International Chamber of Commerce, 'Resolving Climate Change Related Disputes through Arbitration and ADR' <www.iccwbo.org/climate-changedisputes- report> accessed 10 March 2023.

There have been 1,300 lawsuits initiated in 28 countries around the world, and 90% of all cases have been opened in the last 10 years[1718]. On the substance of the claims and the motivation for filing UNEP[1719], international law firms White & Case[1720], Norton Rose Fulbright[1721], and George Washington University researchers19 identify the following types of lawsuits:

-compelling governments to meet commitments/increasing the ambition of commitments,

-holding governments accountable for insufficient adaptation to climate change,

-holding the owners of greenhouse gas emission sources liable for specific adverse climatic events (a special group is lawsuits against oil and gas companies),

-applying the public trust doctrine, companies' liability to consumers; requiring companies to disclose climate-related financial risks,

-attempt to draw attention to the issue of climate change and influence public opinion,

-the requirement for investors to consider climate aspects in their activities.

Grantham Institute researchers identify "two main groups of climate case-law:

1) "strategic" - aimed at changing state or corporate climate policy;

2) "routine" - related, for example, to issues of allocation of emission quotas in the European Greenhouse Gas Emissions Trading System[1722]".

One of the examples of a case on the issue of the requirement to include CO2 in the list of pollutants. In 2003, the State of Massachusetts appealed to the court with a request to oblige the US Environmental Protection Agency to include carbon dioxide in the list of pollutants regulated by the Clean Air Act[1723] - the case of *Massachusetts v. The US Environmental Protection Agency*. "The plaintiffs referred to the provisions of the Clean Air Act[1724], which require the EPA to establish emission limits for any vehicles that may pose a danger to the

[1718]'Internet source' <https://about.bnef.com/blog/liebreich-climate-lawsuitsexistential-risk-fossil-fuel-firms/ > accessed 8 March 2023.

[1719] United Nations, 'Environment Programme' 'The Status of Climate Change Litigation - A Global Review' (2017) <http://wedocs.unep.org/bitstream/handle/20.500.11822/20767/climate-change-litigation.pdf?squence=1 &isAllowed=y> accessed 7 March 2023.

[1720] 'White & Case page' <https://www.whitecase.com/publications/insight/climate-change-litigation-new-class-action> accessed 6 March 2023.

[1721]Wit E. De, Quinton A., Meehan F, 'Climate change litigation update' (2019) <https://www.nortonrosefulbright.com/en/knowledge/publications/848dafd1/climate-changelitigation- update> accessed 5 March 2023.

[1722]'Global trends in climate change litigation: 2019 snapshot' <http://www.lse.ac.uk/granthaminstitute/wp-content/ uploads/2019/07/GRI_Global-trends-in-climate-changelitigation-2019-snapshot-2.pdf> accessed 4 May 2023.

[1723]*Massachusetts v. The US Environmental Protection Agency* (2003) <http://climatecasechart.com/case/massachusetts-v-epa/> accessed 3 May 2023.

[1724] 'Overview of the Clean Air Act and Air Pollution' <https://www.epa.gov/clean-air-act-overview> accessed 2 May 2023.

health and well-being of the population (the term "air pollutant" in accordance with the US Clean Air Act means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material and by-product) substance that is discharged into the ambient air or otherwise enters it. Such a term includes any precursors for the formation of any air pollutant to the extent that the administrator has identified such a precursor or precursors for the specific purpose for which the term "air pollutant" is used))[1725]". However, the court the first instance of the state of California in 2003 ruled that "the law does not establish the authority of the EPA to regulate greenhouse gas emissions in the atmosphere in order to control the processes of change climate". In 2007, the Supreme Court ruled that "the negative impact on the health and well-being of citizens should be considered broadly, including the environment, weather and climate". The court's decision contains references to the IPCC reports, the decisions of the 1992 UN Conference on Environment and Sustainable Development, and the US climate research programs. As a result, the plaintiffs could not prove the damage caused to them personally by climate change. In the future, "this judicial precedent allowed the Obama administration to amend the Clean Air Act in 2012 and adopt standards fuel efficiency for transport, expressed in specific characteristics of the amount of CO2 emissions over a distance[1726]".

v. Measures to reduce gas emissions

To stop climate change, governments around the world need to take urgent and ambitious action to reduce greenhouse gas emissions. This can involve a range of measures, such as:

✓ Implementing policies to transition to clean, renewable sources of energy, such as wind and solar power.

There is no one-size-fits-all approach to policies on renewable sources of energy. Different countries and regions have adopted different policies to promote the use of renewable sources of energy, and these policies can vary depending on a range of factors, including the availability of renewable energy sources, the cost of renewable energy technologies, and the level of support for renewable energy among policymakers and the public. One common policy approach to promoting renewable sources of energy is to establish targets for increasing the share of renewable energy in the overall energy mix. For example, a country might set a target to increase the share of renewable energy to 20% by 2030. This type of target can provide a clear and ambitious goal for promoting renewable energy, and it can help to drive investment and innovation in the renewable energy sector.

Another common policy approach is to provide financial incentives for the development and use of renewable energy technologies. For example, a government might provide grants or

[1725] 'Climate Change Litigation' <https://climate.law.columbia.edu/content/climate-change-litigation> accessed 1 May 2023.

[1726] 'Internet source' <https://www.govinfo.gov/> accessed 1 March 2023.

loans to support the development of renewable energy projects, or it might offer tax breaks or other financial incentives to encourage the adoption of renewable energy technologies. These financial incentives can help to make renewable energy more competitive with fossil fuels and can accelerate the transition to a low-carbon economy. There are many different policies that can be used to promote renewable sources of energy. The most effective policies are likely to be those that are tailored to the specific needs and circumstances of each country or region. In addition, some governments have adopted policies to support the expansion of wind and solar power through the construction of new transmission infrastructure. For example, a government might invest in new transmission lines to connect wind and solar power projects to the grid, or it might implement policies to facilitate the integration of wind and solar power into the electricity grid. These types of policies can help to overcome berries to the development of wind and solar power and can support the growth of the renewable energy sector.

✓ Investing in research and development of new technologies that can reduce greenhouse gas emissions, such as carbon capture and storage.

There are many new technologies that have the potential to reduce greenhouse gas emissions. Some of the most promising technologies include:

- Renewable energy technologies: Renewable energy technologies, such as wind and solar power, can provide clean, low-carbon sources of electricity. These technologies are becoming increasingly cost-competitive with fossil fuels, and they are expected to play a growing role in reducing greenhouse gas emissions.
- Electric vehicles: Electric vehicles (EVs) are becoming more popular as a way to reduce transportation emissions. EVs are powered by electricity, which can be generated from low-carbon sources such as wind and solar power. EVs are becoming more affordable and have a lower total cost of ownership than gasoline-powered vehicles.
- Carbon capture and storage: Carbon capture and storage (CCS) technologies capture carbon dioxide from industrial processes or power plants and store it underground, preventing it from being released into the atmosphere. CCS technologies have the potential to significantly reduce greenhouse gas emissions from industries such as cement and steel production.
- Energy efficiency: Improving energy efficiency is one of the most effective ways to reduce greenhouse gas emissions. Energy efficiency technologies, such as LED lights and energy-efficient appliances, can help to reduce energy consumption and lower greenhouse gas emissions.
- Green infrastructure: green infrastructure, such as green roofs and urban forests, can help to reduce greenhouse gas emissions by capturing and storing carbon, reducing the urban heat island effect, and improving air quality. Green infrastructure can also provide other benefits, such as increased biodiversity and improved public health. These technologies are becoming more affordable and accessible, and they are expected to play a growing role in the global effort to address climate change.

✓ Promoting sustainable land use practices, such as reforestation and conservation, to help absorb and store carbon dioxide from the atmosphere.

✓ Regulating the emissions of greenhouse gases from various sectors, such as transportation, industry, and agriculture.

✓ Encouraging individuals and businesses to reduce their own greenhouse gas emissions through incentives and education programs.

✓ Working together with other countries to coordinate global efforts to reduce greenhouse gas emissions and tackle climate change.

By taking these and other actions, governments can help to slow and ultimately stop the process of climate change, protecting the rights and well-being of current and future generations. As a conclusion, protecting economic, social, and cultural rights in the face of climate change is an important challenge for governments and communities around the world.

5.3. Illegal immigration.
i. Definition, structure, types, and concepts of illegal immigration

The presence of illegal migrants staying in violation of the norms of migration legislation is an urgent problem, since this phenomenon is associated with violations of labour, tax, administrative, criminal legislation. "Negative trends in the territorial prevalence and dynamics of illegal migration, which is a global problem, are being recorded in the world. Since 1970, the total number of migrants has doubled by more than 2 times and tends to increase[1727]".

The number of people living outside the country of their birth or citizenship has reached:
- 281 million in 2020,
-173 million in 2000,
-221 million in 2010.

The share of international migrants in the total world population has increased:
- from 2.8 percent in 2000,
- up to 3.2 percent in 2010,
- up to 3.6 percent in 2020[1728].

Illegal migration includes both economic migrants and asylum seekers. It was the reason for:
- large incomes for international criminal groups,
- illegal commercial trade and, as a result, tax evasion,
- counterfeit goods and products,
- the growth of the shadow economy,
- achievement of certain political objectives of other states.

[1727] Utyatsky M.N, 'Migration of foreign citizens and crime: criminological analysis' in *abstract ... cand. jurid. Sciences* (Moscow, 2008) P. 15.

[1728] 'Key indicators of international migration for 2020' <https://www.un.org/development/desa/pd > accessed 1 May 2023.

The issues of external (international) migration were studied by L. V. Abzalova, E. N. Alekseeva, I. S. Generalov, V. F. Chervonenko, O. V. Domaskin, I. V. Ivakhnyuk, V. A. Iontsev, V. A. Ponkratov, E. V. Tyuryukanova, L. L. Rybakovsky, T. Ya. Khabrieva, A. E. Shaparov, D. A. Vaskovich, A.Y. Yastrebova, J. A. Zayonchkovskaya, N.N. Zinchenko, and others. They studied economic, political, and sociological problems including unregulated migration and forced labour, migrant phobia, immigration policy.

The problems of illegal migration from the point of view of state support of migration relations, the legal status of foreign citizens was analysed in the works of N. P. Azarov, L. V. Andrichenko, M. S. Askerov, K. Y. Arkhipova, Yu. V. Gerasimenko, M. B. Ilezov, L. V. Ivanova, K. P. Kondrashina, T. B. Kochukov, A. A. Mishunina, I. V. Plyugina, D. A. Prudnikova, M. L. Tyurkina, T. Ya. Khabrieva, O. N. Sherstoboeva, O. N. Veretennikova and others.

In the research of specialists in the field of criminal law and criminology (V. A. Andryushenkova, N. R. Asmandiyarova, G. V. Antonov- Romanovsky, M. M. Babaev, E. R. Bayburina, K. I. Bogomolova, Yu. Yu. Byshevsky, Pan Dongmei, K. E. Kecherukova, P. N. Kobets, V. I. Kovalenko, V. E. Kvashis, A. A. Litvinova, S. E. Meteleva, O. A. Mikhal, S. F. Milyukova, I. E. Nezhibetskaya, L. T. Poladova, V. A. Predybailo, N. V. Samoylyuk, T. B. Smashnikova, D. A. Sokolova, V. S. Sviridova, L. R. Rashitova, M. N. Urda, A. Vlasov. The concept of illegal migration, its trends and consequences, migrant crime, its causes and conditions, general social and special preventive measures are analysed[1729]. L. V. Andrichenko, I. V. Plyugina studied the issues of countering this phenomenon.

At the end of the nineteenth century, C. Lombroso and G. Tard revealed a stable link between migration and the growth of crime. In particular, some specialists (Zh. Zaionchkovskaya, V. Perevedentsev (1964); T. Zaslavskaya, L. Rybakovsky (1978) believe that migration is primarily an economic category. Others believe that after the collapse of the USSR, its ethnic component came to the fore (V. A. Iontsev, A. E. Krukhmanov (2002))[1730].

According to V. Iontsev, there are about 63 concepts and theories of migration. In his classification, he included the following main scientific approaches to the study of population migration, taking into account the main concepts and their authors:

• economic approach (J.-B. Colbert, J. Graunt, J. Harris, T. Malthus, T. Man, A. Marshall, W. Petty, D. Ricardo, J. Simon A. Smith, M. Todaro),

• demographic approach (L. Bouvier, V.A. Iontsev, D. Thomas),

• migration approach (I. Ivakhnyuk, Ravenstein, L. Rybakovsky, V. Zelinsky),

[1729] Buchakov S.A, 'Illegal external migration in Russia: criminological situation and counteraction policy' (Abstract) P.2.

[1730] Sobolnikov V, 'Illegal migration and regional security' in *Scientific Bulletin of the Omsk Academy of the Ministry of Internal Affairs of Russia* (№ 2 (26), 2007) P.17.

• sociological approach (E. Lee, D. Gurak, H. Esse, M. Gordon, T. Zaslavskaya, A. Zolberg, A. Mabogunzh),
• geographical approach (K. Davis, V. Maksakovsky),
• ecological approach (A. Richmond, S. Stouffer),
• historical approach (R.Cohen, N. Gorskaya, E. Kulisher, Y. Kvashnin, L. Mokh),
• ethnographic approach (G. Levi, A. Topilin),
• psychological approach (J. Duval, A. Gurevich, M. Prothero),
• biological approach (V. Treasurers),
• genetic approach (S. Harrison, K. Scholz),
• philosophical approach (N. Shrestha, V. Vernadsky),
• legal approach (S. Filippov, T. Khabrieva, M. Tyurkin),
• typological approach (A. Golini)[1731]".

The British scientist Ravenstein laid the theoretical basis for further study of migration, he studied the USA and the UK, and formulated "11 migration patterns:
• the largest flows of migrants are carried out over short distances,
• migration is smooth,
• migrants travel long distances to economically developed areas,
• each flow of migrants can be countered by a counterflow,
• urban dwellers migrate less frequently than rural residents,
• women are more proactive in internal migrations, men are more proactive in external ones,
• the largest number of migrants are adults who leave without families,
• the growth of large cities is due to population migration,
• migration increases with the development of transport and trade,
• the main reason for migration is economic development[1732]".

What is meant by illegal immigration? In the scientific literature, the concepts of "illegal migration" and "illegal immigration" are often identified. In the most ordinary sense, migration refers to the movement of the population within one country or from one country to another, and immigration means settling in a country for permanent residence (about foreigners). There are many the authors' points of view on the definition of 'illegal migration'. For example, according to N. I. Oreshina, "illegal migration is a set of social relations that develop in the process of crossing state borders by foreign citizens and stateless persons and different purposes and terms of stay of these persons on the territory of the state in violation of its migration legislation[1733]". In this definition, the author clearly defines subjects, namely: foreign citizens

[1731] 'Fundamentals of migration policy: Study - method. Stipend' (Under the general editorship of I.N. Bartsitsa, V.K. Egorov, K.O. Romodanovsky, M.L. Tyurkin) (Moscow, 2010) P. 10.

[1732] 'Political, ethnic and interfaith conflicts in the modern world' (Federal State Budgetary Educational Institution higher Prof. education "Oryol State University", 2015) 211p.

[1733]Oreshina N.I, 'On the definition of the concept of 'migration" <http:// www.justicemaker.ru/view-article.php?id=10&art=548> accessed 3 May 2023.

and stateless persons; the objective side of this act, which consists in crossing the border in violation of migration legislation. Of course, in the author's definition of N.I. Oreshina there is no subjective side of this act, which is characterized by guilt in the form of direct intent. A similar definition belongs to E. Sadovskaya.

A. Fedorako writes on this occasion: "... illegal migration is migration that occurs in violation of the requirements of legal norms adopted in a particular state and establishing the grounds and procedure for entry into the country, transit travel, stay and departure from the country of foreign citizens and stateless persons[1734]".

T.B. Smashnikova offers her own interpretation of the concept of 'illegal migration': "... illegal migration is the voluntary or forced movement of the population across state borders in order to change the place of stay or residence, committed in violation of the legislation in force on the territory of the state of migration[1735]".

Table on the structure of illegal migration by G. S. Vitkovskaya[1736]

Illegal entry	Bypassing border control points	✓ On one's own ✓ With the help of local people ✓With the help of fellow citizens legally residing in the country ✓With the help pf organized crime groups	Illegal employment Illegal entry into the countries of destination
	Through border control points	With invalid documents	

There are the explanations of the bodies of the Council of Europe and the European Union on the definition of "illegal immigration". The Convention on the Establishment of the European Police Organization (Europol) of July 18, 1995, defines the illegal importation of immigrants. Illegal importation of immigrants means activities intentionally intended to facilitate, for the purpose of obtaining financial benefits, entry, stay or employment in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States (annex referred to in Article 2 of the Convention)[1737].

[1734] Fedorako A, 'Population migration: concept, causes, consequences' in *Journal of International Law and International Relations* (№ 4, 2012) P.6.

[1735] Smashnikova T.B, 'Administrative and legal counteraction to illegal migration in the Russian Federation and the Republic of Belarus: comparative legal analysis' in *abstract of the diss. ... cand. jurid. Sciences* (Chelyabinsk, 2012) P.9.

[1736] Vitkovskaya G.S, 'Illegal migration in Russia: situation and counteraction policy' in *Illegal immigration*. – 140p.

[1737] European Union, 'Official Journal of the European Communities' (27 November 1995) P. 2–32.

The European Commission on Priorities Policy in the Fight against Illegal Immigration of Third-Country Nationals, in a communication dated July 19, 2006, notes that the term 'illegal migration' includes third-country nationals illegally entering the territory of a Member State by land, sea and air. It should be noted that the legal arrival of persons to the territory of another state with a valid visa or without a visa (for countries with a visa-free regime) is widespread, followed by a violation of the period of stay, as well as a change in the purpose of stay[1738], which, in my opinion, is a significant addition to the existing concepts of 'illegal migration'. Based on this supplement, it is possible to expand the range of subjects and the objective side of the act being committed, namely, illegal migration.

Article 1 of the Agreement on Cooperation of the Member States of the Commonwealth of Independent States in Combating Illegal Migration of March 6, 1998 refers to illegal migrants as third–country nationals and stateless persons "who violated the rules of entry, exit, Stay or transit through the territories of the Parties to the Agreement, as well as citizens of the Parties who violated the rules of stay on the territory of one of the Parties established by its national legislation[1739]".

In academic literature: E.S. Krasinets, E.S. Kubishin, and E.V. Tyuryukanova use the concept of 'illegal migrant', establishing that "they include persons who illegally entered the territory of the state (crossed the border in the wrong places, with or without invalid or forged documents), illegally staying in it (not duly registered stay), and persons conducting illegal economic activity (including committing 'near economic' crimes, for example, arms trafficking)[1740]".

A.V. Sukharnikova concludes that "an illegal migrant is proposed to be understood as a person:

1) crossed the border of a foreign state outside the designated control points,

2) is located on the territory of a foreign state in violation of the norms of national immigration legislation,

3) receives (received) permits to enter (stay in a foreign country) illegally (fraudulently)[1741]".

[1738] European Commission of the European Union, 'Communication from the Commission on Policy priorities in the fight against illegal immigration of third country nationals' C0M (2006) 402 (Brussels, 19.7.2006) <http: // eurlex. europa. eu/LexUriServ/ LexUriServ.do?uri=C0M: 2006:0402: FINo:ENo:PDF> accessed 6 May 2023.

[1739] Concord (NGO), 'Information Bulletin of the Council of Heads of State and the Council of Heads of Government of the CIS' (1/1998) P. 81–86.

[1740] Krasinets E.S, Kubishin E.S, Tyuryukanova E.V, 'Illegal migration to Russia' (Moscow, 2000) P.29.

[1741] Sukharnikova A.V, 'Illegal migration and migration control in Russia' in *Administrative law and administrative process in Russia* (2/2013).

There are several ways to become an illegal migrant[1742]:

1.Crossing the state border without having the necessary documents (no visa, no passport, etc.).

2.Violate the purpose of staying in the host country (come on a tourist visa and get a job, etc.).

3.Violate the regime of staying at a certain place (lack of registration, lack of migration registration, expired grounds for staying in the territory of the Russian Federation (expired visa, expired temporary residence permit in the territory of the Russian Federation, expired residence permit, etc.), a zone closed to entry, etc.). Attention should be paid to the fact that if the first two paragraphs apply exclusively to external migrants, then the third paragraph also applies to internal migrants and can be imputed to them.

-migrants from cities to cities - internal migrants moving from one city to another, usually for the purpose of finding a job.

-migrants from cities to rural areas - internal migrants moving from cities to rural areas, either for the purpose of permanent settlement, or as migrants returning after a previous migration from rural areas to the city.

-migrants from rural areas to cities - internal migrants moving from rural areas to cities.

-rural-to-rural migrants - internal migrants moving from one rural area to another.

-migrants for settlement - foreigners who have received permission to stay for a long or unlimited period of time and do not actually fall under any restrictions concerning the exercise of economic, social and political rights (e.g., migrants who arrived for hire, for family reunification, to their historical homeland, migrants with the right to free settlement or foreign pensioners)[1743]".

Considering 'illegal entry', Article 3 (a) of the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of November 15, 2000, defines the smuggling of migrants (Article 3 (b)). The illegal importation of migrants is understood as the provision for the purpose of obtaining (directly or indirectly) any financial or other material benefit from the illegal entry into a State party of any person who is not its citizen or does not reside permanently on its territory. Illegal entry is defined as crossing borders without meeting the necessary requirements for legal entry into the receiving State. How to distinguish between the concepts of migrant smuggling and human trafficking in the absence of obvious consent to cross-border movement? Interpersonal threats that are a priori coercive (for example, mental violence), and personal circumstances that do not contain a behavioural element of coercion, but force people to leave their places of residence, are factors of different legal significance. The literal interpretation of the phrase 'for the purpose of exploitation'

[1742] Ryazanova L.P, 'The concept of an illegal migrant: problems of definition' in *Belgorod State National Research University* (2017) P.28-29.

[1743] Perrouchou R, 'Glossary of terms in the field of migration' in *International migration law* (№2) P. 38.

indicates that, alternatively, the illegal acts listed in the definition of 'trafficking in persons' must be committed, in particular, for the exploitation of victims of crime[1744].

The following types of crime related to illegal external migration are distinguished:

3.1. Common household - a set of crimes committed by illegal migrants in the sphere of everyday life (family, communal, household, household, industrial and household character), expressing conflict-related motivation associated with the satisfaction of basic needs.

3.2. Transnational organized, in the structure of which human trafficking requires special attention; illicit trafficking of narcotic drugs, psychotropic substances and their analogues; economic organized crime.

3.3. Political, in which the most urgent problem is a multitude of crimes of extremist and terrorist orientation. Illegal external migration and terrorism have a common field of interaction when extremists and terrorists have foreign sources of direct influence (direct financing, training, planning, etc.), as well as in cases of Russian citizens traveling abroad for special training or to participate in hostilities on the side of terrorist organizations[1745].

ii. Recommendations in the acts of the universal and regional levels

Currently, there are two types of documents to combat illegal migration. States regulate these issues in criminal and administrative legislation at the national level and at the international level (universal and regional levels).

At the universal level international organisations such as the United Nations develops conventions and agreements that address illegal immigration and set standards and guidelines for how countries should handle it. The Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of November 15, 2000. The document lists measures to prevent human trafficking, border control measures. In particular, Abdelnazer S. Mohamed Ali notes that: "cases of illegal importation of migrants, which are committed alone or in a group of less than three people, remain outside the framework of this international act. Moreover, in a similar situation, if this act is one of the stages of the plan of an organized criminal group, there are no grounds for requesting cooperation from other States to identify accomplices to the crime, since the condition for such a request is the structuring and the necessary quantitative component of the group[1746]".

[1744] Urda M.N, 'International Legal Acts Against Illegal Migration' in *Proceedings of the Southwest State University*. (Series: History and Law, 2021, № 11(3)) P. 83–95.

[1745] Buchakov S.A, 'Illegal external migration in Russia: criminological situation and counteraction policy' (Abstract) P.8.

[1746] Abdelnaser S, Ali A, 'Smuggling of migrants in international law a critical analysis of the protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations convention against transnational organised crimesed crime' (Leicester, 2014) P.64.

Documents on the protection of the rights of refugees:

✓ On October 31, 2007, the Permanent Commission of the CIS Interparliamentary Assembly on Social Policy and Human Rights approved recommendations on legislative support for the regulation of migration processes in the CIS member States. The Inter-Parliamentary Assembly in this document recommended:

- to develop and adopt the concept of a common migration space of the CIS member states,
- recommendation glossary of terms and concepts used in the harmonization of national legislation,
- a promising program for the development of model legislative acts aimed at regulating migration processes,
- recommendations on the development of migration for the purpose of training and internship of citizens of the CIS member states,
- recommendations for stimulating the integration of immigrants into host communities.

The recommendations of the CIS Interparliamentary Assemblies also provided for the coordination of the principles and procedure for providing medical care to foreigners from other CIS countries, the procedure for their employment, social and medical insurance, social security, the development of a unified procedure for the dissemination of information in the CIS countries about employment opportunities, a program for monitoring migration processes.

✓ Declaration on the outcome of the High-level Dialogue on International Migration and Development 2013. According to this document, the position of the world community regarding international migration as a global problem is reduced to "the following main aspects:

1) the need for international cooperation in ensuring safe, organized, and orderly migration is recognized (paragraphs 1, 3, 5, 18),

2) migration is defined as a factor of sustainable development of countries of origin, transit, and destination (paragraphs 2, 6, 8, 9),

3) the need to improve public attitudes towards migrants and migration is recognized (paragraphs 9, 16),

4) the particularly vulnerable situation of migrant women, children and adolescents is emphasized (paragraphs 10-13, 19),

5) declares commitment to the policy of preventing and combating trafficking in human beings, protecting victims of trafficking in human beings, preventing the importation of migrants and combating such practices, as well as protecting migrants from abuse (paragraph 17),

6) confirms the need to create conditions for cheap, fast, and safe money transfers in the sending and receiving countries (paragraph 7),

7) there is a need for reliable statistical data on international migration (Art.28)[1747]".

[1747] Declaration on the outcome of the High-level Dialogue on International Migration and Development (adopted by the UNGA Resolution 68/4, 3 October 2013) < https://www.un.org/ru/documents/decl_conv/declarations/migrationevelop.shtml> accessed 7 May 2023.

✓ The New York Declaration on Refugees and Migrants of September 19, 2016. The document lists large-scale commitments concerning both the resolution of current issues and ensuring the readiness of the world to meet "future challenges:

• To protect the human rights of all refugees and migrants, regardless of their status.

• Ensure that all refugee and migrant children begin to receive education within a few months of arrival in the destination country.

• Provide support to countries that rescue, receive, and resettle large numbers of refugees and migrants.

• Work to eliminate the practice of detaining children to determine their migration status.

• Strongly condemn xenophobia against refugees and migrants and support the global campaign to combat this phenomenon.

• Strengthen the positive contribution of migrants to the economic and social development of their host countries.

• Implement a set of measures for refugees based on a new mechanism that will establish the responsibility of Member States, civil society partners and the United Nations system in situations involving large-scale displacement or prolonged stay of refugees.

• Find new housing for all refugees recognized by UNHCR as in need of resettlement and expand opportunities for refugees to move to other countries, for example through labour mobility programs or educational programs[1748]".

In the past few years, the EU countries have faced a large flow of foreigners, so the problem of protecting their rights is more urgent than ever. Presently Europe is facing, much more than in the past, increasing waves of internal and external migrations. Under the European Social Charter (Revised) "each Member State has an obligation to assure the enjoyment of the rights protected to refugees and stateless persons legally resident in its territory, as far as protected by the relative international treaties such as U. N. Conventions and to its own citizens, other Parties' nationals lawfully resident in its territory, other Parties' nationals regularly working in its territory[1749]". Articles 1-17 of the Charter may apply to foreigners "only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned" (§1)[1750], which could be interpreted, a *sensu contrario*, to mean that by not mentioning Articles 18 and 19 these were applicable to all foreigners.

On the contrary, Chapters provisions should not apply to:

a) third State nationals;

b) other Parties' nationals unlawfully present in the State territory;

c) refugees and stateless persons not complying with the above conditions.

[1748] New York Declaration on Refugees and Migrants (September 19, 2016) < https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/283/52/PDF/N1628352.pdf ?OpenElement> accessed 5 May 2023.

[1749] European Social Charter (Revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

[1750] Appendix of the European Social Charter (Revised) (adopted 3 May 1996) <https://rm.coe.int/168007cde4> accessed 1 May 2023.

These three exclusions appear in contrast with international, EU laws. For instance, under the International Labor Organization Convention № 143/1975, a migrant worker in irregular position shall "enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security, and other benefits (Art. 9§1)[1751]". As to the EU law, not only is provided equal treatment between all regular workers, third-States nationals included but, by virtue of a dynamic interpretation of EU citizenship, the European Court of Justice (ECJ) has also "extended in some cases the right to residence (with subsequent social entitlements) to even inactive third-countries nationals[1752]". For example in the case of Court stated that : "Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen[1753]".

In 2004, the European Committee on Social Rights addressed the possibility of extending the application to foreign nationals of non-party states by stating that:

"The Parties to the Charter (in both its versions) have guaranteed to foreigners not covered by the Chapter rights identical to or inseparable from those of the Charter, by ratifying human rights treaties – in particular European Convention on Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix or other non-nationals. In doing so, the Parties have undertaken these obligations[1754]".

The European Committee of Social Rights added that these obligations "did not in principle fall within the ambit of its supervisory functions" and made it clear that it did not rule out "that the implementations of certain provisions of the Chapter could in certain specific situations require complete equally of treatment between nationals and foreigner, whether or not they are nationals of member States, Party to the Chapter[1755]".The latter extension of the scope has recently created a lot of controversy following the European Committee of Social Rights' decision in two collective complaints against the Netherlands, "whereby the Dutch

[1751] Part III, International Convention on the Protection of the Rights of all Migrant Workers, and Members of their Families (adopted by the U.N. General Assembly Resolution № 45/158) (December 18th, 1990).

[1752] *Ruiz Zambrano*, C-34/09 (March 2001)

[1753] *Gerardo Ruiz Zambrano v Office national de l'emploi* (March 2011) <https://eur-lex.europa.eu/legal-content/E
N/TXT/?uri=CELEX%3A62009CJ0034 > accessed 3 March 2023.

[1754] European Committee of Social Rights, 'Conclusions 2004' 'Statement of interpretation of Article 11' (2004) P. 10.

[1755] Council of Europe, 'Digest of the case-law of the European Committee on Social Rights' (1 September 2008) P.183.

government considered that European Committee of Social Rights was interpreting the Appendix to the Charter even *contra legem* by extending the protection of the rights in the Charter to persons who were not legally residing in the country[1756]". During a debate between the Governmental Committee and the ECSR in Turin in October 2014, the ECSR explained that its case law was consistent, as it has always highlighted that the European Social Charter was a human rights treaty and that "the Appendix to the Charter, if it applied literally, would exclude irregular migrants including their children from basic human rights such as a right to physical integrity and the respect for human dignity[1757]".

Thus, at the regional level the main problems of the migration policy of the European Union:

1) measures and proposals are advisory in nature, their multiplicity,
2) the lack of a clear, unified, clear concept of migration policy,
3) undeveloped official labour migration infrastructure,
4) weak policy of adaptation and integration of migrants
5) unformed institutions for structuring the flow of migrants.

At the domestic level some common approaches include strengthening border security, increasing enforcement of immigration laws, and offering incentives for individuals to voluntarily leave the country. Other policies consist of providing pathways for individuals to become legal residents or citizens and improving conditions in counties of origin to reduce the factors that drive people to migrate illegally.

Courts play a role in addressing illegal immigration by hearing cases involving individuals who have entered a country without proper authorization or documentation. In some cases, these individuals may be deported or granted asylum, depending on the specific circumstances of their case. Moreover, courts may also hear cases related to the policies and practices of the government in regard to illegal immigration. Judicial system plays a significant role in determining how countries handle illegal immigration.

Thus, to combat illegal immigration, States need to:

- to create a mechanism for the exchange of operational information on the identification of illegal migration channels (information technology, information transfer centres),
- designing an effective system for the suppression of illegal migration,
- not to identify criminals, organizers of the trade in "live goods", and migrants - the victim of deception or due to various circumstances,
- legalize illegal labour migrants who have not committed crimes and have stable jobs,
- to carry out information work with citizens and employers on issues of violation of migration legislation.

[1756] *European Federation of National Organizations working with the Homeless (FEANTSA)v. Netherlands* (European Committee of Social Rights) № 86/2012 (4 July 2012); *Conference of European Churches (CEC) v. The Netherlands* (European Committee of Social Rights) № 90/2013 (17 January 2013).

[1757] 'The European Social Charter and the Employment Relationship' edited by N. Bruun, K. Lorcher, I. Schomann, S. Clauwaert (2019) P. 347.

Conclusion of Chapter 5

The economic, social, and cultural rights approach to addressing the challenges posed by the Covid-19 pandemic, climate change, and illegal immigration faces both external and internal obstacles. Externally, there are systemic and global factors that hinder the effective realization of these rights in the face of these challenges. Factors such as economic inequality, geopolitical tensions, and the lack of international cooperation contribute to the difficulties in safeguarding these rights. Internally, there are also barriers within individual countries, including political and policy constraints, resource limitations, and societal attitudes, which impede progress in ensuring the protection and fulfillment of these rights.

The Covid-19 pandemic has exposed and exacerbated pre-existing inequalities and vulnerabilities within societies worldwide. The economic fallout from the pandemic has disproportionately impacted marginalized communities, widening the gap between the rich and the poor. The challenge lies in addressing the immediate needs of those affected while also addressing the underlying structural issues that perpetuate inequality. Additionally, the pandemic has strained healthcare systems and social safety nets, putting pressure on governments to ensure access to healthcare, education, and social protection for all citizens. However, resource constraints and competing priorities make it difficult to fully meet these obligations.

Climate change presents another significant challenge to the realization of economic, social, and cultural rights. The adverse effects of climate change, such as extreme weather events, rising sea levels, and food insecurity, disproportionately affect vulnerable communities. These impacts can disrupt livelihoods, displace populations, and exacerbate existing social and economic inequalities. Mitigating climate change requires concerted global efforts, including reducing greenhouse gas emissions, transitioning to renewable energy sources, and adopting sustainable practices. However, the pursuit of economic growth often conflicts with environmental sustainability, making it challenging to strike a balance between economic development and environmental protection.

Illegal immigration poses additional complexities in upholding economic, social, and cultural rights. Migration is often driven by socio-economic disparities, political instability, and conflicts. Many migrants face exploitation, discrimination, and limited access to basic services and opportunities in their host countries. Governments must navigate the delicate balance between border control measures and respecting the rights of migrants. Effective immigration policies should prioritize human rights, fair treatment, and integration, while also addressing the root causes of migration. However, political considerations, public sentiment, and resource constraints can hinder the formulation and implementation of comprehensive and rights-based immigration policies.

To overcome these challenges, a multi-faceted approach is necessary. First, it requires global cooperation and strengthened international institutions to address systemic issues and promote a more equitable distribution of resources. International cooperation should include financial and technical support to assist developing countries in responding to the challenges posed by the Covid-19 pandemic, climate change, and migration. Second, governments must prioritize human rights in their policy-making processes and ensure that economic, social, and

cultural rights are central to their agendas. This requires allocating adequate resources, developing inclusive policies, and establishing accountability mechanisms to monitor progress. Civil society organizations, non-governmental organizations, and human rights defenders play a crucial role in advocating for the rights of marginalized groups and holding governments accountable. Furthermore, addressing these challenges requires a holistic and integrated approach. Efforts should be made to identify the interlinkages between the Covid-19 pandemic, climate change, and migration, recognizing that these issues are interconnected and often exacerbate each other. Policies and interventions should aim to address the root causes, including poverty, inequality, and environmental degradation, to create sustainable and resilient societies. Promoting education, awareness, and public participation is essential to foster a culture of human rights and collective responsibility.

Conclusión del capítulo 5

El enfoque de derechos económicos, sociales y culturales para abordar los desafíos planteados por la pandemia de Covid-19, el cambio climático y la inmigración ilegal enfrenta obstáculos externos e internos. Externamente, existen factores sistémicos y globales que dificultan la realización efectiva de estos derechos frente a estos desafíos. Factores como la desigualdad económica, las tensiones geopolíticas y la falta de cooperación internacional contribuyen a las dificultades para salvaguardar estos derechos. Internamente, también existen barreras dentro de los países, incluidas limitaciones políticas y de políticas, limitaciones de recursos y actitudes sociales, que impiden el progreso para garantizar la protección y el cumplimiento de estos derechos.

La pandemia de Covid-19 ha expuesto y exacerbado desigualdades y vulnerabilidades preexistentes en las sociedades de todo el mundo. Las consecuencias económicas de la pandemia han afectado de manera desproporcionada a las comunidades marginadas, ampliando la brecha entre ricos y pobres. El desafío radica en abordar las necesidades inmediatas de los afectados y, al mismo tiempo, abordar los problemas estructurales subyacentes que perpetúan la desigualdad. Además, la pandemia ha puesto a prueba los sistemas de salud y las redes de seguridad social, ejerciendo presión sobre los gobiernos para garantizar el acceso a la atención médica, la educación y la protección social para todos los ciudadanos. Sin embargo, las limitaciones de recursos y las prioridades contrapuestas dificultan el pleno cumplimiento de estas obligaciones.

El cambio climático presenta otro desafío importante para la realización de los derechos económicos, sociales y culturales. Los efectos adversos del cambio climático, como los fenómenos meteorológicos extremos, el aumento del nivel del mar y la inseguridad alimentaria, afectan de manera desproporcionada a las comunidades vulnerables. Estos impactos pueden perturbar los medios de vida, desplazar a las poblaciones y exacerbar las desigualdades sociales y económicas existentes. La mitigación del cambio climático requiere esfuerzos globales concertados, incluida la reducción de las emisiones de gases de efecto invernadero, la transición a fuentes de energía renovables y la adopción de prácticas sostenibles. Sin embargo, la búsqueda del crecimiento económico a menudo entra en conflicto con la sostenibilidad ambiental, lo que dificulta lograr un equilibrio entre el desarrollo económico y la protección del medio ambiente.

La inmigración ilegal plantea complejidades adicionales en la defensa de los derechos económicos, sociales y culturales. La migración a menudo es impulsada por disparidades socioeconómicas, inestabilidad política y conflictos. Muchos migrantes enfrentan explotación, discriminación y acceso limitado a servicios básicos y oportunidades en sus países de acogida. Los gobiernos deben navegar por el delicado equilibrio entre las medidas de control fronterizo y el respeto de los derechos de los migrantes. Las políticas de inmigración efectivas deben priorizar los derechos humanos, el trato justo y la integración, al tiempo que abordan las causas fundamentales de la migración. Sin embargo, las consideraciones políticas, el sentimiento público y las limitaciones de recursos pueden obstaculizar la formulación e implementación de políticas de inmigración integrales y basadas en los derechos.

Para superar estos desafíos, es necesario un enfoque multifacético. En primer lugar, requiere cooperación mundial e instituciones internacionales fortalecidas para abordar

cuestiones sistémicas y promover una distribución más equitativa de los recursos. La cooperación internacional debe incluir apoyo financiero y técnico para ayudar a los países en desarrollo a responder a los desafíos planteados por la pandemia de Covid-19, el cambio climático y la migración. En segundo lugar, los gobiernos deben dar prioridad a los derechos humanos en sus procesos de formulación de políticas y garantizar que los derechos económicos, sociales y culturales ocupen un lugar central en sus agendas. Esto requiere asignar recursos adecuados, desarrollar políticas inclusivas y establecer mecanismos de rendición de cuentas para monitorear el progreso. Las organizaciones de la sociedad civil, las organizaciones no gubernamentales y los defensores de los derechos humanos desempeñan un papel crucial en la defensa de los derechos de los grupos marginados y en la rendición de cuentas de los gobiernos. Además, abordar estos desafíos requiere un enfoque holístico e integrado. Se deben hacer esfuerzos para identificar los vínculos entre la pandemia de Covid-19, el cambio climático y la migración, reconociendo que estos problemas están interconectados y, a menudo, se exacerban entre sí. Las políticas e intervenciones deben apuntar a abordar las causas fundamentales, incluida la pobreza, la desigualdad y la degradación ambiental, para crear sociedades sostenibles y resilientes. Promover la educación, la conciencia y la participación pública es esencial para fomentar una cultura de derechos humanos y responsabilidad colectiva.

Conclusion of Doctoral thesis

It is important to state that unfortunately countries continue to cause harm to economic, social, and cultural rights by:

1) refraining from imposing unilateral economic sanctions on other states. Such sanctions often "cause significant disruption in the distribution of food, pharmaceuticals, and sanitation supplies, jeopardize the quality of food and availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work (para.3)[1758]",

2) refraining from dumping unsafe food or toxic waste in other states,

3) refraining from imposing embargoes or similar measures restricting the supply of another state with essential goods and services, including adequate food, medicines,

4) by not supporting armed conflicts in other states in violation of international law and by not aiding corporations and other actors to violate economic, social, and cultural rights in other states.

However, analysed regional human rights systems are aimed at the protection of economic, social, and cultural rights. For example, C. Heyns, D. Padilla, and L. Zwaak consider that: "The existence of regional human rights systems makes it possible to establish compliance mechanisms that may be better suited to local conditions than a global universal compliance system; within the region, such as Europe, may be a more appropriate judicial approach to the enforcement, whereas in a region such as Africa, might be the more appropriate approach, which also allows the use of non-judicial mechanisms such as the Commission and peer review. The global system does not have that flexibility[1759]". Regional human rights systems allow to protect the rights of the second generation, better than a universal system. The Council of Europe serves as a significant and influential institution in safeguarding economic, social, and cultural rights within its member states. Through its commitment to promoting human rights and the rule of law, the Council plays a crucial role in advancing the protection and realization

[1758] CESCR, 'General Comment № 8' in 'The Relationship between economic sanctions and Respect for Economic, Social and Cultural Rights' UN Doc. E/C.12/1997/8 (12 December 1997).

[1759] Heyns C, Padilla D, Zwaak L, 'A schematic comparison of regional human rights systems: an update' in *African Human Rights Law Journal* (Vol. 5, 2005) P. 308-320 <http://www.scielo.br/scielo.php?pid=S1806-64452006000100010&script=sci_arttext&tlng=en> accessed 25 March 2023.

of these fundamental rights. By establishing legal frameworks, monitoring compliance, and facilitating dialogue and cooperation among member states, the Council contributes to the development of comprehensive and effective mechanisms for the protection of economic, social, and cultural rights.

There also were several research questions in the present doctoral thesis to answer.

Firstly, how do we know that sufficient steps have been taken towards the full realization of economic, social, and cultural rights, or that enough is being done to combat discrimination and inequality? In other words, how do we know that governments are complying with their obligations set out in the the International Covenant on Economic, Social and Cultural Rights of 1966? And how can governments be held accountable in practice for their economic and social rights obligations? There is limited value in demonstrating that a government 'step', i.e., the action required by the International Covenant on Economic, Social and Cultural Rights of 1966 towards the realization of economic, social, and cultural rights, would raise the level of realization in one right. Instead, "it is necessary to show that a step would raise the level of realization in one area, without lowering the level of any other. Only then would a government be expected to take the step concerned, with failure to do so representing a violation of its obligations. These are not just legal challenges; they are also empirical. There is rarely enough evidence to monitor government actions effectively. Too little attention is paid to the rigorous evidence required to ensure that "economic and social rights can be implemented in a meaningful way[1760]".

Complying with their obligations under the International Covenant on Economic, Social and Cultural Rights of 1966 is a complex task. It requires a combination of monitoring mechanisms, accountability measures, and engagement with civil society and human rights organizations, namely:

1)Reporting Obligations. States are required to submit periodic reports to the UN Committee on Economic, Social and Cultural Rights, detailing the measures taken to implement the Covenant. These reports provide insights into the actions, policies, and challenges faced by governments in realizing economic, social, and cultural rights. The Committee reviews these

[1760]'Achieving economic and social rights: The challenge of assessing compliance' (Overseas Development Institute) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-flies/2340.pdf > accessed 5 April 2023.

reports, conducts dialogues with state representatives, and issues concluding observations that highlight areas of concern and make recommendations.

2)Independent monitoring by civil society organizations and human rights defenders plays a crucial role in assessing the fulfillment of economic, social, and cultural rights. These organizations gather data, conduct research, and provide analysis on various issues related to rights violations, discrimination, and inequality. They often work directly with affected communities and amplify their voices, shedding light on gaps in government actions and policies.

3)The use of indicators and benchmarks can help assess progress and measure the realization of economic, social, and cultural rights. These tools provide a quantitative and qualitative framework for evaluating outcomes and comparing performance across countries. Indicators can include poverty rates, access to education and healthcare, housing conditions, and income inequality. International organizations and research institutions often develop and promote such indicators to facilitate monitoring efforts.

4) Special Rapporteurs appointed by the United Nations Human Rights Council play a vital role in monitoring and promoting economic, social, and cultural rights. They conduct country visits, receive information from individuals and organizations, and issue reports that draw attention to specific issues or cases of non-compliance. Engaging with Special Rapporteurs and providing them with access to information and cooperation is an important aspect of governmental accountability.

5) In some countries, economic, social, and cultural rights are justiciable, meaning individuals can seek redress through the courts when their rights are violated. National constitutions or legislation may explicitly recognize economic, social, and cultural rights, allowing citizens to challenge government actions or policies that infringe upon these rights. Judicial review provides a legal avenue to hold governments accountable and seek remedies for violations.

6) Governments can be held accountable by fostering a culture of public participation and consultation. By engaging with civil society, affected communities, and marginalized groups, governments can ensure that policies and decisions are inclusive, transparent, and responsive to the needs and aspirations of the people. Regular consultations, public hearings, and participatory budgeting processes enable citizens to voice their concerns and contribute to policymaking.

7) International pressure and advocacy efforts can help hold governments accountable for their obligations. This can take the form of diplomatic engagement, public statements,

economic sanctions, or the withholding of international aid. International organizations, human rights NGOs, and influential actors can use their leverage to push governments to fulfill their obligations and address violations of economic, social, and cultural rights.

Secondly, how to avoid contradictions between universal and regional levels in the process of protection of economic, social, and cultural rights? Different measures should be used. In particular, there are mutual consultations between interested organizations, technical assistance, compatibility in the texts of international documents, stipulating that the texts of homogeneous agreements do not contain contradictions. Similar clauses have been included in the United Nations International Covenants in relation to the International Labour Organization conventions. Another example is in the Arab Labour Convention, adopted in 1967. Article 120 of it states that "the Council of the League of Arab States does not affect the provisions of other existing international agreements if they are more favourable to individuals[1761]". They are undertaken primarily at the stage of developing regional norms. For example, during the preparation of the European Social Charter in 1961, its draft was sent to the Tripartite Conference of European States of the Council of Europe and the International Labour Organization, which was convened by the latter.

Thirdly, are there any project of substantive additional protocol to European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 adding social and economic rights to the European system of Human Rights? Is this situation similar to other regional systems of human rights' protection? It is worth mentioning that some European experts proposed to transfer certain articles fixing the basic social rights from the European Social Charter of 1961 and the Revised European Social Charter of 1996 to the additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. It would mean that violations of these articles would become the jurisdiction of the European Court of Human Rights. However, it has "not yet found support among the countries of the Council of Europe[1762]".

[1761] Valticos N, 'Normes universelles et norms regionals dans le domaine du travail' in *Regionalisme et universalisme dans le droit international contemporaine* (Ed. A. Pedone, Paris, 1977).

[1762] Dollat P, 'Droit europeen et droit de l'Union europeenne' (Paris: Sirey, 2011) P. 514.

Fourthly, did the Council of Europe promote or create any other treaty on economic and social rights apart of the European Social Charter of 1961? In April of 2021 the Parliamentary Assembly of the Council of Europe adopted the Resolution on the strategic priorities of the Council of Europe. The Resolution mentioned the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the European Social Charter of 1961 and its additional protocols and emphasized the need to pay increased attention to the protection of social and economic rights. According to the document:

✓ "The Council of Europe's aim is "to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress (Article 1.a of the Statute of the Council of Europe, 1949, ETS №1) (para.1)",

✓ "The Assembly highlights the need to put stronger emphasis on the protection of social and economic rights in the work of the Council of Europe(para.10)",

✓ "The Council of Europe has to address existing and emerging threats to democratic societies and democratic security, by promoting a contemporary and holistic vision of human rights, including new generation rights such as the right to a safe, healthy and sustainable environment, and by assessing the impact of the inherent relationship between human rights and development. As a recognized international standard-setter in the field of human rights protection, the Council of Europe should focus on devising common replies and establishing new standards to protect human rights vis-à-vis new and evolving challenges(para.14)[1763]".

Fifthly, if not, the protection of economic and social rights is mainly a jurisprudential contribution by the European Court of Human Rights, so how far this it has gone? Since the establishment of the European Court of Human Rights, many decisions have appeared that became precedents for restoring justice in the sphere of economic, social, and cultural rights. This court considers cases from the point of view of the universal content of fundamental human rights and their indivisibility. The European Court of Human Rights makes decisions in or out of favor of economic, social, and cultural rights protection. However, it should be noted that the main principles formulated in the case-law create a foundation for future protective strategies for economic, social, and cultural rights. Many authors emphasize the contribution of the European Court of Human Rights in the fight against discrimination, in recognizing the

[1763] Parliamentary Assembly of the Council of Europe, 'Resolution 2369 on the strategic priorities for the Council of Europe' (2021) < https://pace.coe.int/en/files/29166/html> accessed 1 May 2023.

need to enforce court decisions on the payment of pensions and benefits, as well as ensuring that it is possible in principle to apply to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 for protection of rights not expressly provided for in the Convention. In many cases, the European Court of Human Rights has used a technique to protect second-generation rights by linking an article of the European Convention on Human Rights to article 14 of the European Convention on Human Rights. The second technique of the Court is the concept of positive obligations of States[1764],procedural obligations. Moreover, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 uses different approaches (textual, contextual) and special legal interpretation. The European Court of Human Rights pays attention to the context and rules of international law. It seems to me that the Court provides different level of legal protection to the rights of second generation in comparison with the rights of first generation. The economic, social, and cultural rights are protected only to the extent necessary for implementation of the civil and political rights. The rights of the second generation do not have autonomous relevance but are linked to the claimed civil and political rights and the factual situation encompassed, by Articles 2, 3, 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, respectively. Turning to the indivisibility and universality of rights, it should be noted that the rights of two generations require the same legal protection.

Sixthly, assuming there is a place to keep on advancing in this jurisprudence, what are the lines of 'progressiveness' I would identify for the next years for the European Court of Human Rights to go ahead? At present there are some problems existing in its system:

- the procedure for implementing the decisions by the member states,
- suffering from repeated cases and clone cases without new legal issues,
- tense relations with countries. Authors of an article 'Switzerland and its special view on European human rights' state that: "one of the possible ways to relieve the existing tension could be a more intensive use of the principle of subsidiarity, according to which States bear the main responsibility for ensuring the rights and freedoms guaranteed by the European

[1764] F. Cherubini for the study of positive obligations refers to the case of *Oneryildiz v. Turkey*. In this case, the Court defined two categories of positive obligations of States, one of which is essential and the other of a case-law nature: the state must take all positive actions, in the first case, to prevent a violation of the right or, in any case, to guarantee its implementation. Second, to address a violation that has already occurred by establishing adequate internal measures. Cherubini F, 'Le prime due generazioni di diritti umani: origine, evoluzione e prassi recente' *in Studi sull'integrazione europea* (2013) P. 321; *Öneryıldız v. Turkey* (2004) № 48939/99.

Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols, and at the same time enjoy the freedom of discretion, while the European Court of Human Rights only supervises the implementation of this very freedom of discretion[1765]". Another author, R. Spano, underlines a "the two-dimensional historical trajectory of the European Court of Human Rights manifested by:

- the substantive embedding phase and,

- the current procedural embedding phase. There are clear signs that this historical trajectory is an empirical reality, but a development that is normatively justified on both institutional and substantive grounds. It will sustain and support in the long run the system's overall legitimacy and effectiveness for the peoples of Europe and, hopefully, at the same time result in the progressive decrease in the number of applications to the Strasbourg Court[1766]".

Moreover, the Steering Committee for Human Rights (CDDH) adopted its report on the longer-term future of the European Convention on Human Rights, presenting four overarching areas were considered as crucial for the longer-term effectiveness and viability of the Convention System:

- ✓ "National implementation of the Convention,
- ✓ The authority of the Court,
- ✓ The execution of judgments and its supervision,
- ✓ The place of the Convention in the European and International legal order[1767]".

Seventhly, maybe collective social, economic, cultural rights linked to the current economic crisis or to the Covid-19 pandemic, or even considering the challenge of the climate change? The collective social, economic, and cultural rights are certainly linked to the current economic crisis, the Covid-19 pandemic, and the challenge of climate change. These interconnected issues have significantly impacted societies worldwide, exacerbating existing inequalities and posing substantial obstacles to the realization of these rights.

The economic crisis triggered by the Covid-19 pandemic has had far-reaching consequences for individuals and communities. Lockdown measures, business closures, and

[1765] 'Switzerland and its special view on European human rights'<https://www.swissinfo.ch/rus/еспч-и-швейцария_швейцария-и-ее-особый-взгляд-на-европейские-права-человека/41148132> accessed 19 May 2023.

[1766] Spano R, 'The Future of the European Court of Human Rights—Subsidiarity, Process-Based Review and the Rule of Law' <https://academic.oup.com/hrlr/article/18/3/473/4999870> accessed 18 May 2023.

[1767] 'Longer-term future of the ECHR System'<https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/echr-system/future-of-convention-system> accessed 18 May 2023.

disruptions in global supply chains have resulted in widespread job losses, reduced incomes, and increased poverty rates. As a result, people's access to necessities such as food, healthcare, and housing has been compromised, undermining their economic and social rights. Vulnerable groups, including marginalized communities, women, and informal workers, have been disproportionately affected, further widening existing social disparities. Furthermore, the pandemic has underscored the importance of strong social protection systems. Adequate social safety nets, including unemployment benefits, healthcare coverage, and income support, are essential in safeguarding individuals' economic and social rights during times of crisis. However, the pandemic has exposed the gaps and inadequacies in many countries' social protection mechanisms, leaving vulnerable populations without the necessary support. Strengthening social protection systems, expanding coverage, and ensuring their accessibility to all are crucial steps in mitigating the negative impacts of the economic crisis and protecting individuals' rights.

The challenge of climate change also intersects with social, economic, and cultural rights. Climate change exacerbates poverty, food insecurity, and displacement, disproportionately affecting marginalized communities. The consequences of climate change, such as extreme weather events and rising sea levels, disrupt livelihoods, compromise access to clean water and sanitation, and threaten cultural heritage. Indigenous peoples, rural communities, and low-income populations are particularly vulnerable due to their dependence on natural resources for their well-being and cultural practices. Addressing climate change requires a just transition towards a sustainable and low-carbon economy. This transition should prioritize the protection of human rights, including the rights to a clean environment, health, and adequate standards of living. It should ensure equitable access to renewable energy, sustainable agriculture, and resilient infrastructure. Additionally, efforts to mitigate climate change must take into account the needs and knowledge of local communities, respecting their cultural practices and promoting their active participation in decision-making processes. The Covid-19 pandemic has highlighted the urgent need for a sustainable and resilient approach to economic development. As countries rebuild their economies in the aftermath of the crisis, it is crucial to adopt policies that prioritize social and environmental sustainability. Investments in green infrastructure, renewable energy, and sustainable industries can promote economic growth while simultaneously protecting the planet and creating jobs. This transition towards a green economy should be accompanied by measures to ensure a just distribution of resources, access to education and healthcare, and the preservation of cultural diversity.

To sum up, the collective social, economic, and cultural rights are deeply intertwined with the current economic crisis, the Covid-19 pandemic, and the challenge of climate change. These interconnected issues demand holistic approaches that address the root causes of inequality, prioritize social protection, promote sustainable development, and respect cultural diversity. By integrating human rights principles into policy-making, fostering international cooperation, and empowering marginalized communities, we can strive towards a more equitable and sustainable future for all.

Es importante constatar que, desgraciadamente, los países siguen perjudicando los derechos económicos, sociales y culturales al:

1) absteniéndose de imponer sanciones económicas unilaterales a otros Estados. Dichas sanciones a menudo "causan importantes perturbaciones en la distribución de alimentos, productos farmacéuticos y suministros de saneamiento, ponen en peligro la calidad de los alimentos y la disponibilidad de agua potable limpia, interfieren gravemente en el funcionamiento de los sistemas básicos de salud y educación y socavan el derecho al trabajo (párrafo 3)[1768]",

2) abstenerse de verter alimentos insalubres o residuos tóxicos en otros Estados,

3) absteniéndose de imponer embargos o medidas similares que restrinjan el suministro a otro Estado de bienes y servicios esenciales, incluidos alimentos y medicamentos adecuados,

4) no apoyando conflictos armados en otros Estados en violación del derecho internacional y no ayudando a empresas y otros actores a violar los derechos económicos, sociales y culturales en otros Estados.

Sin embargo, los sistemas regionales de derechos humanos analizados tienen como objetivo la protección de los derechos económicos, sociales y culturales. Por ejemplo, C. Heyns, D. Padilla y L. Zwaak consideran que: "La existencia de sistemas regionales de derechos humanos permite establecer mecanismos de cumplimiento que pueden adaptarse mejor a las condiciones locales que un sistema global de cumplimiento universal; dentro de la región, como Europa, puede ser más apropiado un enfoque judicial del cumplimiento, mientras que en una región como África, puede ser el enfoque más adecuado, que también permite el uso de mecanismos no judiciales como la Comisión y la revisión paritaria. El sistema global no tiene esa flexibilidad[1769]". Los sistemas regionales de derechos humanos permiten proteger los derechos de la segunda generación, mejor que un sistema universal. El Consejo de Europa es una institución importante e influyente a la hora de salvaguardar los derechos económicos,

[1768] CESCR, 'General Comment № 8' in 'The Relationship between economic sanctions and Respect for Economic, Social and Cultural Rights' UN Doc. E/C.12/1997/8 (12 December 1997).

[1769] Heyns C, Padilla D, Zwaak L, 'A schematic comparison of regional human rights systems: an update' in *African Human Rights Law Journal* (Vol. 5, 2005) P. 308-320 <http://www.scielo.br/scielo.php?pid=S1806-64452006000100010&script=sci_arttext&tlng=en> accessed 25 March 2023.

sociales y culturales en sus Estados miembros. A través de su compromiso con la promoción de los derechos humanos y el Estado de Derecho, el Consejo desempeña un papel crucial en el avance de la protección y la realización de estos derechos fundamentales. Al establecer marcos jurídicos, supervisar su cumplimiento y facilitar el diálogo y la cooperación entre los Estados miembros, el Consejo contribuye al desarrollo de mecanismos integrales y eficaces para la protección de los derechos económicos, sociales y culturales.

En la presente tesis Doctoral también había varias preguntas de investigación que responder.

En primer lugar, ¿cómo sabemos que se han dado pasos suficientes hacia la plena realización de los derechos económicos, sociales y culturales, o que se está haciendo lo suficiente para combatir la discriminación y la desigualdad? En otras palabras, ¿cómo sabemos que los gobiernos están cumpliendo con sus obligaciones establecidas en el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966? ¿Y cómo pueden los gobiernos rendir cuentas en la práctica de sus obligaciones en materia de derechos económicos y sociales? Tiene un valor limitado demostrar que un 'paso' gubernamental, es decir, la acción requerida por el Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966 hacia la realización de los derechos económicos, sociales y culturales, elevaría el nivel de realización de un derecho. En cambio, "es necesario mostrar que un paso elevaría el nivel de realización en un área, sin bajar el nivel de ninguna otra. Solo entonces se esperaría que un gobierno diera el paso en cuestión, y el hecho de no hacerlo representaría una violación de sus obligaciones. Estos no son solo desafíos legales; también son empíricos. Rara vez hay pruebas suficientes para monitorear las acciones gubernamentales de manera efectiva. Se presta muy poca atención a la evidencia rigurosa requerida para garantizar que los derechos económicos y sociales puedan implementarse de manera significativa[1770]".

Cumplir con sus obligaciones en virtud del Pacto Internacional de Derechos Económicos, Sociales y Culturales de 1966 es una tarea compleja. Requiere una combinación de mecanismos de monitoreo, medidas de rendición de cuentas y compromiso con la sociedad civil y las organizaciones de derechos humanos, a saber:

[1770] 'Achieving economic and social rights: The challenge of assessing compliance' (Overseas Development Institute) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-flies/2340.pdf > accessed 5 April 2023.

1) Obligaciones de información. Los Estados deben presentar informes periódicos al Comité de Derechos Económicos, Sociales y Culturales de las Naciones Unidas en los que se detallen las medidas adoptadas para aplicar el Pacto. Estos informes proporcionan información sobre las acciones, políticas y desafíos que enfrentan los gobiernos para hacer realidad los derechos económicos, sociales y culturales. El Comité revisa estos informes, lleva a cabo diálogos con representantes de los Estados y emite observaciones finales que destacan las áreas de preocupación y hacen recomendaciones.

2) El monitoreo independiente por parte de organizaciones de la sociedad civil y defensores de derechos humanos juega un papel crucial en la evaluación del cumplimiento de los derechos económicos, sociales y culturales. Estas organizaciones recopilan datos, realizan investigaciones y proporcionan análisis sobre diversos temas relacionados con violaciones de derechos, discriminación y desigualdad. A menudo trabajan directamente con las comunidades afectadas y amplifican sus voces, arrojando luz sobre las brechas en las acciones y políticas gubernamentales.

3) El uso de indicadores y puntos de referencia puede ayudar a evaluar el progreso y medir la realización de los derechos económicos, sociales y culturales. Estas herramientas proporcionan un marco cuantitativo y cualitativo para evaluar los resultados y comparar el desempeño entre países. Los indicadores pueden incluir tasas de pobreza, acceso a la educación y la atención médica, condiciones de vivienda y desigualdad de ingresos. Las organizaciones internacionales y las instituciones de investigación a menudo desarrollan y promueven tales indicadores para facilitar los esfuerzos de monitoreo.

4) Los relatores Especiales nombrados por el Consejo de Derechos Humanos de las Naciones Unidas desempeñan un papel vital en la vigilancia y promoción de los derechos económicos, sociales y culturales. Realizan visitas a los países, reciben información de individuos y organizaciones, y emiten informes que llaman la atención sobre problemas específicos o casos de incumplimiento. Comprometerse con los Relatores Especiales y proporcionarles acceso a la información y la cooperación es un aspecto importante de la responsabilidad gubernamental.

5) En algunos países, los derechos económicos, sociales y culturales son justiciables, lo que significa que las personas pueden buscar reparación a través de los tribunales cuando se violan sus derechos. Las constituciones o la legislación nacionales pueden reconocer explícitamente los derechos económicos, sociales y culturales, lo que permite a los ciudadanos impugnar las acciones o políticas gubernamentales que infringen estos derechos. La revisión

judicial proporciona una vía legal para responsabilizar a los gobiernos y buscar remedios por las violaciones.

6) Los gobiernos pueden rendir cuentas fomentando una cultura de participación y consulta públicas. Al comprometerse con la sociedad civil, las comunidades afectadas y los grupos marginados, los gobiernos pueden garantizar que las políticas y decisiones sean inclusivas, transparentes y receptivas a las necesidades y aspiraciones de las personas. Las consultas periódicas, las audiencias públicas y los procesos de presupuestación participativa permiten a los ciudadanos expresar sus preocupaciones y contribuir a la formulación de políticas.

7) La presión internacional y los esfuerzos de promoción pueden ayudar a que los gobiernos rindan cuentas de sus obligaciones. Esto puede tomar la forma de compromiso diplomático, declaraciones públicas, sanciones económicas o la retención de ayuda internacional. Las organizaciones internacionales, las ONG de derechos humanos y los actores influyentes pueden usar su influencia para presionar a los gobiernos para que cumplan con sus obligaciones y aborden las violaciones de los derechos económicos, sociales y culturales.

En segundo lugar, ¿cómo evitar contradicciones entre los niveles universal y regional en el proceso de protección de los derechos económicos, sociales y culturales? Se deben usar diferentes medidas. En particular, existen consultas mutuas entre organizaciones interesadas, asistencia técnica, compatibilidad en los textos de documentos internacionales, estipulando que los textos de acuerdos homogéneos no contengan contradicciones. Cláusulas similares se han incluido en los Pactos Internacionales de las Naciones Unidas en relación con los convenios de la Organización Internacional del Trabajo. Otro ejemplo es el Convenio Laboral Árabe, adoptado en 1967. El artículo 120 del mismo establece que "el Consejo de la Liga de los Estados Árabes no afecta las disposiciones de otros acuerdos internacionales existentes si son más favorables para los individuos[1771]". Se llevan a cabo principalmente en la etapa de desarrollo de normas regionales. Por ejemplo, durante la preparación de la Carta Social Europea en 1961, su borrador fue enviado a la Conferencia Tripartita de Estados Europeos del Consejo de Europa y la Organización Internacional del Trabajo, que fue convocada por esta última.

[1771] Valticos N, 'Normes universelles et norms regionals dans le domaine du travail' in *Regionalisme et universalisme dans le droit international contemporaine* (Ed. A. Pedone, Paris, 1977).

En tercer lugar, ¿existe algún proyecto de protocolo adicional sustantivo al Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950 que añada derechos sociales y económicos al sistema europeo de Derechos Humanos? ¿Es esta situación similar a la de otros sistemas regionales de protección de los derechos humanos? Vale la pena mencionar que algunos expertos europeos propusieron transferir ciertos artículos que fijan los derechos sociales básicos de la Carta Social Europea de 1961 y la Carta Social Europea Revisada de 1996 al Protocolo adicional al Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950. Significaría que las violaciones de estos artículos pasarían a ser competencia del Tribunal Europeo de Derechos Humanos. Sin embargo, "todavía no ha encontrado apoyo entre los países del Consejo de Europa[1772]".

En cuarto lugar, ¿promovió o creó el Consejo de Europa algún otro tratado sobre derechos económicos y sociales aparte de la Carta Social Europea de 1961? En abril de 2021, la Asamblea Parlamentaria del Consejo de Europa adoptó la Resolución sobre las prioridades estratégicas del Consejo de Europa. La Resolución mencionaba el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950, la Carta Social Europea de 1961 y sus protocolos adicionales, y subrayaba la necesidad de prestar mayor atención a la protección de los derechos sociales y económicos. Según el documento:

- ✓ El objetivo del Consejo de Europa es "lograr una mayor unidad entre sus miembros con el fin de salvaguardar y realizar los ideales y principios que son su patrimonio común y facilitar su progreso económico y social (artículo 1.a del Estatuto del Consejo de Europa, 1949, ETS №1) (párr.1)",
- ✓ "La Asamblea destaca la necesidad de hacer mayor hincapié en la protección de los derechos sociales y económicos en la labor del Consejo de Europa (párr .10)",
- ✓ "El Consejo de Europa tiene que abordar las amenazas existentes y emergentes a las sociedades democráticas y la seguridad democrática, promoviendo una visión contemporánea y holística de los derechos humanos, incluidos los derechos de nueva generación, como el derecho a un medio ambiente seguro, saludable y sostenible, y evaluando el impacto de la relación inherente entre los derechos humanos y el desarrollo. En su calidad de organismo internacional reconocido que establece normas en el ámbito de la protección de los derechos

[1772] Dollat P, 'Droit europeen et droit de l'Union europeenne' (Paris: Sirey, 2011) P. 514.

humanos, el Consejo de Europa debería centrarse en idear respuestas comunes y establecer nuevas normas para proteger los derechos humanos frente a desafíos nuevos y en evolución(párr.14)[1773]".

En quinto lugar, si no es así, la protección de los derechos económicos y sociales es principalmente una contribución jurisprudencial del Tribunal Europeo de Derechos Humanos, ¿hasta dónde ha llegado? Desde el establecimiento del Tribunal Europeo de Derechos Humanos, han aparecido muchas decisiones que se convirtieron en precedentes para restablecer la justicia en la esfera de los derechos económicos, sociales y culturales. Este tribunal considera los casos desde el punto de vista del contenido universal de los derechos humanos fundamentales y su indivisibilidad. El Tribunal Europeo de Derechos Humanos toma decisiones a favor o en contra de la protección de los derechos económicos, sociales y culturales. Sin embargo, cabe señalar que los principios fundamentales formulados en la jurisprudencia sientan las bases para futuras estrategias de protección de los derechos económicos, sociales y culturales. Muchos autores destacan la contribución del Tribunal Europeo de Derechos Humanos en la lucha contra la discriminación, al reconocer la necesidad de hacer cumplir las decisiones judiciales sobre el pago de pensiones y prestaciones, así como garantizar que, en principio, sea posible aplicar el Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950 para la protección de los derechos no previstos expresamente en el Convenio. En muchos casos, el Tribunal Europeo de Derechos Humanos ha utilizado una técnica para proteger los derechos de segunda generación al vincular un artículo del Convenio Europeo de Derechos Humanos con el artículo 14 del Convenio Europeo de Derechos Humanos. La segunda técnica[1774] de la Corte es el concepto de obligaciones positivas de los Estados, obligaciones procesales. Además, el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950 utiliza diferentes enfoques (textuales, contextuales) y una interpretación jurídica especial. El Tribunal Europeo de Derechos Humanos presta atención al contexto y las normas del derecho internacional. Me

[1773] Parliamentary Assembly of the Council of Europe, 'Resolution 2369 on the strategic priorities for the Council of Europe' (2021) < https://pace.coe.int/en/files/29166/html> accessed 1 May 2023.

[1774] F. Cherubini for the study of positive obligations refers to the case of *Oneryildiz v. Turkey*. In this case, the Court defined two categories of positive obligations of States, one of which is essential and the other of a case-law nature: the state must take all positive actions, in the first case, to prevent a violation of the right or, in any case, to guarantee its implementation. Second, to address a violation that has already occurred by establishing adequate internal measures. Cherubini F, 'Le prime due generazioni di diritti umani: origine, evoluzione e prassi recente' *in Studi sull'integrazione europea* (2013) P. 321; *Öneryıldız v. Turkey* (2004) № 48939/99.

parece que el Tribunal de Justicia proporciona un nivel diferente de protección jurídica a los derechos de la segunda generación en comparación con los derechos de la primera generación. Los derechos económicos, sociales y culturales se protegen solo en la medida necesaria para la implementación de los derechos civiles y políticos. Los derechos de la segunda generación no tienen relevancia autónoma, sino que están vinculados a los derechos civiles y políticos reivindicados y a la situación fáctica abarcada, respectivamente, por los artículos 2, 3 y 5 del Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales de 1950. En cuanto a la indivisibilidad y universalidad de los derechos, cabe señalar que los derechos de dos generaciones requieren la misma protección jurídica.

En sexto lugar, suponiendo que haya un lugar para seguir avanzando en esta jurisprudencia, ¿cuáles son las líneas de "progresividad" que identificaría para los próximos años para que el Tribunal Europeo de Derechos Humanos siga adelante? En la actualidad existen algunos problemas existentes en su sistema:

- el procedimiento de ejecución de las decisiones de los Estados miembros,

- sufrir de casos repetidos y casos clonados sin nuevos problemas legales,

- relaciones tensas con los países. Los autores de un artículo titulado “Suiza y su visión especial sobre los derechos humanos europeos” afirman que: “una de las posibles formas de aliviar la tensión existente podría ser un uso más intensivo del principio de subsidiariedad, según el cual los Estados tienen la responsabilidad principal de garantizar los derechos y libertades garantizados por el Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales de 1950 y sus Protocolos, y al mismo tiempo disfrutan de la libertad de discreción, mientras que el Tribunal Europeo de Derechos Humanos solo supervisa la aplicación de esta misma libertad de discreción[1775]”. Otro autor, R. Spano, subraya “la trayectoria histórica bidimensional del Tribunal Europeo de Derechos Humanos manifestada por:

- la fase de integración sustantiva y,

- la fase de incrustación procesal actual. Hay señales claras de que esta trayectoria histórica es una realidad empírica, pero un desarrollo que se justifica normativamente por razones institucionales y sustantivas. Sostendrá y apoyará a largo plazo la legitimidad y eficacia

[1775]‘Switzerland and its special view on European human rights’<https://www.swissinfo.ch/rus/еспч-и-швейцария_швейцария-и-ее-особый-взгляд-на-европейские-права-человека/41148132> accessed 19 May 2023.

generales del sistema para los pueblos de Europa y, con suerte, al mismo tiempo dará como resultado la disminución progresiva del número de solicitudes ante el Tribunal de Estrasburgo[1776]".

Además, el Comité Directivo para los Derechos Humanos (CDDH) adoptó su informe sobre el futuro a largo plazo del Convenio Europeo de Derechos Humanos, presentando cuatro áreas generales que se consideraron cruciales para la efectividad y viabilidad a largo plazo del sistema de Convenios:

- ✓ la aplicación nacional de la Convención,
- ✓ la autoridad de la Corte,
- ✓ fiscalizar la ejecución de sentencias y su supervisión,
- ✓ el lugar de la Convención en el ordenamiento jurídico europeo e internacional[1777]".

En séptimo lugar, ¿quizás derechos sociales, económicos y culturales colectivos vinculados a la crisis económica actual o a la pandemia de Covid-19, o incluso considerando el desafío del cambio climático? Los derechos sociales, económicos y culturales colectivos están ciertamente vinculados a la crisis económica actual, la pandemia de Covid-19 y el desafío del cambio climático. Estos problemas interconectados han tenido un impacto significativo en las sociedades de todo el mundo, exacerbando las desigualdades existentes y planteando obstáculos sustanciales para la realización de estos derechos.

La crisis económica provocada por la pandemia de Covid-19 ha tenido consecuencias de gran alcance para las personas y las comunidades. Las medidas de confinamiento, los cierres de empresas y las interrupciones en las cadenas de suministro globales han provocado pérdidas generalizadas de empleos, menores ingresos y mayores tasas de pobreza. Como resultado, el acceso de las personas a necesidades básicas como alimentos, atención médica y vivienda se ha visto comprometido, lo que socava sus derechos económicos y sociales. Los grupos vulnerables, incluidas las comunidades marginadas, las mujeres y los trabajadores informales, se han visto afectados de manera desproporcionada, lo que ha ampliado aún más las disparidades sociales existentes. Además, la pandemia ha puesto de relieve la importancia de contar con sistemas de protección social sólidos. Las redes de seguridad social adecuadas, incluidas las prestaciones por desempleo, la cobertura sanitaria y el apoyo a los ingresos, son

[1776] Spano R, 'The Future of the European Court of Human Rights—Subsidiarity, Process-Based Review and the Rule of Law' <https://academic.oup.com/hrlr/article/18/3/473/4999870> accessed 18 May 2023.

[1777]'Longer-term future of the ECHR System'<https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/echr-system/future-of-convention-system> accessed 18 May 2023.

esenciales para salvaguardar los derechos económicos y sociales de las personas en tiempos de crisis. Sin embargo, la pandemia ha expuesto las brechas e insuficiencias en los mecanismos de protección social de muchos países, dejando a las poblaciones vulnerables sin el apoyo necesario. Fortalecer los sistemas de protección social, ampliar la cobertura y garantizar su accesibilidad para todos son pasos cruciales para mitigar los impactos negativos de la crisis económica y proteger los derechos de las personas.

El desafío del cambio climático también se cruza con los derechos sociales, económicos y culturales. El cambio climático exacerba la pobreza, la inseguridad alimentaria y el desplazamiento, afectando de manera desproporcionada a las comunidades marginadas. Las consecuencias del cambio climático, como los fenómenos meteorológicos extremos y el aumento del nivel del mar, perturban los medios de subsistencia, comprometen el acceso al agua potable y el saneamiento y amenazan el patrimonio cultural. Los pueblos indígenas, las comunidades rurales y las poblaciones de bajos ingresos son particularmente vulnerables debido a su dependencia de los recursos naturales para su bienestar y prácticas culturales. Abordar el cambio climático requiere una transición justa hacia una economía sostenible y baja en carbono. Esta transición debe priorizar la protección de los derechos humanos, incluidos los derechos a un medio ambiente limpio, la salud y un nivel de vida adecuado. Debe garantizar el acceso equitativo a la energía renovable, la agricultura sostenible y la infraestructura resiliente. Además, los esfuerzos para mitigar el cambio climático deben tener en cuenta las necesidades y los conocimientos de las comunidades locales, respetando sus prácticas culturales y promoviendo su participación activa en los procesos de toma de decisiones. La pandemia de Covid-19 ha puesto de relieve la necesidad urgente de un enfoque sostenible y resiliente del desarrollo económico. A medida que los países reconstruyen sus economías después de la crisis, es crucial adoptar políticas que prioricen la sostenibilidad social y ambiental. Las inversiones en infraestructura verde, energía renovable e industrias sostenibles pueden promover el crecimiento económico y, al mismo tiempo, proteger el planeta y crear empleos. Esta transición hacia una economía verde debe ir acompañada de medidas para garantizar una distribución justa de los recursos, el acceso a la educación y la atención médica, y la preservación de la diversidad cultural.

En resumen, los derechos sociales, económicos y culturales colectivos están profundamente entrelazados con la crisis económica actual, la pandemia de Covid-19 y el desafío del cambio climático. Estos temas interconectados exigen enfoques holísticos que aborden las causas fundamentales de la desigualdad, prioricen la protección social, promuevan el desarrollo sostenible y respeten la diversidad cultural. Al integrar los principios de derechos

humanos en la formulación de políticas, fomentar la cooperación internacional y empoderar a las comunidades marginadas, podemos esforzarnos por lograr un futuro más equitativo y sostenible para todos.

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