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**THEORETICAL AND PRACTICAL ASPECTS REGARDING THE
RIGHT OF LIVING STANDARD**

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The Universal Declaration of Human Rights proclaimed by the General Assembly of United Nations at 10th of December 1948, didn't settle, expresis verbis, among the fundamental rights and freedoms of human rights, a special rights that, no matter what its name is, may oblige the international community to respect a certain living standard for the human beings, be it decent or sufficient. Still, if we read carefully the provisions of Art.25, paragraph 1 from the Universal Declaration of Human Rights we can identify some specific aspects regarding this special right. After adopting the international document, some states, among which we must mention Romania, appreciated the opportunity of settling the constitutional consecration of this right, even if it wasn't expressly settled but rather incorporated among the provisions of another right.

The equity is not a natural right, but the fundament of any natural right, since there is no natural right unless the people are not equal, equity being thus the main condition of acknowledging human beings condition [1]. Therefore, we all must be equal in rights and freedoms, without any privileges or discrimination, due o the fact that we all are human beings. This social equity must be translated as the assurance and the guaranty of a certain living standard that must correspond to a minimal living standard regarding the material conditions. If every human being enjoys their guaranty of right to life as settled in the international documents and in the Constitution, then we must also take into consideration the possibility of settling a special right regarding the way of living and to impose thus to the international communities, by means of their competent bodies, and to the states, by means of the authorities reliable in this field, the obligation of respecting and assuring “some reasonable life conditions, that must ensure to the person and to the person’s family, a civilized and decent living” [2].

This complex right, its complexity being the result of its containt and of the modalities by means of which it is guaranteed, appeared in the moment when the General Assembly of

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United Nations Organization adopted the International Covenant on Economical, Social and Cultural Rights, namely in 1966. Still, there are some distinctions to make. The Universal Declaration of Human Rights settled in 1948 some provisions related to the right to a decent living standard, within the settlements of the right to health and we quote: „Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”. 20 years after this moment, the International Covenant on Economical, Social and Cultural Rights preserved the same modality of settlement, therefore the right to a decent or sufficient living standard wasn’t expeselly settled, but we can find its reference in Art.11.

The States Parties to the International Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. The States Parties to the International Covenant, recognizing as settled in Art.11 paragraph 2 the “fundamental right of everyone to be free from hunger”, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed, namely to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources and also taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need. Even if the international document focused upon the problems related to food and food supplies, it doesn’t mean that other aspects, such as right to decent clothing or to a residence are ignored. International bodies such as the Food and Agriculture Organization of the United Nations lead international efforts to defeat hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information. The international body helps developing countries and countries in transition modernize and improve agriculture, forestry and fisheries practices and ensure good nutrition for all. Since its founding in the fall of 1945, Food and Agriculture Organization of United Nations have focused special attention on developing rural areas. FAO also serves as a

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knowledge network. FAO lends its years of experience to member countries in devising agricultural policy, supporting planning, drafting effective legislation and creating national strategies to achieve rural development and hunger alleviation goals. On any given day, dozens of policy-makers and experts from around the globe convene at headquarters or in the field offices to forge agreements on major food and agriculture issues. As a neutral forum, FAO provides the setting where rich and poor nations can come together to build common understanding. In crisis situations, Food and Agriculture Organization of United Nations works side-by-side with the World Food Programme, created in 1960, and other humanitarian agencies to protect rural livelihoods and help people rebuild their lives. The uncontrolled increase of population in China and India or in some areas of Central Africa, the decrease of planet’s natural resources, the challenges brought to the entire eco-system requires new strategies regarding prevention and generalization of hunger. The approach of these aspects shall not affect the equality in rights of the persons, without any discrimination.

Still, the consecration of the decent or sufficient living standard in the international documents and in the constitutions of the states determines the state members and the national states to appreciate this right as one of their priorities. Romania must be regarded as one of the states that confirm what we have already stated. Unfortunately, the social and economical conditions of the last 17 years determined some of the Romanian citizens to go to hunger strike, to fire themselves, even to commit public suicide in order to draw attention upon their desperate situation. The most desperate cases were the result of collective dismissals and of the juridical effects of Law No.10/2001 with regard to the juridical regime of the real states abusively taken between 6th of March 1945 and 22nd of December 1989. Due to this law and its current modifications, the old and the poor persons who lived in nationalized buildings were forced to abandon them, without the possibility of finding another residence. Nor the state or the international community by their reliable bodies couldn’t offer a solution in this case. We must acknowledge the poor condition of these people, and we should not forget that poverty endangers people’s life since the lack of living conditions makes their life [3].

Still, the Romanian constitutional legislator settled in the Constitution adopted in 1991, at Art.43, called „living standard”, that the state shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens. The Romanian citizens have the right to pensions, paid maternity leave, medical care in public health establishments, unemployment benefits, and other forms of social care, as provided by law. After the revision of Romanian Constitution, this right is settled in Art.47, but the internal provisions didn’t change: „the State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens. Citizens have the right to pensions, paid maternity leave, medical care in public health centers,

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unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the law”. We must notice that the legislator refers also to the private social securities, not only to the public ones. In this way, “social security is institutionalized as a modern dimension of the measures required to assure a decent living” [4].

Thirst of all, we must notice that our constitutional legislator chose to settle expressly this right in the fundamental law of the state, avoiding thus to refer to the aspects related to this issue within the provisions of another fundamental right, as practiced in other constitutions.

Thus, in the National Constitution of the Argentine Republic at Section 42 is settled: as regards consumption, consumers and users of goods and services have the right to the protection of their health, safety, and economic interests; to adequate and truthful information; to freedom of choice and equitable and reliable treatment. The authorities shall provide for the protection of said rights, the education for consumption, the defense of competition against any kind of market distortions, the control of natural and legal monopolies, the control of quality and efficiency of public utilities, and the creation of consumer and user associations. Legislation shall establish efficient procedures for conflict prevention and settlement, as well as regulations for national public utilities. Such legislation shall take into account the necessary participation of consumer and user associations and of the interested provinces in the control entities. Therefore, the Argentine nation shall establish, by means of its reliable bodies, some minimal standards of social protection.

The Constitution of Federative Republic of Brazil also settles in Art.7 from paragraph I to paragraph XXXIV that the following are rights of city and rural workers, notwithstanding any others that seek to improve their social condition. Among the fundamental goals of Brazil nation we can mention: the employment protected against arbitrary dismissal or against dismissal without cause, unemployment insurance, in the event of involuntary unemployment, unemployment compensation fund, a minimum wage nationwide, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation, and social security, with periodical adjustments and so on.

The Portugal Constitution does not consecrate expressly the right to a decent living standard, but in Art.65 we can find some aspects related to this aspect. Thus, everyone has the right for himself and his family to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy. In order to safeguard the right to housing, it is the duty of the State to: draw up and put into effect a housing policy that is a part of general regional planning and is based on urban planning that secures the existence of an adequate network of transport and social facilities; encourage and support local authorities' and

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communities' initiatives aimed at solving their housing problems and promoting the establishment of housing cooperatives as well as individual building; promote private building subject to the public interest, as well as access to privately owned dwelling. In Art.66 called Environment and Quality of Life, the legislator settled that everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it. Still, it is the duty of the State, acting through appropriate bodies and having recourse to or taking support on popular initiatives, to promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability.

Other constitutions did not state the right to a decent living standard; still they chose not to develop these aspects within the provisions of other fundamental rights. As an example, the Constitution of Latvia settles in art.109 that everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law, and in Art.111 that the State shall protect human health and guarantee a basic level of medical assistance for everyone.

The Romanian constitutional legislator preferred to guaranty the right to a *decent* living standard, and not to a *sufficient* living standard, in this way approaching the settlement conferred by Art.25 from the Universal Declaration of Human Rights. We consider that the term decent has a wider significance than the term sufficient, since a sufficient living standard can be approach by means of a minimum social protection, while a decent living standard requires a living standard that cannot infringe upon the personality and the dignity of the individual. The option elected by the Romanian state is quite honorable but hard to be accomplished, especially “under the historical conditions of a convulsive and transient economy – since this aspiration can only be achieved progressively, by means of economical development and social protection” [5].

The Romanian doctrine [6] emphasized with regard to this issue two components of social security, namely: *social assurances*, and we can include here the pension, paid maternity leave, medical care in public health establishments, unemployment benefits, and *social assistance*, and we refer here to family allowances, the minimum wage, the protection of disabled persons and the services of social assistance. For example, the right to pension, to allowance in case of death, to social assurances is settle by Law No.19/2000 regarding the public system of pension and other social assurances rights, while the unemployment benefit is settled in Law No.76/2002 regarding the system of assurances in case of unemployment and the stimulation of labor.

Even if the Romanian legislator tried to identify and to consecrate the most adequate legal frame of the right to a decent living standard with regard to the current resources and possibilities of the Romanian state, the public authorities reliable to organize the execution of

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law in this matter did not make all the efforts in applying the provisions of these laws. In such cases, the persons who suffered infringements in their rights to social protection were obliged to address to some authorities such as the Constitutional Court of Romania, the Advocate of the People (the Romanian Ombudsman) or to legal courts in order to protect their rights and especially to protect their right to a decent living standard settled in the Constitution of Romania.

In this matter, several exceptions regarding the unconstitutionality of laws and statutory orders were brought to the courts of law.

Thus, in a case the object of exception of unconstitutionality brought *ex officio* in front of the Court of Justice from Mures – the Civil Section, was represented by the provisions of Art.95 from Law No. 19/2000 with regard to the public system of pensions and other rights of social assurances, with all its modifications and amendments. According to this article, only the persons who benefit of pension for age limit can ask for a new calculation of the pension and only after they realize a stage of paying the financial taxes and duties of minimum 12 months. The Constitutional Court pronounced upon the exception of the unconstitutionality of Art.95 paragraph 1 from Law No. 19/2000 with regard to the public system of pensions and other rights of social assurances in the Decision No.264/20th of March 2007 [7]. Thus, the Court admitted the exception of unconstitutionality and proclaimed that such a possibility admitted to the person retired for the age limit to ask for a new calculation of the pension and only after they realize a stage of paying the financial taxes and duties of minimum 12 months is against any principle of equality between citizens, since it implies a discrimination between citizens of same condition. The Court also admitted that this article infringe upon the provisions of Art.47 paragraph 2 from the Constitution of Romania, according to which, even if the conditions and criteria of retire differ from case to case, the modality of calculating the pension must be the same and establish by law. Thus, the legislator cannot establish a different juridical treatment for equal juridical situations.

As a result of the control exert according to the legal and constitutional settlements [8], the Romanian Ombudsman – The Advocate of the People issued some recommendations having as a main object the infringements brought upon the right to a decent living standard. So, in the case of solving the petitions regarding the granting the quality of beneficiary of the provisions of Law No.309/2002 concerning the recognition and the receiving of some rights to the persons who made their military stage at the General Division of Labor Service between 1950-1961 by the National Archives [9]. It was indicated that it is necessary to bring some amendments with regard to the implementing of Law No.428/2003, the law that completes art. 6 from Law No.309/2002, according to which no taxes shall be taken for issuing the documents required to prove for the petitioner the fulfillment of the provisions of Art.1 from Law No. 309/2002; to

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create in cooperation with the Military Unit 02405 Pitești and with the Ministry of Labor, Social Security and Family, a centralized and complete data base regarding the effectives of the former labor detachments; to undertake the remains of the archive owned by the Ministry of Transport, Constructions and Tourism, that keep the record of the payments of persons (soldiers) who were used as military and civil labor force in the former General Division of Labor Service between 1950-195; to examine the necessity of issuing some proposal of amendments for modifying the Law No.309/2002, in accordance with the “Recommendations” settled by the National House of Pensions and Other Rights of Social Assistances in order to apply unitary the provisions of the law mentioned above.

Without pretending that we mentioned all the theoretical and practical aspects regarding the individual right to a decent living standard, we still must emphasize the fact that by means of Law No. 416/2001 with regard to the minimal income guaranteed by the state, with all its modifications and amendments, the right to such an income is guaranteed only to the families and to the single persons. The law settles in Art.2 the meaning of the term “family”, but still, according to the provisions of Art.16 from the Constitution of Romania, the citizens are equal before the law and public authorities, without any privilege or discrimination. Therefore, the right to a decent living standard must be guaranteed to all of us individually, no matter if we are single or we are in a family, for every person has the right to food, or clothing within the limits of a decent living standard. As a consequence, we propose that the right to a minimal income guaranteed by the state must be respected to every citizen taken individually, no matter if he is single or he is a member of a family. We think that it is also necessary a reevaluation of the minimal income, since 108 RON per month for a single person and 196 RON for a family of 2 members is absolutely insufficient for a decent living standard.

The reality proves that the states can’t and won’t give up their prides and interests, in order to guaranty to their citizens the same standard living – be it decent or sufficient. The difference is created by the internal resources and the level of economical development of every single state, but also by the social policies of social security settled by the national legislator and by the programs that apply these social policies. Taking into consideration the provisions of Art.22 from the Universal Declaration of Human Rights, the person who is entitled to the right of social security should obtain the fulfillment of the economical, social and cultural rights that are absolutely necessary in accomplishing the individual dignity and the free development of one’s personality. By national and international effort, every human being must enjoy a decent or a sufficient living standard, with all the significances of the two terms. It is true that it is not easy to identify at the international level the content of the right to sufficient living standard, no matter if the attempt is coordinated by the United Nations Organization or by other structures subordinated to this organization. It is almost an ideal to believe that the international

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community shall find a unanimous content of this right, for in this way the human being shall be positioned above any interest of economical, social and political nature, no matter the interest belongs to a group, to an individual, to a community, to a state, or to a region. Still, the social credo of the Romanian [10], proclaimed by Art.1 paragraph 3 from the Constitution of Romania, oblige the state, as well in present time or in the future, to assure the equality of chances to every citizens. Therefore, the state must assure, in our opinion, the equality in exerting the right to a decent living standard.

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