

## Drepturile culturale *bona fide* ale migranților

### *Bona fide* Migrants' Cultural Rights

Alina Mirabela Gentimir<sup>1</sup>

**Rezumat:** În contextual general al transformărilor sociale din cadrul comunității internaționale, fenomenul migrației reține atenția prin impactul deosebit pe care îl are asupra tuturor membrilor comunității, indiferent de naționalitatea celor care interacționează la nivel social. Premizele armoniei între membri unor comunități naționale diferite sunt reprezentate de drepturile culturale ce sunt exercitate constant de aceștia. Fie că se are în vedere dreptul la educație, fie că sunt vizate drepturi precum dreptul la participare la viața culturală, dreptul de a beneficia de avantajele progresului științific și aplicarea acestuia, dreptul de a beneficia de protecția intereselor morale și materiale rezultate din propria creație științifică, literară sau artistică, dreptul la respectarea libertății indispensabile a cercetarea științifică și creația artistică, dreptul la respectarea nivelului de trai adecvat, autoritățile statelor gazdă ale migranților trebuie să le asigure acestora condițiile optime de exercitare efectivă.

**Cuvinte-cheie:** drepturi culturale; drept la educație; migranți; Organizația Națiunilor Unite

**Abstract:** In the general context of social transformations within the international community, the phenomenon of migration holds attention through the special impact it has on all members of the community, regardless of the nationality of those who interact at the social level. The premises of harmony between members of different national communities are represented by the cultural rights that are constantly exercised by them. Whether the right to education is taken into account, whether rights such as the right to participate in cultural life, the right to benefit from the advantages of scientific progress and its application, the right to the protection of moral and material interests resulting from one's own scientific creation are concerned, literary or artistic, the right to respect for the indispensable freedom of scientific research and artistic creation, the right to respect for the adequate standard of living, the authorities of the host states of migrants must ensure that they have the optimal conditions for effective exercise.

**Keywords:** cultural rights; right to education; migrants; United Nations Organization

---

<sup>1</sup> Lector univ. dr., Facultatea de Drept, Universitatea „Alexandru Ioan Cuza” din Iași, email: gentimir@uaic.ro.

## 1. Introduction

Mentioned in the most relevant instruments in the field of human rights<sup>2</sup> provided by international, regional and national legal framework, following the principle of the indivisibility of rights<sup>3</sup>, cultural rights has earned progressively their importance in the interests manifested by political and legal bodies, taking into consideration the reconfigured balance assured to the all dimensions of reality: political, economical, social, cultural.

Beyond the general status of the cultural rights for any individual, the particular situation of migrants underlines the fundamental role of their cultural rights in the maintenance of their belonging to a certain geographical and cultural area<sup>4</sup>.

In order to avoid more arbitrariness that already exists thanks to constant change of the human society paradigm, which has determined the improvement of the meanings of the fundamental concepts such as culture, it would be recommended to establish precisely which actions or omissions of the migrants have to be protected in the category of cultural rights. It is notable that both hard law and soft law as well as the case law of human rights bodies have indicated a number of cultural rights which can be exercised by migrants, list of rights which has no limitative requirements: right to education, right to participation to the cultural live, right to enjoy the benefits of scientific progress and its application, right to benefit of the moral and material interests' protection resulted of the own scientific, literary or artistic creation, right to the respect of indispensable liberty of the scientific research and artistic creation, right to the respect of the adequate standard of living<sup>5</sup>.

## 2. Common features of the migrants' cultural rights

Cultural rights of the migrants are individual rights or collective rights? Or are they *sui generis* individual rights thanks to the requisite regarding the necessity to belong to the migrants' community for the benefit of guarantees provided by law for migrants? Taking into account that the core of cultural rights is represented by cultural values, important for migrants as persons and as community, it might

---

<sup>2</sup> H. R. Radu, *Convenția Europeană a Drepturilor Omului. Curs Universitar*, Editura Universul Juridic, București, 2021.

<sup>3</sup> M. Odello, F. Seatzu, *The UN Committee on Economic, Social and Cultural Rights The Law, Process and Practice*, Routledge Research in Human Rights Law, Routledge, 2020, pp. 45-50, <https://doi.org/10.4324/9781003061267>.

<sup>4</sup> F. Francioni, *Culture, Heritage and Human Rights: An Introduction*, in F. Francioni, M. Scheinin, (Eds.) *Cultural Human Rights*, International Studies in Human Rights, Martinus Nijhoff Publishers, 2008, pp. 1-17, <https://doi.org/10.1163/ej.9789004162945.i-372>.

<sup>5</sup> L. Crăciunean, *Protectia drepturilor culturale in dreptul international*, Editura Hamangiu, 2011, p. 23.

be timely to accentuate the individual and collective dimensions of the cultural rights.

Exercise of the cultural rights has to be an option for each migrant, so they have to be provided and guaranteed by legal framework.

### **3. Migrants' Principal Cultural Rights**

#### **3.1. Migrants' Right to Education**

##### *3.1.1. General remarks*

The importance of the education for migrants, as for any individual, might be seen as an essential premise of manifestation of their cultural identity. Transfer of the specific values and principles, traditions, religion, language and other cultural items can be done using a complex procedure which emphasizes both official actions of the receiving State, which has to organize an efficient educational system accessible for migrants, and unofficial actions of the migrants themselves, who inform and train members in their families and communities.

Right to education<sup>6</sup> appears to be the main cultural right for migrants thanks to its implications in the fulfillment of the other migrants' cultural rights and to the accommodation in a new cultural environment.

##### *3.1.2. Legal nature of the migrants' right to education*

Having as genesis the need of the migrant to evaluate intellectually and emotionally, its relation with own desires and interests, the right to education of the migrants certifies its multilateral legal nature, it can be qualified as well as a civil right. Apart from this personal explanation, the same belonging to another category of rights – civil and political rights – is justified through the argument according to which these influence essentially the effective implementation of the economic rights or social right. As well, right to education might be considered economic right or social right. In conclusion, it can be framed both in each classification and cumulatively in all classes<sup>7</sup>.

---

<sup>6</sup> G.L. Ispas, *Education Legislation. Between Reform and Interest, between Development and Retrograde Tradition/Legislația educației. Între reformă și interes, întreviziune de dezvoltare și tradiții retrograde*, publicat în volumul Conferinței internaționale de drept, studii europene și relații internaționale *Politica legislativă între reglementare europeană, națională și internațională. Noi perspective ale dreptului*, prima ediție, Universitatea Titu Maiorescu, Facultatea de Drept, București, 24-25 mai 2013, Editura Hamangiu, pp. 614-621.

<sup>7</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), 10 May 1999, E/1992/23, available at: <https://www.refworld.org/docid/4538838c0.html> accessed 30.04.2021.

### 3.1.3. Essential features

#### *Mandatory character of the migrants' education*

Satisfying the interests of the migrants, parents and children, and the benefit of the receiving State, it is established in the international legal framework<sup>8</sup>

---

<sup>8</sup> Article 26 of the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948, as General Assembly Resolution 217 A, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 30.04.2021: „Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.”

Article 13 of the International Covenant on Social, Economic and Cultural Rights, adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, and entered in force from 23 March 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, accessed 30.04.2021: 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the

that primary education to be compulsory, beyond any criterions of discrimination and pursuant to the rights of children and accomplishing the requirements of qualitative education<sup>9</sup>.

*Free character of migrants' education*

Regarding this particular feature, two main ideas must be underlined. Firstly, holders of the right to education, in the case of migrants, might be included in two categories: children education and adult education. Even the international legal framework stipulates only the free character of primary education, it appears to be essential that the access to free education to be assured to the adult migrants for a fast and profound accommodation in the receiving State. Secondly, migrants, generally, having low incomes, would live situations in which, thanks to the direct or indirect costs, will not be able to have access and to participate properly to all the activities organized by schools.

Recommendation to be introduced progressively the free character of the secondary and university education contributes to an extensive guarantee of the free education for migrants.

*Availability of the migrants' education*

Host State has to adopt a proper approach in the regulation of the migrants' education. Without creating situations of discrimination, to the migrants it has to be provided a diversity of options: migrants who speak the language of the host State can be integrated in schools attended by the nationals and other migrants; migrants who don't speak the language of the host State, firstly, have to have access to language classes and, then, to the national educational system, to all the levels.

*Adaptability of the migrants' education*

Education has to satisfy the requirements both updated information and necessities of the national society and migrants' community, qualitative and quantitative approaches.

---

religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14 of the International Covenant on Economic, Social and Cultural Rights: „Each State Party to the present Covenant 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, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.’

<sup>9</sup> L. Crăciunean, *op. cit.*, p. 77.

### **3.2. Migrants' Right Freely to Participate in the Cultural Life of the Community**

#### *3.2.1. Conceptual delimitations*

No matter how is formulated, right freely to participate to cultural life of the community<sup>10</sup>, equal right to participate to cultural activities<sup>11</sup>, right to participate to all the aspects of social and cultural life<sup>12</sup>, right to participate fully to the cultural and artistic life<sup>13</sup>, right to have access and to participate to cultural life<sup>14</sup> has constantly demonstrated that its importance for the balance of the members of the national community.

Other rights such as rights of the persons belonging to the minorities to enjoy their own culture, to promote and practice own religion, of using own language in public and private space and to participate effectively to cultural life<sup>15</sup>, rights of the minorities to their own cultural institutions, ancestral lands, natural

---

<sup>10</sup> Article 27 paragraph 1 Universal Declaration of Human Rights.

<sup>11</sup> Article 5, lit. e (vi) of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 and entered into force 4 January 1969, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> accessed 30.04.2021.

<sup>12</sup> Article 13 lit. c) of the International Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981, <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> accessed 30.04.2021.

<sup>13</sup> Article 31 paragraph 2 of the Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> accessed 30.04.2021.

<sup>14</sup> Article 43 paragraph 1 lit. g International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 18 December 1990 by General Assembly Resolution 45/158 and entered into force on 1 July 2003, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> accessed 30.04.2021.

<sup>15</sup> Articles 17, 18, 19, 21, 22 and 27 of the International Covenant on Civil and Political Rights, adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> accessed 30.04.2021; articles 2 paragraph 1 and 2 of the Declaration UN on the rights of the persons belonging to the national, ethnic, religious and linguistic minorities, adopted by the UN General Assembly resolution No. 47/135 on 18 December, 1992, <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx> accessed 30.04.2021; article 15 of the Framework Convention for the Protection of National Minorities, adopted on 10 November 1994 by the Committee of Ministers and entered into force on 1 February 1998, <https://www.coe.int/en/web/minorities/at-a-glance> accessed 30.04.2021.

resources and traditional knowledge<sup>16</sup> might be considered elements of the right to participate to the cultural life.

The main components of the right to participate to the cultural life might be organized as stages of migrants' cultural activities: access, participation and contribution to the cultural life<sup>17</sup>.

Participation covers in particular the right of migrants – “as individual, or in association with others or as a community – to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice. Every migrant also has the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity”<sup>18</sup>.

Access overlap in particular the right of migrant – “as individual, in association with others or as a community – to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Every migrant has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities”<sup>19</sup>.

Contribution to cultural life refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and

---

<sup>16</sup> Article 5, 8, 10, 11, 12, 13 of the UN Declaration on the rights on indigenous people, adopted by United Nations General Assembly Resolution on 13 September 2007, [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) accessed 30.04.2021; article 2, 5, 7, 8, 13, 14, 15 of the International Labor Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, adopted on 27 June 1989 by the General Conference of the International Labour Organisation and entered into force: 5 September 1991, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Indigenous.aspx> accessed 30.04.2021.

<sup>17</sup> L. Pineschi, *Cultural Diversity as a Human Rights? General comment no. 21, UN Committee on Economic, Social and Cultural Rights in Cultural Heritage, Cultural Rights, Cultural Diversity*, Studies in International Human Rights, Volume 4, 2012, Brill Nijhoff, pp. 27-53, [https://doi.org/10.1163/9789004228382\\_003](https://doi.org/10.1163/9789004228382_003).

<sup>18</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <https://www.refworld.org/docid/4ed35bae2.html>, accessed 30.04.2021.

<sup>19</sup> L. Pineschi, *op. cit.*, pp. 27-53.

implementation of policies and decisions that have an impact on the exercise of a person's cultural rights<sup>20</sup>.

*3.2.2. Conditions for the full realization of the right to take part in cultural life established by Committee on Economic, Social and Cultural Rights in its General Commentary of the no. 21, 20 November 2009<sup>21</sup>*

*Availability* is “the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities. Of all the cultural goods, one of special value is the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory”<sup>22</sup>.

---

<sup>20</sup> Article 5 of the UNESCO Universal Declaration on Cultural Diversity, adopted by UNESCO General Conference on 2 November 2001, [http://portal.unesco.org/en/ev.php-URL\\_ID=13179&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html) accessed 30.04.2021: „Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.”

Article 7 of the Fribourg Declaration on Cultural Rights, adopted in Fribourg on May 7th 2007 by Observatory of Diversity and Cultural Rights (which headquarters are at the Interdisciplinary Institute of Ethnicity and Human Rights at the Fribourg University) together with the Organisation Internationale de la Francophonie and UNESCO, <https://culturalrights.net/en/documentos.php?c=14&p=161> accessed 30.04.2021.

<sup>21</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <https://www.refworld.org/docid/4ed35bae2.html>, accessed 30.04.2021.

<sup>22</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <https://www.refworld.org/docid/4ed35bae2.html>, accessed 30.04.2021.



*Accessibility* consists of “effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person’s choice, and the access of communities to means of expressions and dissemination<sup>23</sup>”.

*Acceptability* “entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them<sup>24</sup>”.

*Adaptability* refers to the “flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities<sup>25</sup>”.

*Appropriateness* refers to the “realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples. The Committee has in many instances referred to the notion of cultural appropriateness (or cultural acceptability or adequacy) in past general comments, in relation in particular to the rights to food, health, water, housing and education. The way in which rights are implemented may also have an impact on cultural life and cultural diversity. The Committee wishes to stress in this regard the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed<sup>26</sup>”.

### 3.2.3. *Limits of the right to take part to the cultural life*

Right to take part to the cultural life is closely linked to the enjoyment of other rights recognized in the international human rights instruments.

Migrants may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their goal<sup>27</sup>.

Applying limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative practices, including those attributed “to customs and traditions, that infringe upon

---

<sup>23</sup> *Idem.*

<sup>24</sup> *Idem.*

<sup>25</sup> *Idem.*

<sup>26</sup> L. Pineschi, *op. cit.*, pp. 27-53.

<sup>27</sup> Article 4 of the Universal Declaration on Cultural Diversity.

other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the Covenant. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The existing international human rights standards on limitations can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association”<sup>28</sup>.

### **3.3. Migrants’ Right to the Protection of Moral and Material Interests Resulted from the Own Scientific, Literary and Artistic Creation**

UN Committee on Economic, Social and Cultural Rights General Comment on the Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author<sup>29</sup> offers the most relevant constitutive elements of this right, as it follows.

#### *3.3.1. Conceptual delimitations*

Scientific, literary or artistic productions of the migrants, such as, inter alia, writers and artists, can be the beneficiary of the protection of article 15, paragraph 1 (c), thanks to the generic formula - “everyone”, “he” and “author” - which indicate that “the drafters of that article seemed to have believed authors of scientific, literary or artistic productions to be natural persons, without at that time realizing that they could also be groups of individuals”<sup>30</sup>.

Although the wording of article 15, paragraph 1 (c), generally refers to the individual creator (“everyone”, “he”, “author”), “the right to benefit from the

---

<sup>28</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), 10 May 1999, E/1992/23, available at: <https://www.refworld.org/docid/4538838c0.html> accessed 30.04.2021.

<sup>29</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), 12 January 2006, E/C.12/GC/17, available at: <https://www.refworld.org/docid/441543594.html> accessed 30.04.2021.

<sup>30</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), 12 January 2006, E/C.12/GC/17, available at: <https://www.refworld.org/docid/441543594.html> accessed 30.04.2021.

protection of the moral and material interests resulting from one's scientific, literary or artistic productions can, under certain circumstances, also be enjoyed by groups of individuals or by communities"<sup>31</sup>, such as migrants communities.

"Any scientific, literary or artistic production", within the meaning of article 15, paragraph 1 (c), refers to creations of the human mind, that is to "scientific productions", such as scientific publications and innovations, including knowledge, innovations and practices of indigenous and local or migrants communities, and "literary and artistic productions", such as, inter alia, poems, novels, paintings, sculptures, musical compositions, theatrical and cinematographic works, performances and oral traditions<sup>32</sup>.

Article 15, paragraph 1 (c) recognizes the right of authors, migrants also, to benefit of an effective protection of the moral and material interests resulting from their scientific, literary or artistic productions. Consequently, this provision prevents States parties from adopting higher protection standards in international treaties on the protection of the moral and material interests of authors, migrants or not, in their domestic laws, provided that these standards do not unjustifiably limit the enjoyment by others of their rights under the Covenant.

The protection of the "moral interests" of authors, migrants also, has been explained in the article 27, paragraph 2, of the Universal Declaration of Human Rights: "Authors of all artistic, literary, scientific works and inventors shall retain, in addition to just remuneration of their labor, a moral right on their work and/or discovery which shall not disappear, even after such a work shall have become the common property of mankind."

As well, it is underline the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations<sup>33</sup>.

The protection of "material interests" of authors, migrants also, in article 15, paragraph 1 (c), "reflects the close linkage of this provision with the right to own property, as recognized in article 17 of the Universal Declaration of Human Rights and in regional human rights instruments, as well as with the right of any worker to adequate remuneration (art. 7 (a)). Unlike other human rights, the material interests of authors are not directly linked to the personality of the creator, but contribute to the enjoyment of the right to an adequate standard of living (art.

---

<sup>31</sup> *Idem*.

<sup>32</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Report on the Twenty-fifth, Twenty-sixth and Twenty-seventh Sessions (23 April-11 May 2001, 13-31 August 2001, 12-30 November 2001), 6 June 2002, E/2002/22; E/C.12/2001/17, available at: <https://www.refworld.org/docid/45c30b330.html> accessed 30.04.2021.

<sup>33</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), 12 January 2006, E/C.12/GC/17, available at: <https://www.refworld.org/docid/441543594.html> accessed 30.04.2021.

11, para. 1). The term of protection of material interests under article 15, paragraph 1 (c), need not extend over the entire lifespan of an author. Rather, the purpose of enabling authors to enjoy an adequate standard of living can also be achieved through one-time payments or by vesting an author, for a limited period of time, with the exclusive right to exploit his scientific, literary or artistic production<sup>34</sup>.

The word “resulting” stresses that authors only benefit from the protection of such moral and material interests which are directly generated by their scientific, literary or artistic productions.

### 3.3.2. *Limitations*

The right to the protection of the moral and material interests resulting from one’s scientific, literary and artistic productions might be subject to limitations and must be balanced with the other rights recognized in the International Covenant on Economic, Social and Cultural Rights. The limitations on the rights protected under article 15, paragraph 1 (c), must some particular conditions such as: to be determined by law in a manner compatible with the nature of these rights, to pursue a legitimate aim, and to be strictly necessary for the promotion of the general welfare in a democratic society, in accordance with article 4 of the Covenant.

The exigency referring to principle of proportionality means that “the least restrictive measures must be adopted when several types of limitations may be imposed”. Consequently, “limitations must be compatible with the very nature of the rights protected in article 15, paragraph 1 (c), which lies in the protection of the personal link between the author and his/her creation and of the means which are necessary to enable authors to enjoy an adequate standard of living<sup>35</sup>.”

The imposition of limitations for migrants may, under certain circumstances, require compensatory measures, such as payment of adequate compensation for the use of scientific, literary or artistic productions in the public interest.

## **3.4. Migrants’ Right to Participate to Realization of Their Cultural Rights**

Migrants, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation 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<sup>36</sup>.

---

<sup>34</sup> *Idem*.

<sup>35</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), 12 January 2006, E/C.12/GC/17, available at: <https://www.refworld.org/docid/441543594.html> accessed 30.04.2021.

<sup>36</sup> Article 22 Universal Declaration of Human Rights: „Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and

### 3. 5. Migrants' Right to an Adequate Standard of Living for Himself and His Family<sup>37</sup>

Right to adequate food and housing has been analyzed and qualified as elements of "cultural adequacy": "The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured<sup>38</sup>".

The link between traditional way of living and respect for the right to housing and private life has been underlined in cases of groups belonging to minorities of host State or migrants. The protection of the special need of a minorities group coincide with the protection of their security, identity and specific life style and satisfy not only their interests, but the protection of cultural diversity as a value of whole community.

### 4. Conclusions

Cultural rights, being exercised by migrants as an individual, or in association with others, or within a community or group, as such, have to have assured by the States the proper conditions for an effective and continuous exercise.

---

international co-operation 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".

<sup>37</sup> Article 11 of the International Covenant on Social, Economic, Cultural Rights

1. The States Parties to the present 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.

2. The States Parties to the present Covenant, recognizing 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:

(a) 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;

(b) 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.

<sup>38</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <https://www.refworld.org/docid/47a7079a1.html> accessed 30.04.2021.

## Referințe

- Crăciunean L., *Protecția drepturilor culturale in dreptul internațional*, Editura Hamangiu, 2011
- Francioni F., *Culture, Heritage and Human Rights: An Introduction*, in F. Francioni, Scheinin M., (Eds.) *Cultural Human Rights*, International Studies in Human Rights, Martinus Nijhoff Publishers, 2008, pp. 1-17, <https://doi.org/10.1163/ej.9789004162945.i-372>
- Ispas G.L., *Education Legislation. Between Reform and Interest, between Development and Retrograde Tradition/Legislația educației. Între reformă și interes, întreviziune de dezvoltare și tradiții retrograde*, publicat în volumul Conferinței internaționale de drept, studii europene și relații internaționale *Politica legislativă între reglementare europeană, națională și internațională. Noi perspective ale dreptului*, prima ediție, Universitatea Titu Maiorescu, Facultatea de Drept, Editura Hamangiu, București, 2013
- Radu H. R., *Convenția Europeană a Drepturilor Omului. Curs Universitar*, Editura Universul Juridic, București, 2021
- Odello M., Seatzu F., *The UN Committee on Economic, Social and Cultural Rights The Law, Process and Practice*, Routledge Research in Human Rights Law, Routledge, 2020, <https://doi.org/10.4324/9781003061267>
- Pineschi L., *Cultural Diversity as a Human Rights? General comment no. 21, UN Committee on Economic, Social and Cultural Rights in Cultural Heritage, Cultural Rights, Cultural Diversity*, Brill Nijhoff, Studies in International Human Rights, Volume 4, 2012, [https://doi.org/10.1163/9789004228382\\_003](https://doi.org/10.1163/9789004228382_003)