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Clothing: from “Subsistence Rights” to the Category of “Comfort and Well-being Rights”

Madalina Virginia ANTONESCU¹

Abstract

The paper opens a legal perspective on the complexity of human rights category identified as “subsistence rights” (such as the right to life, human dignity and freedom, right to health, right of a person to sufficient, nutritious food, right to drinking water and sanitation, right to adequate housing, right to basic medical care). We analyse, in this context, the development of international law regarding a neglected right (despite its vital importance for human existence as such): right to clothing. This right can be seen by academic scholars as a distinct right or, in other views, as an intrinsic part of the right to a decent level of life (the right to adequate standards of life). In addition, clothing is directly connected to the category of human rights named “rights of comfort and well-being”, together with the right to prosperity, right to development, right to benefit from cultural and technological innovations and progress or the right to continuous improvement in life conditions etc.).

Keywords: *human rights, clothing, subsistence rights, rights of comfort and well-being, international law.*

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Introduction: Various Senses of the Right to Clothing

The human rights represent a *unitary structure* from the viewpoint of their legal content and their status of legal protection: they are universal, interdependent, indivisible, which means that if the states *singularly* analyse or enforce *one* of these rights and freedoms, ignoring or affecting the other human rights, they can only bring *serious prejudices to the human being and the concrete observance* of the rights and freedoms of the human being, *in their exercise and essence*.

Therefore, it is only natural that we analyse the human right to adequate clothing and footwear, *not only as a right of subsistence* (directly connected to the fundamental human rights, such as the right to life, health, drinking water and water for domestic and hygiene needs, the right to healthy, nutritious and sufficient food, the right to shelter etc.), *but also as a right of comfort and civilization* (beside the right to development, the right to continue to improve the living conditions, the cultural rights).

In our opinion, the human right to adequate clothing and footwear *cannot be regarded as a “secondary”, “negligible” right*, which “can be ignored”, since in the absence of ensuring the real benefit of exercising it and of its essence, the human being does not benefit from the right to life, the right to freely develop his/her own personality, cultural rights (including the right to identity, cultural rights), the freedom, security of the person or human dignity, the right of free expression or the right to property (since clothes are also regarded from the viewpoint as private property).

The human right to clothing can be directly connected to expressing a public position, a rank or public dignity or the sense of belonging to a certain craft, professional body or social category (from the traditional clothing of the craft of bakers and confectioners, to the military uniform, school or high school uniform, to the uniform of policemen or fire fighters, the judge robe, the lawyer robe or the special protection suit of the miners etc.)

Thus, the right to clothing is directly connected to the right to wear official insignia on the body or on the clothes, or to the right to wear a uniform, the right to display a certain combination of colours and a certain cut of the clothes, which signify the membership in a certain order, body, group, association, public dignity, rank, professional or political body. In this sense, we can talk about *restricting the benefit of the right to special clothing*, which is only accessible to certain categories or people, based on the criterion of

membership in a group/association or assuming a rank, public or political position.

From another standpoint, the clothing can have the forced connotation of mandatory suit, imposed by the public or private institutions, to certain categories of people (from the schools or high schools imposing a certain uniform for the students, specifically to apply the principle of non-discrimination, to the opposite situation, that of the mandatory uniform imposed in the context of the freedom-depriving punishment, applied to certain sentenced people – the uniform of inmates, for example, context in which the right to clothing is no longer applicable, being replaced by an obligation as punishment, for certain people deprived of freedom to wear certain costume, which also has to observe certain rules – not to be ridiculous, not to be indecent, not to be shabby, not to diminish the self-esteem, the dignity of the individual wearing it).

Clothing indicates “a need for visual communication”, “display on the human being of certain messages useful for his/her life in the group”, “a code formed of a set of conventional signs, an indicator from the distance, through visible signs, of the social rank, gender, age, professions, kinships, positions, genders etc.”, according to certain authors (Nanu, 2001, pp. 12-14). Any item of clothing “is filled with social significance, regarding even the possession of power” (heels, trains, tiaras, crowns, jewellery, over-sizing the body, through the cut of the clothes), with clues regarding the position (wearing the uniform), the country of the person, the administrative authority including him/her, the group/association including him/her. The clothing completes highlights or blurs the human face, turning it into a simple representation of a gallery of faces equally blurred (wheels in the bureaucratic mechanism) or, conversely, highlights it, emphasizing its uniqueness.

Similarly, the human right to adequate footwear is directly connected to the freedom to circulate (Nanu, 2001, pp. 161-162), with the human freedom and dignity, with the right to health, the right to personal safety, the right to a decent life standard, the right to prosperity, the right to identity (personal and civilizational), the freedom of expression and cultural rights (footwear as object of personal use, with functional meaning, to footwear, as object of art, handmade or produced in series).

1. The Right to Clothing and its Connection to the Right of the Peoples to Development – Obligation of the Developed States, in the North-South Development Paradigm, to Provide Policies and Forms of Cooperation, as well as Humanitarian Aid for the Populations in the Underdeveloped Countries of the Planet. Solidarity Rights

There is a close connection between the right to adequate clothing and footwear, as a human right (which we do not consider to be “a secondary, second class right”, as compared to the human right to shelter, for example) *and the right to development* (also regarded here from the perspective of a collective right of the peoples). Thus, with the legal obligations assumed at international level, the *UN member states* (as well as states pertaining to other international organizations) assume certain types of policies to support underdeveloped countries or developing countries, policies and measures of humanitarian aid, partnership in certain essential economic fields, with the purpose to reduce the increasing gap between the countries in the industrialized, rich North and the countries in the South.

The international principle of international cooperation among the states, as a fundamental principle of the international law, provides the states with legal behaviour guidelines for the international relations, designed to generate an international solidarity, a true international community, acting towards the fulfilment of objectives such as: maintaining peace and friendship among the peoples, maintaining conditions of international security and stability, action to create an international state of prosperity (Diaconu, 2002, pp. 316-317) (stemming from the fundamental freedoms acknowledged in the UDHR preamble, concerning the right of the human beings and of the peoples to live free from needs, fear, destitution and terror, free from oppression, violence and injustice) (Năstase, 1997, pp. 342-343)².

² Obligation of the UN member states to revitalize the economic growth and development of developing countries, for the exercise of the fundamental rights of all the people, to a life freed from hunger, poverty, ignorance, disease and fear. Preamble to the Declaration on International Economic Co-operation, in particular the Revitalization of Economic Growth and Development of the Developing Countries, adopted through the UN GA Resolution no. S-18/3 of May 1st 1990, in Adrian Năstase, *Documente fundamentale ale dreptului internațional și ale relațiilor internaționale*, 1a, edited by Roxana Frailich, Official Gazette Official Administration, ARED, Bucharest, 1997, p. 342-343.

We consider that *international cooperation among peoples and states*³, at international level, is essential for the development of sets of actions, policies and unitary measures, at international level, to provide concrete a concrete benefit to the peoples’ right to development.

In our opinion, the right to adequate clothing and footwear cannot be regarded as a singular, isolated right. It is *closely connected to the right of the human being to a decent living* (which does not mean a “minimum” level, but a level “adequate for the standards of living in a 21st century society”), *without considering it a right included in the content of the human right to a decent standard of living, but a distinct right, deserving express, concrete recognition, as such*, at international, national and regional legal level (within entities of integration such the EU, in which a high, consolidated level of protection of the human rights is provided).

In addition, the human right to adequate clothing and footwear is connected to the human right to health, safety and personal protection, with the human right to decide for his/her own body, the right to free expression, the right to identity, the right to fully and freely develop his/her own personality, consequence of the freedom, legal equality among the human beings and human dignity.

If we regarded the human right to adequate clothing and footwear as a “subsistence right” or as a right from the category of “rights of comfort and civilization”, *in both situations, we consider that there are close legal connections with the peoples’ right to development*, but it can also be regarded *as an individual* (the right to development of every human being, both of his/her personality and to his/her economic, social, political and cultural development, reaching a state of prosperity, of welfare).

The right to development is part of the category of solidarity rights, which are connected to the *peoples’ right to make decisions for themselves* (in the sense that the peoples are not captive in a system; instead, they have the freedom, sovereignty and independence to decide, they “*freely determine their political status and freely ensure their economic, social and cultural development*”)⁴. Thus, any discussion on the right to development leads to the obligation to

³ The principle of international law on international cooperation among states being defined in the Declaration on the principles of international law, regarding the friendly relations and cooperation among states

⁴ It is internationally acknowledged that “each country is responsible for its own economic policies for development, in accordance with its specific situations and conditions, and for the life and well-being of all its citizens” Preamble to the Declaration on International Economic Co-operation, quoted op., p. 343

consider art. 1, part I/International Covenant on Economic, Social and Cultural Rights of 1966 and art. 1, part I/ International Covenant on Civil and Political Rights of 1966.

But this does not mean that each people should act in a manner isolated from all the others, in order to reach the desired level of development. At this point, *the principle of cooperation among states*⁵ intervenes in order to provide the required legal and political balance and to maintain the coherence of the system of international relations; from the viewpoint of this principle, the peoples' right to development is regarded as a solidarity right. Regarding this right from the viewpoint of international solidarity among the rich, industrialized states and the poor or developing countries, a homogenous legal structure of international relations takes shape, relations based on cooperation, mutual advantage, trust among the states, other common objectives and principles, aiming at the creation of *a developing law of international community as such*.

Thus, in the sense of art. 2/International Covenant on Economic, Social and Cultural Rights of 1966, paragraph 1, the express legal obligation of the states which are part of this Covenant is to take upon "to act both by own effort, *and with international assistance and cooperation, especially from the economic and technical viewpoint*, using the available resources to the maximum", in order to exercise the rights provisioned by the Covenant. Thus, art. 11, paragraph 1/the abovementioned Covenant, expressing stipulating the human right to clothing, included in the human right to a standard of living sufficient for himself/herself and for his/her family, regards a right that the states parties *have the obligation to ensure, in its essence and exercise, including by international cooperation and assistance among the states*. In this context, the international cooperation and assistance can envisage the development of the states with risk of affecting or impossibility of fulfilling the conditions to guarantee that the human rights are observed, i.e. the human right to clothing, in this particular context.

In the sense of the peoples' rights to development, using the mechanisms of international cooperation (the solidarity aspect of the right to development), the states can concretely ensure a real benefit of the individual right to clothing, beside other rights connected to the more

⁵ "National policies also need to take fully into account the obligations of all countries to international economic co-operation." Preamble to the Declaration on International Economic Co-operation, quoted op., p. 343

general human right to a sufficient level of living, for himself/herself and his/her family.

A part of the doctrine assigns a *dynamic meaning* to the right to development, drawing it closer to the human right to continue to improve the living means, i.e. to the category of comfort and welfare rights (“it is generally acknowledged that the development is a global process, an economic, social, cultural and political process, envisaging *the continuous improvement of welfare* for the totality of population and for all the individuals”) (Diaconu, 1993, pp. 43-44).

As a collective right, the peoples’ right to development generates for the states the obligation to create the national and international conditions required to ensure the benefit of this right (Diaconu, 1993, p. 44). According to the Declaration regarding the right to development (adopted by the UN GA, by resolution 41/128 dated December 4th 1986), the states have the obligation to ensure “equality in rights and access for everyone to the basic resources, education, health services, housing, food, a job, equitable distribution of development” (Diaconu, 1993, pp. 44-45).

The doctrine considers that the right to development is even a “synthesis of the totality of human rights” (Diaconu, 1993, p. 45), the concrete ensuring of its benefit being “a premise for ensuring a real benefit for all the other human rights” (Miga-Bestelîu, 1998, p. 199). However, the current economic interdependences determine the doctrine to consider that the obligations imposed to the states are transnational, with development becoming thus a global process.

According to art. 1/Declaration on the right to development, the right to development is regarded as an “inalienable human right, by virtue of which any person and all the peoples are entitled to *participate* in the economic, social, cultural and political development, *to contribute to it and enjoy this development*”.

2. Connections to the Right to Happiness and to the Right of the Person to Security (Protection Clothing, Case of Natural Disaster)

If we regard the human right to clothing and footwear from the broader viewpoint, the *cultural-social integrative* perspective, we will realize that, since the human being is a social being by nature, at the same time he/she is also a being willing to self-define in relation to the surrounding world, in a

symbolic, aesthetic, functional, sacred or profane manner, depending on the age and evolutions of the collective mental.

The human being also makes cultural-symbolic interpretations regarding himself/herself and the surrounding world; costumes, clothing and physical aspect are part of the tools for such interpretation. Besides being “the second skin”, clothing also delivers a symbolic, cultural, social, political power-related and economic discourse, a discourse of sense of belonging/membership to groups, associations transmitting values, ideas, identities, visions and tendencies. The clothing can be displayed as the result of certain clothing tendency, imagined by a creator/group of creators in fashion, or as the result of a necessity, in a determined context: either natural (winter clothes) or social (wedding clothes), identity-cultural (traditional costume, specific to a certain region of the country, costume specific to a determined country, civilizational region).

Clothing “carries symbols and creates language” (about the social category, financial power, type of personality, geographical area of the person wearing it). Clothing creates *complex functions, directly connected to the personality of the individual* wearing it and to his/her aspirations, to the manner in which the individual is self-defined or, on the contrary, allows the others to define him/her.

From this complex perspective of cultural-symbolic, social, political, functional or sacred languages, clothing is *connected to the state of prosperity of the individual, of the state of happiness*. If clothing is a direct indication of the state of prosperity of its wearer (for which reason, when ensuring the real benefit of exercising the human right to clothing, the states must not provide shabby, ridiculous or inadequate clothing for the respective individual), it can subtly provide indications of the state of happiness, integration in the society of the individual wearing it. Happiness in itself is another complex concept, with spiritual, cultural, symbolic, sacred or profane dimensions, depending on the civilization, society and individual of reference. Happiness is a subjective state, since the human being is a unique, complex being, impossible to fully systemize or foresee. The human being in itself is a micro-cosmos, in its biological, spiritual and social-functional state, as well as in its cultural-symbolic state, of relating to itself, to the society, to the surrounding world. The complexity of the human being leads to the complexity of the concept of happiness, exceeding the legal framework (the right to happiness, essentially shaped from the material perspective of prosperity and a “welfare state”).

Similarly, *the complexity of functions fulfilled by clothing derives from the complexity of the human being*; therefore, the right to clothing is not signally a right with a *material* content; instead, it develops *cultural-symbolic* dimensions, of the human being relating to itself, of human interaction, of interaction between the human being and the given society, the surrounding world, the human being-divinity. Clothing turns into a costume, with the aid of which the human being interprets a certain perspective of reality, society, surrounding world (opera costume, theatre costume, circus costume).

The right to clothing *becomes a right shaped from the human right to freely and fully develop personality, from the right of free expression, from the right to identity, from the right to human dignity and from the human freedom* and they are the areas in which the right to clothing is connected to *the right to happiness* of the human being (from the viewpoint of the human right to a decent living, but also from the viewpoint of constantly improving the means of living).

Therefore, it is important to distinguish the *cultural-symbolic* perspective of the right to clothing (as *a right to identity, as well as a right to claim to be something one is not* – the actor’s costume, to display a certain perspective of reality or even a story, an imaginary, fantastic world) from the *functional perspective, biologically necessary and with the role to protect* this right (winter/summer clothing, protective clothing, clothing ensured in case of natural disaster or in case of disaster caused by the human being or in case of calamity). Therefore, the states currently have the obligation to provide the human being with the adequate clothing, from the perspective of connecting the right to clothing to the right to a decent living, not from the perspective of the right to happiness or the right to prosperity or the right to development. The *existing* legal connection, in the international legal documents in force is the one between the human right to clothing and *the right to a decent living standard for oneself and one’s family* (rather broadly *yet not sufficiently* shaped to allow an explicit connection to the right to prosperity or the right to happiness). These last legal connections are *insufficiently explored* in the legal doctrine regarding the field of human rights, with the entire discussion being stuck in at the materialistic-consumerist level, without showing interest for other aspects and meanings entailed by the human right to clothing.

Regarding the *human right to the security and protection of his/ her person* and its connection to the right to clothing, this connection is a strong one, by virtue of the function fulfilled by the clothing and footwear, to protect the human being. The connection itself between the two human rights is

grounded in the human right to life, health, to live free from fear, terror, destitution, disdain, oppression, injustice, discrimination.

The *protection of the person* is the oldest obligation of the states and the ground of their obligation to cooperate at international level. The protection of their own citizens, as well as the protection of the person taking refuge or in movement, under oppression or persecution, fleeing from war, natural or manmade calamities represent not only constitutional obligations for the states, but also international obligations (in the field of human rights).

The security of the person is another obligation of the states, in relation not only with their own citizens, but also with any person present legally on their territory and under their jurisdiction, through which the respective state must guarantee for him/her the set of fundamental human rights, including the right to life, health, adequate clothing and footwear. Not only does the citizen of the respective state have the right to a decent living on the territory of the respective state (constitutional right), but also any person legally present on the territory of the respective state, in the sense of the international obligations assumed by the respective state in the field of human rights (the human right to a decent living standard, art. 11/ International Covenant on Economic, Social and Cultural Rights of 1966), who is entitled to receive adequate clothing and footwear from the respective state, in order to ensure his/her security.

From the perspective of the **protection** obligation of the state, the right to clothing can be regarded as a right based on which the human being, on the criterion of his/her belonging to a social-professional group, performing a certain activity, job or profession, is entitled to receive from the state or employer (also obligated to provide such clothing, based on the internal law) a certain type of essentially protective clothing (the miner, baker, diver, cosmonaut suit) or clothing to indicate the function of protecting other categories of people (policeman, gendarme uniform).

In addition, in case of extremely severe situations (natural or manmade calamity, devastating earthquake, tsunami, devastating hurricanes, massive floods, extended fires, nuclear accidents etc.), the states should be obligated by national, regional law (at the level of EU or the European Council, for example) to provide humanitarian aid, help for the people in need, affected by these calamities, including the provision of adequate, sufficient, decent, free-of-charge clothing and footwear, which can be worn.

Conclusions

In conclusion, we remind that this human right, though in essence a *fundamental* human right, beside the right to life, nutrition, drinking water and water for personal needs, the right to shelter, the right to health, beside the human freedom and dignity, is *a right ignored by the doctrine*, in favour of extended study and definition of other human rights. This situation only causes damage to the human being, not only from the perspective of the right to clothing, but also from the perspective of totality of human rights, which are indivisible and among which no discrimination is accepted.

Therefore, an express, extended definition and consolidation of the legal acknowledgement are mandatory, at the level of national, regional and international right to clothing, regarded from the viewpoint of its numerous legal connections, especially with the rights mentioned in our paper.

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