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Participation in Cultural Life

DEF: The right to participate in cultural life is double-faceted, similar to a great number of other human rights. There is, on the one hand, the negative right to participate in cultural life which entails the freedom to participate without interference from the state. On the other hand, there is the positive side of this right, which entails positive obligations for the state such as the obligation to develop → cultural policies aiming at broadening access and participation in cultural life.

INSTR: At the international level, the most specific formulation of the right to participate in cultural life can be found in Article 27 of the UDHR and Article 15, 1, a), of the UN *International Covenant on Economic, Social and Cultural Rights*. This last provision reads as follows: ‘The States Parties to the present Covenant recognise the right of everyone [...] to take part in cultural life’. Originally, the right to participate in cultural life, at the international level, had been

conceived essentially as a freedom to participate in cultural life and as a right to access the set of major artworks of a given community. The legal sources of this human right are also rooted in international and regional legal instruments on cultural policies. The 2005 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, for instance, embodies explicit references to fundamental rights such as the right to participate in cultural life as requirements, but also as limits to cultural diversity.

The ECHR does not clearly recognise a right to participate in cultural life. The *Charter of Fundamental Rights* (EU) limits the benefit of the right to participate in cultural life to the elderly (Article 25). Within the European legal space, a short review of national Constitutions shows that only those in Belgium and Portugal fully recognise a right to participate in cultural life. Other Constitutions either limit themselves to the recognition of a right to access to culture (e.g. in Poland, the Czech Republic, Romania or Slovakia), to the recognition of artistic freedom (almost all European Constitutions) or to the protection of minority cultural rights (e.g. in Austria, Estonia or the FYR of Macedonia).

CASES: The interpretation of the right to participate in cultural life has evolved significantly in the last decades under the actions of the UN Committee on Economic, Social and Cultural Rights (CESCR) and regional jurisdictions. Article 15 of the ICESCR was firstly constructed as a right to participate in the diversity of cultural life, before being interpreted, in some statements of expert bodies and commentators, as a right to cultural identity (notably the *General Comment no. 21* of the CESCR). This interpretation of Article 15 as a right to cultural identity remains uncertain: in its Concluding Observations, the Committee recommends that states parties take appropriate measures to protect the general capacity of minorities and indigenous groups to maintain and practice their way of life by referring itself to a *combination* of different provisions, rather than on the sole basis of Article 15 ICESCR. Still at the international level, it is striking to note that, despite the multiple elaborations on this human right, the invocation of the right to participate in cultural

life never played a decisive role in international case law.

At the regional level, this right was at the centre of a case decided by the African Commission on Human Rights [ENDOROIS, 2010]. As regards the ECtHR, it took up some of the dimensions of the right to participate in cultural life by recognising the freedom not to suffer from any interference in accessing, or participating in, cultural life [ADKAS v. TURKEY, 2010], artistic freedom [since MÜLLER v. SWITZERLAND, 1988] and the freedom of association in the cultural sector [GORZELIK AND OTHERS v. POLAND, 2004]. The Court also protects cultural interests by integrating cultural considerations in the interpretation of restrictions to the right to property [e.g. BEYELER v. ITALY, 2000].

VIEWS: Firstly, a converging opinion in the literature is that the interpretation of the right to participate in cultural life has moved towards a right protecting cultural identities at the international, national and regional levels. Clearly, a change in the interpretation of the word ‘culture’ in the international cultural rights discourse is now widely recognised. Some authors note that states regularly report to the CESCR information concerning the protection of minorities’ cultural identities (beyond their cultural practices) and ways of life.

Secondly, some authors actively participated in the drafting of General Comment no. 21 and/or promote a broad, anthropological conception of cultural life which constitutes the object of Article 15 (1) (a) of the ICESCR. These authors form part of a group known as ‘*Groupe de Fribourg*’, an academic association which aims at promoting the advancement of cultural rights. They adopt a normative point of view on this right, promoting a certain vision of it, which is mainly in line with communitarian theories.

Thirdly, other studies examine the evolution of the interpretation of Article 15 (1) (a) of the ICESCR and try to identify the normative content of that right. They discuss what could be a legal definition and legal regime of that right. In this context, some authors focus on a potential interaction between the right to participate in cultural life and copyright or with ICT and attempt to identify ethical foundations of the right. As well, some

authors try to unravel economic and social issues that certain soothing discourses on this human right might obscure (e.g. inequalities, cultural homogenisation).

Finally, some authors analyse the influence of EU law or of other legal orders (like that of the WTO) on the recognition, protection and promotion of the right to participate in cultural life. They try to explain the following paradox: While the right to participate in cultural life has been the subject of much attention and elaboration in discourses (law in books), it had almost no effect in legal practice (law in action). They try to adopt an analytical insight and to explain the link between the broadness of the current definition of the right and its qualification as a ‘soft law’ instrument by the vast majority of the legal doctrine.

CONCL: It can be said that there are two different rights to participate in cultural life: The first one is a right to ‘ways of life’, a right to ‘cultural identity’, whose broad object has not yet been fully defined, and whose scope remains uncertain – as are its legal and political effects. This ‘right’ appears sometimes in the form of a principle of interpretation: the idea would be to interpret every human right ‘culturally’. It draws attention to the situation of minorities of autochthonous peoples but also to all distinct ‘ways of life’.

The second right is a distinct human right to participate in a diverse cultural life. This implies multiple, precise prerogatives: freedom of artistic and creative expression; the right to conservation, development and diffusion of the diversity of cultural heritages and expressions; the right to access to cultural life and cultural information; the right to actively contribute to the diversity of cultural life; freedom of choice (the possibility to choose to participate or not to participate in cultural life, and also the choice to determine which forms of cultural life to be involved in); the right to participate in decision-making in cultural matters (this is the procedural facet of the right to participate in cultural life) and non-discrimination in participation in cultural life. This second right to participate in cultural life is intimately bound with cultural democratisation / democracy policies and cultural diversity. It is more linked with the fight against inequalities and with questions raised by cultural policies.

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Peoples' Rights

DEF: The term 'peoples' rights' refers to certain rights recognised by international law to pluralities of individuals considered as collectivities, due to their common characteristics and/or collective self-identification. Peoples' rights are intended to be enjoyed collectively and refer *inter alia* to the following rights to: exist, self-determination, peace, security, development, land, natural resources, health, environment and culture. Such

rights are inherent and complementary to individual human rights. Yet, they are also often perceived as undermining or colliding with other human rights.

INSTR/CASES/VIEWS: Although international law does not define 'peoples', it has recognised various rights in favour of pluralities of individuals, considered and/or self-identified as wholes. The equal right to self-determination is primordial to peoples' rights. Incorporated into the UN Charter (Articles 1 and 55), enshrined in the ICCPR (Article 1) and ICESCR (Article 1), and developed during the era of decolonisation, entails the right of every people to freely decide on its sovereignty and choose its international status. Self-determination, mostly seen in political terms, has gradually extended to other dimensions of peoples' existence, including the right to peace and free pursuit of economic, social and cultural development. Such rights, labelled as 'third-generation human rights' (Vasak, 1984), are enumerated, *inter alia* in the *Algiers Declaration of the Rights of Peoples* (1976), *UNGA Declarations on Right of Peoples to Peace* (1984) and on the *Right to Development* (1986). On the level of treaty law, peoples' rights are enshrined in the ACHPR (1981), to a degree not matched by other binding international human rights law instruments. Alongside the right to self-determination, the ACHPR recognises peoples' rights to: equality, existence, free disposal of their wealth and natural resources, economic, social and cultural development, peace and security and 'a generally satisfactory environment'. Thus, the ACHPR positions peoples' rights as inherent and complementary to individual human rights, representing distinct, but inter-linked human aspirations and objectives (Viljoen, 2012). The notion of peoples' rights is sometimes perceived as losing importance in the current post-colonial and post-Cold War reality, due to their conceptual vagueness and non-justiciability (Alston, 2001). The right to self-determination of peoples is generally treated as an unenforceable right under international human rights monitoring regimes. In particular, the HR Committee does not deal with collective claims to the right to self-determination, under Article 1 ICCPR, brought pursuant to individual communications procedure (LUBICON LAKE BAND, 1990). The neutralisation of peoples'