

## THE DEFINITION AND CHARACTERIZATION OF THE CURRENT CONCEPT OF HUMAN RIGHTS

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### Abstract

*Human rights are perhaps the most commonly used concept of socio - legal and political discourse today. As can easily understand the concept of human rights is currently enjoying a multitude of definitions, expressing these socio- cultural and political values of the system from which the author defined .*

*By September 2001 , there were authors who speak of " the death of human rights" , or an imminent need to limit them<sup>1</sup> . According to the latter position , states that for reasons of safety and security of states and communities urgently require limiting civil and political rights .*

**Key words:** human rights, fundamental freedoms , private life, fundamental rights

### INTRODUCTION

Human rights are perhaps the most current concept of socio-legal discourse and current political. As it is, can easily understand the concept of human rights are currently enjoying a multitude of definitions.

The diversity of existing definitions is likely to make us understand that they express socio-cultural and political values of the system from which the author defined . Or, just the socio-cultural pluralism of values between different companies, making it almost impossible to generally valid definition of human rights.

For the definition of human rights and specifically the establishment of their content even more difficult lately, especially after September 2001, there were authors who speak of " the death of human rights", or an imminent necessity their limitation<sup>2</sup>. According to the latter position, states that for reasons of safety and security of states and communities urgently require limiting civil and political rights .

### MATERIAL AND METHOD

The socio-legal doctrine is recognized that both the concept and the contemporary system of fundamental human rights are rooted in the

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<sup>1</sup> B. Barber – *Jihadul versus McWorld*, Humanitas, 2003

<sup>2</sup> *Ibidem*

American Declaration of Independence (1776) and the Declaration of the Rights of Man and the Citizen proclaimed by the French Revolution of 1789.<sup>3</sup>

These documents were the basis for socio-political emancipation of the society of the eighteenth century, they aimed at fundamental changes in public policy dominated by patriarchal nature of traditional hierarchies, political and ecclesiastical. Based on natural law, the ideal promoted by these statements was that of equality and fraternity, the belief that all people are equal by birth and who possess fundamental and inalienable rights .

Since the XIX-th century, the provisions concerning human rights laws have been introduced in most European countries, namely the United States. Of course, the general rules on human rights were made only gradually, with the limits of the doctrine and traditional principles of international law. Specifically , according to the tradition mentioned above, only the states were recognized as subjects of international law, such as promoting human rights internationally, going over sovereignty, was unthinkable. This traditionally has been adopted by each of the provisions concerning the prohibition of slavery, humanitarian treatment of prisoners of war, and the minimum standards of the legal status of foreigners.

The break with this tradition was marked by the European Convention on Human Rights and Fundamental Freedoms<sup>4</sup>.

Domestic and international legal acts subsequently developed rapidly , talk of "human rights", "fundamental rights", "freedoms", "public freedoms", "civil rights". Undoubtedly, the consecration classical notion of "human rights" is found in the "Declaration of the Rights of Man and Citizen" of the French Revolution of 1789 but are equivalent to the above mentioned notions? Or cover them different colors? And in general, we give a definition of "human rights"?

According to a paperwork<sup>5</sup> "law is not only the above mentioned concepts, but have an important ideological, philosophical and political content. The concept of human rights is generally accepted by lawyers as having a broader meaning. It refers to the natural law and the whole evokes the historical and ideological notion arose and crystallized. Human rights

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<sup>3</sup> Despite the chronological priority, but Europe is considered the cradle of human rights. The legal thinking and modern philosophy expressed by its authors (J. Locke , Montesquieu, Th . Hobbes) Europe has influenced the Declaration of Human Rights in the eighteenth and nineteenth centuries.

<sup>4</sup> Adopted by the Council of Europe , entered into force on 03.09.1953 , and Romania became part by adapting them to 06.20.1994 . She devoted a complete protection system by establishing a European jurisdictions Human Rights , European Court of Human Rights.

<sup>5</sup> *Human Rights Handbook* - published by the Association Human Rights in Romania - Helsinki Committee, Bucharest, 2008 APADOR -CH, p.3

are thus important philosophical and moral sense. Public freedoms have a strict legal sense and is practical operating method of the relationship between the individual and the state".

This distinction may, however, remain theoretical, even philosophical, as above mentioned legal acts devotes varying degrees of protection for rights and freedoms. The Constitution guarantees equally right to life and to physical and mental integrity (art. 22), the right of defense (art. 24) and freedom of conscience (art. 29) or expression (art. 30). European Convention on Human Rights also enshrines the right to liberty and security (art. 5) and freedom of assembly and association (art. 11) .

Regarding the distinction between civil and political rights, it undoubtedly comes from nature or object protection used.

In a general sense, civil and political rights are fundamental rights of the first generation and the core concept of human rights. They include the right to life, the right not to be subjected to ill-treatment, the right to liberty, the right to respect for private and family life, the right to respect for correspondence. The rights of the second generation adds a new level of protection in areas of economic, social and cultural. By way of example, the second generation rights are entitled to special protection for the elderly or people with disabilities the right to a healthy environment, freedom of the arts and sciences, free access to culture.

European Convention of Human Rights<sup>6</sup> enshrines the general core civil and political rights. The Constitution<sup>7</sup> has a broader scope of protection and includes social, economic and cultural. An even broader scope of protection conferred by the Charter of Fundamental Rights of the European Union recently signed.<sup>8</sup>

The definition of working<sup>9</sup> regarding human rights in the UN system, is: "*Human rights are those freedoms, immunities and benefits determined in accordance with contemporary values that every human being is entitled to claim from the society in which he lives*".

Freedoms and immunities specified in the definition refers to protection against public intervention in the private sphere. They assume the same time, guarantees the state meaning positive action in order to achieve economic rights, social and cultural.

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<sup>6</sup> Also known as the Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>7</sup> Romanian Constitution of 1991 , the Official Gazette. 767/2003 republished. In its original form , was published in the Official Gazette 233/1991

<sup>8</sup> EU adopted in December 2007, the Treaty of Lisbon, which includes the European Union Charter of Fundamental Rights

<sup>9</sup> L. Lenkin, "*The Age of Rights*", Columbia University Press, 1990, p.38

In other news, the definition of Lenkin show that on these rights is the contemporary values accepted by the international community, without any discrimination between different civilizations and cultures, or privileges of "civilized nations".

Another feature highlighted by the aforementioned definition is that it is a special class of subjective rights that every human being has, by virtue of birth. "In addition to human rights capitalization person becomes alienated from his own nature, so human rights are inalienable, not only in the sense that a person can not be denied these rights, but also in the sense that the loss of these rights is morally impossible: can not lose these rights and live at the same time that human being".<sup>10</sup>

From the definition of human rights brought by Lenkin it follows that there is a negative obligation of the state not to interfere in the life of a person, and not to interfere in political freedom, religious, and provide a positive obligation to take action, according available resources, because those rights can be valued and exercised in practice. In both cases, it is a legal obligation.

International human rights law has evolved from general regulations specific to the eighteenth century, the specific regulations, punctual. In this regard, the various agreements and pacts adopted by the United Nations and its specialized agencies were regulated specific rights (non-discrimination, equal treatment, civil, political) rights of specific groups of people (women, children, refugees, foreigners), the rights of persons belonging to communities (ethnic minorities, linguistic). Later they moved to the complex regulation of rights, such as sustainable development and solidarity.

The fourth generation of human rights, raises the question of obligations to society.

Along with the universalization of human rights of conversion into global international standards can be seen as a process of contextualization, regulation not only a list of more than rights, and the concrete situation of individuals and groups.<sup>11</sup>

What we have seen in this field is that the phenomenon of universalization of human rights did not mean completely take over Western values . Conversely, there was international attention in the sense that human rights fold better local traditions and cultures.

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<sup>10</sup> Donnelly, J. , *Universal Human Rights in Theory and Practice*, Cornell University Press, London, 1989, p.17

<sup>11</sup> *Ibidem*

We noted that "amid these trends should be seen and confrontations related universalism-cultural relativism in human rights implementation".<sup>12</sup>

With reference to cultural relativism universalism-axis were expressed views<sup>13</sup> that the universal standards of human rights could be easily accepted and respected if they reflect the cultural tradition of groups and communities.

Another author<sup>14</sup> speaks about the dissatisfaction of certain western communities of interpretation of human rights. "We must not forget that the great diversity of cultural traditions, political structures and levels of development, will make it difficult, if not impossible, to define a single coherent system of human rights in a region that includes vast region stretched from Japan to Burma, and who meet the Confucian tradition, Buddhist, Islamic, Hinduse. However, the move towards such an ideal should continue. What is clear, however, is that there is a general dissatisfaction about Western interpretation of human rights, and rightly so "he same author concludes that" should not surprise anyone that the Western democracies and understand the different human rights and democracy".

## CONCLUSIONS

International human rights law draws a distinction between rights absolute classic and relative rights, rights which state authorities can not affect in any situation and rights whose exercise may be restricted to compliance with certain conditions.

Constitution does not seem to take this classification because it enshrines in Article 53 a general clause to restrict the exercise of rights without making a distinction between certain categories of rights . The distinction is necessary, however, because of the protective character of the international provisions under Article 20 of the Constitution shall apply with priority over national law.

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<sup>12</sup> D. Balahur, European Protection of Human Rights - Course Support - University "Alexandru Ioan Cuza" University - Iasi , Center for European Studies, p.9

<sup>13</sup> An-Na im, Abdullahi, *Toward an Islamic reformation: Civil liberties, Human Rights and International Law*, Syracuse University Press, 1990, p.23

<sup>14</sup> Kauskian, B, *Asian versus Universal Human Rights, in the Responsive Community*. Rights and Responsibilities, Vol. 7, 1997, nr.3, p.11

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