



THE 8<sup>TH</sup> EDITION OF THE INTERNATIONAL CONFERENCE  
EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES

## Human Rights in the Context of Cultural Diversity

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**Abstract:** The human rights understood in the sense of fundamental inalienable rights are therefore considered as universal – they apply to everything and egalitarian – they are the same for all and they may exist in two ways: as natural or legal rights, both in the national and international legislation. The human rights doctrine in the international practice within the international law, the global and regional institutions, in the state policies and the activities of non-governmental organizations was a corner stone of public policies from all over the world regardless of peoples' cultures. At world level, cultural diversity which should manage the ethnic-cultural communities living on the territory of a state often contributes, in fact, to the separation and not to the reunion of peoples, the ideological and political factors acting rather as division factors whereas the affective spiritual connection exists only between the states having deep similarities. For this purpose, serving justice having as a goal the preservation of human rights is also affected since it relies on the social feelings of humanity.

**Keywords:** cultural diversity; human rights; serving justice; national authorities; fundamental liberties

In reality, human rights have been noted in declarations<sup>2</sup> that were and are officially accepted and acknowledged not only by the national or international authorities (Andreescu & Puran, 2012) effectively engaged in their observance, but also by allegedly democratic authorities which, in fact, conduct an internal and international policy for the permanent violation of some fundamental human rights and liberties.

Despite all these, the concept of *human rights* apparently creates the impression that it is an issue specific to the 20<sup>th</sup> century, but it is not absolutely new in the history of mankind.

These rights are inspired from a planetary conception taking into account the world interdependence and the need to establish a new international political and economic order based on justice aimed at the guarantee by the state of the social-economic and cultural conditions that allow everybody to fully enjoy their rights. Without them, the implementation of civil and political rights is not possible.

The idea of *human rights* goes down to ancient times such as 300 B. C. when in the Greek-Roman historical philosophy founded by Zeno the idea that each individual is entitled to ask for the recognition of their own dignity and their respect as a person took shape. In antiquity, the concept of universal human rights (Malcom, 2008, pp. 45-51) did not exist, however the antique societies had a

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<sup>2</sup> The *Universal Declaration of Human Rights (UDHR)* is a declaration adopted by the United Nations General Assembly on 10 December 1948 at Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.

The *European Convention on Human Rights (ECHR)* (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

series of taxes, justice conceptions, flourishing political and human legitimacy that tried to achieve the human dignity, thriving or welfare completely independent of the human rights (Donnelly, 2003, p. 49). As for the expression of guarantee of liberties, the first relevant document is Magna Charta Libertatum of 1215 by which the English nobility managed to impose the observance of their privileges by the king.

The concept of *human rights* was first formulated in the 18<sup>th</sup> century but it got objectified during two great events, namely the bourgeois revolution of France (1789) and the rebellion of the English colonies from North America against the Great Britain (1776), thus belonging to the philosophy of *the natural and race law* and lying at the bottom of Jean-Jacques Rousseau's *social contract* theory (Rousseau, 2008, pp. 20-25).

On 4<sup>th</sup> July 1776 they adopted the *Declaration of independence* of the English colonies from America by which they proclaimed the principle of equality between individuals, the right to life and freedom as inalienable rights and the setting up of governments with the agreement of the governed ones. In 1789, on August 26<sup>th</sup>, they adopted the *Declaration of the French revolution on human and civil rights*, a document expressing the philosophy of the natural law and consecrated the principle of *equality of all individuals before the law* as a principle on which all the other rights and liberties such as the right to property, security, the resistance against oppression, the freedom of thinking, expression and manifestation are based. The enforcement of rights proclaimed this way both in the USA and in France was made by written constitutions.

We must say that the idea of a “declaration of rights” signifies the fact that the document synthesizes preexisting rights, rights considered as inherent to human nature – transposed afterwards in the constitutions of modern states and international treaties. We may draw the conclusion that the “concept of human rights was born during the period of preparation of the bourgeois revolutions from Europe; it took shape from ideas that already existed in antiquity or in the political thinking of the Middle Ages” (...) and during the bourgeois revolutions it was affirmed in the social practice” (Birsan, 2005, p. 20).

The protection of human rights by legal instruments for the transposition of these rights into legal provisions has become an imperative issue of the international community after World War II following the disclosure of atrocities committed by the Nazis and later on following the perpetuation of the practice to violate the human rights in the state with totalitarian regimes. This need materialized into regulations having a universal or regional character that followed after the signing of the Charter of the United Nations (June 26<sup>th</sup> 1945).

Thus, the Universal Declaration of Human Rights proclaimed and adopted by the UN General Assembly on December 10<sup>th</sup> 1948 is the first document having a universal vocation in this domain and establishing a unitary conception of the international community on the human rights and liberties opening the way towards a system of international protection of the human rights. After 1948, the UN General Assembly adopted more than 60 conventions and declarations in this domain by which they also tried to institute certain specific mechanisms for the protection of such rights.

In the preamble of this document we enumerate the reasons based on which it was adopted, namely:

- “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;
- Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall

- enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people;
- *Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;
  - *Whereas* it is essential to promote the development of friendly relations between nations;
  - *Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom;
  - *Whereas* Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms;
  - *Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.”

In the course of history, the phenomenon of globalization (Jones, 2011, pp. 5-22) of all kinds of problems has become more obvious and dynamic, including the issues related to the moral nature such as the ones referring to the individuals' rights to sincerity and generosity, the respect of other's property and life, compassion and the manifestations against barbarism, vandalism and gratuitous violence and generalized stealing have increased as well; in these conditions the considerations about deontology as well as its relations with morals and morality are much more promising and wider spread. For this purpose, more consistent implications in the problems of politology and legal philosophy are necessary because this way the three concepts mentioned above would be relevant.

Taking into account the new rights so as to express the idea that all individuals should belong to the field of application of morality and justice, it is necessary to make sure that individuals receive a certain level of a decent treatment in order to protect the human rights. To violate the fundamental human rights, on the other hand, it means to deny the fundamental and moral rights (Alexy, 2008, pp. 11-13) of the individuals. It means treating them as if they are less than a human being deserving respect and dignity.

Examples are acts usually considered as *crimes against humanity*, including genocide, torture, slavery, rape, forced sterilization or medical experiments and deliberate starvation. Since these policies are often conducted by governments that limit the unlimited power of the state, which is an important part of the international law lying at the bottom of the laws that forbid diverse “crimes against humanity” is the non-discrimination principle and the idea that certain basic rights universally apply.

The abuses of the human rights often lead to conflicts resulted from violations of these rights. Then, it is not surprising that human rights are often abuses in the war centers and the protection of human rights is a central element for the settlement of conflicts. The violation of economic and political rights is the main causes of many crises. When rights to adequate food, dwelling places, the occupation of manpower and cultural life are denied and large group of people are excluded from the decision-making processes of the society, it is likely to have some social unrest. Such conditions often give birth to legal conflicts where parties ask that their basic needs be fulfilled. In fact, many conflicts are triggered or spread by violations of the human rights. For example, a massacre or torture may inflame hatred and consolidate an opponent in the decision to continue the fight. Violation may also result in violence exerted by the other party and it may contribute to an uncontrollable spiral conflict.

By examining these situations, we may affirm that the proclamation and acknowledgement of the human rights must refer to all inhabitants of this planet (Branzan, 2001, p. 17). Current or at least apparent acknowledgment of the human rights applies at a global level – but the unanimous consensus of states hides a series of divergences in understanding this notion.

Considering the criterion of geographical application field, we must distinguish between the documents having a universal vocation – which address to all states – and the ones having a regional vocation which express both solidarity and the ideological, political, economic, cultural and even religious particularities of some states or groups of states.

For this purpose, we may speak of a multicultural and intercultural education which might present a special interest that may exceed the difficulties of social policies in diverse systems if social realities are known and accepted.

A first stage in this cognitive approach should be the defining and operationalization of the concepts of cultural diversity through multiculturalism and interculturalism. Through they interweave, they are used in different situations to express specific modes of manifestation of the social education.

Intercultural education focuses on the manner in which we interact with other cultures, societies or social groups. All today's societies are characterized by a higher and higher level of multiculturalism and cultural diversity. This makes the recognition and respect towards minorities more and more important. The old conceptions about the national societies as homogenous entities must be eliminated. The European integration and the higher and higher social and economic interdependence among different regions make these conceptions look obsolete.

The existence of ethnic, religious and linguistic communities, constitutes an undeniable reality, which justifies and preoccupation increasingly greater for legal protection of human rights generally and therefore, as part of their for legal protection of minorities. Faced with these realities, international law has developed and promoted over time a constructive policy towards minorities, which contributes to maintaining of internal and international stability. (Duminica & Tabacu, 2010)

Even in those areas of the globe where there is no migration, conflicts may be noticed as starting from a lack of understanding between different peoples or from a certain way of life of a society. The conflicts from Northern Ireland, former Yugoslavia or certain regions from Caucasus Mountains are sad examples of such issues that may appear from the incapacity to observe and live with other cultures.

Intercultural education is also a very good way to address current problems such as racism or racial discrimination and intolerance. They often make mistakes by confounding the notions of *race* and *nation* or *ethnic group*. These words may be defined by *population* whose members share the same culture, language, practices and rituals and institutions. In numerous cases, the members of such community may exhibit common psychic characteristics. Peoples have mingled over the centuries and it is an illusion to pretend today that you belong by *blood* to a certain nation in particular. In fact, scientific tests show that genetic differences between two individuals are as strong within the same nation as between two different nations.

In the course of history of mankind, each time neighboring dominating peoples wished to extend their territories, they occupied by force these surfaces by jeopardizing the autochthonous peoples. Their efforts to keep their identity and way of life were successful, but in other cases there were no legal forms which might protect this identity. Despite the ethnic and cultural diversity of these nations, we may often notice similar issues, the requests and interests of autochthonous peoples are often exposed

before international courts. The participation of representatives of autochthonous populations to the reunions of the United Nations Organization has contributed to the highlighting of these similarities.

Cultural diversity is a precious asset for the evolution and welfare of mankind in general and it should be really valued, accepted and considered as a permanent feature that enriches our societies.

There is undoubtedly historical evidence (Dragusin, 2009, p. 77) of the fact that a continuously developing trend requires the reconsideration of the human rights on the principle of the duty we have towards the other citizens and our communities. They underlie these requests on the rights that future generations may have.

At the same time a special attention must be paid to the values of solidarity, respect, tolerance and cultural diversity and multiculturalism which are the moral and inspirational ground for the world fight against racism, racial discrimination, xenophobia and intolerance associated to them, and the human tragedies that affected people from the entire world for a much too long period of time.

All nations and individuals of the world constitute a single human family rich in diversity which contributed to the progress of civilizations and cultures and represents the common heritage of mankind. Keeping and promoting tolerance, pluralism and respect for diversity may generate more inclusive societies.

The benefits of globalization must be increased to a maximum *inter alia* by the consolidation and increase of international cooperation meant to lead to higher equality of chances for trade, economic growth and sustainable development, global communications via the use of the new technologies and a larger intercultural exchange by keeping and promoting cultural diversity which may contribute to the eradication of racism, racial discrimination, xenophobia and intolerance associated to them. Only by extended and sustained efforts for the creation of a common future based on common humanity, and everything in diversity, may globalization become fully inclusive and equitable.

The representatives of international organizations discuss more and more often about cultural diversity referring to the diverse origin and cultural heritage specific to each nation whose members carry out their activity within them and which must integrate into a heterogeneous and high dynamic world unity.

Cultural diversity refers of course to different antidiscrimination policies as well meant to ensure an equal social statute to the members of diverse cultures, identity policies meant to favor diverse cultures, community policies for the creation and promotion of the legal status specific to the members of a certain cultural community (administrative, legal policies, etc.). A democratic society must treat, in principle, all its members based on these non-discriminating policies thus offering equal chances for the manifestation of cultural and religious identity.

*Cultural diversity* or *multiculturalism* is a reality of the existence of some groups of individuals within the same spatial-temporal horizon, groups that come from or relate with many cultures affirming their specific notes in an isolated manner and avoiding contaminations, as a rule. Multiculturalism and pluriculturality have a predominating static dimension; in an approach of cultural diversity interactions are not excluded, but they are both implicit to the concept (Dasen, Perregaux & Rey, 1999, pp. 129-203). This is the explanation why cultural diversity and multiculturalism which consider the juxtaposition of cultures as sufficient leave room for certain racial practices such as apartheid.

Interculturalism appears as a concept having a wider content than the ones presented above due to the prefix *inter* sending to “interaction, exchange, opening, reciprocity, solidarity” (Dasen, Perregaux & Rey, 1999, pp. 129-203). The same author defines culture as the “*recognition of values, ways of life,*

*symbolic representations to which human beings, individuals and societies relate to in their interaction with another and in understanding the world, the recognition of their importance, the recognition of interactions that intervene simultaneously between multiple registers of the same culture and between different cultures in time and space”.*

Mutual knowledge of nations' culture in the process of interaction favors communication. In the process of knowledge between countries, cultural paradigms, the system of values, the specific languages, the experiences and practices of each country taken as an ethnic group are involved.

Each country usually has its own culture which is then transmitted from generation to generation and then defended whenever necessary. It is true that there are often many conflicts produced by the cultural differences and the lack of knowledge of the other without even existing the intention to understand otherness. In front of such a reality, we must not stick only to the multicultural perspective or, even worse, adopt the point of view of assimilation, according to which the minority culture should be absorbed by the majority culture. The most adequate perspective is the intercultural one starting from the premise that all cultures are equal among them, with a focus on the interactions between individuals, groups or subgroups. The intercultural perspective capitalizes and puts the cultural differences and social conditions to good use and facilitates mutual knowledge and exchange between different communities.

In a multicultural society, values are different and relative and they express particular viewpoints. The cultural assembly of today's society is kaleidoscopic: cultures superpose, influence and reconfigure one another and they simultaneously open and sear again. We might say there is not only one reason and form of rationality. Thus, we may not accept under any circumstances, in the name of cultural specificity, the violation of human rights, the exploitation of children or repression of any kind.

Universalist ideologies consider that cultural entities will disappear in favor of a unique, universal culture (Cucos, 2000, p. 159) focused on a certain cultural matrix. Such a thesis is wrong not only by ethnocentrism but also by simplicity setting aside cultural complexity, the impossibility to establish hierarchies and the potential contradictions accompanying the cultural evolution.

Cultural pluralism asserts that each culture develops its own vision of the world with significations of universal value starting from a particular experience. Besides defending diversity, cultural pluralism poses the problem of communication between cultures which recognize that each of them contributes to the enrichment of human experience exactly by these specific differences.

Reason, especially public reason, is the one which imposed the preservation of cultural diversity of communities, guided them towards tolerance and the defense of individual liberties and reason again is called to offer grounds and means to make possible the existence of a society where such diversity may exist without insoluble conflicts.

Therefore, the cultural and civilization differences contribute to the separation and not to the reunion of nations, the technological and political factors acting rather as division factors. Setting up a community would rely on the affective and spiritual bond and this can exist only between the states having deep similarities.

Certain political or legal structures or institutions, out of which some have been inherited and they exist even today, do not correspond to multiethnic, pluricultural and plurilingualism characteristics of the population and, in many cases, represent an important discriminating factor through the exclusion of indigenous peoples.

The means of information must show the diversity of a multicultural society and play a role in the fight against racism, racial discrimination, xenophobia and intolerance associated to them and the defense of all fundamental human rights and liberties.

The right to education a fundamental human right should be so organized as to ensure equal opportunities to people involving in the first place prohibition of discrimination or of privileges. Although international regulations establishes and guarantees both to a general level as well as in to particular level the right to education without discrimination, however, exercise of this right still remains problematic for some minorities, as is the case Romany minority. (Duminica & Tabacu, 2010)

It is imperiously necessary to ensure the quality of education, which may lead to the elimination of analphabetism, and the access to free primary education for all the factors that may have a decisive role in the creation of united societies, equality, stable and harmonious relationships and friendship between nations, peoples, groups and individuals and a peace culture that may facilitate mutual understanding, solidarity, social justice and respect of all the human rights for everybody.

Thus, the human rights offer a valuable framework adequate for the contemporary society which is multicultural and multiconfessional. Therefore, the human rights constitute an essential element of the modern civil education.

Benefic results would give the observance of the golden rule of Christianity lying at the bottom of laws (Duminica, 2011) and multiculturalism: *Do unto others what you want done unto you*, the Christian teaching which urges most Christians to respect towards the values and beliefs of the *foreigner*, be they Jews, Muslims, Hindus or atheists.

Platon wrote (Platon, 2010): “*You have again forgotten, my friend, I said, the intention of the legislator, who did not aim at making any one class in the State happy above the rest; the happiness was to be in the whole State, and he held the citizens together by persuasion and necessity, making them benefactors of the State, and therefore benefactors of one another; to this end he created them, not to please themselves, but to be his instruments in binding up the State.*”

## **References**

- Alexy, R. (2008). *Concept and Validity of Law*. Pitesti: Parallel 45.
- Andreescu, M. & Puran, A. (2012). *Constitutional Law. General Theory. Rights, Fundamental Freedoms and Duties. The Institution of Citizenship*. Craiova: Sitech Publishing House.
- Andrew, J. (2011). *Globalization. Fundamental Theoreticians*. Cluj-Napoca: CA Publishing.
- Birsan, C. (2005). *European Convention of Human Rights, Vol Rights and Freedoms*. Bucharest: All Beck.
- Branzan, C. (2001). *Ombudsman, an Institution Available to the Citizen*. Bucharest: Juridical Publishing House.
- Cucos C. (2000). *Education. Cultural and Intercultural Dimensions*. Iasi: Polirom.
- Dasen, P., Perregaux, Chr. & Rey, M. (1999). *Intercultural Education - Experiences, Policies, Strategies*. Iasi: Polirom.
- Donnelly, J. (2003). *Universal Human Rights in Theory and Practice* (ed. 2nd). Ithaca: Cornell University Press.
- Dragusin, N. (2009). How Children Gave Birth to their Parents – Explaining Generational Equity. *Mediterranean Journal of Human Rights*, Vol. 11, no. 1. University of Malta.
- Duminica, R. & Tabacu, A. (2010). Brief Reflections on the Exercise of the Right to Education of the Romany Minority. *Agora International Journal of Juridical Sciences*, no. I/ 2010. Oradea.
- Duminica, R. (2011). The Divine Foundation of the Law. *Agora International Journal of Juridical Sciences*, no. 2/2011.
- Duminica, R. & Tabacu, A. (2010). Brief Reflections on the Exercise of the Right to Education of the Romany Minority. *Agora International Journal of Juridical Sciences*, no. I/ 2010. Oradea.

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- Freeman, M. (2002). *Human Rights: an Interdisciplinary Approach*. Cambridge: Polity Press.
- Fuerea, A. (2003). *European Community Law. The General Part*. Bucharest: All Beck.
- Malcom, S. (2008). *International Law* (ed. 6th ed.). Leiden: Cambridge University Press.
- Platon (2010). *Republic*. Translation: Dumitru Vangelis, 2nd Edition. Bucharest: Antet.
- Rousseau, J.J. (2008). *About Social Contract or Principles of Political Right*. Bucharest: Nemira.
- Scaunas, S. (2005). *European Union. Construction. Institutions. Law*. Bucharest: All Beck.