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## **The Universal Declaration of Human Rights**

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**Abstract:** The Universal Declaration of Human Rights of 1948 was preceded by several other Declarations in the first half of the twentieth century, beginning with the Declaration of 1929 and ending with the one of 1947. All these Declarations make express reference only to the “Human rights” and not to those of the “individual” or of the “Citizen”, as in the Declaration of the French Revolution, in 1789, or in the one of the Bolshevik Revolution, in 1917. Among other things, in our paper, we emphasized that the Universal Declaration of Human Rights remains the first legal international instrument that imposed an unitary and universal conception regarding the human rights and fundamental freedoms, and, ipso facto, of the “Dignitas humana” (dignity of the human person), to which the Treaty establishing a Constitution for Europe (Lisbon, 2007) would make express reference.

**Keywords:** the principles of the UN Charter; the human person; the European legislation and jurisprudence; legal protection

### **1. Introduction**

In 1929, the International Law Institute (New York) developed and published the “International Declaration of Human Rights”. Among other things, this Declaration stipulates that “it is the obligation of every State to recognize the equal right of every individual to life, liberty, property, and to grant to those on its territory full protection of this right without distinction of nationality, sex, race, language or religion” (Art. 1) (Agi & Cassin, 1998, p. 331).

In 1939, the League of Human Rights brought an addition to the text of the Declaration of 1929, and made the specification that “human rights apply without distinction of sex, race, nation, religion or opinion. These inalienable and imprescriptible rights are attached to the human person; they should be respected at all times, in all places and guaranteed against all forms of political and social oppression. The international protection of human rights should be universally organized and secured, so that no state can refuse the exercise of these rights of a single human being living on its territory” (Art. 1) (Agi & Cassin, 1998, p. 333).

The Addendum to the Declaration specified that it stipulated the rights of the “human being” or of the “human person” and their international legal protection, and not the rights of the “individual” or of “citizen”, as the text of the 1789 French Declaration did. However, unfortunately, this last phrase emerged as a leitmotif not only in the texts emanating from the Bolshevik Revolution of 1917 or from the constitutional text of the countries which entered into the Soviet camp, but even in some texts

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produced and published by the Council of Europe or by other organizations and EU bodies. Moreover, these texts were also understood tale-quala by some jurists of prestigious law schools in Western Europe (Dură & Mititelu, 2013 a., pp. 130-136).

In 1942, Jacques Maritain – an outstanding Christian philosopher and prominent defender of human rights – also published a “Declaration on Human Rights and Natural Law”, where – among others – he said that, among the “rights of the human person”, there is also the “right leading to eternal life, according to the path that the consciousness recognized as being drawn by God ... “ (Agi & Cassin, 1998, p. 336). Moreover, according to philosopher Jacques Maritain, “the value of the person, his/her liberty, his/her rights depend on the order of sacred things, bearing the imprint of the Father of (human) beings ...” (Riquet, 1981, p. 63).

In 1947, Professor René Cassin, the French representative of the Drafting Committee of the UN Commission on Human Rights, presented to the General Assembly of the United Nations the “Project of the International Declaration of Human Rights”. Among other things, in his Project, René Cassin stated that “the individual freedom of conscience, faith and thought is a sacred and absolute right”, and that the public or private exercise of the manifestations of religious beliefs “can be subject only to the restrictions imposed by the public interest, morals or by the rights and freedoms of others” (Art. 20) (Agi & Cassin, 1998, Annexe 9, Doc. II, p. 362).

This brief overview of the four Declarations on Human Rights (1929, 1939, 1942 and 1947) reveals therefore that humanity was not concerned with human rights and freedoms only after the human scourge produced after World War II, as erroneously claimed and accredited by the juridical literature. On the contrary, through its exponential representatives and competent bodies, official documents, entitled “Declarations”, were drafted; they referred explicitly to the human “being” or “person” and to his/her rights, whose legal protection was imposed, from the very beginning, both by “*Jus divinum*” and “*Jus natural*” (Mititelu, 2012 a., pp. 194-204).

## **2. The Internationalization of Human Rights**

The United Nations Charter<sup>1</sup> - adopted in San Francisco, on 26 June 1945 – reaffirms the faith of the world's peoples in asserting and defending the fundamental human rights, in the dignity and worth of the human person (Art. 1). Moreover, this Charter – under which the “International Court of Justice” was established as a “judicial organ of the United Nations”<sup>2</sup> – set the Organization’s objective “to promote and encourage the respect for human rights and fundamental freedoms of all persons without distinction of race, sex, language or religion” (Diaconu, 1995, p. 160).

In order to materialize this goal, in 1947, the Human Rights Commission was established, under article 68 of the UN Charter. This Commission drafted the Universal Declaration of Human Rights, which was the first document establishing a common and universal conception on human rights and freedoms. Indeed, the Universal Declaration on Human Rights<sup>3</sup>, adopted and proclaimed by the UN General Assembly, by Resolution 217 A (III) of 10 December 1948, released the phrase “human rights and fundamental freedoms” (Preamble) and, as specified in the Preamble of the European Convention of Human Rights, published in 1950, aimed at “securing the universal and effective recognition and

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<sup>1</sup> Published in the Official Gazette on 26 June 1945.

<sup>2</sup> Statute of the International Court of Justice, Art. 1 (<http://www.icj-cij.org/documents/?p1=4&p2=2>).

<sup>3</sup> For the text of this Declaration, see *The main International human rights instruments to which Romania is party*, vol. I, (Zlătescu et al., 1997, pp. 7-13)

observance of (human) Rights”. Moreover, this Declaration is the first international legal instrument that provided that “human rights” should “be protected by the law” (Preamble).

The fact that the internationalization of human rights took place by the “Universal Declaration of Human Rights” is also attested by its title, where we find the adjective “universal” and not that of “international”, because – in the view of its authors, i.e. of the persons of the States who were members of UN – the rights and freedoms stipulated in this Declaration do not belong to individuals or citizens (Dură & Mititelu, 2012, pp. 103-127), but to the human being or person, to which express reference is made both in the Roman-Byzantine and in the Byzantine Nomocanon law (C. Mititelu, 2014 b.). The fact that “only the human being” – and not the citizen or the individual invoked by the French and the Bolshevik Revolutions – “has the vocation of universality” (Dură, 2006, p. 131) is also attested by the European legislation and legal doctrine, beginning with the legislation and the jurisprudence developed and published in Justinian’s era (527-565) (Mititelu, 2011, pp. 218-231) and ending with the “Treaty establishing a Constitution for Europe” (Dură, 2011 b., pp. 25-48), ratified and published in 2007.

Regarding “The Declaration of the Rights of Man and of the Citizen” – proclaimed by the French National Assembly on 26 August 1789 – it should be noted and remembered that it is not “a first reference” (Dură, 2006, pp. 129-151) to the assertion of human rights and freedoms - as still erroneously stated by some jurists, political scientists, sociologists, philosophers, etc. - and, of course, a “Charter” of these rights and freedoms, but only “a symbol, a sign revealing the relationship between Power and Person, which is the primary political relation” (Marx, 1989, p. 50).

### **2.1. The Universal Declaration of Human Rights, the main Document containing General Principles and Rules regarding the Human Rights and their Juridical Protection**

Regarding the Universal Declaration of Human Rights – universally accepted “as a document containing general principles and rules that give expression to a minimum standard in the field of human rights” (Diaconu, 1995, p. 161) – the representatives of the Governments signatory to the European Convention on Human Rights wanted to specify, “*expressis verbis*”, that they took “into account the Universal Declaration of Human Rights”, and that they took the “first steps to secure the universal and effective recognition and observance of certain rights stated in the Universal Declaration” (Preamble). It was certainly about the fundamental human rights, whose legal protection was guaranteed by the European Convention.

For the Universal Declaration of Human Rights, “the foundation of freedom, justice and peace in the world” is represented by “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”, hence the requirement “that human rights should be protected by law... “ (Preamble).

The foundation of this legal system would be established in 1950, i.e. two years after the proclamation of the Universal Declaration of Human Rights, namely by the European Convention on Human Rights, which – from then until nowadays – was followed by all European instruments on human rights and fundamental freedoms, culminating in the Treaty of course Nice (Dură & Mititelu, 2013 b., pp. 123-129) (France). All these legal instruments stated and emphasized the general Principles (Dură, 2013, pp. 7-14) of EU law on human rights and their legal protection (Dură, 2010, pp. 153-192).

In the Universal Declaration of Human Rights, on 10 December 1948, the UN General Assembly expressly asked “that every individual and every organ of society (...) shall strive by teaching and

education to promote respect for these rights and freedoms ..” (Preamble). The respect for these human rights and fundamental freedoms is, therefore, promoted only “by teaching and education”.

Aware of this reality, many countries worldwide – including the Romanian State – introduced, in the syllabus of the Faculties of Law, *The legal protection of human rights*, as a subject of study, in order to educate and train the young generation of the academic world in the spirit of the respect and application of these human rights and fundamental freedoms, which have been proclaimed by the United Nations as “their faith” (Preamble of the Universal Declaration of Human Rights).

Postulating that “all human beings (...) should act towards one another in a spirit of brotherhood”, the Declaration stated that they “are born free and equal in dignity and rights” (Art. 1). Moreover, in the Preamble of the Declaration, the UN General Assembly also specifies that “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 ...” (Preamble).

In exercising these fundamental rights, “every” human being is entitled to them, “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”(Art. 2 § 1). Moreover, the same Declaration specified that, in the exercise of these rights, “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs ...” (Art. 2).

Article 3 of the Declaration states that “everyone has the right to life, liberty and security of person”. Therefore, the right to life is the first right of the human being. However, it should be accompanied by the right to liberty and security. Therefore, the Declaration further states that “no one shall be held in slavery or servitude” (Art. 4), or “be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Art. 5). Moreover, the EU legislation expressly reaffirmed these interdictions (Mititelu, 2012 b., pp. 70-77).

Article 7 provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law” and that “all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

Against the acts violating the fundamental human rights “granted by the constitution or by law”, Article 8 provides that “everyone has the right to an effective remedy by the competent national tribunals”.

Within the same legal protection of human rights there also fall the following articles which either prohibit “to arbitrary arrest, detention or exile” (Art. 9) or which provide for the presumption of innocence (cf. Art. 11).

By interdicting the “arbitrary interference with a human person’s privacy, family, home or correspondence”, and by prohibiting any “attacks upon his honor and reputation”, the Declaration expressly provides that “everyone has the right to the protection of the law against such interference or attacks” (Art. 12).

The same Declaration stipulates that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (Art. 16, 3). It also states that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family” (Art. 16, 1). The same Declaration also provided for concrete measures for the protection of the family, which remains, indeed, one of the old legal European institutions (Mititelu, 2014 a., pp. 240-264).

Article 25 states that “the mother and the child are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection” (Art. 25, 2). Also, each family member “has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” (Art. 25 § 1).

Other fundamental rights stated by the Declaration, rights which any “human being” should enjoy, are “the right to own property” (Art. 17); “the right to freedom of thought, conscience and religion” (Art. 18); “the right to freedom of opinion and expression” (Art. 19); “the right to freedom of peaceful assembly and association” (Art. 20); “the right to take part in the government of his country, directly or through freely chosen representatives” (Art. 21); “the right to social security” (Art. 22); “the right to work, to free choice of employment ...” (Art. 23); “the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay” (Art. 24); “the right to education” (Art. 26), which also implies the right to religious education (Dură & Mititelu, 2014, pp. 141-152); “the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (Art. 27) etc.

Therefore, we note, that, according to the principle enunciated by the Universal Declaration of Human Rights, everyone has “moral and material interests”, for which is otherwise entitled both by “*Jus divinum*” and “*Jus naturale*” and by “*Jus positivum*” of the World Nations, which assure also their legal protection. However, unfortunately, the legislations of some EU countries do not always make express reference to the “moral interests”, much less to those arising from the works that have eminently a sacred or religious content, hence, the obligation of their jurists to not ignore or circumvent the principles enunciated by this Declaration - which have actually the force of “*Jus cogens*” - regarding this kind of interest of the human being.

The same Declaration states that “higher education shall be equally accessible to all on the basis of merit” (Art. 26 § 1) and that “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”. However, the educational process “shall promote understanding, tolerance and friendship among all nations, racial or religious groups ...” (Art. 26 § 2).

The Universal Declaration of Human Rights finally provides that “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Art. 29 § 2).

We should also emphasize and note that, the text of this first international instrument, which has the force of “*Jus cogens*”, also states that, in a “democratic society”, in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law, under two realities: a) “solely for the purpose of securing due recognition and respect for the rights and freedoms of others”, so that “*alterum non laedere*” (Ulpianus), i.e. not to prejudice your peer, and b) for the purpose of “meeting the just requirements of morality, public order and the general welfare”.

Another aspect that the informed reader may notice is that the text of this “Declaration” makes express reference to “Morals”, i.e. to the “Moral law” (Dură, 2011 a., pp. 158-173), not to the “Ethics”, as the Legislations from 1947-1989 and even some papers in the contemporary literature did, hence the

obvious need to use, in the text of laws, the notion of “Morals” and not the one of “Ethics”, which, semantically, philosophically and legally, does not refer to the same reality.

## **2.2 The Principles enunciated by the text of the Universal Declaration, reaffirmed obviously by all the International and European Instruments concerning the Human Rights**

The provisions of principles enunciated by the Universal Declaration were reaffirmed by all – International and European – main instruments on various aspects of Human Rights (coord. Zlătescu et al., 1997, vol. I). For example, on 9 December 1948, the UN General Assembly adopted the *Convention on the Prevention and Punishment of the Crime of Genocide*. On 4 November 1950, the member States of the Council of Europe signed the *European Convention on the Protection of Human Rights and Fundamental Freedoms*, which entered into force in 1953. It was followed by an impressive number of Additional Protocols, such as *Protocol 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, signed in Strasbourg in 1984, regarding the abolition of the death penalty (Zlătescu et al., 1997, vol. I, pp. 72-75). On 7 September 1956, in Geneva, the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* was signed. On 7 March 1965, the *International Convention for the Elimination of All Forms of Racial Discrimination* was adopted. Then, by Resolution 2200 (XX) of 16 December 1966, the UN General Assembly adopted the *International Covenant on Civil and Political Rights*, which entered into force on 23 March 1976; on 30 November 1973, the *International Convention on the Suppression and Punishment of the Crime of Apartheid* was adopted.

We remember also the fact that the *Final Act* of the Conference on Security and Cooperation in Europe, signed in Helsinki, on 1 August 1975, provided for – among others – the obligation of States to take action in the field of human rights and fundamental freedoms, in accordance with the principles of the UN Charter and the Universal Declaration of human rights.

On 10 December 1984, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted. In its turn, the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (which entered into force on 1 February 1989) was adopted on 26 November 1987. Romania has ratified this Convention by Law no. 80 of 30 September 1994, published in the Official Gazette no. 285 of 7 October 1994. In January 1989, the *Final Document of the General European Meeting* was adopted; among other things, it provided for eliminating and preventing the discrimination against persons or communities on the grounds of religion or religious belief. In addition, of course, the examples could continue with the Treaty of Nice (2000) and the Treaty of Lisbon (2007), where the human rights and freedoms were affirmed in the same spirit of the provisions and principles enunciated by the Universal Declaration of Human Rights, that remains the first legal international instrument which imposed a unitary and universal conception regarding the human rights and fundamental freedoms, and, *ipso facto*, regarding “*Dignitas Humana*” (dignity of the human person), to which the Treaty establishing a Constitution for Europe (Lisbon, 2007) would make express reference.

## **3. Instead of Conclusions**

After the adoption and proclamation of the Universal Declaration of Human Rights, on 10 December 1948, the UN General Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools

and other educational institutions, without distinction based on the political status of countries or territories”<sup>1</sup>. Or, it is well-known that in the Soviet geopolitical space – including, therefore, in our country – this recommendation was not applied. Therefore, its reading and comment remained only a “*pium desiderium*” (a pious wish) for many Romanian schools and educational institutions<sup>2</sup>, hence the obligation of the responsible authorities to take note of this unfortunate reality and to act under the Recommendation of the UN General Assembly of 1948, because only “by teaching and education” we can really develop “the respect for human rights and freedoms ...” (Preamble of the Universal Declaration of Human Rights).

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<sup>1</sup> Declarația Universală a Drepturilor Omului din 10 decembrie 1948 (Universal Declaration of Human Rights of 10 December 1948) ([http://www.anr.gov.ro/docs/legislatie/internationala/Declaratia\\_Universala\\_a\\_Drepturilor\\_Omului.pdf](http://www.anr.gov.ro/docs/legislatie/internationala/Declaratia_Universala_a_Drepturilor_Omului.pdf))

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