

# HUMAN RIGHTS – A CONCEPT WITH UNIVERSAL MEANINGS

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**Abstract:** *The concept of human rights has evolved in its essence as the physical force was gradually replaced by reason and as legal principles took shape in society, principles that would become fundamental: the principle of freedom, equality, solidarity, etc..*

*The fundamental human rights are a set of rights, freedoms and duties recognized worldwide covering essential issues for the development, welfare and progress of the human being.*

*Over time, the human rights institution has evolved and undergone important corrective measures from one historical system to another and within the same system, from one stage to another.*

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## 1. Human rights. Conceptual boundaries

Ever since its beginning, the human community was seen as a big family in which all members had equal rights, at least theoretically. Related to the rights of human beings, we cannot say that there is a certain moment of occurrence, but history shows that they date back since antiquity, together with the implementation of certain traditions and the appearance of the first inter-human conflicts.

According to some opinions, the history of human rights concepts originated in the seventeenth century BC, with the advent of the Code of Hammurabi in which it is specified that people cannot be tortured, enslaved and have their wealth confiscated without a fair judgment (Otovescu-Frăsie, 2009).

Thus, in the relationships of human beings with the society in which they live, ancient thinkers have shown that human rights emerged first, springing from the nature of things and later on the law that established them occurred as a necessity of “disciplining” human behavior.

The first signs of social inequality are to be found in Aristotle’s philosophy, in the so-called natural inequality, when people were divided into slaves and free people.

A first legal document meant to discipline human behavior and also to protect the individual from the abuses committed by his/her peers is the Law of the Twelve Tables; within it there were listed for the first time citizens’ rights such as: the right to property, the right to be free, the right to choose their own leaders and even the right to happiness.

Over time, the scientific approach to human rights was seen differently: on the one hand, starting from finding the natural sociability of the human person, as a prerequisite of their existence, and on the other hand, starting from the finding that power is inherent in any social form, even though the type of organization is different (Popa, Vâtcă, 2005).

Man, with his imprescriptible rights, represents the first value of society and his rights were stated, proclaimed, established and guaranteed by legal, institutional and material means so that the person is protected and defended from the harmful effects of war and other acts of barbarism, from the manifestations of ethnic, religious, philosophical and political intolerance (Popa, Vâtcă, 2005).

The idea that man has, by nature, a series of rights, just as a consequence of being born a human being, therefore comes from ancient times. For example, Plato said that “You all, who are present here, I consider you all as parents, relatives, citizens by nature, if not by law (physis/nomos). By nature, a fellow is the fellow’s parent, but the people’s

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tyrant law is in opposite contrast to nature”, seeming to distinguish between legally acquired rights and the ones acquired due to the fact that we were born human beings.

According to one author, human rights are the individual subjective rights, essential for the existence, dignity, freedom, equality, happiness and free development of the human being enshrined and guaranteed by the legal rules (Popescu, 2000).

In another author’s opinion, the concept of human rights designates, first, subjective human rights, of a particular type, which define his/her position in relationship with the public power, but he/she becomes a genuine legal institution, a set of legal rules aiming to promote and guarantee human rights and freedoms, his/her defense against abuses and threats of any kind (Scăunaș, 2003).

Human rights have also been defined as those prerogatives conferred by domestic law and acknowledged by international law to each individual in his/her relations with the community and the state, that give expression to fundamental social values aimed at meeting basic human needs and some legitimate aspirations in the economic and social, political, cultural and historical context of a certain society (Năstase, 1992).

From another point of view, human rights are an expression equivalent to the fundamental human rights acknowledged internationally, indicating a set of prerogatives based on human dignity and whose observance is understood to be promoted for the benefit of all people (Conforti, 1987).

We can say that “the development of the concept of human rights was the result of some juridical acts with a rich moral and political content, of grounding them in the form of documents drafted by lawyers of high reputation, of political organization principles, founded in theoretical works with universal value that have withstood time. The concept itself of human rights was therefore a synthesis of everything that humankind thought was best, raising the humanist principles on new heights, incorporating elements of religious thought and from the general aspirations of freedom which had been known with great force in the seventeenth and eighteenth centuries” (Conforti, 1987).

Therefore, the concept of human rights has evolved in its essence as the physical force was gradually replaced by reason and as principles of law took shape in society, principles that were to become fundamental: principles of freedom, equality, solidarity etc.

Capitalizing the constant elements in defining human rights, we consider they are those rights that man possesses by the mere fact of his birth; by being born a human being, man has certain needs in relation to which he acquires and can claim certain rights.

We notice that in the specialized literature the terms of law and freedom are frequently used. For example, the Romanian Constitution in Chapter II – Fundamental rights and freedoms uses the term of law when governing the right to life, to physical and mental integrity, the right to defense, to intimate and private life, and the concept of freedom to regulate individual freedom, freedom of conscience, freedom of expression, etc., these terms designating only one legal category, fundamental law. Therefore, law is a freedom, and freedom is conferred by a right.

Thus, fundamental human rights and freedoms are a leading concern of communities of all times. They must be understood as subjective rights of citizens, essential to their life, liberty and dignity, essential to the free development of the human personality, rights established and guaranteed by the constitutions of the states and by the national legislation (Muraru, Tanasescu, 2002).

Related to the concept of freedom, Mircea Djuvara said that “a person’s freedom extends to the other’s limits of freedom.” There are therefore two main angles from which we can approach the notion of freedom, a philosophical one, which mainly sees man in himself, which wants to understand the intimate relationships, thus, one that regards freedom wondering whether a man really has it, whether the feeling of freedom is not

altered by the internal struggles of each individual, whether he is not subjected to an inexorable determinism, whether another person does not need the other to be free, and a legal one, which implies from the beginning that man exists only as a social person, that his/her freedom can only be a relative freedom and which can only be seen in material terms, as the maximum of facilities and opportunities left to the individuals to choose (Dogaru, Danilet, 2001).

Montesquieu believed that “freedom is a person’s right to do what the laws allow, and if a person could do what they forbid, he/she would not have freedom because the others could do the same.”

Thus, for an optimal use it requires a deep understanding of these two concepts. For example, freedom of conscience, of thought, freedom of expression, religious freedom is unlimited and does not imply the obligation to think, the obligation of expression or, to choose one’s religion. Therefore, we believe that to speak about the right to think, the right to conscience, to religion is an improper and inappropriate expression.

Therefore, we consider that in the internal regulations and in the international legal documents it is correct to distinctly speaking about fundamental rights and freedoms.

## **2. The distinction between basic human rights and fundamental rights of the citizen**

Fundamental human rights are a set of rights, freedoms and duties recognized worldwide and the use of the concept of fundamental rights requires that these rights should include key aspects for the human development, for the life, progress and welfare of the individual. Thus, we must understand that not all human rights are fundamental, but only the ones indispensable to the human being, those without which human existence could not be conceived.

The fundamental rights and freedoms of a person and of citizens are an objective reality on which the whole human activity is based; and therefore required special attention from ancient times up to the modern world.

The concepts of fundamental human rights and citizens’ fundamental rights must be analyzed carefully because they cannot be confused. Thus, the concept of human rights has a much broader meaning than that of civil rights because human rights are universally valid rights, applicable to all human beings, while civil rights are, according to their own name, specific to a particular group of people, namely the citizens of a particular state (Purdă, 2001).

According to Tudor Drăganu the notion of citizens’ fundamental rights designates those rights of citizens, which by being essential for the physical existence, for their material and intellectual development, as well as to ensure their active participation in the management of the state, are guaranteed by the Constitution itself (Drăganu, 1998).

Therefore, the citizens’ rights and freedoms are those rights provided by the constitution of every democratic state and individually recognized by international documents acknowledged at this level as human rights, rights that cause effects in the relationship of a person with the community in which he/she lives and with the state which grants them to him/her. These rights represent the synthesis of some fundamental social values, such as: good, truth, beauty, freedom, etc. within any society, and they have gradually evolved.

We should not draw the conclusion that citizens’ rights are more limited than human rights, but that their exercise involves certain limits. Thus, for example, the Romanian state guarantees its citizens the right to vote and to be elected in public offices, but this right is not guaranteed in Romania for foreign citizens or for other states’ citizens or for stateless citizens.

### **3. Human rights legally established in national legal documents**

During the regime of communist dictatorship, human rights have suffered major amputations and limitations, being subordinated to the new concept of organizing the state, based on the dominance of a single party and the banning of the other parties, on the prohibition of any actions or political attitudes that would have contravened the communist ideology (Popa, Vâtcă, 2005).

The revolution of 1989 removed the communist dictatorship and led to the adoption of a new Constitution in 1991, a document that grounded the citizens' rights, freedoms and duties in a whole title and in which the Ombudsman is regulated for the first time in Romania, an institution later on founded by Law no. 35/1997 and which was to make an important contribution to the promotion and protection of the citizens' rights.

Later on, in 2003, this Constitution is also amended, resulting in a Constitution with ample provisions, based on European regulations. As human rights have evolved and have been legally established, the doctrine has divided them into three generations:

- civil and political rights;
- economic, social and cultural rights;
- third-generation human rights.

A very important provision found in Article 20 refers to the international treaties on human rights: "The constitutional provisions the citizens' rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania participates. If there is discrepancy between the covenants and treaties on the fundamental human rights to which Romania is part, and the internal laws, the international regulations shall take precedence" (Duculescu, 1994).

In terms of civil and political rights the following rights are set forth: the right to life and to physical and mental integrity (Article 22), individual freedom (Article 23), the right to defense (Article 24), freedom of movement (Article 25 ), the right to privacy (article 26), inviolability of home (Article 27), secrecy of correspondence (Article 28), freedom of conscience (Article 29), freedom of speech (Article 30), the right to information (Article 31), the right to vote (Article 34), the right to be elected (Article 35), freedom of assembly (article 36), freedom of association (Article 37), prohibition of forced labor (art39), the right to petition (47), the right of a person aggrieved by a public authority through an administrative act or by not solving within the legal terms of an application to the acknowledgement of the right claimed, cancellation of the act and damages (Article 48) (Duculescu, 1994).

Article 49 of the revised Constitution establishes a common rule for all categories of rights, namely the one regarding the restriction of some rights or freedoms. This can only be done by law, in special situations, such as defense of national security, public order, preventing a disaster, a catastrophe, etc. One must report provision according to which the "restriction must be proportionate to the situation that caused it, being unable to affect the very existence of the right or freedom in question" (Duculescu, 1994).

So this is how, based on the coordinates of history, the citizens' fundamental rights and freedoms were extended or limited, depending on the political interests of the moment.

### **4. Promotion and protection of the human rights by means of international documents**

We see therefore that the human rights institution has evolved over time, the conceptions on human rights undergoing major corrective measures, currently being a particularly complex institution. We can speak today of a process of developing human rights internationally, given the substantial aspects of its development, caused mainly by the adoption of many regional and international documents (Popa, Vâtcă, 2005).

The first significant documents which crystallize concepts on human rights are:

- Magna Carta Libertatum (the Great Charter of the Liberties) in 1215, a document signed by John Lackland, under the pressure of the nobility, and which seeks to defend human rights against abuses of royal power;

- Bill of Rights (1689), a document signed in England and which contained provisions similar to the Great Charter of the Liberties;

- the U.S. Declaration of Independence (1776) emphasizes the equal rights of all people, bestowed by God through the act of Creation: “We hold these truths to be obvious, that all men are created equal; that they were endowed by their Creator with certain unalienable rights, that among these there are life, liberty and the pursuit of happiness”;

- Declaration of the human and citizen’s rights (France, 1789): “People are born and remain free and equal in rights. Social distinctions may be based only on common equality”.

All these documents mainly acknowledged the existence of certain civil and political rights incumbent, first of all, on the human being, the individual, and then on the citizen.

As a consequence of the events that took place during the Second World War, the states were encouraged to create a strategy to apply worldwide the principles mentioned on human rights. A series of documents appeared that were actually acts preparing the setting up of the UN, but which already covered the human rights issues. The following ought to be mentioned: President Roosevelt’s Declaration of 1941 on freedom of opinion and speech, freedom of religion, right to social protection, the 1941 Atlantic Charter signed by Churchill and Roosevelt which mainly promoted the same freedoms to which the need for economic advancement and social security were added. They were used later on, in 1942, in the United Nations Declaration, in which they were considered international rights.

All these documents have resulted in the establishment of the United Nations. By the fact that all states joined this organization, human rights became an issue for the states’ international community. The contract concluded between the Member States, the so-called United Nations Charter was adopted in June 26, 1945 (Otovescu-Frăsie, 2009).

The establishment of the United Nations allowed the creation and development of a new era in the field of the cooperation between states on human rights; over 50 treaties, agreements, and a number of declarations and resolutions of international bodies and organizations which had a important role in promoting and respecting human rights were developed.

Thus the idea of international protection of human rights emerged, a moment that was marked by the adoption on 10 December 1948, in Paris, by the United Nations General Assembly, by resolution, of the Universal Declaration of Human Rights, the first international document of general and universal jurisdiction in human rights.

The stipulations of the Declaration were taken and legally established by treaties of universal jurisdiction, such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights adopted in 1966 and the two Optional Protocols to the International Covenant on the civil and political rights. The First Optional Protocol was signed in 1966 and entered into force in 1976 and it empowers the Committee of Human Rights to receive and consider requests from individuals. The Second Optional Protocol refers to the death penalty.

All these international legal documents – the Universal Declaration of Human Rights, the covenants and the two protocols – represented what today is known as the International Bill of Human Rights.

Based on these documents, the United Nations has grown significantly and its continuous concerns to develop mechanisms to safeguard and promote human rights have led to the adoption of various conventions, protocols and other documents of the General

Assembly and of the UN specialized agencies, in specific areas to the protection of human rights (Scăunaș, 2003).

### **5. Promotion and protection of human rights by means of European documents and bodies**

The entire set of factors that led the UNO to the special concern for the protection of human rights has had a similar effect on Europe (Robertson, Merrills, 1994).

As an example we will briefly review several European institutions and bodies that have a fundamental role in promoting and protecting human rights.

Thus, it has become a need to create an organized system that can apply throughout this set of principles. This is how the Council of Europe was created.

The Council of Europe is the main regional European international organization based in Strasbourg, established in May 5, 1949 when the representatives of ten European countries – Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, UK, Norway and Sweden – signed in London the Statute of the Council of Europe, which provided in its first article that “maintaining and achieving human rights is one of the means of accomplishing the Board’s objective, namely a greater unity between its members for protecting and achieving the ideals and principles that form their common spiritual heritage and facilitate the economic and social progress.”

We notice that this way the Council of Europe materializes the earlier concerns of achieving a united Europe. This idea encountered during the interwar period as a project of the United States of Europe emerged after the Second World War as institutionalizing by creating more European organizations, by economic integration, but also by political integration (Scăunaș, 2003).

One of the sources that represented the foundation of the protection system of the human rights and man’s fundamental freedoms created by the Council of Europe was the Convention for the Protection of Human Rights and fundamental freedoms. It was adopted in the Universal Declaration of Human Rights, long before the adoption of international pacts from the United Nations system of human rights protection, which entitles us to say that the pioneer in this field is represented by the European system (Scăunaș, 2003).

What is characteristic is the Convention is the fact that it does not enshrine economic, social and cultural rights, which are covered by other treaties adopted by the European Council as well as by the European Social Charter.

Furthermore, the States which were parties to the Convention are obliged to ensure that the rights and freedoms are set forth, without distinction based on race, gender, color, national or social origin, language, religion, political opinion, wealth or membership to a national minority (Scăunaș, 2003).

Therefore, the Convention for the Protection of Human Rights and Fundamental Freedoms was and still is one of the most important and effective international instruments for the protection and promotion of human rights.

In order to comply with the commitments made by the Member States, the Convention established an European Commission of Human Rights and an European Court of Human Rights.

Protocol no. 11, adopted in 1994 in Strasbourg, reforms the control mechanism originally set up by the Convention, by replacing the Commission and the Court with a unique permanent body – the European Court of Human Rights.

The European Court of Human Rights (the Strasbourg Court) is the first international court specialized in human rights that was established. Today, after a continuous development of its status, it is compulsory jurisdiction of the States Parties to the European Convention on Human Rights (which, currently, are all members of the Council of Europe)

and individuals have direct access to inform the court with a complaint against the State which is believed to be the author of a violation of human rights (Popescu, 2000).

The European Court of Human Rights acts as a mechanism with real power in ensuring protection of human rights and fundamental freedoms enshrined in the European Convention on Human Rights and its additional protocols.

Furthermore, the Charter of Fundamental Rights of the European Union, drawn up by a body set up by the European Council and adopted by the European Council at the Summit in Nice on 7 December 2000 underlines the importance of respecting and promoting the rights already enshrined in international and regional documents, but others such as banning human cloning, the rights of elder people, but others such as the prohibition of discrimination based on grounds of disability or sexual orientation, has the merit to be established.

In the summer of 1975, the representatives of 33 European countries, except Albania, but including the Republic of Vatican, met together with the United States and Canada at a conference. The result of this conference was to formulate a Declaration, adopted on 1 August 1975, and which was named the Final Act of the Conference on Security and Cooperation in Europe. It has become a legally binding instrument, as well as a framework for cooperation, which allowed a number of principles to be stated (Otovescu-Fräsie, 2009).

The turning of the Conference on Security and Cooperation in Europe into a European regional international organization, the Organization for Security and Cooperation in Europe, began, more precisely, during a meeting in Paris, in 1990, when the Charter of Paris was adopted for a New Europe, the latter being generated by the great changes in the international society, the collapse of communism and the establishment of democracy throughout Europe, by the need to respect the human being and the rule of law.

The scope of the O.S.C.E. is extremely large, the cooperation and security in Europe, include an important dimension of human rights. Nevertheless, human rights emphasize the positive dimension, the establishment of human rights and not the dimension of ensuring and actual protection of human rights, although this second dimension is totally absent (Popescu, 2000).

### **Conclusions**

Despite the progress made in the field of human rights internationally, there are currently countries in the world where certain fundamental rights such as the right to life and freedom of speech cannot be guaranteed because of the maintenance of certain insecurity factors nationally.

For example, if over time the right to life appears as a fundamental right and as a precondition for the existence of other rights, being established over time in all the documents governing human rights, it is not, event today, protected evenly worldwide. In the 21<sup>st</sup> century there are still countries in the world that have not abolished the death penalty, stipulating in the international and regional documents that the death penalty may be imposed only for the most serious crimes and only according to the law.

Neither the Universal Declaration of Human Rights, as international fundamental document in the field of human rights, nor the European Convention on Human Rights, as European document, establish for the word “life” a coherent and complete definition and provide details on the moment this right is acknowledged.

We consider that a more explicit analysis of the fundamental right to life is necessary, a clearer delineation of the moment when this right becomes a freedom, as well as an internationally uniform regulation on this right.

We have also showed that ownership – one of the first rights assigned to the human being – has been violated or limited over time, according to the political interests of the moment that existed in the respective society.

We appreciate that the prerogatives of the private property rights are not, even today, fully acknowledged; the proofs are the many causes in which the European Court of Human Rights is vested on this matter.

As it is well known, although we are in the twenty-first century, in many poor countries of Asia, Africa and other continents much of the population lives in the worst poverty, without any possibility of improving the situation; in these cases education is a concept completely unknown to them. And in the rich countries there are large discrepancies between the rich and the poor, the rich becoming richer, while the poor barely survive. People living in poverty have limited access to the information and power they need to influence policies on improving living standards, being thus deprived of their rights by being excluded from the decisions that concern them and affect their lives, these decisions are taken by other people without taking into account the needs and views of the poor.

We appreciate that increasing the living standards of citizens – beyond the fact that constitutional rules insert it as an obligation of each state – would contribute significantly to avoiding human rights violations. To do this, each state should integrate in its internal policy certain improvement mechanisms of the living standards, of creating jobs or increasing the efficiency of the existing ones, of investment in education, culture and research.

We therefore showed that although human rights issues are considered to be an institution concerning the international community of the states, it finds concrete solution in the internal laws of the states that are required to adopt national policies and measures to solve them. Today almost all of the world's provide by their constitutions the legal means to respect their citizens' rights, while guaranteeing the right of victims to address the court.

In front of certain borderless issues, such as globalization, organized crime, terrorism, climate change, etc., no state, no matter how developed it is, has the power to deal with them alone, requiring harmonization of efforts of all members of the international community, a universal consensus.

Even if currently, worldwide, a relative peace prevails, as a result of certain political interests, regional conflicts continue, however, to affect the planet and to threaten the fundamental principles underlying human rights. Hence the conclusion that human rights, which are above all a social problem, cannot be conceived separately from the political actions.

We appreciate that only through concerted efforts of all social and political factors at national and international level can we reach the highest degree of respect of human rights and fundamental freedoms, in accordance with the standards set out in the international documents. Human rights should not remain at the stage of simple goals, but, because of their social importance, they should become essential elements of the social, political and legal life in every state.

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2. European Convention on Human Rights;
3. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, adopted on 29 June 1990;
4. Charter of Paris for a New Europe, adopted on November 21, 1990