UNIVERSITETI I EVROPËS JUGLINDORE
УНИВЕРЗИТЕТ НА ЈУГОИСТОЧНА ЕВРОПА
SOUTH EAST EUROPEAN UNIVERSITY

FAKULTETI JURIDIK
ПРАВЕН ФАКУЛТЕТ
FACULTY OF LAW

POST GRADUATE STUDIES - SECOND CYCLE
INTERNATIONAL LAW

THESIS:

"International treaties on protection of Human Rights in Europe"

CANDIDATE:
Besar Deari

MENTOR:
Prof. Dr. Bekim Nuhija

Tetovo, 2020

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"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

United Nations, Universal Declaration of Human Rights.

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RESEARCH FIELD

The thesis I want to work on is the protection of human rights in Europe or more specifically the level of protection of the human rights on European ground. I choose this thesis because I believe that this thesis is very important and actual and the same should be in the research field of the future law students especially to those who study International Law.

In this thesis I'm going to elaborate level of the implementation of human rights within the European Union, as well as within the council of Europe and more specifically the Convention of Human Rights, its implementation, its relations and the need of cooperation between countries for its implementation.

The work of the European Court of Human Rights as international court established by the European Convention of Human Rights will be analyzed. The court hears applications alleging that a contracting state has breached one or more of the human rights provisions concerning civil and political rights out in the Convention and its protocols.

Aims of the research

1. Aim of research will be to analyze the readiness of European Countries to prevent and stop the violation of the human rights, taking necessary measures in the direction of having better life and better conditions of all the citizens in Europe.

2. To identify or even to solve situations where human rights are violated or are not completely respected based on European Conventions on Human Rights.

3. Other point of this thesis is to check the implementation of those rights that are guaranteed with the European Conventions on Human Rights by checking if those rights are implemented in practice, which is one of the most important things in this essay.

Hypotheses

To defend and to guarantee fundamental rights in the Europe for its citizens, also helping to increase the mechanisms that will help or push forward all European countries in respecting fundamental rights to all its citizens and to be equal to all of them.

Importance of the thesis

The protection of human rights and freedoms is a key pillar in the democratic world and especially in Europe as one of the most democratic continents. Countries that have high level of implementation of human rights standards in all forms can be taken as examples for the rest of the European countries (Denmark, Norway and Sweden). Protection of freedoms became interesting topic as a result of many factors from the past such as wars, strong regimes in which where people have been treated in worst possible ways, where at the most cases, elderly age people, kids and women's have affected since they at the same time fall under less power categor

CHAPTER I

1. The concept and the historical development of the international law of human rights

1.1. The idea of human rights (theoretical aspects)

The contemporary idea for human rights is formulated in the context of the postwar period of the Second World War. It is a front-notion of the human rights movement. It starts to get its "formal" shape with the Universal Declaration of Human Rights, passed by the United Nations in 1948 and with a series of conventions and agreements that come out of it.

The international law of human rights, by definition, represents: a set of norms contained in the contemporary international conventions and agreements, in which states undertake the obligation to accept, respect, protect and guarantee the specific rights of their own citizens in the framework of their territory.

The individual human rights which are an object of protection and guarantee with these international acts, however, are an older concept (from their international protection) which historically has come out of the Euro-Atlantic idea of individual human autonomy (freedom and equality), supported with the conception of the national (citizen) sovereignty and the social contract.

The different explanations and the defense of the idea of human rights spring from the moral rights and responsibilities among people who live in a society or between people and the political authorities and institutions in that society.

The concept of "rights" can be found in: ethics (theories of the moral), legal and political theory, the theories related to justice, theories of "good society", etc. But, the notion of "individual rights" as a political idea has its roots in the "natural law" and the theories for "natural rights". Their modern articulation is related to Hobbs, Lock, with the French declaration for the rights of men and the citizen and with the American Declaration of Independence (later included in the American constitution and their Bill of Rights).

The contemporary form of the concept for human rights is indebted a lot to these sources, but it also differs from them because it is not based on the explanations that have their roots in the "natural law" or the social contract, nor from any specific political theory. The excuses and defense of the concept of human rights is mainly based on the self-obvious nature of their need, which implies that they are a result of previously generally accepted moral principles and goals of the society (such as peace and justice) and of the individual values such as: the human dignity, autonomy, freedom, equality, etc. They are based on the "moral argument", which connects them with some human values, but they are then descriptively explained (in some places that is called analytical or positive jurisprudence), and not deduced (also known as normative or natural-legal jurisprudence and is related to a general political or philosophical concept). This is a dominant, pragmatic tendency in basing the importance of the concept of human rights, in an attempt to protect it from the weaknesses and the change of political conceptions, and from the meta-narrative explanations.

The basic idea of the existence of the human rights overall, which are different from other "rights" between the subjects of some legal traffic, in any kind of a society – departs from the previous assumption for the existence of the concept – human nature, common for all the people. This human nature is determined in the way that represents a basis for the following sequence of human rights which are then basis for the establishment of the civil society made up of equal individuals in front of the law. Namely, the human nature is a concept which can be understood and recognized; to be analyzed and broken down (it is not unrecognizable such as is the case with the "wisdom of God", etc).

As such, its main feature is REASON. It is the basic instrument through which the human understands the world around himself, to meet his needs, but also a basic instrument with which the human learns about himself and his human nature (self-reflexive feature) (due to this, such a feature is can be called 'natural law"). It also has to be common knowledge of the kind, knowledge that can be exchanged and upgraded with other people (because of this, it is a universal right of all people). Finally, this feature of the human nature is special to its kind and sets it apart from the other animal reality (the human is a master of himself and the world around him).

The second series of the features of human nature stems from the importance of the DIGNITY feature of the individual. That actually means that every individual (his individual nature) is

absolute – indestructible by anything and unthinkable by any other thing (this is a very meaningful trait which lays the foundation of the value hierarchy in the relations of the individual with any collectivity, society, state). The individual is not just different but also sepaated from the society with which the core of the human nature is reflected as individualistic. Society is some kind of super structure which can represent even a threat to the individual. Thus, here are the human rights to defend the individual and his autonomy. The autonomy of the individual is expressed through the ability to choose models of behavior in pursuit of their own needs, and sometimes with the risk that those are not real. Therefore, the "natural right" would actually represent (according to Hobbs): the human freedom to govern with himself with regard to the questions of self-preservation and the right to think and make decisions, from which stems the right to act in line with the decisions made due to the questions of self-preservation. The human, in such a capacity has unalienable dignity, because he is a goal for himself and a kind of "absolute value" (the human as *imago dei*).

The third group of characteristics of the human nature refers to the democratic principles of any social order that is compatible with the human nature. Namely, society is not a hierarchical order which is a result of power based on mythical or divine background, but rather a sum of relationships, defined by the free individuals, organized with the intention of achieving common goals (which otherwise they wouldn't be able to achieve).

Based on this assumption every individual is considered as equally important and responsible for the well-being of the society. Their will and sovereignty are with decisive importance. The freedom and rights of the individuals may be restricted only through the same rights of other individuals and through some strictly defined values of the social maintenance, security and well-being. The basis for the establishment of the CIVIL, citizen community is the recognition of all the other people by everyone as equal to them with regards to rights (according to the nature of the things). People leave the state of "everyone having rights over everything" and the same recognize each other as individuals that possess equal rights. This act of 'recognition' is the basis of the moral of each citizen community.

The whole concept of human rights and human nature that we are talking about and that we describe up to now – are values which are being developed in the last three-four centuries of the western civilization, supported by some philosophy and anthropological teachings, which have helped in their establishment and justification. Their epistemological characteristic is that they

are “self-established”. They are not established by some previous concept of God, or Nature, etc. They are self-established and self-given in the proclamation of the human nature, in the sum of its features. They don’t have basis beyond themselves. What does that mean? That means that there is nothing beyond the process of anthropocentrism and humanism within the human history and practice – that would guarantee and defend these values as truth. In the nature of the human rights is for them to be PROCLAIMED, published as such (values important to us). The human rights are self-established or created – *ex nihilo.* As such, they create their own legitimacy – with the act of announcement. There is no need for further argumentation. Thereof, there is a constant tension between the capacity of the proclaimed human rights and the concrete historical and social actors that implement those rights in the concrete states and legislations, between the self-established humanism and the historical acts of its realization.

From the above mentioned we can draw a synthetic definition of the human rights as: ***a set of principles and norms established on the basis of recognition of the human dignity as a universal, basic feature of human nature, which aim to ensure their respect in the relations among humans within the society and between humans and the political institutions in the state, as to achieve protection and development of the human dignity, freedom and equality.***
Those rights are “natural” not because they are given, exist everywhere and forever, but because they ensure the development of the human nature. Using the human rights, the person is self-realized having at the same time various opportunities to develop his nature or potentials encoded in his genetic nature. Also, it is very clear that “human rights” are cultural. Namely, they have a “solid nucelus” of universal norms and allow for cultural variations, relativisations, and interpretations, and what is truly universal is the human nature and its importance.
There are different variations of explaining the merits of human rights and the right to act in line with their realization. One of the newer influential interpretations is that of Alen Gewirth. With a desire to maintain the positivist impulses to establish a scientific view of human rights and at the same time in order to justify the moral argument needed for their initial existence, Gewirth defines what he calls "the principle of generic consistency". He aims to explain the origin of the human right to act in accordance with what he considers to be his "natural right". Gewirth defines the term "generic rights" and as such he considers freedom and self-preservation (which includes the pursuit of individual well-being) as basic generic conditions and grounds for action. They are the only reasonable "rights" of action (to meet them). But they are still not moral

principles. They become such when one recognizes the same moral principles to all other people as equals. He must do so because he is otherwise contradictory. Namely, if he does not recognize the equal rights of all other people, he cannot exercise those rights for himself. Otherwise the principle of force rules - the rights are established by the one who is stronger and everyone else suffers (until someone stronger than him emerges). The principle we have described for the moral establishment of generic rights (which is, in fact, the principle of universalization of rights), Gewirth refers to as "pain and self-contradiction".

This principle is based on the basic moral principle of human rights: equality of generic rights. This means that all people have equal moral rights to the satisfaction of their needs, and above all to freedom and prosperity, as indispensable conditions for all other actions.

Moral rights can be human rights if every person has them over all other people and over the state; accordingly, every person has a duty to act in accordance with those rights and all persons have the right to be treated in accordance with them in such an appropriate manner. In this way the author thinks he avoids the critical argument of skepticism and positivism: how to logically derive rights (as values) from facts (human needs).

1.2. The historical periodization of the development of human rights.

The main thesis related to the history of the idea of human rights is that the idea is presented and developed "in the West", ie in the Western logocentric line of philosophical, spiritual and civilization development; this "West" represents it as his own, protects it and "exports" it to the rest of the world; that Western, Greek-Roman, Jewish-Christian civilization creates and develops the individualistic and anthropocentric political philosophy on which human rights are based, and on the basis of which a rational optimism about "mastering of the nature" and "human liberation" is found.

But some traces of “human rights” can be found even earlier, such as, in the Babylonian code of the Hammurabi (2000 B.C.), in which the king “gives” right to the population. But, the key milestone is the Old-Greek political and philosophical thought and especially its foundation (Plato, Aristotle, the practice of ancient democracy and especially of the Greek Stoics) on division of laws of those, who are in compliance with known virtue – called nomos- laws, and

those that are expression of the legislative activity of the Assembly - Ecclesia (legislator), called tezis-laws. In that division the possibility of establishing the nature of man looms (as an understanding virtue, as a rational being and a political being, in a word - an idea of the nature of things), through social laws that represent actions in accordance with the same and through laws that represent a "naked" expression of authority. That dualism is a dynamic principle of change aimed at creating a "real society" immanent to human nature (expressed in human reason and dignity). At the same time that is a point of reference from which the "real" can be distinguished from deviation, from distortion and usurpation, or from improper political regulation. The ideal of the stoics "to live in harmony with nature" has an external and internal aspect, viewed from the standpoint of the individual. They believed that there was a natural order that did not end within the confines of the polis, and which was guided by the principle of reasoning. The individual has to discover and conform to that order in order to live a "moral life". According to the Stoics, the duties and freedom of the community of the polis is extended beyond the confines of the polis - into the "community of reasoning". So the community now is not determined by kinship or territory but by reasoning (and this is a new moment in them) which is universal. The individual belongs to the universal community of reasoning, which exists by the nature of things, and whose rules are healed by the principle of reasoning.

The content of the then-established "human nature" may differ from what we are talking about today, but the principle is the same and it is based on that time. ROMAN legal and political thought (especially the lines of the continuation of Stoicism, the ancient-Roman concept of ius gentium, ius naturae, ius civile and Cicero) complements this human nature with one important element: its legal form through the category "individual". Particularly amended is the right of private property, thus rounding up the individuality of man, and given the fact of the expansion of the Roman Empire, this concept de facto becomes universal (at least for what was then called civilization).

Christianity, which represents a "step backward" in a very large proportion of these areas, appears as a "step forward" in one area. Namely, it inserts the "conscience" into human nature and its freedom to "decide". It makes man as a "son of God", a special and person - equal before God, with freedom of conscience - for the decision to choose his social and spiritual behavior and ultimately to be saved (by the faith). It emphasizes the organic unity and individualization of the human situation and rights, at least in one sphere, that is, spiritual.

Humanism and the reformation reinforce this line with new contents of the term, "human nature", that is its freedom and rights but in a different way. Humanism does this by glorifying human individuality and creation, with an emphasis on art and science, creating the model of so-called renaissance hybrid. It is the basis of optimism in human freedom and creation, which is a point of resistance to the absolutist state and in favor of individual rights. In contrast, the reformation, with Luther, Calvin, and the Puritans, departs from opposing views, but ends, however, with the support of individual rights. Namely, according to them, man has "fallen" into inevitable sin. He can be saved only by God's grace. In the short and fleeting life, there is only one true power - the power of God and the salvation of God. If so, then man has the right to resist all established authorities because they are acts of sin. Man has a "contract" only with God (Calvin), he should behave in a way that can remove the sin and its products as much as possible. In doing so, he is guided by his conscience, his "contract" with God, and what he calls "morality of the call." The result of this trend is the liberation of individual morality from the metaphysical constraints of religious, or more specifically, church dogmas, especially in the everyday business segment.

Thus, man, as a "reasonable and political being", as a "legal person - INDIVIDUAL", as a person of "God's kind" - has innate, natural, sacred, inviolable rights (from none on earth). Those rights are pre-state and determine the state (and not that them). On this basis, the thinkers of the enlightenment follow up and build upon it (The Age of Reason): The Hobs, Locke, Hume, Rousseau, Montesquieu, Kant, Pufendorf, Grotius, Mill, Bentham, Jefferson and others. They create the "secularism" of authority, that is, they create a new political legitimacy for every righteous authority - so that it is extracted from social relations, and from those who uphold and respect human "natural rights".

The sequence of political and legal acts reflecting this change begins with: England and Magna Carta [the Grand Charter of 12 June 1215 (which resembles more to a list of privileges rather than a declaration of rights)]; then the Rights Patent, from 7 June 1628; May Day Agreement, from 1 May 1649; Habeas Corpus Act, of 1679; and the Bill of Rights of 13 February 1689 (in which Parliament in some areas takes precedence over the Crown, as well as some rights for citizens). Later, on the American Continent it is followed by: The Declaration of Independence of the American Colonies, 4 July 1776, followed by the American Bill of Rights of 15 December

1791, and in Europe, it is preceded by the important Revolutionary Declaration of Human and Civil Rights of the French Revolutionaries, 26 August 1789.

The French Declaration will have an impact on many of the constitutions of European countries in the 19th and 20th centuries. Universal human rights documents such as: The General Declaration ... of 1948 of UN, or the Pacts of 1966 - essentially are takeover of the content of the transitional texts and it's setting, on a new level and protection. An important "novelty" in recent acts is that they are based on a new political stance in regards to human rights, according to which they are an appropriate and necessary object of international regulation. Since then, we talk about "international human rights law".

According to traditional international law, regulation in the field of human rights it's up to the sovereignty of individual states as their "internal matter". After 1945 this changed in the direction of the internationalization of human rights and the creation of international human rights law (hereinafter referred to as IHRL).

The first attempts to internationalize some dimensions of human rights are recorded in Movement against slavery (in the 18th and 19th centuries): Anti-slavery Treaties (1815-1880), Berlin Conference (1885), Brussels Conference (1890) and Convention on the Abolition of Slavery (1926). The Treaty of Berlin (1878) establishes the principle that, at least, extreme forms of human rights abuses may be subject to international regulation; second, are the attempts of the so-called international humanitarian law, which specifically deals with the protection of human rights in armed conflicts (the Geneva Convention of 1964, The Hague Conventions of 1897 and 1907, etc.) and third are the forms of restricted humanitarian protests and interventions (treatment of Jews in the Russia, Armenians in Turkey, etc.) and fourth, is the experience of the League of Nations in the treatment of minority rights (1920). But the League will try to determine elements of the so-called mandatory systems or treatment of nations of dependent countries and territories, as well as the opportunity for fair and human working conditions for men and women ... But the most serious is the attempt with minorities. Between 1919 and 1924, 9 treaties, 5 declarations and 4 local conventions in the area of the position and rights of individual minorities were concluded - with an aim to establish control mechanisms, including the role of the Permanent Tribunal for International Justice.

Finally, after all these attempts and the traumatic experience of World War II, the establishment of the United Nations (1945) marked the new stage. The most important acts in this period are

the Universal Declaration of Human Rights (1948); Covenants on Civil, Political, Social, Economic and Cultural Rights (1966), Series of Conventions by Area (Genocide, 1948; Women's Rights, 1952; Elimination of Racial Discrimination, 1965; Refugee Status, 1967; Convention Against torture, 1984; Convention on the Child's Rights, 1989, etc. Also like series of regional instruments: the European Convention, 1950; the European Social Charter; the American Declaration, 1948; the American Convention, 1969; the African Charter, 1986, etc.

The development of international human rights law is the reason for the kind of flourishing of the so-called "soft law" in this area - or declarations and policy decisions of international organizations and bodies, which do not have a strictly legally binding action (in the classical way) but create morally binding and political forms of "pressure" to respect their commitments. They in their content sometimes go a step further, paving the way for new dimensions of the development of international law. In this regard, the role of the OSCE (Organization for European Security and Cooperation with the Helsinki Process) and the Council of Europe is particularly important. Finally, it should be emphasize another characteristic of the process of internationalization of human rights and the fight for them, namely the flourishing of international non-governmental organizations (NGOs). They are most active in creating this "soft law" and in monitoring human rights violations.

In the period which marks it as "contemporary", the theoretical standpoints for and about human rights intersect around two "schools" or theories: one of them is the so-called natural legal theory (and schools inspired by it); and the second is the positivist theory of rights (which develops into a series of subtypes, such as utilitarian, empirical, analytical, pragmatic, and similar streams)[1]. Some authors also define these two tendencies to explain human rights as a deductive, continental variant, which attempts through philosophy to provide the principle of "reason" and the moral values derived from it (such as human rights) - political recognition, through an appropriate political philosophy of rights (normative theories). and the other, Anglo-American version which is more pragmatic and that looks at the list of human freedoms and rights - a "testament" to their previous generational struggle and an expression of the common spirit of tradition (in them), something as "obvious" and undivided values of the tradition of freedom and

[1] Especially see at: The Ethics of Human Rights, Carlos Santiago Nino, Clarendon Press, Oxford, 1991; Scott Davidson, Human Rights, Open University Press, Philadelphia, 1997; Henry J. Steine, Philip Alton, International Human Rights…, Clarendon Press, Oxford, 1996; J.J. Shestack, The Jurisprudence of Human Rights, in the T. Merton (ed) Human Rights in International Law, Oxford, 1984 and as likes.

liberalism (utilitarianism and pragmatism or theories of descriptive conception of law). In more detail at the latter ones we can distinguish: (contrary to universal claims to natural-legal theories) - particular, national-legal theories based on the "spirit of the historical community of the nation"[2], Bentham's utilitarianism and utilitarian concepts (ain the broader framework of which the following can be accommodated - positivism and empiricism)[3], anti-utilitarian theories (Gerald Dworkin, Robert Nozick, H.L.A. Hart, and others): theories of so-called legal realism (Karl Llewellyn, Roscoe Pound and the like)[4].

The firsts, natural-legal or normative concepts, which in fact play the greatest role in developing the self-consciousness of the so-called Western view of human rights and liberalism, in general, departs from the view that:

- Human rights are defined in a "list" of rights (as such it can be identified in the Universal Declaration ...);
- Second, these rights can only be ascribed to the human because of his possession of "natural" dignity and reason (later this will be the reason for the transformation of the term "natural rights" into human rights);
- Third, those rights are "property", owned by the human-person, namely by his ability to make a reasonable choice and to assess that they are rationally self-evident (ie, "naturally" belongs to human).

[2] R.J. Vincent, in Human Rights and International Law, Cambridge University Press, 1986, pp.27, defines these theories as introduction to authoritarian logic of political system by that - they call for a „revolt of the Nation against Nature„ (Essence of the German Thought Revolution): "Not rights - but obligations, not reasoning - but authority, not individual - but a community of the nation ..." The attacks on the idea of natural human rights, on this line, have been "attacked" by Bourg (on an anti-individualist basis), Hegel (with universal rationality behind institutions), Bantam (and his utilitarianism against the metaphysics of natural rights) and finally Marx (the collectivism of the class).

[3] According to Bentham: to speak of natural rights is nonsense ... rights derive from specific situations in the state and from contracts concluded by the state and individuals, and not from natural law ... the practical consequences caused be the law always precedes it, and not from some general principles of law ... from real laws derive real rights ..., and from imaginary laws (laws of natural law) derive imaginary rights ..., natural rights are nonsense and rhetorical error ... they are often called rulers who are arbitrary, unfair, and repressive ... The morality of utilitarianism, for human rights, actually changes the source of their justification and does not contradict them substantially. Namely, he believes that their origin cannot be in metaphysical resources but by the expression of the majority interests in the community and the personal preferences of individuals (Also in: Scott Davidson, Human Rights, Open University Press, Philadelphia, 1997, pp.29).

[4] Anti-utilitarian theories criticize the result of the functioning of utilitarianism, which in human rights is down to the rule of the majority and to its choice of opportunity and utility. They again trying to bridge the gap between concrete social practice and the more general moral and ontological obligations of the law. They find it in the "image" of the pre-statehood of human rights as moral values and obligations for the state. They renew the role of the state as a "night watchman". H.L.A. Hart, for example, considers that freedom is a pre-eminent right and that all remaining rights are subordinate to it (J. Rawls. A Theory of Justice, Clarendon Press, Oxford, 1972).

According to this view, with these traits, human rights precede any social organization and are a measurement of the morality and fairness of any such organization. They disagree with the view that human rights should only be reduced to "rights" in the legal order and nothing more. They believe that human rights, in addition to being literally right, are also moral principles and moral guidelines where the law cannot help. They show not only what the right is, but what it should be (in terms of the development of human rights).

Positivist attitudes, starting from the thesis that with the emergence and legitimacy of a range of value and theoretical attitudes in any democratic society, it is not possible to defend that only one of them (even if this was the human rights) is the best or the only good. Because it is impossible to scientifically make good defenses of valuable courts (and even for human rights) and because such attempts should be abandoned accordingly. Because human rights have to be defended in a different way: as self-evident, intuitive or traditionally adopted as values, and so on. As human rights these 'rights' - should be reduced to their strictly positive legal form as provided by laws and nothing more. [5]

It is obvious that lawyers will be divided on "what the law should be" (the representatives of these theories argue) and therefore is it important only what the "law" is. Only for the latter one, a scientific dialogue and debate can be made. This view, therefore, considers that the justification of human rights (which is always a valuable court) is a rhetorical question. It is not a scientifically sustainable drawing a conclusion from a more general premise or from several such premises, but the only possible justification lies in the self-evident need for legal regulation of human rights since only with them some indivisible human needs can be met, to be realized some accepted principles and social goals (such as social peace, justice, human dignity, freedom, oneness, etc.).

Controversies and additions among authors that predominate towards one or the other from these views are still being pursued today in the context of the contemporary debate on the topic.

[5] J. Rolland Pennock and J. W. Chapman, New York University Press, 1981, pp.11-13 - provides four possible sources for justifying human rights: intuition, social contract, common law or conventions, and utilitarian reasons for achieving happiness.

1.3. THE CONTENNMPORARY CONCEPT OF INTERNATIONAL LAW ON HUMAN RIGHTS

As already mentioned, there is (and there was even more) deep tension between tradition - human rights to be treated exclusively as a matter of the internal sovereignty of states, on one hand, and the international "concern" over the state of individual rights embodied in the international efforts to improve the living conditions of individuals, wherever they live, on the other hand. A tension which encompasses international politics and international law.

Speaking strictly, international human rights law emerged in 1945 with the establishment of the United Nations, and in particular, with their political and legal action in this field, started with the 1945 Universal Declaration of Human Rights. Also speaking, strictly legal, international human rights should be distinguished from human rights under the jurisdiction of the national laws of the states, although these are related terms. The content of the term "international human rights" in international law and politics is understood in one of the following ways::

- As "desirable goods", which are not rights but which should be transformed into "rights" in the national laws of the states;
- As of "moral rights", from an accepted moral order (most commonly "natural law"), and the rights have the form of "demands" for freedom and basic necessities addressed to the moral order of the "universe", "God" or the like;
- As a moral, natural right, addressed by every individual to his or her society;
- Or finally, as positive rights addressed to its society and the state on the basis of their constitutional system.

International Human Rights Law (IHRL), as well as the idea of human rights in general, builds itself on the belief of the desirability, necessity, and value of human rights, but seeks to avoid all philosophical uncertainty about the explanation on the origin and "morality" of human rights, in the famous positivist manner. For the IHRL, human rights are a positive right, contractual or customary.

To reiterate: from the point of view of the IHRL, human rights are rights that, in accordance with accepted moral principles, are enjoyed by individuals in the constitutional-legal systems of their

states. As national guarantees for respect for human rights are often insufficient or insufficiently effective, international human rights law is designed to 'force' states to respect guaranteed rights and to protect them effectively by creating so-called general international standards - through which national systems of guarantee and protection of human rights could be verified and evaluated. Through which also with the so-called monitoring - it could be more effective to put pressure on states to implement their accepted commitments and to control that process. It follows that the law, policies, and institutions of the IHRL - do not replace national law and institutions in this field - but create additional mechanisms for the protection and enforcement of the rights of national legislation. The IHRL is implemented through national institutions in each country and it would be "satisfied" if national institutions were available and effective for that purpose.

In the event of a dispute or a conflict between these two "instances" of human rights protection, the IHRL is satisfied (at least in the first instance) by resolving disputes within the frameworks of national laws of states in the light of national standards of protection. In this sense, international rights complement national rights. Conflicts can arise from two aspects: from principled differences in the concept of rights or different treatment of particular rights of the systems. The reinforcement of international standards regarding the sovereignty of the states has gained weight in the process of establishing human rights as universal and international.

From all that was said above, we define international human rights law as: ***a law that emerges from modern international treaties and customs in which states undertake to recognize, respect and guarantee rights for their citizens***.

With the emergence of a list of new standards in the field of international human rights, the older undertaken obligations such as "not depriving justice" of their citizens and others, contained in, for example, anti-slavery legislation, International Labor Organization conventions, etc. - the new set of international rights is not replaced but remains in force.

Apart from "negative" guarantees for civil-political rights and part of economic-social and cultural rights (embodied in protection against violation of rights) international law also contains special obligations for positive action of states, with the words: "taking steps" .. ., "to the maximum available resources" ... "to achieve a full realization of the rights envisaged"... There are also known restrictions on the rights of the classical kind: "indispensable in any democratic

society in the interests of national security and public order or the protection of the rights and freedoms of others ..."

The question we want to discuss in detail in this section is whether international human rights are "positive rights" in the true sense of the word. Namely, do they have all the dimensions and contents of a "positive law" institute, as it is in the case of national legal systems? Namely, what is their source and base of authority? Are they just moral rights or "positive rights"? Whose rights are they? Do they have correlative duties related to them and with whom? What remedies are available to the holder of the right? And are they adequate and sufficient to support and guarantee the realization of the right?

According to the generally accepted legal view: to have a "right", as a positive right, means to have a law-based authority over anyone else, a state or a legal or individuals (for his act or omission); that is, they have correspondent obligations to the holder of the right; and to have legal remedies available to insure the right, in the effective possession of the holder of the right. From this aspect, regarding the question of whether IHRL is a positive law, there are three theories:

a) The first theory claims that today, human rights as a positive law cannot yet be discussed. This is because all the treaties that talk about human right are expressed in inter-state terms (rights and obligations between sides; there are only horizontal interstate "remedies"; the damaged state can initiate diplomatic action, to seek reparation or to use "self-help", in this aspect, all rights, and obligations that have been pledged and to keep promises; individuals can only be treated as "casual beneficiaries" of these state obligations; individuals have no international legal remedies in their possession (they are also occasional beneficiaries of the results of remedies between states), even if there is a case of individual legal remedy (Civil and Political Rights Pact, Additional Protocol, Articles 1 and Protocols 9 and 11 to European Convention on Human Rights) – it is not a legal remedy in personal possession for the guarantee of personal rights, but merely an additional guarantee - a mechanism for insuring states' obligations under the treaty; if any of the rights provided for in the contract is infringed, it is interpreted not as an infringement of an individual's right, but as a breach of the contractual provisions of the contracting party.

b) From this perspective, there are no positive international human rights laws and consequently, no international human rights law (as a positive right) exists. When speaking of

such a right, it is meant to support and encourage the conversion of the moral values (referred to in international treaties) into the positive law of the contracting states (within their national orders).

c) The third theory, which is independent of the previous two, but which can be combined with the latter one, claims that the states, as contracting parties to the treaties, have been obliged to give legal status to particular values - to human rights; that the status is supported by agreed positive rights and duties, independently whether they will be exercised solely by states or by states and individuals; acting together, states have agreed to recognize the legal status of human rights as a list of rights that each individual has or should have in their state system. In the international experience so far, the second and third theories dominate, which stimulate the action of expanding and regulating the international legal area of human rights.

1.4. LEGAL REMEDIES FOR THE INTERNATIONAL HUMAN RIGHTS

As we have seen, the treatment of the subject of the IHRL is twofold: it is sometimes only the Contracting State, and sometimes the holder is directly the individual, although, in the case of exclusive state obligations, the individual is the beneficiary of the rights. Some authors put this under the well-known legal term: "ius tertii" or a third party as a user. International law recognizes the benefit for a third-party when the contracting parties accept such an effect from the treaty, but the human rights case is different. Namely, the relation of the individual towards the obligations assumed by the state by contract is not worn out by the "ius tertii" institute, but the individual is the true enjoyer of individual rights, guaranteed by the international act. For this to be so in entirety, the individual must also have a legal remedy for effective protection of the right - a legal remedy.

The legal remedy, according to the theory, is to enable the social function of "having the right" - namely to guarantee the realization of that social relationship in practice. The legal remedy should enable the holder the right to enjoy it effectively. In internal legal systems, they are consist of institutes: appeals, lawsuits, extraordinary legal remedies and so on. But in

international law, such things do not exist or are available but only as exceptions. Whether there are other remedies available, it should be determined whether those new remedies meet the purpose for which the legal remedy exists. Namely in international law, the institute of the lawsuit - petition, from the holder of the right to the international court - is possible only in the two cases we cited. In other cases, violations of contractual obligations guaranteeing rights are reduced to: effectiveness of legal reactions by contracting parties; additional measures to deliver the promised commitments, such as the political decisions of international organizations which is comprised by the contracting states - on and around the realization of the agreements (such decisions may be warnings, reports, and controls, restrictions on boycotts and isolation of the state); criticism from influential NGOs about respecting the human rights in given countries (which can be very effective in combination with the previous measure, especially if they are successfully effective in the international public and in the media); to the United Nations Security Council's most vigorous response (under Article 7 of the Charter) in cases of harsh human rights violations and situations of humanitarian disasters.

Otherwise, for the cases of violation of international human rights, there are several ways of responding in a legal way::

- The first are the cases of intervention by a contracting state because only in very rare cases is there a possibility of a lawsuit of the kind "actio popularis", or any state against the infringer state, it comes down to a dispute between the signatory states and in favor of their citizens. Certainly, states may supplement the provisions of the general treaty with bilateral agreements, which also provide for other control mechanisms. Thereby most often there is a situation as such: because human rights of the citizens of one state are not a direct concern of the other state, the latter does not always easily raise protection mechanisms and brings the political relations to strain (unless its about its minorities, citizens of the other state). But that does not mean that the state does not have legal opportunity to do so, based on contracts they predict specific protection and monitoring systems that are more easily activated.

1.5. INTERNATIONAL HUMAN RIGHTS AND STATE BORDERS

Human rights, even those that are internationally guaranteed, refer to and regulate relationships with the individual and his or her society. These are rights that derive from the moral obligations between people in the society and between them and state institutions. Hence human rights “in the other state” are not a concern for the "first state". The obligation of the state (each) under international law is to: respect and refrain from violating the human rights of any individual, wherever he may be. But since a state, due to the principle of sovereignty, does not have jurisdiction over the territory of another state, it cannot be held responsible for respecting human rights in the other country. But it should have the respect of the other state, though it has no jurisdiction or obligation to take care of their realization and guarantees in practice. It has such jurisdiction and obligations only to its citizens. There are a few exceptions to this principle; the first is the situation of providing economic assistance and assistance for the realization of some economic and social rights (especially food, education, medical care), in case of critical situations in the other country. It is not regarded as a forceful intervention, and is done by giving that assistance to local authorities; the second situation is regarding situations of humanitarian disasters or natural disasters; the third situation is for stateless persons, and the fourth is for person’s so-called refugees.

Interestingly, for the latter two categories of persons, stateless persons, and refugees, the legal obligation for help in meeting basic needs derives and is based on the "community of states" or the international community as a whole, rather than one or group of countries (usually neighbors). Their rights and obligations of the states are also regulated by special conventions for the right of such persons.

Although the international community expresses international concern for human rights and their protection, still it remains a community of states at this stage. The instruments for international protection of human rights and institutions are still underdeveloped and ineffective. But the direction of development is clearly outlined.

1.6. THE PRINCIPLE OF "NON INTERVENTION" AND HUMAN RIGHTS

When it comes to the internationalization of human rights, as we have been arguing so far, one possible legal collusion arises: namely whether the internationalization of human rights and in particular some of the legal and political means for their control and protection, do not violate fundamental political principle of the international community - inviolability of the territorial integrity and sovereignty of states?[6]

According to the UN Charter and the relevant conventions that follow, the issues of non-intervention (the prohibition of interference in the internal affairs) refer only to matters that are within the internal competence of the states. Since human rights are internationalized, through all of the acts listed, that is, they are not matters within the exclusive competence of states and their internal organs; the question of "non-intervention" does not apply to them. It is, of course, not treated as an "intervention" if a country, a signatory to an international document, uses the legal possibilities provided in the treaty or in common law to indicate a violation of the treaty provisions from the other state (the signatory state). It may raise the specific legal remedies provided in some human rights conventions if it considers that the provisions are being violated by another state.

The principle of "non-intervention" is also irrelevant, ie it cannot be applied as a "defense" when used against common forms of expression of international "concern" about the human rights situation in a state, as a legal form the intervention must be by use of force or to assume a threat by force. According to this support, caring for victims of human rights violation - cannot be treated as "interference with the country's internal affairs".[7]

[6] "Member States shall refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs that fall within the internal jurisdiction of the member state, irrespective of their mutual relations." UN Charter, also in Helsinki (Accord) (1 (a) VI)

[7] The Helsinki Charter, on the other hand, explicitly states that: "the requests for respecting of human rights and requests for accountability and report on respecting them ... does not mean interference with the internal affairs of the countries". See in: Louis Henkin, *The Age of Rights,* Columbia University Press. N.Y. 1990

CHAPTER II

2. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Recent efforts by the Council of Europe to guarantee human rights have placed increasing emphasis on preventing injuries. Article 3 of the ECHR (according to which: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment") is the main idea behind the adoption of the Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[8]

This Convention provides for"non-judicial" preventive machinery, which is an important complement to the system of protection enshrined in the ECHR. Namely, the Convention is the legal basis for the establishment of the "European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment"[9] who is the main carrier of this specific "protection system", based on visits to places where persons are deprived of their liberty or detained [10] as a result of any appropriate action by a public authority.[11] Namely, this Committee, through its special delegations, visits prisons, police stations and psychiatric hospitals of the State Parties [12] in order to determine the treatment of persons deprived of their liberty.[13] The Committee is not authorized to consider individual applications related to alleged violations of this Convention as they are the responsibility of the ECHR-stimulated judicial machinery.

[8] The Convention was adopted on 26 November 1987 and entered into force on 1 February 1989. The Republic of Macedonia ratified this Convention on 06.06.1997, and entered into force in the Republic of Macedonia on 01.10.1997.

[9] Members of the Committee are independent and impartial experts in the fields of law, medicine, prison affairs and politics, and the like. They act in their personal capacity and are elected by the Committee of Ministers, with a four-year term and the possibility of re-election. The number of its membership corresponds to the total membership of the Council of Europe.

[10] For the purposes of this Convention, the term "deprivation of liberty" should be understood within the meaning of Article 5 of the ECHR.

[11] Upon ratification of this Convention, its signatories are obliged to permit such visits.

[12] Airports in relation to asylum seekers are also special places to visit.

[13] Such visits the committee shall make periodically to all member States of the Council of Europe, but may also arrange additional ad hoc visits if necessary.

In accordance with the Convention, during their visits, delegations of this Committee have "unlimited access" to any places where persons deprived of their liberty or detainees are located, where Delegations have complete freedom of movement. At the same time, they conduct interviews with detainees and detainees without the presence of witnesses and have "free access" to any person who can provide relevant information.[14]

For the visit, the delegations compile a separate report, which may contain "recommendations" to strengthen protection for those subject to torture and inhuman or degrading treatment or punishment, and constitute the basis for "dialogue" with the particular state. The report shall be submitted to the State concerned, which may be required (within six months of the submission of the report) to provide an interim response to the report, and (within 12 months) a full response to the report. In this regard, the two main principles underlying the work of this Committee should be emphasized in particular:

- "cooperation with national authorities" (Article 3 of the Convention), since the primary purpose of the Committee is to "protect" prisoners and detainees, not to "condemn" States for abuses in that context[15] and
- "Confidentiality" of its activities[16]

The Committee should assist the State which fails to perfect the factual situation in the light of the recommendations set out in its reports, and if the State refuses to cooperate in the above context, the Committee may decide to make a "public statement" in that regard. These reports of the Committee shall be published in accordance with the States to which they refer, and in accordance with current practice, States may require the reports to be supplemented together with their comments given in that context.[17] In addition, the Committee draws up its annual report, which it submits to the Committee of Ministers of the Council of Europe, containing

[14] The Committee shall inform the State which they wish to visit , but it does not have to specify the period between such notification and the actual visit. Governments' objections to the time and place of the visit can only be justified for reasons of national defense, public security, serious disorder, and the like, and in such cases they must take steps immediately, in order to enable the Committee to carry out its visit as soon as possible.

[15] The principle of cooperation applies to all phases of the Committee's activities, which is particularly the case during the visits themselves. According to Article 8 of the Convention, States are obliged to supply the Committee with all available information necessary for the proper performance of its task. In this regard, the Committee is obliged to comply with all relevant domestic laws and regulations and professional ethics, in particular those concerning the protection of personal data and the rules on medical confidentiality.

[16] This refers to information on the Committee's visits and reports, as well as its consultations with the State concerned, including the State's responses.

[17] So far 73 such reports have been published. This Committee visited the Republic of Macedonia in 1998.

information on its activities in accordance with its mandate. The "action" of the publication of the reports should be seen in the context of the overall functioning of the Organization itself.

2.1. POLITICAL ACTION OF THE COUNCIL OF EUROPE IN THE AREA OF HUMAN RIGHTS

Along with its normative-legal infrastructure and action illustrated mainly through the ECHR system, the Council of Europe has also succeeded in promoting and developing specific political procedures in the field of human rights protection, as a kind of "human rights diplomacy". In this regard, apart from the large series of standing intergovernmental committees in the fields of law, human rights, the media, gender equality, etc. (including here also the Parliamentary Assembly[18] and the European Commission for Democracy through Law, the so-called Venice Commission),[19] the European Commission against Racism and Intolerance and the European Commissioner for Human Rights have a special place and role in the "Council of Europe diplomacy in the field of human rights".

2.2. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE

This committee (also known as ECRI) was established in 1993,[20] with the task of combating racism, xenophobia, anti-Semitism and intolerance at European level from the perspective of

[18] Overall, the role of the Parliamentary Assembly in the area of promotion and protection of human rights is seen in the context of its multi-dimensional activities undertaken within its four-year sessions and more specifically through its missions to establish factual situations within the "system of examination of candidates for membership in the organization" and " the process of monitoring the implementation of statutory and other obligations by Member States" in that area.

[19] The Venice Commission (or the so-called "European Commission for Democracy through Law") is a "partial agreement" of the Council of Europe, established on 10 March 1990. It is composed of independent eminent experts in the field of constitutional or international law, or other relevant areas; its work is based on the three fundamental foundations of the European constitutional heritage: democracy, human rights and the rule of law. The Venice Commission is known for its expertise in the field of constitutional law, legislation on constitutional courts and national minorities, and other legislation that has implications for national democratic institutions.

[20] The commission was established at the First Summit of Heads of State and Government of member States of the Council of the Europe (Vienna, October 9, 1993). The decision on its establishment is contained in the Vienna

protecting human rights. Its action encompasses all necessary measures to combat violence, discrimination and prejudice faced by individuals or groups of individuals, in particular on the basis of race, color, language, religion, nationality and national or ethnic origin. The members of this Commission are appointed by the member States of the Organization on the basis of their high moral values, professional qualifications and experience in the field of the fight against racism in their personal capacity and act as independent members.

One of the most important aspects of its Action Program is the 'state-by-state' approach, in which the Commission examines in detail the relevant situation in each member state of the Council of Europe. Such an examination results in the preparation of a separate report, containing a situation analysis, which at the same time contains suggestions and recommendations on how to address potentially identified problems related to racism and intolerance in each country separately. This report first (in the form of a proposal) is forwarded to the particular state, which is the basis for its "confidential dialogue" process with the national authorities of the state. The content of the report is reviewed in the light of such dialogue. The ECRI submits the final report to the specific State through the Organization's Committee of Ministers, and two months after this transmission, the report is made public, but only if it is not explicitly opposed by the Government.[21] The publication of ECRI's national reports is an important step in developing an ongoing active dialogue between ECRI and the Member State authorities in order to identify solutions to the problems of racism and intolerance that countries are facing. Of course, the “input” of NGOs and other institutions or individuals active in this field is always welcome in this process to ensure that ECRI's work is as constructive and useful as possible.[22] In this context, the Agreement on

Declaration and its action was strengthened with the Second Summit of the Organization (Strasbourg, October 10-11, 1997)

[21] This approach applies to all Member States of the Organization on the same basis and in accordance with a plan developed in advance. The second round of such reports began in early 1999, which is actually a process of "controlling the proposals contained in the first reports" updating the information contained therein as well as "a detailed analysis of the issues with a particular concern in the particular States". In addition, in order to obtain a more detailed and comprehensive picture of the situation in the particular country in relation to racism and intolerance, ECRI Rapporteurs visit the specific country in particular prior to the preparation of the second reports.

[22] In this respect, the other two aspects of ECRI's Action Program, namely "work on general topics" and "activities related to civil society" are particularly important. Anti-Semitism and intolerance, and specific activities and results in this context include "making thematically relevant policy recommendations", "collecting and disseminating examples of good practice in that area" , "The preparation of the proposal for the adoption of the Additional Protocol no. 12 to ECHR” and similar. Activities related to civil society are aimed at spreading ECRI's anti-racist message among the general public and popularizing its work in relevant spheres at international, national and local levels. Additionally, activities in this area are designed to disseminate information and promote awareness-raising on issues related to racism and intolerance.

the close cooperation between the European Center for the Control of Racism and Intolerance (of the EU) and ECRI, signed on 10 February 1999, should be particularly emphasized.

2.3. THE COMMISSIONER OF THE EUROPEAN COUNCIL FOR HUMAN RIGHTS

The idea of establishing this function within the Council of Europe dates back to the Second Summit of the Organization, and it was formally adopted by the adoption of Resolution (99) 50 during the 104th session of the Committee of Ministers of the Council of Europe (Budapest, 7 May 1999). This Resolution sets out the basic goals of the Commissioner for Human Rights, which are basically reduced to:

- Promoting human rights education and awareness in Council of Europe member states
- Facilitating the activities of national ombudsmen or similar institutions in the field of human rights
- Identifying possible shortcomings in the law and practice of Member States in respect of their respect for human rights, and
- Assist in promoting the effective respect for and full realization of human rights (embodied in the various instruments of the Council of Europe) in the Member States.

The Commissioner is not a judicial institution and consequently he does not deal with individual complaints in that context.[23]

Therefore, it cannot accept "a request for the submission of individual complaints before a national or international court, nor before the national administrations of the member States of the Council of Europe". But in this regard, it can draw conclusions and take appropriate initiatives of a general nature based on individual complaints. Namely, in accordance with his mandate, he can act on any relevant information in relation to the general aspects of the

[23] As an independent institution, the Commissioner for Human Rights has been elected by the Parliamentary Assembly from a list of three candidates drawn up by the Committee of Ministers. Candidates for this post must be nationals of a member state of the Organization, with recognized expertise in the field of human rights. The term of office of the Commissioner shall be six years without the possibility of re-election.

protection of human rights.[24] In this context, he: *provides advice and information on the protection of human rights and the prevention of human rights violations; actively cooperates with all national structures (established in Member States) on human rights, and encourages their relevant activity, while encouraging the establishment of such structures where they do not exist; cooperates with international institutions to promote and protect human rights, while avoiding any unnecessary duplication of relevant activities, and the like.* In carrying out these tasks, the Commissioner may directly contact the Governments of the member States of the Council of Europe, which must facilitate the independent and efficient performance of his functions. In this context, the Commissioner may also provide recommendations, thoughts or reports with regard to any question within its jurisdiction.[25]

For its work, the Commissioner shall submit an annual report to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, taking into account their views expressed in connection with its activities. At the same time, in the manner he deems appropriate, the Commissioner responds to requests submitted to him by the Committee of Ministers and the Parliamentary Assembly in their task of ensuring compliance (of member states) with Council of Europe standards in the field of human rights.

[24] Such information and requests may be obtained by the Commissioner from governments, national parliaments, national ombudsmen, or similar institutions, as well as from individuals or organizations.
[25] In this regard, the Commissioner may in particular refer a report on a specific issue to the Committee of Ministers or to the Parliamentary Assembly.

CHAPTER III

3. European Union

3.1. History of the EU Charter of Fundamental Rights

The European Union also has an important place and role within the parallel and complementary construction of the European legal order in the field of human rights (especially in the period following its Maastricht Treaty).[26] The protection of human rights is one of the fundamental principles of the union and a necessary precondition for its legitimacy.[27] In this regard, the EU Treaty of Amsterdam [28] establishes progress and a balance at the judicial and political level (drawing on the experience gained from the responses to the daily demands of European citizens and the need for more concrete action at international level to promote and protect human rights). Namely, this Agreement sets out a series of provisions concerning several aspects of the protection of human rights in the Union legal order: the horizontal clause concerning gender equality, the non-discrimination clause, the fight against racism, the protection of personal data, cultural diversity, the regime of religions and faith, social rights with an explicit reference to the Council of Europe's social charter, the jurisdiction of the Luxembourg Court of Justice of the EU.[29]

[26] This Agreement entered into force on July 1, 1993.

[27] The first paragraph of Article 6 (ex f) of the EU Treaty states that "The Union is founded on the principle of freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law, which are common to member states." , and the second paragraph of that article states that "The Union shall respect the fundamental rights guaranteed by the European Convention (of the Council of Europe) on Human Rights and Fundamental Freedoms of 1950, as well as those arising from common constitutional traditions of member states and the general principles of community law. "

[28] The Agreement entered into force on 1 May 1999.

[29] Like any other legal system, the first system of the community needs a court guarantee in the event of a dispute or compulsory enforcement of its law. In this sense, as a community judicial institution, the Court of Justice was established in 1952 with its headquarters in Luxembourg. Its judgments are a function of ensuring convergence in the interpretation and application of community law in each of its member states. Otherwise, the law of the community is independent and uniform in each of its member states, which is "separate" and "superior" to national law, with many of its provisions being directly applicable in all its member states. In order to fully fulfill this role, the Court of Justice hopes to resolve disputes involving the member states and community institutions, as well as its natural legal persons.

While looking back, the European Union has always expressed its commitment to respect for and promotion of human rights and fundamental freedoms, and with its Amsterdam Treaty several new and specific procedures for ensuring their protection are established formally and legally at Union level, and this regard the following three points are important, which clearly reflect the growing importance of the protection of human rights within the Union:[30]

- First of all, the European Union establishes a democratic identity and thereby a certain competence in the subject of human rights. It is based on the principles of freedom, justice, respect for human rights and the rule of law. The European Convention (of the Council of Europe) on Human Rights (ECHR) becomes the normative reference in its system. In this context, the Court of Justice of the EU can intervene in matters brought before it by natural or legal persons (Article 6 of the EU Treaty);
- Secondly, for the first time in the history of the European Union, a system of sanctions has been set up in respect of each of its member states, which could violate the relevant principles concerning fundamental human rights which may include the suspension of certain rights (which derive from the application of the Amsterdam Treaty), including voting rights within the EU Council of Europe[31] for a government official who commits a "serious and long time violation of fundamental democratic principles" (Article 7 of the EU Treaty and Article 309 of the EC Treaty), and
- Third, any candidacy for accession to the European Union is conditional on respect for the principles of respect for human rights stipulated in Article 6 of the Treaty (Article 49 of

[30] For more on the EU's new challenges, see the European Commission's "Communication" in more detail [doc.COM (2000)154 final od 09.02.2000,"Objectifs Stratégiques 2000-2005-Donner forme à la Novelle Europe"]

[31] Apart from the Court of Justice, the main institutional structure of the EU consists of:

-The European Parliament, which (directly elected by universal suffrage) represents the peoples of the community. It participates in the adoption of laws and the budget process, and has limited but more controlling powers in this regard;

- The European Council, which (consisting of 15 members, one minister from each government) makes decisions and adopts community legislation. Its membership depends on the type of issue under consideration (it may consist of 15 ministers of foreign affairs, agriculture, transport, finance, etc.);

- The European Commission, which (composed of 20 independent members) proposes community law, controls compliance with legislation and treaties, and manages general policies;

- the Court of Auditors, which controls the application of the Community budget;

- the Economic and Social Committee, which (as a consultative body) involves representatives of trade unions and social / professional groups in the process of drafting Community legislation, and

- the Committee of the Regions, which (as an auxiliary body of the Council and the Commission) represents regional and local bodies in the Community institutional system, and has advisory functions in that context

the EU Treaty). In this sense, the issue of human and minority rights becomes a political requirement and a legal precondition.[32]

The novelties introduced by the Amsterdam Treaty in respect of human rights are, first and foremost, a direct result of its success in the field of internal affairs at Union level, consisting of the successful resettlement of several key areas in that area within normal legislative structures of the Union and in the formal legal incorporation of the "Schengen model of cooperation and integration"[33] in EU law. In this context, equipped with their new Amsterdam Instruments, the EU governments and the European Commission have developed specific plans to implement the amended EU rules on internal affairs in terms of maintaining and developing the area of freedom, security and justice on the one hand, and the extension of the protection of fundamental rights, on the other hand, which are inseparable from each other and are in fact two sides of a coin. Namely, the intervention in the areas of police and judicial cooperation or asylum and immigration policy obviously presupposes the necessity of a parallel strengthening of the protection of fundamental human rights. In other words, the protection of fundamental rights is at the very heart of the area of freedom, security and justice. In the context of the abovementioned background, the Cologne and Tampere European Council[34] decided to initiate the drafting of the

[32] Namely, with the adoption of the European Council criteria by Luxembourg (1993), the "Stability Pact for South Eastern Europe", the "regional approach of the Union to the Balkans" and the "2000 agenda for a strong and enlarged Europe", the issue regarding human rights becomes a "Sine qua non" condition for any development of economic and political relations with the Union. Namely, such conditionality has practically become the "main axis" of the development of any relationship with the Union, as well as the adoption of Union sanctions against a third country. In this sense, the process of EU enlargement (started in March 1998) is an adequate proof of the fact that the issue of democratic institutions, human rights and the rule of law in the EU candidate countries remains a fundamental precondition for their accession to the Union, which must be fulfilled satisfactorily.

[33] Freedom of movement for persons was not exercised solely in the context of the European Community because in 1985 Germany, France and the Benelux countries signed the Schengen Agreement on an intergovernmental basis (later amended by a separate Convention of 1990) in order to establish genuine freedom of movement for all citizens of the European Community within the Schengen area and for resolving visa, immigration and asylum issues, which have become particularly relevant in the context of the "internal security of the European Union" after leaving the mutual external borders of its member states. The Amsterdam Treaty has succeeded in "reconciling" the Schengen inter-state framework with the European Union, integrating the relevant Schengen acts within the European Union itself. Thus, the free movement of persons today is a reality within the EU with the exception of the United Kingdom and Ireland.

[34] The necessity of drawing up the Charter in order to make the fundamental importance and relevance of fundamental human rights more visible to the citizens of the Union was formally legally established by the European Council of 3-4 June 1999 in Cologne, and the composition and mandate of the ad hoc working body for the preparation of the Charter was formally legally established during a special meeting of the European Council of 15-16 October 1999 in Tampere (Finland), devoted exclusively to issues related to the creation of the area of freedom, security and justice in the EU.

(EU) Charter of Fundamental Rights, which was formally adopted at the EU Summit in Nice in December 2000.

3.2. The current EU law in the field of human rights

The protection of human rights has also been the subject of interest in the acquis communautaire so far, although the EU is primarily an economic integration tool. Namely, the area of human rights in the EU before the Charter was partially covered by some of the EU treaties and in particular the case law (of the Court of Justice of the EU), which were based on the same sources of inspiration, i.e. the ECHR (since 1950, with all its protocols) and the common constitutional traditions of the member states of the union.

EU treaties (successively revised) have created a series of human rights for Union citizens, which will later find their place in the EU Charter of Fundamental Rights. This body of freedoms and rights covers, among other things:

- The freedoms associated with the creation of the internal market;
- Prohibitions of discrimination based in particular on nationality or sex, race, ethnic origin, religion or faith, disability, age or sexual orientation, and
- European citizenship, the concrete form of which is given, for example, by the right to vote and the right to stand for election in local and European elections.

The Luxembourg Court of Justice (EU) has developed a jurisprudence that is sufficiently precise to establish a "minimum standard" below which the future level of human rights protection within the Union cannot be found. Namely, in resolving various disputes, this court has created a list of human rights, covering, for example, the right to a fair trial, the right to an effective judicial review, the principle of prohibition of retrospective application of the incriminating provisions, the right to privacy, the right to freedom of association, the right to property, the right to professional secrecy, or the right to freedom of expression,[35] which emphasized the need for them to be incorporated into a new and integral document, such as today, the EU Charter of Fundamental Rights.

[35] But the jurisprudence of the court has some other features which are not of less importance in the above context. Namely, one of them concerns the establishment of institutions which must respect the fundamental human rights, which are the institutions of the Union itself, as well as the organs of its Member States, which operate in the field of Community law.

Of course, the above list of rights is too long to list and it can continue to be developed in accordance with Article 22 of the EU Treaty, which gives the European Council (on a proposal from the European Commission) the opportunity to introduce new rights for citizens of the Union. In addition, social rights, described as "fundamental" by the Amsterdam Treaty, are strengthened by reference to the European Social Charter (signed in Turin on 18 October 1961) and by incorporating the provisions of the social protocol into the Treaty of the European community, which is now being applied to all 15 member states. In the light of the above-mentioned, the adoption of the EU Charter of Fundamental Rights should be construed as a means of perfecting the Union's first order of fundamental human rights.

3.3. EU Charter of Fundamental Rights

Adoption of the Charter is a particularly significant event for the EU as it marks a definite change in the community, cutting off the substantive economic basis of its origins in order to establish it as a full political union. The Charter is made up of a preamble and seven chapters. It is a balanced text that contains the following ambitious innovations:

- All personal rights (civil, political, economic and social rights, and the rights of citizens of the European Union) are linked by a single instrument. The Charter is therefore the strongest expression of the indivisibility of rights. It ends with the current distinction made (in European and international documents) between civil and political rights on the one hand, and economic and social rights on the other, enumerating all rights around several key principles: human dignity, fundamental freedoms, equality, solidarity, citizenship (ie citizen's rights) and justice.
- In terms of the principle of universalism, the stipulated rights are generally granted to all persons, regardless of their nationality or residence. But this position is different in terms of rights that are most directly related to Union citizenship, and which are granted only to Union citizens (such as the right to participate in European Parliament elections or in local elections at EU level), as well as in terms of doing something related to a particular

status (for example, rights of the child, some social rights of workers within the Union or the like);

- The document itself is a contemporary response to human rights problems created to respond to the challenges of current and future development of information technologies and genetic engineering. In this respect, for example, new rights and freedoms include (inter alia) "the right to physical and mental integrity of the individual" (Article 3), "the prohibition of trafficking in human beings" (Article 5, paragraph 3) and the like, which, in turn, are not formally covered by the ECHR.[36]
- It also represents a response to the legitimate demand for transparency and impartiality in the functioning of community administration, incorporating the right of access to administrative documents of the Community institutions and the right to efficient administration, which summarize the main meaning of the decisions of the EU court in Luxembourg;
- Particularly noteworthy is the neutral semantics used in the text; namely, the text is addressed to everyone and without any gender discrimination;
- In a formal sense, the document is made clear and concise and easy to understand, which is in fact a condition for enjoying all the benefits deriving from the rights in the areas where Union law is applied.

This "new" or "added" value to the Charter has been assessed as "real" by the European Commission, which is a condition for the future success of the Charter itself, regardless of the final outcome of the question on its final legal nature.

3.3.1. The legal nature and action of the Charter

The question of the legal nature of the Charter has been at the center of the debate since the European Council in Cologne itself decided to draft the Charter. This decision is explained by all the current protection of basic human rights in the EU, which has been found to suffer from several "weaknesses":

[36] Out of this context, the Charter also contains other "new rights and freedoms", such as "the right to asylum" (Article 18), "the right to physical and mental integrity of the person" (Article 3), "the right to effective administration". "(Article 41)," Personal Data Protection "(Article 8), and the like, which are not formally contained in the ECHR.

- - First, it is indirect, in the sense that it is manifested through the "general principles of Community law" (expressed by the case law of the Luxembourg Court and Article 6 of the EU Treaty);
- Second, it is largely in the hands of the courts. Namely, the common constitutional traditions of EU member states and international instruments, including the ECHR with its essential role in the Court's case law, however, do not constitute "sources of inspiration" for the Court's case law, as they provide it only with "signposts" which it "can" take into account in its task of protecting fundamental human rights. Thus, from the perspective of legal certainty, it is quite obvious that this incorporation of the fundamental rights of the legal order of the community through the use of precedents alone is unsatisfactory. Namely, the court has a certain discretion in establishing the rights that are protected, even when it directly refers to specific members of the ECHR;
- - Third, it is not directly visible to the users themselves. Namely, the mere fact that the EU treaty refers to other international texts, and in particular to the ECHR and its successive protocols, it "prevents" more than it "helps" the public understanding of the protection of human rights in the Union. This difficulty is great when the citizens of the Union must also refer to the "constitutional traditions common to the Member States of the Union" when determining the content of such protection within the Union. The insufficient understanding of protection (as it is worded now) is also a product of the EU treaties themselves, which, while enumerating a series of human rights issues, are nevertheless dispersed between their various sections or chapters, and
- Fourth, it is not subject to review by courts outside the community itself. Namely, while acknowledging the "compulsory level" of controlling the Luxembourg Court of Justice's respect for basic human rights, there is still a "real gap" in law, ie Union citizens cannot appeal to The Strasbourg Court of Human Rights against Union institutions and actions, and this is of particular importance today as the number of cases initiated by Union citizens before the Strasbourg Court has increased, in accordance with the provisions of the ECHR.

In the light of the above mentioned, the decision of the European Council on the preparation of the Charter should be construed as "a statement of intention to drastically improve the Union's system of protection of fundamental human rights".

The European Commission gave its opinion on the legal nature of the charter in its document entitled "Communication" (dated 13 September 2000), which states: "the final status of the charter should leave open the two options that were actually provided by the Heads of State and Government of the EU", ie "the Charter to be a legally binding instrument incorporated in the Treaties" and "the Charter to be a solemn political declaration". Namely, the Commission stated that the charter should meet the following two main objectives: "validity" for citizens, and "security" in terms of the law which the charter must offer where Union law is applied.[37]

The charter is another affirmation of the rights resulting from the ECHR and the Council of Europe's social charter, as well as the jurisprudence of the European Court of Human Rights in Strasbourg. In this regard, according to Article 51: “the Charter is addressed to the institutions and bodies of the Union (with due respect for the principle of subsidiarity), and to its Member States when they themselves exercise Union law. The Charter does not stipulate any new powers or tasks for the Community or the Union, and it does not modify the powers and tasks defined in the EU Treaties in that respect." Accordingly, the question of the legal force of the charter remains unresolved, leaving the European Council to make the final decision in that regard.[38]

With regard to the "scope" of the rights guaranteed by the charter, the charter itself states that the recognized rights based on Community treaties or on the treaty of the European Union shall be exercised under the conditions and within the limits defined by those treaties, and on the meaning and scope of those rights, which correspond to the rights guaranteed by the ECHR. The Charter explicitly states that they will be exactly the same as those laid down in the ECHR, but this does not prevent the Union from securing the right which provides greater protection (Article 52 of the Charter).[39] At the same time, the Charter cannot be construed as "restrictive" to

[37] In this context, the European Parliament, in its two resolutions of 16 March 2000 (Resolution A5-0064 / 2000 of the European Parliament on the Charter of Fundamental Rights of the EU) and 2 October 2000 (Resolution B5-767 / 2000 of the European Parliament on the Charter of Fundamental Rights of the EU) firmly supported the idea of a mandatory charter incorporated into the EU Treaty. This is how the Economic and Social Committee and the Committee of the Regions acted in their opinions during their September 2000 sessions.

[38] According to the "Declaration on the future of the Union" (adopted at the Nice Summit): "following the preparation of the report to be submitted to the European Council in Gothenburg in June 2001, the European Council will adopt a declaration containing appropriate initiatives to continue the process indicated by the declaration, which in turn includes the status of the EU Charter of Fundamental Rights in accordance with the conclusions of the European Council in Cologne. "

[39] In this context, the Parliamentary Assembly of the Council of Europe (in document 8819 of 11 September 2000) also presented many of its critical remarks on the content of the text of the draft charter, such as:

- The fact that all the guarantees provided for by the ECHR do not appear in the Charter, especially Article 1 of the ECHR, which does not have its proper "counterpart" in the text of the Charter;

existing EU rights, nor to those already recognized by international law and international treaties (including the ECHR), whereby the union, community, or all member states, appear as agreement parties, and the same applies to the rights established by the constitutions of the member states of the Union (Article 53 of the Charter).

- The fact that in the context of "rights of defense" the Charter does not expressly state the set of guarantees that (on the other hand) are listed in Article 6 of the ECHR;
- The fact that some charter rights, such as "the right of access to vocational and constituted training" (Article 15), the "right to pursue a freely chosen profession" (Article 15, paragraph 1) and the like, may arise as 'problematic in practice', and analogously such problems could also arise in relation to social security and social assistance rights (Articles 33 and 34);
- The fact that the text of the charter hardly finds an appropriate "compromise" between the rights it guarantees to all individuals (on the one hand) and those it uniquely guarantees to the citizens of the union (on the other);
- The fact that there is no legitimate motive for excluding acts performed on behalf of the EU in the basic external control mechanism created by the ECHR.

Chapter IV

4. Protection of Human Rights within Organization for Security and Cooperation in Europe

The Conference on Security and Co-operation in Europe (CSCE), renamed in 1994 the Organisation for Security and Co-operation in Europe (OSCE), is not strictly speaking a European organisation. Although its members now include all European countries, some other states, such as the United States, Canada and Tajikistan, are also members. Although the Organisation's main focus is regional security it provides a comprehensive system in the field of human rights protection, differing considerably from that of other international bodies. For one, the OSCE standards do not generally impose enforceable international legal obligations, nor do they contain a list of rights to be protected. The instruments are of a more political nature, and have provided states and international bodies with valuable guidance in formulating standards as to what is 'politically acceptable' to states.

The CSCE came into being in the wake of the Cold War, when tensions between East and West had eased to such an extent that both blocs agreed to sit at one table to discuss the future. The preparatory talks that marked the start of the actual negotiating process for the CSCE took place between November 1972 and June 1973 in Helsinki. The Conference on Security and Co-operation in Europe was officially opened on 3 July 1973 in Helsinki. The subjects for discussion in Helsinki were divided into headings, which have become known as the three 'Baskets' of Helsinki: a) Matters of European security (First Basket); b) Co-operation in the field of economics, science, technology and environment (Second Basket); and c) Co-operation on

humanitarian matters, including information, education and culture (Third Basket).The CSCE was formally created by the Helsinki Final Act (HFA) in August 1975, which was signed by 35 states, 33 European, plus the United States and Canada. In March 2009, the OSCE has 56 participating states from Europe, Asia and North America. East-West relations were still strained, however, in 1975, so it was not until 1989 —the year in which a wave of liberalisation swept across Eastern Europe —that a breakthrough within the CSCE framework in the field of human rights proved possible, resulting in the adoption of the Charter of Paris for a New Europe (1990), an event that marked the end of the Cold War. The links between the Baskets form one of the most important elements of the HFA and, to maintain the CSCE/OSCE as an integral process, it is essential to strive for balanced progress in all three. The HFA is not a treaty and its provisions are not legally binding on the signatories. They conceived it as a nonbinding instrument proclaiming political commitments. According to the Preamble 'determination to respect and put into practice [...] the following principles, which are all of primary significance, guiding their mutual relations', setting out political commitments. The great achievement of the CSCE in the field of human rights and related issues was embodied mainly in Principle VII ('respect for the human rights and fundamental freedoms, including freedoms of thought, conscience, religion or belief'); Principle VIII ('equal rights and self-determination of peoples'); and in the First and Third 'Baskets'. The Vienna Concluding Document (1989) consolidated the subject of human rights previously dealt with in Baskets I and III, and it subsumed both topics under the heading 'Human Dimension of CSCE' (see below).

4.1 Observation on implementation of Human Rights

The human rights journey from standard-setting to effective implementation depends, in large measure, on the availability of appropriate tools for policy formulation and evaluation. Indicators, both quantitative and qualitative, are one such essential tool. While the importance of indicators for the realization of human rights is widely recognized, and even enshrined in human rights treaties, as in article 31 of the Convention on the Rights of Persons with Disabilities, their use has not yet become systematic. The present Guide will help in filling this gap. In recent years, the critical need for such tools has become increasingly evident. On the eve of the Arab Spring, there were still reports about the remarkable economic and social progress and general improvements in governance and the rule of law that some countries in the region were achieving. At the same time, United Nations human rights mechanisms and voices from civil society were painting a different picture, and reporting on exclusion, the marginalization of communities, discrimination, absence of participation, censorship, political repression or lack of an independent judiciary and denial of basic economic and social rights. Popular uprisings and demonstrations in other parts of the world, including in relatively well-off countries, remind us of the necessity to place the human being at the centre of our development policy and to adjust our analytical lens accordingly. [40]

They compel us to review existing analytical, methodological and legal frameworks to ensure that they integrate real attention to freedom from fear and want, and to discrimination; assess the extent of public participation in development and in the fair distribution of its benefits; strengthen accountability and embrace methods empowering people, especially the most vulnerable and the most marginalized. Policy management, human rights and statistical systems

[40] Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation (United Nations publication, Sales No. E.06.XIV.10), p. 1.

are closely interrelated and thus need to be in tune with each other for promoting the well-being of people. Devising a policy or statistical indicator is not a norm or value-neutral exercise. Yet, integrating human rights in these processes is not only a normative imperative, it also makes good practical sense. Failing to do so can have real consequences. I believe that this Guide will represent an important reference and resource from this perspective. There is a long way to go in improving our capacities for human rights implementation. There are numerous challenges in the collection and dissemination of information on human rights. What to monitor, how to collect information and interpret it from a human rights perspective, and the inherent danger of misusing data, are but some of the concerns addressed in this publication. [41]

The Guide also reminds us of the limitations that are intrinsic to any indicator. In particular, it cannot and should not be seen as a substitute for more in-depth, qualitative and judicial assessments which will continue to be the cornerstones of human rights monitoring. Instead, the indicators and methods described in this Guide are primarily meant to inform more comprehensive assessments and are neither designed nor suitable for ranking the human rights performance of States. The primary objective here is to highlight the human rights norms and principles, spell out the essential attributes of the rights enshrined in international instruments and translate this narrative into contextually relevant indicators and benchmarks for implementing and measuring human rights at country level.[42] Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.2 Human rights are inherent in all human

[41] Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation (United Nations publication, Sales No. E.06.XIV.10), p. 1.

[42] In the human rights literature, these are referred to in the Maastricht Guidelines, which define the scope of State obligations in relation to economic, social and cultural rights, but are equally relevant to civil and political rights. See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht, Netherlands, 22–26 January 1997).

beings and are founded on respect for the dignity and worth of each person. They stem from cherished human values that are common to all cultures and civilizations. Human rights have been enshrined in the Universal Declaration of Human Rights and codified in a series of international human rights treaties ratified by States and other instruments adopted after the Second World War. There are also regional human rights instruments, and most States have adopted constitutions and other laws that formally protect basic human rights and freedoms. While international treaties and customary law, together with interpretive practice by treaty organs, form the backbone of international human rights law, other non-binding instruments such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development.[43] The obligations to respect, protect and fulfil also contain elements of the obligation of conduct and the obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. For the right to health, for example, it could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a substantive standard, such as an actual reduction in maternal mortality, which can be measured by a statistical indicator like the maternal mortality ratio.[44] Another type of obligation that also calls for the development of indicators is the obligation to monitor and report on the progress made towards the realization of the human rights set out in the core international human rights treaties, an immediate obligation particularly emphasized in relation to economic, social and cultural rights and in the context of the rights of persons with disabilities.

[43]In the human rights literature, these are referred to in the Maastricht Guidelines, which define the scope of State obligations in relation to economic, social and cultural rights, but are equally relevant to civil and political rights. See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht, Netherlands, 22–26 January 1997).

[44] General comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights and the Maastricht Guidelines

4.2 Third generation of the Human Rights

There are three overarching types of human rights norms: civil-political, socio-economic, and collective-developmental (Vasek, 1977). The first two, which represent potential claims of individual persons against the state, are firmly accepted norms identified in international treaties and conventions. The final type, which represents potential claims of peoples and groups against the state, is the most debated and lacks both legal and political recognition. Each of these types includes two further subtypes. Scholar Sumner B. Twiss delineates a typology:

Civil-political human rights include two subtypes: norms pertaining to physical and civil security (for example, no torture, slavery, inhumane treatment, arbitrary arrest; equality before the law) and norms pertaining to civil-political liberties or empowerments (for example, freedom of thought, conscience, and religion; freedom of assembly and voluntary association; political participation in one's society).

Socio-economic human rights similarly include two subtypes: norms pertaining to the provision of goods meeting social needs (for example, nutrition, shelter, health care, education) and norms pertaining to the provision of goods meeting economic needs (for example, work and fair wages, an adequate living standard, a social security net).Finally, collective-developmental human rights also include two subtypes: the self-determination of peoples (for example, to their political status and their economic, social, and cultural development) and certain special rights of ethnic and religious minorities (for example, to the enjoyment of their own cultures, languages, and religions). (1998: 272)

This division of human rights into three generations was introduced in 1979 by Czech jurist KarelVasak. The three categories align with the three tenets of the French Revolution: liberty,

equality, and fraternity.

First-generation, "civil-political" rights deal with liberty and participation in political life. They are strongly individualistic and negatively constructed to protect the individual from the state. These rights draw from those articulates in the United States Bill of Rights and the Declaration of the Rights of Man and Citizen in the 18th century. Civil-political rights have been legitimated and given status in international law by Articles 3 to 21 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights.

Second-generation, "socio-economic" human rights guarantee equal conditions and treatment. They are not rights directly possessed by individuals but constitute positive duties upon the government to respect and fulfill them. Socio-economic rights began to be recognized by government after World War II and, like first-generation rights, are embodied in Articles 22 to 27 of the Universal Declaration. They are also enumerated in the International Covenant on Economic, Social, and Cultural Rights.

Third-generation, "collective-developmental" rights of peoples and groups held against their respective states aligns with the final tenet of "fraternity." They constitute a broad class of rights that have gained acknowledgment in international agreements and treaties but are more contested than the preceding types (Twiss, 2004). They have been expressed largely in documents advancing inspirational "soft law," such as the 1992 Rio Declaration on Environment and Development, and the 1994 Draft Declaration of Indigenous Peoples' Rights. Though traditional political theory presents liberty and fraternity as inherently antagonistic (and therefore would assert the incompatibility of "collective-developmental" rights with the preceding generations), progressive scholars argue that the three generations are in fact deeply interdependent. For

example, Twiss argues that no single generation can be emphasized to the exclusion of others without jeopardizing personas and communities over time, including jeopardizing the very interests represented in the type or generation of rights being privileged. (1998: 276). He offers examples of self-defeating imbalances that would result from the excessive prioritization of any one generation over another:… to emphasize civil-political rights to the exclusion of socioeconomic and collective-developmental rights runs the risk of creating socially disadvantaged groups within a society to the degree of triggering disruption, which, in turn, invites the counter response of repression. To emphasize socioeconomic rights to the exclusion of civil-political rights runs the risk of ironically creating a situation where, without the feedback of political participation, the advancement of socioeconomic welfare comes to be hampered or inequitable. To emphasize collective-developmental rights to the exclusion of other types runs the risk of not only fomenting a backlash against civil-political repression but also of under-cutting the equitable distribution of the socioeconomic goods needed for the continuing solidarity of the society. (1998: 276)

Twiss rejects alleged incompatibilities between the three generations of rights. He asserts that, at worst, there may by tension between such rights in specific societies and at periods of socio-historic transition, but this does not mean tensions cannot be solved in a way that respects all three generations of rights. Human rights are so thoroughly interconnected that it is difficult to conceive of them as operating properly except in an interdependent and mutually supportive manner (1998: 276).Although the three generations framework is a valuable conceptual tool for thinking about rights, it is worth questioning some of its assumptions. Does the notion of a progression of rights and the metaphor of age it is based on make sense? Do second generation rights create the background conditions necessary for the exercise of first generation rights, as

certain sections of the International Bill of Rights suggest, or are it the other way around? Should second and third generation rights be viewed as simultaneous? Does one generation take precedence over another, or are all equally important? Should second and third generation rights even be considered rights, or are they something fundamentally different? The three generations framework contains within it room for many of the key debates about the nature of rights. It also encourages us to take a critical approach in challenging our own assumptions about rights as we begin to think about some of the real-world problems involved in the application of human rights in the sections ahead.

4.3 Legal-political dilemmas in the field of the European system of protection of human rights

In the context of the above mentioned, an interesting question also arises: Should the European Union as a whole accede to the ECHR, and not just its member states which are individually contracting parties to the ECHR as members of the Council of Europe? The Charter does not regulate this issue, and EU accession to the ECHR has long been advocated by the European Commission as a separate step aimed at addressing the shortcomings of relevant human rights protection within the Union / Community itself.[45,46] In this sense was also the European Parliament's Resolution (dated 16 March 2000) in which it spoke in favor of the EU's accession to the ECHR. In this regard, the Council of Europe, ie its Parliamentary Assembly and the Committee of Ministers, have continuously and carefully followed the entire process of elaborating and drafting the EU Charter of Fundamental Rights, pointing primarily to the risk of two sets of fundamental rights in Europe and the divergent case-law of the Strasbourg and

[45] In this respect, the Court's opinion (No. 2/94 issued on 28 March 1996) holds that "the EU accession to the ECHR could only occur if the EU treaty itself had been amended" since no provision of the Treaty authorizes the Community institutions to adopt human rights rules or to conclude international agreements in that field; therefore, "accession" could only be a reality by amending the Treaty.

[46] In this respect it should be emphasized that the drafting and adoption of the Charter (on the one hand) and the EU accession to the ECHR (on the other) represent two parallel but different activities, neither of which excludes or represents the other activity.

Luxembourg courts, appealing (in that sense) to the EU taking care to preserve the coherence of the protection of human rights in Europe. The Council of Europe, and in particular its Parliamentary Assembly, has always been of the opinion that "accession of the European Union to the ECHR would be the best means of guaranteeing a full and universal protection of human rights in Europe". Namely, according to the official position of the Council of Europe:[47] "EU accession to the ECHR would ensure coherence in the protection of fundamental rights in Europe without, however, depriving the Charter of its 'usefulness'. The charter would actually appear as "complementary" rather than "competing" with the ECHR. It would prove that the Charter would not attack the universality of human rights nor the uniformity of the norms applied in Europe. On the other hand, the European Court in Strasbourg would be able to control the interpretation of the Charter's provisions "borrowed" from the ECHR and to guarantee excellent harmony between the two instruments, which would, in turn, serve legal clarity and certainty, towards which European citizens themselves aspire. Lastly, accession itself would allow Union / Community institutions to appear as parties to the proceedings initiated before the Strasbourg European Court of Human Rights regarding the effect of Union / Community norms on the legal order of its Member States.

The complexity of this issue is reflected by the fact that the European Union itself (on the one hand) affirms its firm intention for better protection of European citizens, but (on the other hand) it has so far refused to put under control its own institutions, opening up to the door to divergent interpretations of human rights by the two separate jurisdictions. In this respect, reference is still made to the Luxembourg Court of Justice's previously stated opinion of 1996 in the direction of "not ratifying the ECHR by the EU", but of course, the European Council is not hampered by anything in this regard as to resolve this factual situation by making a decision to change the Treaty of EU, which would allow such ratification.

A similar question has arisen regarding the relation between the Charter and the Social Charter of the Council of Europe, which (together with the ECHR) is explicitly referred to in the text of

[47] In the process of elaborating and drafting the Charter, the Council of Europe participated in the capacity of an "observer" with two representatives, one of whom was from the Strasbourg Court for Human Rights. The Luxembourg Justice Court of the EU has also participated as an observer.

the Charter itself. Of course, if such a future mutual continuity is ensured,[48] then these two charters will follow the same path, and in that sense, the complementary nature of the methods used to control social human rights could become a major asset for Europe, giving (thereby) a special boost to its social image, highly valued worldwide.

Conclusions and Recommendations

The European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union.

This thesis studies the role of the European Union (EU) in the global governance of human rights, more particularly at the United Nations Human Rights Council (HRC). The main idea is to link the theoretical discussion concerning the EU's role as a normative power to a particular policy domain and institutional context. Role conceptions are beneficial in explaining why actors act in a particular manner. In this thesis, the normative power role of the EU is used as a theoretical starting point for understanding the EU's ambitions and actions, but also the challenges it faces in its norm promotion. The normative power role emphasizes the importance of values and principles in the EU's external action, and serves as an important source of legitimacy. With this these we can conclude that Human Rights are a big number of rights the people wins those right in the moment of their birth, those right are written in the Convention of Human Rights (approved by European Commission)

We can conclude also the level of respecting the human rights:

[48] Namely, despite the selection of social rights in the Nice Charter (which is open to criticism from the point of view of fundamental human rights), it gives greater visibility to the Council of Europe's social charter, from which it is inspired.

1. We have states that are in their highest performance about human rights.

2. We have states that are a little bit late on respecting the same.

Foreign policy actors frequently refer to values, images of the world and principles that are used to characterize the EU and provide the basis for its role in the world. We already know that human rights are inalienable rights possessed by every human being, but how can we access these rights? Where can we find evidence that these rights have been formally recognized by states? And how are these rights implemented? t goes without saying that human rights protections and understandings are ultimately most reliant on developments and mechanisms at the national level. The laws, policies, procedures and mechanisms in place at the national level are key for the enjoyment of human rights in each country. It is therefore crucial that human rights are part of the national constitutional and legal systems, that justice professionals are trained about applying human rights standards, and that human rights violations are condemned and sanctioned. National standards have a more direct impact and national procedures are more accessible than those at the regional and international levels. As Eleanor Roosevelt observed: Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. As well as recognizing the fundamental rights of individuals, some human rights instruments recognize the rights of specific groups. These special protections are in place because of previous cases of discrimination against groups and because of the disadvantaged and vulnerable position that some groups occupy in society. The special protection does not provide new human rights as such but rather seeks to ensure that the human rights of the UDHR are effectively accessible to everyone. It is therefore incorrect to pretend that

people from minorities have more rights than people from majorities; if there are special rights for minorities, it is simply to guarantee them equality of opportunities in accessing civil, political, social, economic or cultural rights. Examples of groups that have received special protection are:

Their main protection is given at the UN level with the Convention on the Rights of the Child (CRC) of 1989, the most widely ratified convention (not ratified only by the United States and Somalia). The Convention's four core principles are: non-discrimination; a commitment to upholding the best interests of the child; the right to life, survival and development; and respect for the views of the child. At the African level, the African Charter on the Rights and Welfare of the Child provides basic children's rights, taking into account the unique factors of the continent's situation. It came into force in 1999. The Covenant of the Rights of the Child in Islam was adopted by the Organization of Islamic Conference in 2004. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children was inaugurated in April 2010.The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse came into force on 1 July 2010. This Convention is the first instrument to establish the various forms of sexual abuse of children as criminal offences, including such abuse committed in the home or family. The rights of refugees are specially guaranteed in the Convention relating to the Status of Refugees of 1951 and by the United Nations High Commissioner on Refugees (UNHCR). The only regional system with a specific instrument on refugee protection has been Africa with the adoption, in 1969, of the Convention Governing the Specific Aspects of Refugees, but in Europe the ECHR also offers some protection. Europe has a well-established system within the Council of Europe for the protection of human rights of which the cornerstone is the European Convention of Human Rights with its

European Court of Human Rights based in Strasbourg. The Council of Europe, with its 47 member states, has played a key role in the promotion of human rights in Europe. Its main human rights instrument is the European Convention on the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights-ECHR). This has been accepted by all the member states in the Council of Europe, since it is a requirement for membership. It was adopted in 1950 and came into force three years later. It provides for civil and political rights and its main strength is its implementation machinery, the European Court of Human Rights. This court and its jurisprudence are admired throughout the world and are often referred to by the UN and by constitutional courts of numerous countries and other regional systems.

Just as at the UN level, social and economic rights in Europe are provided for in a separate document. The (Revised) European Social Charter is a binding document that covers rights to safeguard people's standard of living in Europe. The charter has been signed by 45 member states and, by 2010, it had been ratified by 30 of them.

In addition to these two major instruments, the Council of Europe's action in the field of human rights include other specific instruments and conventions that complement the guarantees and provisions of the ECHR by addressing specific situations or vulnerable groups. Conventional monitoring systems are complemented by other independent bodies such as the European Commission against Racism and Intolerance and the Commissioner for Human Rights. Altogether, the work of the Council of Europe for human rights should be able to take into account social, scientific and technological developments, and the possible new challenges that they present for human rights. Human rights instruments are a record of our latest understandings of what human dignity requires. Such instruments are likely to be always one step behind, in that

they are addressing challenges that have already been acknowledged rather than those that remain so institutionalized and embedded in our societies that we still fail to acknowledge them as rights and rights violations. In the Council of Europe, the standard-setting work of the organization seeks to propose new legal standards to respond to social measures to deal with problems arising in the member States concerning issues within their competence to the Committee of Ministers. These measures may include proposing new legal standards or adapting existing ones. This is how the procedures of the European Court of Human Rights are evolving so that it remains effective, how provisions for abolishing the death penalty have been adopted, and how new convention-based instruments, such as the Convention on Action against Trafficking of Human Beings, adopted in 2005, have come to light.In this sense, human rights instruments will continue to be revised and advanced for time immemorial. Our understanding, case law and – most of all – our advocacy will continue to push, pull and stretch human rights continuously. The fact that the provisions of human rights conventions and treaties are sometimes seen as being below what we would sometimes expect should not be a reason to question what human rights represent as hope for humanity. Human rights law will often remain behind what human rights advocates would expect, but it also remains their most reliable support. The European Court of Human Rights in Strasbourg is famous for a number of reasons, but perhaps above all, because it gives life and meaning to the text of the ECHR. One of its main advantages is the system of compulsory jurisdiction, which means that as soon as a state ratifies or accedes to the ECHR, it automatically puts itself under the jurisdiction of the European Court. A human rights case can be brought against the State Party from the moment of ratification. Another reason for its success is the force of the Court's judgment. States have to comply with the final judgment. Their compliance is supervised by the Committee of Ministers of the Council

of Europe. In every case brought before the European Court, the procedure also includes the possibility of having a friendly settlement based on mediation between the parties. The Court has been able to develop over time. When it was initially set up in 1959, it was only a part-time court working together with the European Commission of Human Rights. With the increase of cases, a full-time court became necessary and one was set up in November 1998. This increase in the number of cases is clear evidence of the Court's success, but this workload is also jeopardizing the quality and effectiveness of the system. People know that the Court is there and able to step in when they feel their fundamental rights are being infringed; however, the authority and effectiveness of the ECHR at the national level should be ensured, in accordance with the "principle of subsidiarity", which foresees that states have primary responsibility to prevent human rights violations and to remedy them when they occur.

Many people would argue that the poor human rights record in the world is a result of the lack of proper enforcement mechanisms. It is often left up to individual states to decide whether they carry out recommendations. In many cases, whether an individual or group right will in fact be guaranteed depends on pressure from the international community and, to a large extent, on the work of NGOs. This is a less than satisfactory state of affairs, since it can be a long wait before a human rights violation is actually addressed by the UN or the Council of Europe. Can anything be done to change this? Firstly, it is essential to ensure that states guarantee human rights at national level and that they develop a proper mechanism for remedying any violation. At the same time, pressure must be put on states to commit themselves to those mechanisms that have enforcement procedures.

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