

## CULTURAL RIGHTS AT THE BEGINNING OF THE 21<sup>ST</sup> CENTURY<sup>1</sup>

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**Abstract.** Within the XXI century global society, as one based on knowledge and equally, within the framework of cultural and informational types of globalization, some categories of human rights can receive a better statute and an enforcement of their legal regulation. The paper is focused on defining the legal concepts of human person's right to culture, cultural rights and the consumer's right to culture and information, accordingly to their existent regulation on national, regional and international fields. Legal differences between above-mentioned concepts will be highlighted, too. The methodology is based on the legal comparative approach. The finality of our study is to show the content of some human rights, so-called by academics "of last generation". Within the second part of the study we'll propose some solutions of improving, at international juridical level, the legal regime of this specific category of human rights. Within the global society of XXI century, these specific rights of the human person receive a new legal significance, reflecting the concrete access of human person to knowledge, her correct and complete information but also, they are tools for consolidation of human personality. The above-mentioned rights are placing the human person in a continuous, creative relation with the society, and also, as an active contributor in building the reality.

**Keywords:** human and cultural rights, information, human personality, the XXI<sup>st</sup> century

The theoretical debate on the economic, social and cultural rights has focused on a pragmatic view (since the exercise of such rights is affected by the resource-related policies and programmes of the states, by their concrete ability to execute engagements of social, integration, solidarity and equality among people, taking the adequate measures, for the protection of vulnerable groups such as the poor, disabled persons, local people, ethnic minorities etc.)<sup>2</sup>. This balanced and pragmatic view on the economic, social and cultural rights was established only after the World Conference on Human Rights, Vienna, 1993.

The cultural rights are included in a distinct category of human rights and liberties, being enshrined at international legal level; without any hierarchy among the various categories of human rights, the cultural rights are enshrined distinctly from the civil, political, social and economic rights of the human being.

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<sup>2</sup> Ion Diaconu, *Drepturile omului în dreptul internațional contemporan. Teorie și practică*, 2<sup>nd</sup> edition, Lumina Lex, Bucharest, 2009, p. 133.

From the chronological perspective, the first generation of human rights is represented by the civil and political rights, based on the principle of equality and non-discrimination (or subjective rights)<sup>3</sup>; the second generation of rights is represented by the economic, social and cultural rights, implying concrete measures taken by the states to create material and social conditions for their exercise, according to the doctrine and international legal documents; finally, the third and most recent generation of rights is represented by the rights to solidarity, which not only the states but also the entire community is called to observe (the right to peace and security, the right to development, the right to a healthy environment<sup>4</sup>). Thus, cultural rights represent a legal sub-domain, from the second generation of human rights, and they include a series of concrete rights, recognized and guaranteed for the persons by the international legal documents. Thus, in certain views, the category of cultural rights, in a narrow sense, includes the following: the right to education, the right to participate in the cultural life, the right to enjoy the benefits of scientific progress and its applications, the right to enjoy the protection of patrimonial and non-patrimonial rights, resulting from the said person's creations<sup>5</sup>.

For other authors, in a broad sense, the category of cultural rights includes the following: the right to education, the right to participate in the cultural life, the right to enjoy the benefits of scientific progress and its applications<sup>6</sup>. In addition, this category includes the following: the right to protection of moral and material interests result from a person's productions (enshrined in UDHR, art. 27, paragraph 2); the right to exercise the economic, social and cultural rights necessary to maintain personal dignity (in this view, a necessary correlation is made to the right of each person to have the necessary means for a decent living, the property right enshrined in the Universal Declaration of Human Rights (December 10<sup>th</sup> 1948), art. 117, paragraph 1 and 2, as well as the right to social security (art. 22, UDHR), which according to UDHR entitles the person to exercise the social, economic and cultural rights indispensable for the dignity and free development of said person's personality<sup>7</sup>.

In an broad sense, it is considered (starting from the extended definition of culture as a "way of life of a person and society, as a set of values produced and shared by the human spirit and inherited by a community, including values, behaviours, customs, language, religion, as well as various aspects of the material civilization"<sup>8</sup>) that there is an interconnection among the social rights, the

<sup>3</sup> Raluca Miga-Bestelciu, *Drept internațional. Introducere în dreptul internațional public*, Ed. All, Bucharest, 1998, 197-198.

<sup>4</sup> Idem, p. 198.

<sup>5</sup> *Ibidem*, page 198

<sup>6</sup> Ludovic Takacs, Martian Niciu, *Drept internațional public*, Ed. Didactică și Pedagogică, Bucharest, 1976, p. 99.

<sup>7</sup> Dumitru Mazilu, *Drepturile omului. Concept, exigențe și realități contemporane*, Ed. Lumina Lex, Bucharest, 2000, p. 109-118.

<sup>8</sup> Ion Diaconu, *op. cit.*, p. 133.

economic rights and the cultural rights of the person, resulting in an extended content of the cultural rights. Thus, they could also include many of the civil and political rights: the right to freedom of opinion and conscience; the freedom of expression and association; the right to participate in public matters. In addition, in an extended view and moreover, the cultural rights could also include economic and social rights such as: the right to education, the right to a decent standard of living; protection and assistance granted to the family. Other authors consider that the category of cultural rights includes the right of minorities to enjoy the benefits of their own culture and the right to use their mother tongue<sup>9</sup>.

From the second legal viewpoint, the right to culture is a combined right, entailing a close connection among the three categories of rights (social, economic, cultural, as well as the civil and political rights). All these categories of rights are based on the fundamental principles of equality of rights for all the people and on the fundamental principle of non-discrimination; their essential motivation is the legal protection of three fundamental values: human integrity, freedom and equality. The responsibility for the violation of economic, social and cultural right is not only international but also an internal one, to the extent in which the rights included in this specific category are clearly regulated by international documents or the internal legislation enforced in their exercise. They can be protected internally, in any state, and indirectly, through the generally accepted regulations concerning the equality of rights and non-discrimination, they are enshrined in the doctrine.

In addition, at international level, an integrated approach to human rights was preferred, since cases regarding social security (entailing the protection of social rights) were also analysed by the Human Rights Committee, based on art. 20 in the Covenant on Civil and Political Rights, and it was decided that this article also applies to the set of social, economic and cultural rights. At regional level (in the Latin-American space), the cultural rights can receive legal protection, subject to the Protocol of San Salvador (adopted on November 17<sup>th</sup> 1988), which states the right to submit individual petitions for the protection of the right to education and the right to organize trade unions, subject to the Inter-American Convention of Human Rights<sup>10</sup>.

At European level, the Charter of Fundamental Rights, adopted in 2001 and enforced together with the Treaty of Lisbon (2009), both endowed with mandatory legal value (as well as this founding treaty of the new EU), also stipulates specific cultural rights as: freedom of expression and information (art. 11), freedom of arts and sciences and respect within EU of freedom of universities (art. 13), right to education and right to access to continuous professional training (art. 14), right to intellectual propriety (art. 17, align. 2), within title I (Human Dignity); consecration

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<sup>9</sup> Dumitru Mazilu, *op. cit.*, p. 112-113.

<sup>10</sup> Ion Diaconu, *Drepturile omului în dreptul internațional contemporan*, *op. cit.*, p. 136.

of the principle of non-discrimination (art. 21) and principle of cultural, religious and linguistic diversity (art. 22) within title III (Equality).

A clear enshrining of the cultural rights and their legal content at international level is stipulated in the International Covenant on Economic, Social and Cultural Rights (adopted by the UN GA, on December 16<sup>th</sup> 1966). Thus, art. 13 of the Covenant acknowledges the right of any person to education (as a right directly related to the full development of the human personality and the sense of dignity, strongly emphasizing the observance of human rights); art. 15 of the Covenant stipulates a series of cultural rights, acknowledged by the states (parties) for any human person (not only for their citizens): the right to participate in the cultural life, the right to enjoy the benefits of scientific progress and its applications; the right to enjoy the protection of material and moral interests resulted from any scientific, literary or artistic work produced by the person. Besides these cultural rights stipulated in paragraph 1, art. 15 of the Covenant, the document specifies the acknowledgment of the freedom indispensable for scientific research and creative activities (which the state parties take upon to observe) and the engagement of the state parties to encourage and develop the cooperation and international contacts in the field of science and culture. In addition, the Universal Declaration of Human Rights also acknowledges (besides a series of economic and social rights) the right to education (art. 26), the right to participate in the cultural life of the society, ; the right to enjoy the protection of material and moral interests resulted from any scientific, literary or artistic work produced by the person (art. 27, paragraphs 1 and 2), as well as the right of any human being to an international social and cultural system, in which the fundamental human rights and freedoms are fully exercised (art. 28)<sup>11</sup> as *cultural rights* (without being nominated as such).

At regional level, although the European Convention on Human Rights does not distinctly and clearly acknowledge the category of cultural rights, we can consider that art. 9 (which acknowledges the right of any person to the freedom of thought, conscience and religion) and art. 10 (the right to the freedom of speech of any person, including the freedom of holding an opinion and the freedom to receive or transmit information or ideas, without the involvement of the public authorities and irrespective of the borders) are clearly included in the wide legal content of the cultural rights.

In the Treaty of Lisbon (in force from 2009), which practically sets the basis for a new European Union, art. 2/EUT, the Union expressly takes upon the legal obligation to respect “its rich cultural and linguistic diversity, and [...] ensure that Europe's cultural heritage is safeguarded and enhanced”. In art. 2E/EUFT (the other founding treaty of the new EU, in the legal view of the Lisbon stage), the Union (as original political entity, endowed with its own competences) takes upon specific

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<sup>11</sup> *Principalele instrumente internaționale privind drepturile omului la care România este parte*, vol. I, Documente universale, IRDO, Bucharest, 2002, p. 10-11.

obligations in relation to the cultural domain (to take specific actions of coordination, support and supplementation of the actions taken by the member states).

### **1. The Right to Culture, an Individual Right and a Right of the Peoples as well**

Concerning the matter of cultural rights, they are formed of a series of subjective rights (or individual rights, since they are acknowledged for the individual); however, they also entail a strong collective aspect (since they concern persons with common values, who maintain and develop these values, taking common action, according to the doctrine<sup>12</sup>).

The international principle of the right of peoples to self-determination also specifies as a distinct element the peoples' right to promote according to their own will, their political, economic, social and cultural development (right exercised through the state)<sup>13</sup>. This *collective* and *state* dimension of the cultural rights is clearly stated in the International Covenant on Economic, Social and Cultural Rights, adopted in 1966, in which art.1 acknowledges the right of all the peoples to have control of themselves and the following articles refer to the concrete legal obligations of the states to ensure by themselves or through international cooperation the full exercise of these rights, as well as to guarantee their exercise without any form of discrimination. Thus, the *state* must observe the right of every person to cultural creation, access to culture, participation in the cultural life; it must protect the moral and material interests of the authors against appropriation, unlawful use, alteration or other damages caused to their works; it must create conditions for the participation of all the individuals in the cultural life, for the promotion and development of culture and science, for the support of the cooperation in these fields<sup>14</sup>. In view of ensuring the full exercise of these rights, the Committee for the enforcement of this Covenant, created by the Economic and Social Council for the assessment of the reports elaborated by member states, in its comment to art.2/Covenant, considers that the member states must use all their available resources to place a high priority on the fulfilment of their minimum obligations, i.e. to ensure at least the basic exercise of these rights, in conditions of non-discrimination, with emphasis on the essential role of cooperation and international assistance, for the exercise of these rights<sup>15</sup>. Cultural rights are directly connected to the solidarity rights (*latest generation*), such as the *right to development*. Thus, the *Declaration on the Right to Development* (1986), this right grants any person the right participate in, contribute to and benefit from economic, social, cultural and political development, in which all the fundamental

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<sup>12</sup> Ion Diaconu, *Drepturile omului, op. cit.*, p. 161.

<sup>13</sup> Ion Diaconu, *Tratat de drept internațional public*, vol. I, Ed. Lumina Lex, Bucharest, 2002, p. 309.

<sup>14</sup> Ion Diaconu, *Drepturile omului în dreptul internațional contemporan*, quoted title, p. 137, 161.

<sup>15</sup> Idem, p. 139.

rights and freedoms of an individual can be fully exercised. In addition, the legal view on the right to culture, as right of the peoples derived from the international principle of international cooperation is clearly stipulated throughout the Declaration on the Principles of International Cultural Cooperation (adopted under the authority of UNESCO, 1966), where, art. 1, item 2, enshrines the right as well as the obligation of every people to develop its own culture (*the right to cultural development*, here, acknowledged for the peoples).

At the same time, the doctrine considers that the best method to acquire an efficient level of protection of the economic, social and cultural rights, at the level of the states, is to prompt their economic development (chronic poverty being regarded as a threat to the world peace and security), to guarantee equal opportunities for everyone and social coverage for the vulnerable individuals, as well as to ensure a minimum level of social, economic and cultural rights, taking specific measures, depending on the available resources of the state, to use these resources to their full potential and, when necessary, to provide international assistance and cooperation<sup>16</sup>.

In our opinion, cultural rights entail the dimension of protecting the human rights (as individual rights, acknowledged for any person), a collective dimension (as rights acknowledged for vulnerable categories, such as persons with disabilities, young people, children, women, persons belonging to religious or national minorities etc.), as well as a national dimension (deriving from the right of the peoples to have control of themselves, including the right to freely determine their cultural development, to maintain and promote their specific cultural identity).

## **2. The Right to Culture of the Human Person and the Right of the Consumer to Culture and Information**

At national level, the legal enshrining of the *cultural rights* is stipulated in the fundamental law of the Romanian state, which expressly guarantees **access to culture** (seen a human right, not as a citizen's right), in article 32<sup>1</sup>, due to the fact that in paragraph 2 it enshrines the 'freedom of the *person* to develop his/her own spirituality and to have access to the values of the national and universal culture, which cannot be restricted'. In addition, the law enshrines the legal obligation of the state to guarantee the safeguarding of the spiritual identity, support for natural culture, promotion of arts, protection and preservation of the cultural legacy, development of contemporary creativity, and promotion of Romanian cultural and artistic values abroad. *Other rights closely connected to the right to culture* (distinctly enshrined in art. 32<sup>1</sup> of the Constitution) and which form the extended legal content of the cultural rights acknowledged by the Romanian state for any person, are distinctly specified by the lawmakers: art. 32 (right to education), art. 31 (right to information of public interest, guaranteed for any person), art. 29

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<sup>16</sup> *Ibidem*, p. 143.

(freedom of thought and opinion, freedom of religion and conscience), art. 30 (freedom of expression of thoughts, opinions and beliefs, as well as freedom of creations of any sort, as sacred freedoms), corroborated with art. 20 (obligation to construe according to UDHR, according to Covenants and other international treaties on human rights, to which Romania adhered), with art. 6 (the right of the persons from national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity, acknowledged and guaranteed by the Romanian state), as well as with art. 1 (Romania, as a state subject to the rule of law, democratic and social, in which the human dignity, the rights and freedoms of the citizens, the free development of the human personality are supreme values and are guaranteed as such).

Concerning the right of the person to culture (or access to culture, in other legal documents), it is necessary to mention the European Cultural Convention, within the European Council organization (adopted in Paris, in 1954; Romania adhered to the European Cultural Convention in 1991), which enshrines the phrase “European cultural heritage”, based on the efforts of international cooperation, among the member states. Art. 4 of this Convention includes implicit references to the “European cultural market”, compelling the member states to enable the movement and exchange of persons and objects of cultural value, to enable the development cultural activities of European interest, as well. Subject to art. 5 (which includes an imperative legal obligation for the member states), it is established that the states must consider that objects of European cultural value, which are under their control, are part of the “common cultural heritage of Europe”. At the same time, it enshrines the obligation of the Convention member states to take appropriate measures to safeguard them and ensure reasonable access thereto (another reference to the right of the person to culture).

Concerning the right of the consumer to culture and information, there are no clear references in legal texts to such right, since the majority of documents (at international or regional level), including the Constitution of Romania, use legal phrases such as: access to culture, freedom of the person to develop his/her spirituality, freedom of the person to have access to the values of national and universal culture, free development of human personality, right of the person to have access to any item of information of public interest (or right to information).

Discussing about a “right of the consumer to culture and information” would entail assigning a *primarily economic connotation* of certain rights, which are regarded as subjective rights, inherently belonging to the person by virtue of a person’s quality of free and dignified human being, with equal rights and obligations as the other persons. Both the right to culture and the right to information are considered *fundamental human rights* (besides the right to free expression, the freedom to hold an option, conscience and religion and other fundamental human rights and freedoms), belonging a broader sense of culture, to which we referred in the first part of our exposition.

### 3. Certain Solutions to Improve the Legal Status of this Specific Category of Human Rights at International Level

In many countries, the observance and correct implementation of cultural rights, besides the social and economic rights (together with which the latter form the second generation of human rights) depend de facto on the conditions and economic resources available in the respective state; therefore, the economically developed countries might not be quite willing to actively promote these rights at global level, in order to avoid impacting their level of welfare and economic growth, through commerce and development assistance programmes envisaging less developed countries<sup>17</sup>.

The better developed Nordic countries are provided with more resources and instruments to ensure these resources for their citizens, to exercise these rights (being founded on the model of the welfare state, also focused on providing social coverage for the categories of vulnerable persons). For most of the countries in the world (especially those located in the Southern part, which are confronted with issues of economic-social underdevelopment, which is chronic in certain places), these rights depend directly on the Government's capacity to fully use the resources available, in order to avoid depriving the person from the benefits of such rights. According to the Covenant on the Economic, Social and Cultural Rights, the states have the obligation to provide their populations with the concrete benefit of these rights, even though the respective states might not have reached the economic development of the industrialized North. Therefore, there should not be a hierarchical relationship among the human rights, as the states guarantee the human being the concrete observance of all the categories of rights, which are interconnected and equal among each other.

As noticed in the doctrine, the observance of the human rights cannot be obtained in social and economic conditions that place the human being in a state of degradation, fear and need<sup>18</sup>; therefore, all the states are called to improve the economic, education and information level of their society, through assumed legal engagements, and to ensure the protection of vulnerable groups, to this end.

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<sup>17</sup> Ion Diaconu, *Drepturile omului*, op. cit., p. 142-144.

<sup>18</sup> Idem, p. 143- 144.