

Cultural rights: new era, old principles, same challenges?¹

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Abstract

The way events rapidly develop nowadays today on the international scene comes to our attention through various media sources and at one moment could have led us Europeans think that after centuries of attempts, transformations and assiduous researches people had, at one point, finally discovered the ideal form of government that would bring stability and the harmonious development of any community. But this dream seems to have crumbled with the transition to the information society. However, rapid digitalization, economic crises, migrant waves, hybrid wars, climate problems, the precariousness of classical resources and health hazards have once again raised the issue of building proper statal structures capable of guaranteeing fundamental civil rights and freedoms. In this article, we will address the issue of the principles of cultural rights that are at the forefront of the nowadays debate on the changes and reforms that national public administrations are called upon to implement in order to meet the needs of future generations.

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JEL Classification [H520, I240, I250, K380]

Of rights and liberties, an introduction

Just as democracy cannot exist without rights, freedoms, civil society, political pluralism, equality or equity, the same freedom can only exist in a society that allows its manifestation in various forms, ideas and actions. Such a society that can guarantee civil liberties is also capable of developing an administrative framework able to face any political turmoil and to deliver a quality public service.

In the context of society's evolution, man has become a citizen. Thus, human rights are now correlated with his legal status, as he has to relate to both his

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status as an individual and as part of a community. That is why the term "liberties" is used referring to the fact that man can exercise his will without constraints. This term is completed in order to reflect the other human condition with "public" - public liberties - because it requires the intervention of the state, which, legitimized by the fact that it is the holder of legal sovereignty, must ensure that everyone has the opportunity to manifest their will, but without affecting the other members of their community.

Through the public administration system, the state not only manages its daily existence but also plans its future existence. The survival of the state depends to a large extent on the way it organizes the well-being of its own population - increasing the birth rate and discouraging emigration - and on the intelligent and sustainable way in which it exploits its territory - the natural resources at its disposal.

In this sense, a state that is truly aware of its own existence and especially of its own future will do its utmost to consolidate its pillars of values and principles that helped building it. While doing this reinforcement, the state provides as accurately as possible, the steps it needs to take on medium and long term. Because the natural way in which the roots of the civilization of the inhabitants of a certain area developed is, in our opinion, the natural way in which the society of the future can evolve in the same space, without succumbing to allogeneic influences through assimilation.

Hence the special interest we should pay to cultural rights, with an emphasis on the right to education. Once the visionary milestones for future development have been set, they must be systematically presented to the public. From the beginning of life and throughout it, in all aspects, citizens must have the opportunity to be educated, informed in the spirit of freedom, having the opportunity to develop and communicate their own critical and innovative thinking. In Article 11 of the Declaration of the Rights of Man and of the Citizen, we find the following statement: „free communication of thoughts and opinions is one of the most precious human rights”²

The part we synthesized within this paper addresses the issue of the principles of cultural rights that are at the forefront of the nowadays debate on the changes and reforms that public administrations are called upon to implement in order to meet the needs of future generations.

In this approach we started from two premises: first stating that the globalization of culture and the society based on consumption have led to the need to build mechanisms and tools for protection and defense of the local

² Declaration of the Rights of Man and of the Citizen <http://www.istorie-pe-scurt.ro/declaratia-drepturilor-omului-si-ale-cetateanului/>.

specificity of populations: customs, cultures and civilizations threatened with extinction; and the second one considering that classical education systems have been caught in the grip of adapting to the economic requirements of society and preserving local identities, being those called to prepare the new generations of global citizens

Further on we propose two hypotheses: 1. Public authorities and subordinated institutions play a major role in guaranteeing the rights and freedoms of citizens, that is why in the recent decades they have received more responsibilities regarding culture and education; 2. Well targeted public policies lead to the consolidation of cultural and educational institutions, connected to the dynamics of the information society, as well as attractive mechanisms for their functioning, thus guaranteeing and extending citizens' access to culture and education and preserving local diversity.

This led us to formulating another two research questions: what are the principles of the cultural rights that must be guarded no matter the costs and what are the main challenges that authorities face in order to guard those principles?

We tried to answer these questions and to validate our hypotheses by looking back in history at the main, universally recognized and acknowledged documents that granted liberties, rights and freedoms (from Magna Carta to the UN Universal Human Rights Declaration or the EU Charter of Fundamental Rights). We Identified the main international bodies that play the major role in granting cultural rights and then we extracted from their core documents the exact articles mentioning these rights. From both the above mentioned (old and new documents) we have synthesized the universal principles of the right to culture and of the right to education.

A glimpse in the past: a short historical review on human rights

The field of human rights has been constituted by successive contributions made by researching the great principles in the field, the normative provisions and the institutions created. But like any other theoretical science, pure and applied, human rights science has progressed in the alternation of brighter and darker periods³.

The origin of human rights can be traced back to the dawn of civilization, then goes through the Middle Ages, evolving through the important contribution of the Enlightenment of the seventeenth and eighteenth centuries, blooming to its actual shape after the two world conflagrations of the 20th century. Identifying its oldest traces seems to be an almost impossible task; for this we should look back at the men's conception of the world, of their relation to deities, and, last but not

³ Zlătescu, Irina.Moroianu, *Drepturile omului: un sistem în evoluție*. (Ediția a II-a, București, Ed.IRDO, 2008) p. 24.

least, in their relation with power. Here we find the sources of moral norms, that is, human attitudes that define good (or bad) conduct, which recommend rules of behavior that people must conform to in their relationships⁴.

In European antiquity, Plato and Aristotle referred to the natural law, Aristotle often being even called the father of natural law, then the founding theologians of the Christian Church introduced the concept of natural law in Christianity. In the Far East in ancient China, Confucius postulated about the possibility of crafting a harmonious society only if the people who embody it were guided by principles of high morality, with all their actions being nothing but a continuous effort for good. The similarity with the principles of future Christianity goes even further as Confucianism considers man at the center of his philosophical and moral system, and that he must love and respect his fellow man, with the emphasis on morality.

Later on, in the history of thought, philosophers such as Thomas Hobbes, John Locke, Thomas Aquinas became interested in natural rights, and Hobbes even founded a contractual theory that man would act according to natural law to overcome his fear of death for reasons beyond his control. Jean Jacques Rousseau's "contract" suggested the hypothesis of a social contract in which a group of individuals agreed, for the common good, to form institutions in order to govern themselves.

Among the earliest human rights documents were the Magna Carta set down in England in 1215, the Petition of Rights from 1682, and the Bill of Rights of 1689. The Magna Carta influenced as far as for the development of common law and the United States Constitution. It was one of the first documents that limited the power of rulers in order to protect citizens and that introduced the concept of the right to a fair trial. In the eighteenth century, natural rights became fundamental elements of national constitutions, thus giving them the legitimacy, they needed, to be legally protected. All this became an interconnected strong link between the state and the citizen, the power of the former deriving from the free consent of the latter⁵.

This is the basis of the *French Declaration of the Rights of Man and of the Citizen* of 1789 and the American Bill of Rights of 1791. Among the authors who were concerned with the notion of freedom is also John Stuart Mill, who stated that freedom is determined by the relationship between the individual and the society. The sphere of human freedom, for Mill, includes freedom of conscience, freedom of expression, freedom of the choice of a lifestyle, and freedom of association. As we can see, Mill speaks of individual freedom, of the human right

⁴ Zlătescu Moroianu, Irina. *Drepturile omului: un sistem în evoluție*. (Ediția a II-a București, Ed. IRDO, 2008) p. 9.

⁵ Levin, Leah. *Drepturile omului*. (Cluj-Napoca, Ed. Clusium, 2001) p. 16.

to decide for oneself, stating in his work, *About Freedom*, that apart from exceptional situations, such as times of crisis in a community, society must not interfere in the sphere of individual freedom of a person as this would lead to an interruption of his development and to further uniformity⁶. This uniformity would transform the person, from an individual, to an obscure small wheel in the great gear of society.

John Locke also seems to be at the forefront of human rights concerns. The idea of natural rights was perfectly illustrated by him, and his work contributes decisively to the development of subsequent theories and programs focused on human rights. These likewise considered to stand at the foundation of the United States Declaration of Independence of 1776 and the Declaration of the Rights of Man and of the Citizen of 1789. Documents of essential importance in the evolution not only of the states where they appeared, but for all humanity. Certainly not Locke alone inspired these fundamental statements and subsequent movements, but they are the fruit of an entire century of enlightenment, ideas, and philosophies that overlap with transformations of societies, economies, and interstate relations globally.

In the United States, the Declaration of Independence of the 4th July, 1776 enshrined particularly valuable ideas and concepts for guaranteeing the freedom and equality of the people and for protecting them from abuses of government, including their right to change that government when it becomes contrary to these fundamental purposes, proclaiming that: *All men were created equal; they have been endowed by their Creator with certain inalienable rights; among these rights are life, liberty, and the pursuit of happiness. Governments are established by the people to guarantee these rights, and their rightful power emanates from the consent of the governed*⁷. As a philosopher and great scholar spirit, Thomas Jefferson, the main personality drafting the Declaration, signaled for the first time that a government must be exclusively in the service of the people, from which it draws its legitimacy, with the support of which it exercises its authority and having the specific mission to defend people's rights and freedoms.

On the "old continent", the French Revolution brought with it, in 1789, the adoption of the "Declaration of the Rights of Man and of the Citizen". A huge step that marks the beginning of a new era, the domino that started the irreversible collapse of totalitarian monarchies. The ideas propagated by the flame of the French Revolution stand as a turning point in human history. In practice, their effect has been translated into the emergence of constitutional mechanisms in many states, which have evolved more and more effectively to guarantee the fundamental rights and freedoms of human beings.

⁶ Mill, Stuart, John. *Despre libertate* (traducere de Adrian-Paul Iliescu, București Ed. Humanitas, 2005), pp. 48-60.

⁷ Zlătescu Moroianu, Irina. *Drepturile omului: un sistem în evoluție*. (Ediția a II-a, București, Ed. IRDO, 2008) p. 19.

All these have definitely stated the imperative feature of human rights in any society, precisely because they have valued the principles of natural law, principles that made their way in the first legislative achievements⁸. The Declaration, adopted between 20 and 26 August 1789, proclaimed that it „*recognizes and declares, at present and under the auspices of the Supreme Being, the rights of man and of the citizen [...] people are born and remain free and equal in rights. [...] The purpose of any association is to preserve the natural and inalienable human rights. These rights are freedom, property, security and resistance to oppression*”⁹.

The eighteenth century is therefore the century of natural rights based on reason. Their place is later taken in the theoretical approaches, by positive rights, the forms of law considered as deriving from the positive norms of the companies, determined politically and applied through the administrative apparatus. Thus, citizens become obliged to obey the laws regardless of their content. "To understand the birth of Christianity or the French Revolution, it is not enough to understand the interaction of genes, hormones and organisms. We need to take into account the interaction of ideas, images and fantasies."¹⁰

And as history would prove us in later events, full of bloody conflicts and massacres, being formally correct did not necessarily mean being of high moral standards. So, the new totalitarian, constitutional regimes, conceived in the late nineteenth century and spread in the early twentieth century, produced atrocities unimaginable until then, but legally justifiable.

Unfortunately, neither the League of Nations nor the lesson of the First World War were enough to avoid a new "clash of civilizations." This time one that produced such great horrors and unleashed such powerful destructive forces that the very existence of humanity could have been endangered. In the face of extinction and in order to prevent other major international conflicts after this period, the concerns of public international law have focused primarily on the individual as the supreme value to be protected. The adoption of the UN Charter and, in particular, the Universal Declaration of Human Rights will trigger a broad and particularly complex process that will make human rights an institution of international law with a universal vocation. This led to the individualization of an independent discipline, with its own language and methodology of gathering, interpreting and explaining information, with statistical analysis techniques¹¹.

Subsequently, more and more states began to adopt the principle of interconnectivity between the state and the citizen, gradually recognizing other rights in addition to the natural ones such as social, economic and other rights.

⁸ Zlătescu Moroianu, Irina, *Drepturile omului: un sistem în evoluție* p. 20.

⁹ <http://www.istorie-pe-scurt.ro/declaratia-drepturilor-omului-si-ale-cetateanului/>.

¹⁰ Harari, Yuval Noah. *Sapiens: Scurtă istorie a omenirii*. (Ediția în limba română, Iași, Ed. Polirom, 2017) p. 41.

¹¹ Zlătescu Moroianu, Irina, *Drepturile omului: un sistem în evoluție*. p. 10.

One of the most important documents in the field is the Charter of the United Nations, signed on June 26, 1945, which reiterates as one of its main objectives the re-proclamation of trust in fundamental human rights, human dignity and worth and the equal rights of men and women. The Convention on the Protection of Human Rights and Fundamental Freedoms, following the European Congress of May 1948 and amended in 1949 to better reflect human rights and fundamental freedoms, is one of the first documents to provide a clear definition of guaranteed rights. The exercise of these rights and a body (European Court of Human Rights) to deal with cases of abuse of the exercise of these rights or the impossibility of benefiting from them due to various factors. The Convention was signed on November 4, 1950 in Rome¹².

The Universal Declaration of Human Rights, although widely recognized by the international community, has no legally mandatory status, so it is not enforceable against the members of the United Nations. Only treaties - pacts, conventions, protocols etc. - have legal force and can compel the member states to meet their obligations. Right from the preamble, the Declaration acknowledges that the recognition of the implicit dignity of all members of the human family and of their equal and inalienable rights is the foundation of freedom, justice and peace in the world. This document states that ignoring and disregarding human rights it's the reason that has led to acts of barbarism, and that the creation of a world in which human beings will enjoy freedom of speech and belief, freed from terror and misery, has to be human's highest aspiration. As a legal institution of international law, human rights represent a set of legal norms, closely related to their object - relations between states and other entities with international personality, which are established for the purpose of protecting human beings¹³.

That is why the UN General Assembly has proclaimed this declaration as a common ideal to which peoples and all nations must strive for the universal and effective recognition and enforcement of these rights and freedoms. Within its 30 articles, the Universal Declaration of Human Rights enshrines both civil and political rights, as well as economic, social and cultural rights. In four of its articles (1st, 2nd, 22nd and 28th), the Declaration sets out the fundamental principles on which the whole edifice of established rights and freedoms is built: - art. 1 states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood; - art. 2 does not admit in the exercise of the proclaimed rights and freedoms any distinction based on race, color, sex, language, religion,

¹² Deleanu, Ion. *Instituții și proceduri constituționale*, (Arad, Ed. Servo-Sat, 2001), p. 216.

¹³ Ciucă, Aurora, *Protecția internațională a drepturilor omului* (București, Ed. Fundației Axis, 2005) p. 72.

political opinion or any other opinion, national or social origin, wealth, birth or any other situation, but also based on status political, legal or international law of the country or territory to which the person belongs; - art. 22 lays the foundation for the exercise of economic, social and cultural rights, namely that every person, as a member of the society, has the right to social security and is entitled to get his economic, social and cultural rights recognized as indispensable for the dignity and free development of his personality, through national effort and international cooperation, taking into account the organization and resources of each country; - art. 28 states that each of us is entitled to an encouraging social and international order for the rights and freedoms set forth in the Declaration to be experienced.

In addition to these documents, there are also some human rights pacts - the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly on December 16, 1966. The greatest benefit what they bring to the signatory countries, and implicitly to their citizens, is the fact that they are legally treated and have a constraint on members.

The European Union was equally concerned about human rights, adopting the Charter of Fundamental Rights of the European Union in Nice at the end of 2000, stating in its preamble that the Union is based on "the indivisible and universal values of human dignity, freedom, of equality and solidarity; it is based on the principle of democracy and the rule of law." This charter speaks, in addition to the rights it defends, of "responsibilities and obligations to others as well as to the human community and future generations." The Charter adopted at the Nice European Council of 7-10 December 2000 reinforces the values and principles underlying the European Union, "placing the person at the center of his or her action, establishing citizenship of the European Union and creating an area of freedom, security and justice"¹⁴.

As for the latter, it is generally agreed that the Union truly supports the implementation of international law on cultural diversity in accordance with its own "unity in diversity" model, and participates through the values promoted in its foreign policy in strengthening and worldwide. The European project contributes to the development of the culture and identity of the Member States but also to the preservation and possibility of manifesting their traditions, beliefs and customs, ensuring a stable, intercultural, free and strengthened environment for the citizens of the Union¹⁵.

Therefore, we can conclude that, due to their importance, fundamental rights have been enshrined one by one in philosophical works, in declarations of rights,

¹⁴ Deleanu, Ion., *Instituții și proceduri constituționale* pp. 223-224.

¹⁵ *Ibidem*.

international pacts and fundamental laws. At the time they were valued as essential values for humanity, they were immediately incorporated into a separate form of legal protection. Their addition in the fundamental laws, in the Constitutions of the states, meant their certification and the generation of the subsidiary legal mechanisms for their guarantee, protection and exercise.

Furthermore, we understand that universal and effective respect for human rights requires broad and intense international cooperation between states. To this end, the international community has created the system of protection and guarantee of human rights, which theorists have referred to in the literature as the "system of international guarantee mechanisms". Mechanisms divided into two categories: jurisdictional (having the legal instruments to create bodies with jurisdictional powers, having the power to examine complaints and to give judgments with *res judicata* authority) and non-jurisdictional (not having the force of *res judicata*). coercion necessary to ensure their fulfillment, when they are not put into practice voluntarily)¹⁶.

Human rights science is the science whose objectivity and rigor are guaranteed by the independence of human rights in relation to any school of thought or any interpretation of reality. This is closely related to constitutional law, which examines the constitutional laws in which human rights are enshrined, rights that, in fact, determine the relationship between the state and the person, his status as a citizen. These laws define the areas in which the state cannot intervene, the areas that the state has the obligation to protect, to promote, and here are also included the obligations that the citizen has towards the state¹⁷.

In legal terms, the concept of human rights designates, first of all, subjective human rights, of a certain nature, which define its position in relation to public power. However, it becomes a true legal institution, a set of domestic and international legal norms whose object of regulation is the promotion and guarantee of human rights and freedoms, its defense against abuses of states and dangers of any kind. We can thus discuss human rights, on the one hand, as an institution of domestic, constitutional law, which sums up the rules governing the legal status of the citizen regarding his fundamental rights and freedoms, and, on the other hand, as an institution of international law, a source of legal rules established by mutual agreement by states for the protection of human beings, but also as a fundamental principle of public international law.

As a milestone, the most frequently cited and at the same time the most comprehensive document in the description and support of human rights, remains the Universal Declaration of Human Rights of December 10, 1948. This is also due to the fact that it promoted from the beginning for all peoples and

¹⁶ Scaunas Stelian, *Dreptul internațional al drepturilor omului*, (București, Editura CH Beck, 2003) p. 43-56.

¹⁷ Zlătescu Moroianu, Irina. *Drepturile omului: un sistem în evoluție*, p. 29.

nations”¹⁸. It divided human rights into two broad categories: civil rights, including the right to life, the right to liberty, personal security, the elimination of slavery and torture, equality before the law, the prohibition of arbitrary arrest, detention, exile, and the rule of law, the right to a fair trial, to property, to political participation, to marriage, freedom of thought, conscience, religion, freedom of opinion and expression, peaceful association and a category of social, economic and cultural rights.

As already mentioned above, it is well known that the Declaration of Human Rights, as a resolution of the UN General Assembly, is not a source of law. Its provisions have been endorsed and legally set up in treaties with a universal vocation. In addition to these documents, there are also other human rights pacts - the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly on 16 December 1966 and the two protocols International Covenant on Civil and Political Rights, the first adopted in 1966 and the second on the abolition of the death penalty, adopted in 1989. The greatest benefit they bring to the signatory countries, and implicitly to the citizens is that they are treated legally and are mandatory for their members. These documents are now seen as the core of international human rights law, generically referred to as the International Charter of Human Rights.

Gradually, at first recognized and then accepted as prerogatives of each individual that he may invoke to protect his legal status, human rights have evolved over time from key concerns, such as the right to life or the right to liberty, to concerns such as economic or cultural rights. In this sense, theorists classify them into three generations. With regard to the third generation of rights, their particularity lies in putting the issue of human individuality in the background to the detriment of the universality of citizenship. Globalization brings to mind concepts with much more complex definitions such as people, humanity, religious doctrine, in the name of which people have made sacrifices, generated conflicts, genocides but also advances in science and technology that can endanger the survival of the human race or health. the planet as a whole¹⁹.

In the classical paradigm of law, the role that culture has played in the evolution of social sciences and in the evolution of international law has been rather secondary. However, according to Michael Keating, the last decade of the last century has brought a rediscovery of culture²⁰. He appreciated that taking culture into account will help us to properly identify people in their social

¹⁸ Ayton-Shenker, Diana. *Drepturile omului și diversitatea culturală*. p. 25.

¹⁹ Zlătescu Moroianu, Irina. *Drepturile omului: un sistem în evoluție* pp. 18-30.

²⁰ M. Keating, *Culture and Social Science*, în D. Della Porta, M. Keating (eds.), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*, (Cambridge University Press, Cambridge-New York, 2008).

context, a context in which their choices make sense. At the same time, in this way, we will be able to analyze the actions that cannot be easily deciphered in the calculated language of the theory of rational choice, a theory that has long dominated this field of social sciences. The specificity of cultural rights has made it difficult to institutionalize them from the beginning. At first, they faced problems with content and definition because researchers did not agree with an unanimously recognized definition of culture, a concept that is considered to be a constantly changing one²¹.

The new type of approach has influenced a large part of the social sciences, and therefore even law. At international law level, among other things, this has meant: the elaboration of a comprehensive, anthropological definition of culture, as opposed to the classical definition of an elitist meaning, which covered only art and literature, numerous developments in the relationship between culture and human rights (illustrated by the jurisprudence of the European Commission and the Inter-American Court of Human Rights or the by approach to cultural rights of European Court of Human Rights); the effort to strengthen the mechanism for the protection of cultural rights; an intense concern for the protection of the rights of persons belonging to minorities and, last but not least, by honoring cultural diversity as a value of the international community. This was set apart at UNESCO level, initially by a document with optional legal force and then by a document with binding legal force²².

The preamble to UNESCO's Universal Declaration on Cultural Diversity²³, 2001, reaffirms the definition of culture from the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982), the World Commission on Culture and Development (Our Creative Diversity, 1995) and the Conference Intergovernmental Development Policy (Stockholm, 1998). According to it, *culture should be seen as a set of distinctive material, spiritual, intellectual and emotional aspects that characterize a society or a certain social group [...] it includes in addition to art and literature, and lifestyles, ways of living together, value systems, traditions and beliefs*²⁴.

Regarding this debate between universalism and cultural relativism, pointing out to art. Article 4 of the same Declaration we may see that *no one may invoke cultural diversity in order to suppress or restrict the fundamental human rights*

²¹ M. Keating, Culture and Social Science, în D. Della Porta, M. Keating (eds.), Approaches and Methodologies in the Social Sciences: A Pluralist Perspective, (Cambridge University Press, Cambridge-New York, 2008) pp. 102-103.

²² Crăciunean, Ramona Laura. *Protectia diversitatii culturale in dreptul internațional: modelul „uniti in diversitate”?*. (București, Ed Hamangiu, 2013) pp. 2-3.

²³ UNESCO Universal Declaration on Cultural Diversity <https://unesdoc.unesco.org/ark:/48223/pf0000127160>.

²⁴ Apud Crăciunean, Ramona Laura. *Protectia diversitatii culturale in dreptul internațional: modelul „uniti in diversitate”?* pp. 2-3.

guaranteed by international jurisdictional mechanisms. In 2005, the General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris at its 33rd session, adopted a new document, the Convention on the Protection and Promotion of Diversity of Cultural Expressions, continuing to promote the concept of human rights seen as guarantees of cultural diversity, and the *defense of cultural diversity* as an ethical imperative, inseparable from the respect for human dignity. This implies a commitment for the respect of human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples²⁵.

Therefore, culture can be viewed both in a narrow sense (the traditional conception, which refers only to art and literature) and in a broad sense (the anthropological conception, which includes, in addition to art, literature and traditions, ways of life, ways of living together, value systems etc.). From the point of view of this paper, it is much more appropriate to dwell on the notion of culture in the anthropological sense, especially since only such an approach would be of maximum use when it comes to protecting cultural diversity. In the anthropological sense, culture is presented in all its complexity, as a subjective concept, able to take on different meanings depending on different peoples and contexts, and it can be useful in protecting the cultural rights of minorities members²⁶.

In addition to the difficulty of defining the notion of culture, there is also a standstill in defining the notion of art²⁷. As linguists might add the term originates from the Latin language where it had the meaning of handicraft, skill or craft²⁸. There is therefore no universally recognized definition by theorists or philosophers²⁹, but it is accepted that this concept describes a creative activity of the individual, based on knowledge, exercise, perception, imagination and intuition, in which native talent is intentionally used to express, in a material form (perceptible to the senses) a vision of the real or of the imaginary world³⁰. In a classical sense, there are only seven arts traditionally described: poetry (literature), painting, sculpture, music, dance, architecture and cinema³¹. In this

²⁵ Convenție asupra protecției și promovării diversității expresiilor culturale <http://legislatie.just.ro/Public/DetaliiDocumentAfis/72999>.

²⁶ Crăciunean, Ramona Laura. Protecția diversității culturale în dreptul internațional: modelul „uniti în diversitate”? p. 7.

²⁷ Manea, Irina Maria. „Este arta imposibil de definit?” Revista Historia, ediție online, <https://www.historia.ro/sectiune/general/articol/este-arta-imposibil-de-definit>.

²⁸ Marder, Lisa. Modalități de definire a artei articol. online <https://ro.eferrit.com/modalitati-de-definire-a-artei/>.

²⁹ Art, Stanford Encyclopedia of Philosophy - <https://plato.stanford.edu/entries/art-definition/>.

³⁰ „Art.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/art>.

³¹ Estrella, Anabel “The story of the seven arts and how cinema connects them all” articol online <https://medium.com/lessons-from-history/the-story-of-the-seven-arts-and-how-cinema-connects-them-all-6d63250b9000>.

paper we understand to use the meaning of the arts starting from the classic point of view and adding in the sense of modernity the activities of dramatic art, design or traditional crafts.

According to the theory of the three generations of human rights developed by Professor Karel Vasek, the right to education is a cultural right and belongs to the second-generation rights³². The right to education is one of the fundamental rights of contemporary society, being the subject of regulation in the European Convention on Human Rights, but also within the European Union and the Member States. The importance of this right is given by the extremely fast dynamics of communications technology and the IT industry and by the growing need for staff - in any branch of the public or private sector - being able to easily use any type of equipment in order to increase work efficiency.

All persons should therefore have the opportunity to express themselves, to create and disseminate their work, in a language of their choice and in particular in their mother tongue; all persons are entitled to the right to a quality education process and training which fully respects their cultural identity; all persons have the right to take part in the cultural life of their choice and to pursue their own cultural practices, with respect for human rights and fundamental freedoms³³.

Because it cannot not be an exaggeration to think at the right to education as the right of future generations, its aims are specifically drawn by the Convention on the Rights of the Child (1989) which provides, inter alia: for the development of mental and physical abilities; educating the child in the spirit of respect for human rights and fundamental freedoms, as well as the principles engraved in the Charter of the United Nations; educating the child in a spirit of respect for [...] the national values of the country in which he lives, of the country of origin and of civilizations other than his own; preparing the child to take on the responsibilities of life in a free society, in a spirit of understanding, peace, tolerance, gender equality and friendship between all peoples and ethnic, national and religious groups and with persons of indigenous origin; educating the child in the spirit of respect for the natural environment³⁴.

The 26th Article of the Universal Declaration of Human Rights states that: *Everyone has the right to education and education shall be free of charge, at least as it regards basic and general education. Elementary education must be compulsory. Technical and vocational education must be accessible to all, and higher education must also provide equal opportunities and be accessible to all on merit basis.*

³² Karel Vasek, *Les dimensions universelles des droits de l'Homme*, (UNESCO, Ed.Emile Bruylant, 1990), pp. 297-316.

³³ Crăciunean, Ramona Laura. *Protectia diversitatii culturale în dreptul internțional: modelul „uniti in diversitate?”* pp. 5-7.

³⁴ Zlătescu Moroianu, Irina et al. *Educație, dreptul la educație și educația pentru drepturile omului* (București Ed.IRDO.2016) p. 12.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It must promote understanding, tolerance, friendship between all peoples and all racial or religious groups, as well as the development of the work of the United Nations for the maintenance of peace. Parents have the priority in choosing the right kind of education for their minor children³⁵.

Present principles to be thoroughly guarded. Is it old still gold?

As far as we have seen until this moment the branch of human rights dedicated to culture and education encompasses - if we were to summarize and condense the philosophical and legal theories set out - a series of basic principles which stand as the basis of many international and national institutions, created to oversee and guarantee them. These institutions have translated all these principles, in rules, declarations, recommendations and even court decisions. Given their importance for any scientific research in the field we propose to clarify them and further address them as principles of the right to culture that any society should consider:

Freedom - as freedom of artistic expression and freedom of access to cultural acts;

Accessibility - in the sense of facilitating access to cultural and artistic acts by creating public institutions with a wide territorial representation and developing public policies that reduce or eliminate the financial conditioning of the participation of beneficiaries. Within the information society, this principle implies access to culture through the internet and television, but it is not limited to it, equally designating the access to cultural and natural heritage, access to culture for detainees, and so on.

Cultural identity - understood as being able to live in accordance with a cultural identity, having the right to choose the cultural identity to which you belong, the right to religious identity, the right to associate with a cultural purpose, the right of native speakers to use their language and other language rights.

Protection of cultural and natural heritage - meaning the acknowledgment of state's legitimacy of the state in protecting cultural heritage even when it interferes with the exercise of individual rights, especially property rights, the right of the state to control the art market and to preserve, conserve sites of local, national or universal value;

Training - seen as the instruction needed in order to ensure all the necessary for the transmission of knowledge, for the improvement of skills and the development of intellectual abilities, in accordance with each one's cultural identity.

³⁵ Universal Declaration of Human Rights <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

By integrating these principles into their legal-administrative structure, states and international bodies acknowledge that by culture they define the values, beliefs, languages, knowledge, art, and wisdom which an individual or a community uses in order to express its humanity and the meaning it attributes to its existence. In this case, the concept that culture is a common good that contributes to improving the ability of individuals to shape their own future is strengthened, facilitating in the same time the understanding, interpretation and modeling of reality. Consequently, cultural rights are an integrating part of human rights, without anyone being able to invoke cultural diversity in order to violate or limit human rights guaranteed by international law.

Given the principle of training - as instruction - within the right to culture and considering education, therefore, a cultural right we can subsequently emphasize as principles of the right to education:

Accessibility - initially seen as a response to the organization of education exclusively in the ecclesiastical environment, we understand it in the sense of free access to state-organized educational institutions, taking into account demographic and geographical data, facilitating attendance and ensuring the preservation of cultural identity and language rights.

Free education- this principle is complementary to accessibility, being equally important to ensure the addressability increasing of education for all social categories, providing equal opportunities for intellectual development of each individual and thus contributing to the progress of society. The state should therefore be organized institutionally in such a way as to provide citizens with the opportunity to enroll in a form of education, without any access costs, at every stage of their life.

Compulsory education - in order to offer citizens the opportunity to acquire the skills needed to pass on knowledge, the ability to acquire the skills necessary for survival and progress, but also the possibility of intellectual development, the state, especially in this age of rapid digitization, must establish compulsory schooling stages for its citizens

Inclusive education - the education system must develop its capacity to include all students, without any discrimination, ensuring everyone the opportunity to access courses in respect of their cultural specificity and regardless of the existence of native or acquired physical features as a result of accidents. Thus, the state ensures that it builds institutions that adapt to the diversity of educational needs and to the particularities of learning and development, promoting tolerance and cooperation and valuing every citizen.

Quality - a principle of modern education that should be understood in two ways, one as ensuring a valuable educational process, with standards set for each actor involved and clear objectives for each stage of the institutional education path, so that at the end of schooling, the impact on the individual can be

measured in way like: the appropriate qualification of the graduate for the labor market, him being able to learn all that is necessary to master decision-making skills using the filter of self-thinking, the respect for other citizens, the development of social skills and last but not least the desire for self-esteem and actualization³⁶. A second way in which this principle should be viewed relates to the concept of sustainability³⁷, given that we understand that states should provide an education whose attribute is the acquisition by individuals of the knowledge and skills necessary to understand the need to address a lifestyle that will not endanger the existence of future generations.

Looking at these principles may bring us closer to understanding the depth and complexity of the need of ensuring the right to education for the present and future society. Not only economic prosperity, social development, lifelong individual development but also the survival of the values and traditions of each community depend on how international organizations and states understand how to relate to this cultural right. These rights guarantee that anyone can access the resources needed to identify and preserve cultural identity but also to interact with all other cultures. This is where not only rights and freedoms are born, but also responsibilities that contribute to strengthening democratically based constructions, encouraging dialogue and promoting a culture of peace. Accessing and participation to cultural, artistic, and symbolic acts throughout life thus become essential elements for the development of sensitivity, critical thinking, the ability to express oneself, and to make self conscient, assumed decisions.

Are the ghosts of the past the challenges of the future?

Yet what society brings us forth nowadays can alter all of the good intentions crafted in treaties the last century. Faced with the rapid digitalization process, accelerated due to pandemic crisis, cultural and educational sectors needed – and still do - to adapt on fast forward. The image captured by us in an online study conducted on February 2021 in Romania, in a single county - on more than 200 students in their final high school year of study, from different schools, with different specializations - and the projections of those surveyed, are not far from what the statistical data tell us at Romanian national level as a study conducted by the World Vision Romania Organization in 74 rural schools in 14 counties show us in September same year.

From these surveys, but not exclusively, we see that as always, the lack of proper financing led to poorly paid teachers and cultural managers. Poorly paying staff led to lack of interest for the job and for a teaching career. Lack of interest led to bad administered schools, crumbling buildings and poorly educated

³⁶ As Maslow stated it – see also Maslow, Abraham, Motivation and personality.

³⁷ Sustainable education <https://www.edu.ro/educa%C8%9Bie-pentru-dezvoltare-durabil%C4%83>.

students. All in all, this leads to an inefficient cultural end education system, where no matter the reforms or public policies displayed by the political actors, the outcomes, the day-to-day reality of either small or large communities, that of the employment market and that of the general state of mind of the citizens show us that there is a wrong direction we are turning to as human kind.

Further on the past legislative instability brought more confusion to an already dazed system. The seemingly ongoing economic crisis enlarged the rural/urban cleavage, raised the education cost and hardened the access to utilities. The outcomes of these system flaws breached the surface as a result of the health crisis. The online teaching, remote working and isolation outlined the huge technological gap between generations (students/parents/teachers/cultural workers) and the one between civilizations' as to for response to the unknown threat of a virus (Asian/African/American/European).

Visible and quantifiable results of these „sins of the past” thirty years of democracy and policy shaping in Romania breach through the high rates of early school dropping, the growing rates of illiteracy, poor results on PISA tests and the worrying high rate of functional illiteracy of the youth. If the future is of a green, sustainable, informational society how are the new generations going to face it if they will not have the capacity to understand the way it works, the ability to learn about the path that took them here and the knowledge to pass on this information or skills?

There is a strong perception of citizens on the major role that local government institutions must play in culture and education especially the town/city halls and the local councils. The way each nation understands to relate to cultural rights reflects not only on their economic prosperity, social development, or the lifelong individual's development but also the survival of the values and traditions of each and every community.

Just as there can be no democracy without institutions and no funds to sustain it, we can neither have culture and education without well-funded and well-endowed institutions and establishments that can preserve, promote and develop the unique values of each nation. At a closer look to the history of mankind for the last 60 years it is easy to see that the lack of democracy involves great costs. The full ratification of freedoms and liberties does not materialize without actions of the state and not without proper budgeting. Yet the costs of not having democracy seemed that always exceed by far those needed to sustain a democratic regime. Likewise, neglecting national, regional and local culture can involve a number of costs, which are not only financial quantifiable, which I believe no civilization could really afford without endangering its existence.

At the same time, the social dimension of education is the state through which education becomes possible and accessible. Public authorities have a positive obligation to create, organize and maintain the educational structures necessary

for the realization of the right to education in its essential components³⁸. Placing the need for culture and education on the higher levels of self-esteem and self-realization, as Maslow imagined on his pyramid, can transform their achievement in a goal that once reached leads to individual fulfillment and freedom.

In a time and place when basic human rights are once more at stake, where misinformation and false information roam across the world wide web, where books and libraries feel more and more abandoned and where mere logic and plain reason are to be contested, is there still a place for peaceful development, high culture and education for all? This might be a key question for any government and administration in the following decade, provided both us and them survive the pandemic not only healthy but in all mental integrity.

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