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TYPES, CATEGORIZATION AND INTERNATIONAL HUMAN RIGHTS RECOURSES

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Abstract: The basis of fundamental rights and freedoms is human dignity that is inviolable. Fundamental rights and freedoms are guaranteed by legal acts, they are constitutional categories because they are protected and guaranteed by the state - hence the highest legal act, but they are also contemplated in international acts. However, there remains a permanent challenge to guaranteeing and protecting human rights, as they often remain formal, not being effectively enjoyed by the individual. Formal equality or equality before the law provides all citizens with equality of rights, but only substantial equality or material equality economic and social life provides everyone with the same opportunity to enjoy these rights.

In the theoretical and legal research as well as based on the traditional classifications of different authors, especially in international legal acts and domestic acts of states, there is a wide catalog of civil rights and freedoms. From all these sources, we distinguish different divisions or classifications, such as: rights and freedoms; fundamental rights and basic rights; limited and unrestricted rights; individual rights and collective rights; classical rights and social rights; civil and political rights, economic rights, social rights and cultural rights; but also classifications such as rights that are guaranteed and enforced during court and administrative proceedings.

Keywords: human rights, rights and freedoms; fundamental rights, equality

1.1. TYPES AND CATEGORIZATION OF HUMAN RIGHTS

The division of human rights into fundamental rights and freedoms includes: the right to life, the right to personal integrity, the right to freedom and security, the right to a fair and impartial trial, the right to access, the right to privacy, etc., whereas fundamental freedoms include: freedom of movement, freedom of belief, freedom of expression, freedom of assembly, freedom of association, etc. Some of these fundamental rights and freedoms are also referred to as fundamental rights, such as the right to equality before the law, which is intertwined and intertwined with the actions and other procedures of state organs, respectively with the right to a fair trial and impartial, the right to remedies, the right not to be tried twice for the same act - "ne bis in idem", the right to freedom and security. These rights are referred to as fundamental rights because they are rights that relate exclusively to the life and inviolability of the individual. They are necessarily crucial for the state to protect them with absolute priority at the domestic level, but also to promote it at the international level. Fundamental rights are absolutely paramount, linked to the existence of man and are essential conditions for the protection of all other types of fundamental human rights.

Other fundamental rights and freedoms that are not fundamental rights are: freedom of speech and expression, freedom of religion / religion, etc. which can at the same time be termed as restrictive rights and freedoms, because the state has the right to restrict them, but only on a legal basis and without affecting the essence of the guaranteed right.

The classification of individual and collective rights consists in protecting and guaranteeing the rights to individuals or more individuals - groups of individuals / collectives or legal entities. Collective rights are a consequence of social reality and social development as well as their inclusion in legal provisions. Referring to constitutional norms, legal persons also enjoy fundamental rights and freedoms to the extent they are applicable to them.

We classify or divide other fundamental rights and freedoms into international acts and constitutions of many countries in Europe and the world such as: civil law; economic rights; social rights; cultural rights.

Depending on the review procedures - which state body reviews and decides on human rights violations, we can distinguish: rights exercised during court proceedings and the rights exercised during administrative proceedings.

Bearing in mind this theoretical description of human rights as well as their theoretical classifications, in practical terms they can not be considered separate. Human rights, as envisaged in normative acts, are always inviolable, inseparable, and inalienable to all persons.

1.1.1 Rights of the First Generation

In the literature of recent years we often encounter categorization of human rights by generations. Human rights of the first and second generations have a common denominator, but they are not divided and conditioned, as they precede the country's democratic development. Obvious differences with the third generation can be

ascertained in the fulfilment of rights belonging to different generations. Third generation rights depend heavily on economic and technological developments that relate to the will and well-being of the individual for a life in a clean and ecological environment. Their realization can be greatly assisted by various humanitarian programs as well as by international law itself through the promotion of these rights and the protection and preservation of the social and human environment, focusing specifically on the strengthening of human capacities and economic development and technological.

This relatively new division, which was categorized by Karel Vasak, First Secretary General of the International Human Rights Institute in Strasbourg[286], has been recognized since 1977, but in the legal literature we can now also face the rights for the fourth generation. The latter, in a general sense, includes rights that have evolved from the development of communication and information technology, such as the right to communication and the right to information.

The first generation includes civil and political rights, which are related to fundamental freedoms, and are rights to protect the individual in the event of arbitrary interference by state bodies. Civil rights are the most basic, fundamental rights include the innate dignity of man, the right to life, the right to personal integrity. Also, the political rights in which they are included should be taken into account: right to fair trial, election rights, freedom of speech freedom of belief.

1.1.2 Rights of the second generation

In the second generation are included economic and social rights, which are related to personal security and include: the right to work, the right to live up to the standard of living, nutrition and health protection. In particular, the rights deriving from the right to work are further elaborated including guarantees to be remunerated at least in minimum for the work performed, the right to safe and hygienic working conditions, the same opportunity for each raised to an appropriate and higher category, the right to rest, the right to leisure[287].

From the very notion of these rights we mean that state and state bodies should undertake numerous positive measures to effectively fulfill these rights. These rights, as stated above, if they remain guaranteed only by formal legal acts, do not bring the effect they have been adopted for, and depend on civil and political rights.

1.1.2 Rights of the third generation

The third generation rights include other generic rights more geared toward protecting the environment and include: the right to live in a healthy environment with fresh air and water, as well as protection against the dangers of the environment other that significantly threaten human health. In other words the right to live in peace, the right to a healthy environment, health security, all of which are made possible in a clean and ecological environment are included. Third generation rights overcome the dimensions of civil and political rights and are fully linked to developments in the field of the latest technology of industrialization of contemporary economies, which consequently result in environmental pollution. State and state bodies should play an active role in the realization of these rights by taking the necessary measures to stop pollution of the environment by creating good living conditions on the one hand and on the other by protecting the environment so that individuals create a clean and healthy environment, as well as a spatial planning of the environment in which individuals live. Third generation rights have also found expression in many international law documents, including the 1972 Stockholm Declaration on the Human Environment, adopted by the UN Conference, the Rio Declaration on Environment and Development of 1992 , as well as other documents that by reason of their nature can be categorized as "soft laws". These rights can be foreseen in mandatory acts, but democracy, good governance and the indivisibility of human rights are closely related to each other[288]. The European Union countries explicitly admit and uphold the right to development as an integral part of the new concepts and definitions of human rights. The three generations of rights have a distinctive feature of grouping the fundamental rights and freedoms to which they refer mainly. In this regard, we can conclude that first generation rights are related to the existence of human beings and fundamental freedoms, second generation rights are linked to equality, while third generation rights refer to advances or advancements in new areas of technology and their impacts, such as environmental pollution.

[286] Oliver C Ruppel, "Third-generation human rights and the protection of the environment in Namibia", *Windhoek: Macmillan Education Namibia* (2008): 101-120 f./p 101, 102.

[287] International Covenant on Economic, Social and Cultural Rights, January 16, 1996, entry into force December 1996.

[288] Zyberi, Dr. Gentian, International Human Rights Law, Tirana, 2011, p. 70-72.

1.2. International Human Rights Resources

International law is a set of international legal norms devoted specifically to the protection of human rights and fundamental freedoms. Whereas international human rights law refers to the field of international law that treats and studies the protection of human rights[289].

According to a traditional view, international law is created by states to regulate their relations in an international legal system, based on the plurality of independent states, equal to one another, and not recognizing any superior authority over them, in accordance with Peace - the Treaty of Westphalia of 1648[290], which was not a separate treaty, but a collection of treaties that brought the end of the Thirty Years War. Therefore, international law includes a wide range of issues such as security, diplomatic and commercial relations, but all of these are also related to human rights and their protection, "in international law there is no single legislature, nor does it have a single implementing institution[291]." Consequently, international norms can be adopted only with the consent of the states and their implementation is largely dependent on the states themselves. In cases of lack of understanding and approval in international institutions responsible for the implementation of these norms, observance of the rules can only be done through individual or collective actions of other states[292].

In the past, compensation for the violation of civil rights and freedoms was done through various acts of states. After the Second World War and after the Holocaust, the human rights issue got the attention of the international community on a large scale[293]. In this way, the states admitted that an international protection of fundamental rights was needed. Nowadays, many international written norms and customary norms oblige states to respect the fundamental rights of their peoples, and individuals have the right to file a petition with international judicial or quasi-judicial bodies[294]. But in most cases, they also come up with arguments against this theory, as it is claimed that individuals are not subject to international law and do not have the legal status of an international subject. The responsibility of individuals from an international perspective is an issue that was dealt with at the trial of Nurnberg and Tokyo. Namely, the first step in filling this gap came with the treatment of war crimes in Nuremberg (1945-1946), in which the leading Nazi regime leaders were prosecuted under the charge of serious crimes, such as genocide[295].

The source of human rights is international law - while the sources of international law, namely the classification of resources of internationally recognized international law, are provided in Article 38 of the Statute of the International Court of Justice according to this order:

a) International, General or Special Conventions, recognized by States;

b) Laws, as evidence of general practice accepted as law;

c) The general principles of law recognized by civilized nations; and

d) Jurisprudence and skilled doctrine of different nations, as a complementary way of determining the rules of the law, - the provision of Article 59.

The first three sources are primary or primary sources, while jurisprudence and doctrine are treated as secondary or secondary sources.

The main sources of human rights are international treaties that can be universal or regional, in a narrower or broader sense and comprehensive. Instruments such as the Universal Declaration, the decisions of human rights bodies, national laws, and UN resolutions may be considered at the level of customary law. Therefore, due to the importance that the main sources, the following, will focus on treaties and customary law.

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[289] Adam McBeth, Justine Nolan, Simon Rice, The International Law of Human Rights, (University Oxford Press, South Melbourne, Vic, 2011.

[290] Antonio Cassese, *International Law 150* (2nd Ed. Oxford University Press 2003);

[291] Peter Malanczuk, *Akehurst's modern introduction to international law,* (7th rev. ed. - London; New York: Routledge, 1997), p.1-12.

[292] Manfred Nowak, *Introduction to the international human rights regime,* (Leiden; Boston: Martinus Nijhoff Publishers, 2003), p. 35-37.

[293] Jack Donnelly, *International Human Rights*, 2nd ed. (Boulder, CO: Westview Press, 1998), 4, available at <http://www.questia.com/read/14865431>, accessed on February 12, 2013

[294] See European Convention on Human Rights, Rome, 1950, amended by Protocols Nos. 11 and 14.

[295] Manfred Nowak's quoted work. p 54-56.

1.2.1 International Treaties – as an International Source of Human Rights

From the beginning of this discussion it should be noted that the purpose of this section is not to analyze the intrinsic nature of treaties and constituent parts, but the identification of binding human rights resources at the level of treaties. However, before addressing this aspect, it is worth highlighting some facts that have major implications for the importance of a treaty.

International treaties are agreements between two or more States or international legal entities through which international rights and obligations are created, amended and supplemented. They envisage reciprocal obligations for the states that are parties to any particular treaty, - for the states parties are "pacta sun servnta". The main particularity of human rights treaties is that treaties stipulate obligations to states about the way in which they should treat all individuals within their jurisdiction. Although the sources of international law are not hierarchical, treaties have a significance especially because of their role in human rights issues as well as the fact that over forty major international human rights conventions have already been adopted. International human rights conventions have different titles, including "covenant", "convention" and "protocol", but common is the explicit indication that states parties are obliged to adhere to the terms of theirs, is what we quoted above "pacta sun servant".

Human rights treaties are largely endorsed within the United Nations and its specialized agencies, of which we can mention: International Labor Organization / ILO and United Nations Educational, Scientific, Cultural Organization / UNESCO, and under the care of the regional organizations, such as the Council of Europe (CoE), the Organization of American States (OAS) and the African Union (AU), formerly the Organization of African Unity (OUA). All these organizations have contributed a lot to the establishment and consolidation of a full and sustainable body of human rights. The way in which treaties are negotiated and how they have come into effect are the result of realizing the goals and the consent of the parties. However, the main document detailing the procedures for drafting, processing and entering into force of a treaty is the Vienna on the Law of Treaties.[296] The UN Charter is the most important act in the field of human rights and in this regard we can highlight and analyze its core provisions. More specifically, the United Nations Charter contains several human rights provisions, such as the second paragraph of the Preamble, Article 1 (3), Article 13 (1) b, Article 55 and Article 56, which declare all the pragmatic side of theirs, calling for more respect and enforcement of human rights. In addition, Article 55 (c) and 56 provide that "the United Nations shall promote universal respect and respect for human rights" and that "all members undertake to take joint and shared actions in cooperation with the Organization for achieving the goals set out in Article 55"[297].

When talking about the human rights law, the role of "soft laws" should not be underestimated, as soft laws include: adopted standards, common statements, goodwill policy statements, and resolutions in human rights concerns that do not contain legally binding norms[298]. Thus, although these acts are not legally binding, they play important roles in the field of human rights because they represent common positions on a particular issue, in this case of human rights. A typical example of soft law is the Declaration of Human Rights adopted by the General Assembly on 10 December 1948, which has no binding effect but has served as the basis for many treaties such as the International Covenant on Economic Rights, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, which expressly states that they "possess moral and political strength."[299]. It can therefore be said that the basis for the treatment of human rights is the Charter of the UN, which through the interpretation of its articles has served as a starting point for the development of the international law system. Here we can again conclude that a mild law has produced mandatory laws such as the Bill of Rights. In addition to the Charter of Human Rights, a number of other international instruments have been adopted under the auspices of the UN and other international agencies, and as a result they serve as human rights sources. In legal literature and in practice they are grouped together in:

[296] Ian Brownlie, f/p. 607-638.

[297] Charter of United Nations at http://www.un.org/en/documents/charter/. Accessed on Feb. 25, 2013

[298] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Govemance", International Organization 54, 3 Summer 2000, p. 421-456, in particular p.435.

[299] Cassese A., *International Law in a Divided World,* (Clarendon Press, Oxford University Press edition, Oxford, 1986), p. 299

I. Conventions that treat certain rights, inter alia (inter alia):

Convention on the Prevention and Punishment of the Crime of Genocide, (1948); International Labor Organization, ILO No. 98 on the Right to Organize and Negotiate (1949); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984); International Convention for the Protection of All Persons from Extinction (2006)

II. Conventions that relate to certain categories of persons who may need special protection, inter alia (inter alia):

Convention Relating to the Status of Refugees, (1951 and Protocol 1976); Convention on the Rights of the Child, (1989); Optional Protocol to the Convention on the Rights of the Child on Inclusion of Children in Armed Conflict (2000); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography, (2000); International Labor Organization, ILO no. 169 regarding domestic and tribal peoples in Independent States, (1989); International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990); Convention on the Rights of Persons with Disabilities, (2006).

III. Conventions envisaging the elimination of discrimination:

ILO 111 Discrimination in Employment and Occupation, (1958); UNESCO Convention against Discrimination in Education, (1960); International Convention on the Elimination of All Forms of Racial Discrimination, (1965); International Convention for the Prohibition and Punishment of Parthia Crime, (1973); Convention on the Elimination of All Forms Discrimination against Women, (1979) and its Optional Protocol (2000) [300].

As regards the rights of regional rights that have been adopted in various continents such as Latin America, Africa and Asia, we may refer to those quoted in the general section. The conventions that apply in Europe are among the most popular: ECHR (1950), supplemented by the European Social Charter in 1961; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and the Convention on National Minorities (1994).

These are the basic and most important documents that address human rights and are the first source of these rights.

1.5.2 Laws - an international source of international law

The law as a source of international law is considered another source of human rights, and represents a common practice consolidated by several precedents. Even in theory, there is much controversy about whether customs play a role in human rights. Many scholars have commented on the question of whether law is a source of international law but, in accordance with Article 38 of the ICJ Statute, the custom is accorded the appropriate elements and in provision 38-b "international custom is considered evidence of practice generally accepted as a law."[301] So the main question for this discussion is whether human rights are part of customary international law?

International customary law plays a decisive role in international human rights acts. In order to apply customary international law, it should represent a broad consensus in terms of content and applicability, in order to convey the idea that this practice is mandatory (opinio juris et necessitatis).

Ordinary law is mandatory for all states (except those who may have objected to it at the stage of its formation). In the most classic sense, the customary international law is a set of statutory, mostly unwritten, laws that are developed over time through state practices and actions. What is general and applies to any customary right is that for to be considered a customary norm, there must be a recurrence, and in the case of international law, especially when it comes to fundamental rights and freedoms, it is necessary to "have a lasting or persistent state practice". The other element that should be a compulsive element is that states should be convinced of this practice, repeat it, and engage in this direction to make it sustainable. States should respect the practice, should follow it because of humanity, because of humanity, but also in the sign of the reciprocity and appropriateness of state policies. Based on the prediction of the ICJ's status, the custom traditionally includes two elements: general practice (an objective element) and jurisprudential necessity (subjective element), which is the impression that "states follow practice from feeling of legal obligation."[302].

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[300]Human Rights Instruments, < http://www.humanrights.is/the-human-rights- project/human rights cases and materials /human rights concepts ideas and for a/Human rights for a /the united nations/ >, February 14, 2013

[301] *Statute of the International Court of Justice*, art 38.b

[302] Michele Maria Porcelluzzi, "Chapter One The sources of International Human Rights Law and their application in the United States of America", Bocconi University – Department of Law; Duke University – School of Law, October 22, 2010 p. 11. Electronic copy available <at: http://ssrn.com/abstract=1809937>;

Of course, our discussion will focus on aspects of the complex nature of customary human rights law. One of the most important features of customary international law is that customary law can be applied to universal jurisdiction or its compulsory enforcement, and in this case every citizen should be subject to extra-territorial claims in the courts of his state according to international law, which is in fact the class of customary international law ius cogens.[303] The norms of the right of general international, which are recognized and accepted by the international community, as a whole, are ius cogens norms. Even with the Vienna Convention on the Law of Treaties (VCLT), any treaty that conflicts with a fixed norm is invalid.

Another interesting point of view was addressed by Schachter,[304] suggesting that the traditional criteria for determining the human rights obligations that have reached the status of customary law are irrelevant. The criterion is that the "practice" and "jurisprudence" related to human rights have been discussed in international forums, and they are only a matter of discussion at the UN level, and as such may arise within the framework of international law. In this respect, human rights issues discussed at national level can not be considered as having reached the status and scale of customary international law. "It is not enough to assert that a common norm has reached international status, but the essential is whether there is a general conviction that particular behavior is legitimate."[305].

The ruling of the International Court of Justice in the case of the North Sea Continental Shelf[306], in the best descriptive way, highlights what are the basic conditions or elements of the existence of customary international law and are considered not only to pass the time and repetition, but the interest of states for the uniformity of the provision, the need for trust, the existence of a subjective element implied as "opinio juris sive necessitatis" - ie the belief that an act constitutes a legal obligation, not just a continuous repetition because it is not in itself sufficient. In addition to this decision, according to what is contained in the Commentary to the Statute of the International Court of Justice, other forms of determining the existence of customary practice such as administrative acts or attitudes, in particular in the field of diplomatic protection, judicial acts and treaties.

Generally, we can say that court decisions are ranked as the most typical in order to create customary international law. It can not be excluded from the continuous references to the Universal Declaration of Human Rights, as there are allegations that some fundamental rights and freedoms are the norm of customary rules. There are also supporters of the views of the Universal Declaration is the document that contains the rules or norms of "jus cogens."[307] Undoubtedly, with regard to the concepts of customary law, even within the sphere of human rights, there may be differences of apparent nuances, but it remains clear that the rights and fundamental freedoms pertaining to international law are mandatory for all states, regardless of whether they have ratified the relevant conventions.

Simma B. and Alston P., The Sources of Human Rights Law: Custom, Jus Cogens, General Principles, Y.B.I.L., vol. 12,(1992).

[303]M.S. McDougal *et al., "*Human Rights and World Public Order,*" Principles of Content and Procedure for Clarifying General Community Policies." Va. J. Int'l L. 14 (1973):* 387. p. 272; Orakhelashvili A., *Peremptory Norms in International Law, (*Oxford University Press, Oxford, 2006); Linderfalk U., *The effects of Jus Cogens norms: Whoever Opened Pandora's Box, Did you ever think about the consequences?,* The European Journal of International Law, Vol. 18 No.5, 853-871 (2007)

[304] Oscar Schnader, *International Law in Theory and Practice,* (Kluwer Academic Publisher 1991) p. 338

[305] Ibid.

[306] ICJ, *North Sea Continental Shelf* , ICJ Reports, 1969, 74 and 77; ICJ, *Military and Paramilitary Activities* in and against Nicaragua (Nicaragua v. US). Merits ICJ Reports, 1986, 99-100. Vojin Dimitrijevic, "Customary Law as an Instrument for the Protection of Human Rights", (2006 by ISPI (Istituto per gli Studi di Politica Internazionale), p. 1-5

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SUMMARY

Regarding the concept and importance of human rights, we can undoubtedly point out that they are inviolable, inseparable, inalienable, thus related to human nature itself. Consequently, when it comes to the conceptualization and definition of human rights, we have addressed theoretical approaches from various angles in an effort to discuss them from ancient times and to date. The common denominator of all views from different periods is that fundamental rights and freedoms are very precious. They are discussed in the dimension of their evolution, from the philosophical, but also to the normative and legal approach. Therefore, this paper has included:

- Chronological evolution of human rights, reflecting the natural rights developed by Aristotle; natural theory which served as a platform for discussions about human rights as well as positivism and justice.

- Institutionalization of human rights and normative documents, which also had the first elements of human rights protection, and

- Treaties - international conventions, as well as customary rights, which are the fundamental sources of human right

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