

# EFFICIENCY OF LEGAL NORMS HUMAN RIGHTS AND FREEDOMS IMPLEMENTATION

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## Abstract

*In the last years cybercrime has increased significantly in Europe and across the world. Thus we may notice a wide range of efforts in order to combat this phenomenon.*

*National and international institutions were created for this purpose with the aim to protect social, political and economic development.*

*The paper also underlines the most common cybercrime aspects and the importance of international cooperation in this area.*

Key words: *human being, freedom, equality, protection, human rights.*

JEL Classification: [K10]

*Freedom is the right to do what the law allows.*

*Neruda*

## 1. Notion of human rights

In most general terms, human rights are to be defined as the minimum moral, political, social and economic requirements of citizens towards the state authorities. Realization of those requirements is a *conditio sine qua non* for basic biological, political and cultural existence of an individual, *i.e.* the condition for a decent life with a dignity, creativity and humanity. Those human rights derive from a fundamental character of a human being as a rational and the most perfect being.

The starting point of these characteristics of the human rights is naturally inherent in the autonomy of the human personality, which does not need to prove and explain because it is obvious ethical and gnoseological category, as stated by Luis Henkin.<sup>1</sup>

Today natural rights are called human rights.<sup>2</sup> The term "human rights" chronologically speaking, was created earlier, and was widely accepted in many and

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<sup>1</sup> L. Henkin, *Human Rights*, in „Columbia Law Review”, (404), 1979, pp. 10 – 25.

<sup>2</sup> O. Popovic, *Deklaracija prava coveka i gradjanina, temelji moderne demokratije – izbor deklaracija*

the most important declarations and charters of the past centuries and especially in the eighteenth century, when the Declaration of the Rights of Man and of the Citizen, of 1789 represented the dominant entity of, until then, created concept of natural law school in its most rational form.

The term "natural law" is a genus term and it is backed up by legal and philosophical thought from Socrates, Aristotle to Kant and even after him, i.e. to the UN Universal Declaration of Human Rights, and beyond. The entire history gives us the right to keep, not just a concept, but also an expression of the concept of "natural law"<sup>3</sup>. The term "human right" refers to the human individual, as a source of law, where a man is not viewed only as a natural, but also as a rational being, a legal entity with rights and responsibilities as a moral being. This expression is well-rooted in the English-speaking world with a marked ideological connotation from the time of the French bourgeois revolution.

The term "human rights" refers to the specific origin of the rights of the complex moral and ethical concept of humanity and is considered to be the least wrong of all three mentioned terms in use. It is evident that in modern times it is the most used term in academic, media, professional and public debates.

## **2. The importance of human rights**

By passing the mentioned UN Declaration a new problem arose at the time, that the entire range, a catalogue of human rights has no protection mechanism. This problem was overcome at the regional level by adopting the European Convention for the Protection of Human Rights and Fundamental Freedoms. The very history of the formation of the European Convention for the Protection of Human Rights and Fundamental Freedoms shows that this path was neither easy nor short and simple.

After the World War II, Europe found itself in crisis. On one side are still present fresh memories and the consequences of massive human rights violations before the Second World War and during the fascist occupation, and on the other hand threatened the growing danger of Stalin's dictatorship, which all the more gave the seal to the current situation.

In this atmosphere arose and were created the non-governmental movements for the unification of Europe on certain principles (United European Movement, the European alliance, etc.), and in May 1948 the Hague Conference of International Committee of the European Movement was held which concluded:

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*i povelja o ljudskim pravima*, Beograd, 1989, p. 141.

<sup>3</sup> S. Perovic, *Ljudska prava - tekovina skole prirodnog prava*, Belgrade, 1998, p. 34.

"We want a charter of human rights which will guarantee freedom of opinion, assembly and expression and the right to create a political organization, and the creation of the court with adequate sanctions for the implementation of this charter."

From this movement of non-governmental organizations the Council of Europe was formed, which promotes the tradition of respecting human rights and which primary objective is bringing together countries which common values are respect for human rights, political freedoms and the rule of law. All this is given and is contained in the Statute of the Council of Europe, adopted on 5 May 1949 in London.

The formation of the European Convention on Human Rights was hard and enduring.

The Committee of Ministers on 5 November 1949 called on Member States to nominate their experts to prepare a draft European Convention and on 1 April 1950, convened a conference of senior officials of member governments to prepare the basis for political decisions despite the disapproval of larger number of Member States. Finally, on 4 November 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted in Rome, and entered into force on 3 September 1953.

Entry into force of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>4</sup> meant on the one hand, that the state must give up part of their sovereignty, and on the other hand a citizen became a subject of international law. These facts constituted a restriction on the countries, especially for those powerful, the obligation to deal with its citizens, and doing so not to decide alone. In this atmosphere, to mitigate the resistance of some countries a compromise solution was found by introducing the European Human Rights Commission which task was to achieve alignment between the individual and the state, even if it would not have conditions for that. First, it questioned the permissibility and merits of the submission and if they established that there is a condition it forwarded the case to court. Initially, the Commission represented the party before the court, later the lawyers were included, and finally it was allowed to the appellant to appear before the court.

Today, the European Court of Human Rights in Strasbourg is opened for about 800 million people.

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<sup>4</sup> B. Burgental, *Medjunarodna ljudska prava*, Centar za ljudska prava Belgrade, 1997, p. 52.

### 3. General guidelines on human rights

Not every right is a human right. First of all there is a set of rules by which people must govern. The rules made by the competent legislator or the international community, equipped with sanctions for breach thereof, are within the norms of objective law.

Human rights are based on values which are recognized to every man or woman, and not on other characteristics, including their merits. The greatest number of human rights is aimed exclusively, to the state. They limit state power or impose obligations aimed at protecting these rights. The most typical requirements for non-interference of the state concerns freedom of movement, of assembly, of expression, freedom of conscience and consciousness. State's obligation is to refrain from interference and impact on civil and political rights, and to be active when it comes to economic and social rights of the people - citizens.

The concept of human rights refers to the concept that is based on the idea that human beings have universal natural rights or the status independent from legal jurisdiction or other determining factors such as ethnicity, nationality and gender. As can be seen from the Universal Declaration of Human Rights, they are conceptually based on the innate human dignity and maintain their universal and inalienable character.

Legally speaking, human rights are defined in international law and the domestic law of many countries. The aim of the concept of human rights is the establishment of common standards regarding the position of the people that should be achieved by all the peoples and all nations, so that every individual and every citizen of the society would seek to promote respect for rights and freedoms.

The idea of human rights has evolved from the idea of natural rights. Some scholars do not distinguish between these two concepts. Human rights protection is ensured at the national level by ratification and implementation of international instruments into domestic legislation and the existence of institutions of national and international state - legal character.

Human rights, which are regulated by the law, are set as follows:

1. *The right to life*, protecting people from such crimes, such as murder, massacre, torture and rape;
2. *The right to liberty*, which protects freedom in areas such as: religion, freedom of association, assembly and movement;
3. *Political rights*, which protect freedom of participation in political events disclosing them through freedom of expression, protesting, and participation in government;

4. *The right to fair criminal proceedings*, which protects against abuses, such as illegal detention, secret trial and unjust sanctions;

5. *The right to equality*, which guarantees equal rights of all citizens before the law and non-discrimination i.e. prohibition of discrimination;

6. *Economic and social rights*, which provide education and protection from severe poverty and starvation.

#### **4. Human rights as life necessity of people**

To understand the essence of the concept of human rights is essential to bear in mind that this is a complex and multifaceted concept. The concept of human rights contains two, one could say basic concepts: the concept of human and the concept of rights. The ultimate concept is the human, and the concept of human rights was created for man. For this reason the right is in human function for the protection and realization of human rights. Also, the concept of rights implies a certain role of a principal, the one that authorizes the entity, protects it and creates the conditions for its application i.e. the role of the sovereign who in a particular community controls the basic social relations, and this is a country i.e. state power. The state establishes rules of conduct<sup>5</sup>. These rules of conduct are referred to as the legal rules or legal standards (Regulus), and they are rights in the objective sense. From the rights in an objective sense, every entity to whom applies objective legal rule of conduct, draws and pulls and bases its individual "subjective right" or authority to meet specific individual vital need, in the way it determines the rules of conduct - an objective right.

In the context of this thinking man's basic needs can be understood as all the things without which man cannot live, what is necessary and appropriate, on the attained level of civilization of the community in which he lives, to further develop. Natural life goal and aspiration of man is optimal as possible, to meet the essential needs of life in both numbers and quality, meaning its presence and participation in as much as possible scope of social community in which he lives, in a way that enables the highest possible material and spiritual wealth, the more freedom, the more learned, the more built, as perfectly and dignified as possible human personality. Such human personality is a factor of civilization progress and factor that pulls forward.

From the foregoing, it is evident that the life needs are a touch point, what is common to human and rights, the internal measure that connects a human, as a

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<sup>5</sup> T. Akvinski, *Drzava*, Zagreb, 1990, p. 41.

natural category, and the right as a civilization category, a complex concept, which is a human right. It should be noted that the government, depending on its character and its interest (the degree of alienation from the people) can have, more or less, understanding for the needs of the people. However, it should be noted that the needs and interests of the government and the necessary life needs of people almost never coincide completely and there is always a certain degree of misunderstanding that can take different forms, ranging from the one when the government ignores the needs of the people, and sometimes the man himself, until the moment when the government recognizes human needs and protects them declaratively "on paper", but in real life does not create conditions for their satisfaction and protection, to the worst forms when the government deprives people of basic needs. Rare are the cases that the government for human needs has a lot of understanding, and this is part of the awareness of government itself and with such awareness government is making efforts to notice the current necessities of people, to define, recognize, protect and create conditions for their satisfaction in optimum possible custom. When the government becomes aware of the current necessary basic needs of people, then gives them legal form, defines, recognizes, protects and creates conditions for their exercise, then the necessities of life are institutionalized, and then they make a human right.

A set of human rights for which the people have fought, or the state government recognized to them, is earned capital for the people and a guarantee of gained life status. Many non-governmental organizations also have an important role in the promotion of human rights. Non-governmental human rights organizations can be defined as the original and immediate associations of people who are created and act in terms and communities with the conflicting relationship between the state government on the one hand and the people and their essential needs of life on the other side, in order that such needs that people have, be perceived, defined, promoted and recognized, be protected and fulfilled in the authentic, as immediate as possible, organized and in the circumstances the optimal possible way that enables life to a man as materially and spiritually rich and free personality.

## **5. Human rights and freedoms protection**

Protection of human rights and freedoms, is particularly important for the status of fundamental rights and freedoms such as the right to life, right to property, freedom of thought, freedom of religion, conscience and consciousness. These freedoms and rights must enjoy specific legal protection as due to the fact that the fundamental freedoms and human rights are, by their sources and origin above-

constitutional matter (belonging to natural rights), it is necessary that the state in relation to them self-limits itself<sup>6</sup>.

The powers of state authorities must be restrictively regulated<sup>7</sup>, state power must be divided (separation of legislative, executive and judicial power), freedoms and civil rights have to be protected. As a disadvantage of these specific constitutional guarantees it is considered that they take away from some freedoms and rights the status of basic rights and freedoms.

There are different procedures for the protection of freedoms and rights of citizens, depending on the type of violation. One of the forms of judicial protection of the rights and freedoms of citizens is protection before the special administrative courts. In such cases, the subject of the dispute is a decision or an act of the second instance administrative body. Next, there is the special protection of freedoms and rights of a citizen, before the court that has jurisdiction over administrative litigation, provided that there is no other judicial protection of the rights and freedoms of citizens, as well as that a violation of the freedoms and rights of citizens was caused by an individual act or action. The next and most important form of judicial protection of the rights and freedoms of citizens at the state level is the protection before the constitutional courts. This form of protection is achieved directly through constitutional appeals, and indirectly through general normative control by the constitutional judiciary.

An important form of protection of freedoms and rights before the constitutional courts shall be exercised in the context of a general review of constitutionality and legality. General control of the constitutionality and legality is the most important and basic competence of the constitutional courts. General control of the constitutionality and legality is the form of indirect protection of the rights and freedoms of citizens as it indirectly affects the individual's – citizen's subjective position.

In addition to the judicial protection of human rights, there are other very different forms of protection of these rights. It is a wide range of international governmental, non-governmental and mixed bodies for the protection of the rights and freedoms of citizens, as well as specific specialized bodies, which core competence concerns the protection of human rights. The main feature of these bodies is their organizational autonomy and independence which ensures that those bodies are governed by an objective assessment of the situation in the field of human

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<sup>6</sup> B. L. Basta, *Politics limited by law*, Belgrade, 1984, p. 32.

<sup>7</sup> K. Cavoski, *Existence of Freedom in a Democracy*, Belgrade, 1981, p. 56.

rights, as well as to base their work on the constitution, laws, legal acts and international law in this area.

The functioning of these international bodies is based on the following principles: immediate autonomy and independence in the work, then the informality of the proceedings, followed by direct contact with citizens whose rights have been violated or compromised, access to information and documents of importance for the protection of human rights, cooperation with state and social institutions in relation to the protection and realization of human rights.

It is particularly important that these bodies continually and systematically monitor and analyze the situation in the field of human rights, then follow legislation in this area<sup>8</sup>, have the advisory influence and initiatives to competent state authorities. In this way, these bodies and institutions are acting to protect not only the rights of citizens when they are violated and threatened, but also preventively.

## 6. Conclusions

Although social concept of the state based on the rule of law has lasted for more than two centuries, it is, from the standpoint of its conceptual determination, an ambiguous creation. Therefore, even today there is neither complete scientific, nor theoretical, consensus on its definition.

However, the political rights, democracy and the state based on the rule of law are an expression of the widest social desires to limit the arbitrary and subjective behavior of the holders of state power by means of the rule of law and the need to ensure human rights and freedoms and general legal predictability, certainty and security in society<sup>9</sup>. Therefore, to the democratic rule of law applies the basic social rule that everything that is not prohibited by the Constitution and by law is allowed for an individual, with a view to the expansion of human rights and freedoms, while all that the constitution and the law did not mandate and predict for the state and its organs is prohibited in order to prevent arbitrariness of the state's authority to dispose of the elements of power and monopoly of coercion and sanctions - repression<sup>10</sup>. This is necessary in order to limit and precisely regulate the work of the state and its organs.

Based on the previous ideas and conceptions of human rights, it may be established, with the scientific certainty that the human rights are achievements of the

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<sup>8</sup> D. Mrdjanovic, *Temelji moderne demokratije - izbor deklaracija i povelja o ljudskim pravima*, Belgrade, 1989, p. 38.

<sup>9</sup> I. Kant, *Um i sloboda*, Belgrade, 1974, p. 35.

<sup>10</sup> B. Babic, *Buducnost demokratije*, Belgrade, 1990, p. 28.

school of natural law<sup>11</sup>. This is important to point out reasons for enormous impact that a school of natural law made in the socio - political life of the European world. Thus, for almost all, great milestones of recent European history, the idea of natural rights was one of the most important driving forces. Hence, it is undisputed that, under the auspices of natural law it was created one well-known individualistic atmosphere of the Renaissance, which paved the way for the liberation of man from the medieval multiple fittings and clamps.

Today there are a large number of international legal acts<sup>12</sup> issued by the UN on matters of establishing, exercising and protection of human rights. In addition there are a number of regional legal acts regulating these issues and most importantly the highest number of countries are signatories of these documents. Therefore, states directly apply these documents in its legal system or certain attitudes from these international and regional acts, implant in their constitutional - legal system and apply in the legal order.

At the end of this paper it is necessary to emphasize that it is essential that the catalog of human rights in accordance with the development of society and civilization, is constantly being expanded and improved, in order to be in line with the real needs of the people to free life.

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<sup>11</sup> E. Block, *Natural Law and Human Dignity*, Belgrade, 1977, p. 11.

<sup>12</sup> D. Mrdjanovic, *op.cit*, p. 23.