

# EUROPEAN UNION AND HUMAN RIGHTS

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**Abstract:** *No matter whether they live in Europe, on the American continent, in Africa, Asia or Australia, humans have rights and obligations that ought to be respected. Regardless of the obvious differences between people, there is one thing common to every single one of us – the innate rights. The violation of human rights makes us step down the evolutionary ladder.*

*I consider that respecting and defending human rights represents a key characteristic of any state that wants to be considered democratic. The level of development of a state is also indicated by the degree to which it respects the rights of both its citizens and non-citizens.*

*Even if in the beginning it was built on a solely economic foundation, the European Union slowly developed, taking on many of the functions of a regular state. Due to its ambitions of becoming a better connected major political power, it was forced to draft a document defending the rights of community citizens.*

*The question is: when economic interests and the interests of community citizens will become contradictory, which of them will prevail? Will European Union institutions intervene the moment a powerful member state violates human rights or will they overlook certain slips?*

**Keywords:** *European Union, Human Rights, European Convention on Human Rights, Charter of Fundamental Rights, Romania, Spain.*

## 1. Short history of the development of Human Rights

The concept of “human rights” has hundreds of definitions reflecting the social, cultural and political values of the person who approached the problem. ***Richard Rorty believes that nowadays, in this world marked by plurality and diversity, human rights should be seen as the most important means of avoiding sufferance and humiliation. Respecting these rights would offer the minimum standards of dignity, tolerance and cohabitation in a globalized world.***<sup>1</sup>

Both the concept and the contemporary system of fundamental human rights have their origin in the 1776 American Declaration of Independence as well as the Declaration of the Rights of man and Citizen proclaimed by the French Revolution in 1789.<sup>2</sup>

These documents show the wish for change and emancipation in modern times. The ideal promoted by these declarations was founded on natural right, in

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<sup>1</sup> Balahur Doina, *Protectia Europeană a Drepturilor Omului, Suport de curs*, Universitatea Alexandru Ioan Cuza, Iași, Centrul de Studii Europene, p. 4.

<sup>2</sup> Ibidem., p. 5.

its turn based on equality, brotherhood and the belief that humans are, from very birth, equal and endowed with certain inherent rights.

The most important proclamation in the XXth century regarding human rights was the “Universal Declaration of Human Rights”, adopted by General Assembly of the United Nations on December 10, 1948.<sup>3</sup>

The above mentioned declaration was the source of inspiration and at the same time the basis for the creation, at the initiative of the Council of Europe of the European Convention on Human Rights and Fundamental Freedoms adopted on November 4, 1950.

The Convention has an important significance for international law of human rights because: it was the first treaty in the world in the field of human rights; it set up the first procedure and international court for complaints in the field of human rights; it is the most developed and efficient system of human rights; and the developed jurisprudence is the most extensive compared to any other international systems.<sup>4</sup>

Although the European Union adopts provisions and sets up institutions to impose the respect of fundamental human rights, there are authors who argue that policies regarding human rights created by the European Union are faced with a paradox. On one hand, the Union is a strong defender of these rights, both at internal and external level, and on the other hand it lacks coherent policies in the field and there are doubts regarding the legal competency of its institutions to deal with a large range of problems regarding human rights.<sup>5</sup>

The need for adopting the European Union’s own document on the issue of human rights was presented in the Human Rights Agenda for the European Union for the Year 2000.

The reasons mentioned by Antonio Cassese, Catherine Lalumière, Peter Leuprecht and Mary Robinson in their work, underline the need for adopting such a document because:

- A European Union that does not constantly and effectively protect and promote human rights will betray its common values and the attachment to it. The Existing European policies in this area are no longer appropriate. They have been created for yesterday’s Europe and they are no longer sufficient for tomorrow’s Europe. It is an urgent need to create a coherent, balanced and professional policy of human rights.

- There are many reasons for which the European Union cannot be left without an internal act in the field of human rights:

- the fast movement towards an “increasingly closer” and unique market;
- the adoption of an unique currency for close to 300 million people;
- the increase of racist, xenophobic, race hatred incidents in Europe;
- Europe’s tendency to turn into a hostile “fortress” for those on the outside, discouraging refugees;

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<sup>3</sup> Alston Philip, Bustelo Mara, Heenan James, *The EU and human rights*, Oxford University Press, 1999, p. 3.

<sup>4</sup> Balahur Doina, *op.cit.*, p. 34.

<sup>5</sup> Alston Philip, Bustelo Mara, Heenan James, *op.cit.*, p. 6.

- increasing cooperation in the field of security policies and its insufficient adaptation to the standards of human rights;
- The desire to include in the Union at least 5 new countries, if not all 13, in the following years.<sup>6</sup>

Drafting a Fundamental Rights Charter of the European Union was decided at the European Council in Cologne, which took place on June 3-4 1999. The Charter was meant to “regroup fundamental rights in force in the European Union, so that it can offer a higher visibility and to mark their exceptional importance”.<sup>7</sup>

Adopting this very important document is first and foremost a political message of the 15 Member States (that the European Union had at that time) to their citizens, reinstating fundamental rights standing at the basis of European construction.<sup>8</sup>

The project of the Charter was adopted by the Convention at the beginning of October 2000. The European Council at Biarritz on October 13-14 2000 unanimously approved the project and presented it to the European Parliament and the European Commission.<sup>9</sup>

The Charter of Fundamental Rights of the European Union was proclaimed by the president of the European Commission, the president of the European Parliament and of the Council, following the European Council in Nice from December 7, 2000.<sup>10</sup>

The preamble of the Charter announces the fact that “the Union is founded on indivisible, universal values of human dignity, freedom, equality and solidarity; it is supported on the principle of democracy and the principle of the rule of law. It places the person in the center of its actions, establishing the citizenship of the European Union and creating a space of freedom, security and justice”.<sup>11</sup>

In the Charter, the rights are classified in 6 chapters: Dignity, Freedoms, Equality, Solidarity, Citizens’ rights, Justice. In addition to these, the Charter also includes a 7th chapter stating general dispositions. In total, the Charter has 54 articles.<sup>12</sup>

When the member states of the European Union launched the idea of drafting a Charter of Fundamental Rights, they did not set the status. It was supposed to be analyzed afterwards, when the text had been adopted definitively and the question was: Should the Charter be integrated in the treaties? If it had been included in the treaties, it would have got constraining legal value for the states and the community institutions.<sup>13</sup>

Thus, at the European Council in Nice, it was decided not to incorporate the Charter in the treaties, followed by the analysis of the problem of the legal status

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<sup>6</sup> Cassese Antonio, Lalumière Catherine, Leuprecht Peter, Robinson Mary, *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000*, AEL, Florence, 1998, p. 1-3.

<sup>7</sup> [http://ec.europa.eu/romania/documents/eu\\_romania/tema\\_8.pdf](http://ec.europa.eu/romania/documents/eu_romania/tema_8.pdf)

<sup>8</sup> Idem.

<sup>9</sup> Idem.

<sup>10</sup> Idem.

<sup>11</sup> Idem.

<sup>12</sup> Idem.

<sup>13</sup> Idem.

set to take place during the debates on the future of Europe on January 1st, 2001.

The Charter of Fundamental Rights was incorporated in the European Constitution. Following the rejection by referendum in France and the Netherlands, in 2005, and the 2-year period of reflection, on June 23, 2007, the state and Government leaders, reunited in the European Council, decided the convocation of a new intergovernmental conference, in view of drafting a Reform Treaty, by the end of 2007.<sup>14</sup>

The Lisbon Treaty that entered into force on December 1st 2009 promotes an “Europe of rights, values, freedom, solidarity and security”, introducing the Charter of the Fundamental Rights in the primary European law, instating at the same time new mechanisms of solidarity and ensuring a better protection of European citizens.<sup>15</sup>

The Lisbon Treaty maintains the existing rights and introduces new ones, it guarantees the freedoms and principles set in the Charter of Fundamental Rights and offers these dispositions mandatory legal force. The rights this document stresses are civil, political, economic and social rights. The treaty maintains and consolidates the political, economic and social freedom of European citizens.<sup>16</sup>

## **2. The way the respect of Human Rights is perceived in the European Union**

The promotion and protection of human rights is not an activity done on a single occasion and the governments and bureaucracies cannot be constantly vigilant. There will always be occasions and problems related to which it will seem preferable to sweep human rights under the carpet (“temporarily”, of course, and only for the best interest of a more profound objective which is presupposed to be itself friendly regarding human rights).<sup>17</sup>

In its work, “EU Human Rights Policies. A study in Irony”, Andrew Williams explains the source of the superficiality of the protection of human rights within the European Union and presents its implications on the long term. The author starts from the idea that the source of the problems is the lack of a coherent and consistent policy regarding the protection of human rights in the Union, respectively the fact that its promotion in the European Union is due in fact to the Union’s desire to explain its legitimacy in front of Europe.<sup>18</sup>

Fundamental rights, as a “fashionable” element in the European context, have become indispensable in the process of formation of a European identity. In its desire to become an entity which is more than economic, it neglected the dangerous implications of creating a superficial policy, policy that will have to be agreed on and respected by the member states.<sup>19</sup>

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<sup>14</sup> Idem.

<sup>15</sup> [http://europa.eu/lisbon\\_treaty/glance/index\\_ro.htm](http://europa.eu/lisbon_treaty/glance/index_ro.htm)

<sup>16</sup> Idem.

<sup>17</sup> Idem.

<sup>18</sup> Williams Andrew, *EU Human Rights Policies. A Study in Irony*, Oxford University Press, New York, 2004, p. 7.

<sup>19</sup> Alston Philip, Weiler J.H.H., *An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights*, Harvard Law School, Cambridge, 2000, p. 3.

Williams observes incoherence in the protection of human rights, caused by the much too rigorous supervision of fundamental rights outside the Community, than inside it. These inconsistencies could lead to a loss of credibility, the appearance of discrimination and use of human rights for political purposes.<sup>20</sup>

The above mentioned author takes into discussion the situation of human rights in the European Union, regarding the obligations of member states to ensure the respect of these rights, respectively the “priority level” of fundamental rights in the Community’s policy. He shows that, in opposition to the diligences submitted before accession, this field is neglected after accession. We could assume that the consent to accession is only possible after solving all problems related to the protection of human rights, but the reality proves us wrong.<sup>21</sup>

Thus, as also stated in the Human Rights Watch Organization report, there were still major problems – at least – regarding the discrimination of Turkish immigrants in Germany, of Turkish minority in Greece and even more regarding the situation of Romani in Central and Eastern Europe.<sup>22</sup>

In spite of these recognitions, no decision-frame was taken regarding the promotion of the protection of the rights of the minorities (at least until 2004), the monitoring of this field being left to the decision of the Council of Europe.<sup>23</sup>

It is true that in article 7 in the Treaty of Nice stipulates the possibility of suspending certain rights in case of severe violation of the principles stated in art. 6 (1), including the violation of human rights. But, due to the restrictive conditions of this article, its application is very rare and also due to the weak monitoring of the respect of human rights in the EU, the protection of these rights is clearly superficial compared to the protection insured before admission.<sup>24</sup>

Regarding political, civil, social, economic and cultural rights, whose respect was imposed as priority among accession conditions, they lose importance after accession, better said, they are subject to the community purpose, and economic development respectively.<sup>25</sup>

### **3. Discrimination of Romanian workers by Spain with the consent of the European Commission**

We will now present a concrete example of violation of human rights by a community state, while the European Union looks away, pretending not to observe this abuse and supporting, through the European Commission the discrimination of certain community citizens.

The European Commission accepts as of August 11, 2011, Spain’s decision to temporarily restrict free access of Romanian workers. Following a request from the Spanish authorities as of July 28, 2011, the European Commission approved Spain’s request to restrict the labor market for Romanian workers until December 31, 2012, as a result of serious disturbances on the labor market.

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<sup>20</sup> Idem.

<sup>21</sup> Ibidem, p. 87-89.

<sup>22</sup> Idem.

<sup>23</sup> Idem

<sup>24</sup> Ibidem, p. 109.

<sup>25</sup> Ibidem., p. 93.

Spain was seriously affected by the crisis, with a historic fall of GDP (-3.9% between 2008 and 2010) which led to the highest level of unemployment in the EU, of over 20% starting with May 2010. The continuous increase in the number of Romanian residents in Spain and their high level of unemployment had an impact on Spain capacity to absorb new flows of workers.<sup>26</sup>

László Andor, the European commissioner for employment, social business and inclusion, insists on the fact that: “This decision was taken due to the very specific situation of employment in Spain. As a general rule, I am convinced that restricting free access of European workers is not the proper approach to a high level of unemployment. We should focus more on creating new job opportunities. From the very beginning Spain permanently had a very open policy regarding workers from other countries, including those from the new member states, a fact that the Commission has always appreciated. However, the Commission understands the reason why, at this moment, due to the dramatic situation in employment and due to the very complex financial context, the Spanish authorities want to take a distance from a principal of total free access. The Spanish request is supported by concrete test elements, as the Act of Accession allows reinstating temporary restrictive measures in these cases. By enforcing these measures, Spain would still remain more open for workers from new member states than some other member states. Nevertheless, I hope that this undertaking will be limited, as much as possible, in time and that the generally positive attitude towards free access in Europe will continue to prevail. I will continue to encourage Spain to reform the labor market and to improve the employment chances for young people and, also, to request higher efforts to increase the employment possibilities in Romania. Both countries must use structural EU funds better in order to create jobs in a more efficient manner.

This thing is necessary for a long-term improvement of the situation of employment”.<sup>27</sup>

In its decision, the European Commission authorizes Spain to instate temporary restrictions for Romanians regarding their access on the labor market in Spain, until December 31, 2012. These restrictions will apply for activities in all sectors and regions. Nevertheless, restrictions will not affect Romanian citizens already active on the Spanish labor market.

Moreover, the Analysis performed by the Commission established that Romanian citizens living in Spain are seriously affected by unemployment, 30% of them being unemployed. 191.400 of Romanian citizens who worked in Spain were unemployed in the first quarter of 2011, this being the highest number of people unemployed after the Spanish nationals. Three years before, this number was only 80.100. In the same period of time, the number of Romanian employees dropped by almost 24%. Despite a fall in the number of Romanian nationals who came to work in Spain in the last years, the flow remains high, probably because of the economic recession. The number of Romanian nationals with permanent

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<sup>26</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/960&format=HTML&aged=1&language=RO&guiLanguage=en>

<sup>27</sup> Idem.

residence in Spain increased from 388.000 on January 1st, 2006 to 823.000 on January 1st, 2010.<sup>28</sup>

As soon as Spain opened its labor market for all UE citizens, any restriction of free access of workers represents a derogation and can only be temporary. The European Commission will closely monitor the situation and will have the possibility to change or revoke the decision whenever it deems necessary.

In general, free access of workers had a positive economic impact at a European level and led to an economic growth in the target countries. Recent estimates suggest that, between 2004 and 2009, the long-term impact of the flows of population on the GDP of EU-15 materialized in a 0.9% surplus.<sup>29</sup>

The European Commission will further inform the Council regarding its decision and any member state can request the Council to change or cancel the decision of the Commission regarding the suspension of the EU legislation in 2 weeks.<sup>30</sup>

Romania's Act of Accession to the European Union in 2005 provides transitory dispositions for the free access of people. This implies that the free access of workers can be postponed for a maximum of seven years (until December 31st, 2013).<sup>31</sup>

Spain already liberalized access on the labor market for Romanian workers and their families, from January 1st, 2009. As a consequence, Spain can only restrict access of Romanian workers by invoking the so-called "safeguarding clause". The safeguarding clause grants a member state the possibility to reinstate restrictions concerning access on the labor market, in case it deals with severe disruptions of the labor market or anticipates these situations. Spain called „safeguarding clause" in an address to the European Commission as of July 28, 2011. It is for the first time that a „safeguarding clause" was called in the field of free access of workers.<sup>32</sup>

Nevertheless, employment recruiting specialists in Romania believe that the moratorium imposed by Madrid is a political measure, and maybe even an electoral one.<sup>33</sup>

#### **4. Conclusions**

The conclusion we can draw is the following: despite the fact that there is a legal framework and institutions established in view of defending human rights at community level, European Union often looks from the abuses taking place in certain community states when it invokes economic reasons.

Human rights are consciously violated by the authorities of certain states, sometimes even with the consent of the European Commission. Certain community citizens are considered "second hand" workers and are used as negative examples in order to cover up the failure of some member states to manage their internal situation.

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<sup>28</sup> Idem.

<sup>29</sup> Idem.

<sup>30</sup> Idem.

<sup>31</sup> Idem.

<sup>32</sup> Idem.

<sup>33</sup> <http://www.europalibera.org/content/article/24293777.html>

Spain adopted this restrictive measure only for Romanians, which means that other community citizens have unlimited access to the labor market in this country. We understand the delicate situation this state finds itself in, but if it faces unemployment problems, it should take restrictive measures applicable to all, not just to Romanians.

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