

# INTERNATIONAL PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF UNDERSTANDING THE ORIGIN OF HUMAN NATURE

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## **Abstract:**

International protection of human rights in the context of understanding the origin of human nature. The specificity of the legal norms on the international protection of human rights is determined by the conception of the issuer of these norms about the human being, about the specifics and origin of the human nature, and, depending on such perception, the content of the legal norms in this field exhibits significant differences.

**Keywords:** *legal norms, moral norms, human rights, human nature, regulation.*

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## **Introduction**

Legal norms are the expression of the Government's will to regulate social relations based on the most important values of a society organised in state form. However, legal norms are not the only rules that form, guide and discipline social conduct. Moral, social, religious norms are also assemblies of rules to which man refers, in the management of his behavior and attitudes. In its evolution, the law has more or less assimilated from the specificity and content of the other categories of norms, has maintained harmony and convergence with some of them or has detached radically, through different regulatory contents, sometimes even diametrically opposed.

If, in certain branches of law (in which, for example, technical regulations prevail), the harmony between the respective legal norms and other moral, social or religious norms and values is less relevant, in the field of regulations on the international protection of human rights, it is very important that the author of the legal norms refers to the system of moral-religious and social values regarding the human being, the origin of man, the

meaning and purpose of human life. Sometimes, in the content of these regulations we may find elements that point to the observance of these systems of moral-religious and social values. Other times, legal norms claim the status of primary rules for regulating and ensuring the social order and social interest prevailing in a given society, in relation to all other categories of rules. The vision of moralistic theories about law or legal positivity presents the main elements that configure the harmony or disharmony of legal norms with other categories of norms, also emphasizing in general terms the specificity of the regulations in the two cases.

### **1. The specificity of the content of legal norms, in the context of moralistic theories and positivist theories about law**

Every society needs rules to organize itself and to operate. The lack of norms or their inefficiency leads to a gradual decay of cohesion and social relations, thus entailing anarchic destructive processes. The emergence of the state, as a form of social organization, institutes a new type of norms (legal norms), which become primordial and dominant in societies organized in state form. They coexist with the other categories of norms, from which they have taken many elements of content, in the initial forms even taking over customary and moral social regulations.

“Thus, along with taking over some of the old customary rules and imposing them (acknowledging them) as state norms, the law also appears in the form of new laws, edicted by the new power. At the same time, society has continued to create social rules (ordinary, moral, religious, etc.) that coexist with legal rules.”<sup>1</sup>

In the context in which any person chooses his social conduct by reference to the legal norms, but also to the specificity of the moral norms in the society in which he lives, it is relevant whether or not the two categories of norms are similar in terms of the social conduct they prescribe.

“The group of morals and law presents itself as a whole. The thinkers who have analyzed the problem of the legal reality come to put the moral and the legal reality together, which may be called ethic-legal realities and, in a broad sense, moral realities, thus distinguishing them from all the other realities. In this way, law and morals are shown as being part of the

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1 Nicolae Popa, *Teoria generală a dreptului, Ediția a 3-a* (*The general theory of law, 3rd edition*), București, Editura C.H.Beck, 2008, pp. 37-38.

same group of disciplines, trying to indicate the close connection between the two realities they represent.”<sup>2</sup>

In the constant interaction of norms, the natural question is whether in contemporary society there is a harmony of their coexistence, or whether we can talk about a hierarchy of norms in their pressure on the social conduct of individuals. While in the case of the first legal norms one can see the similarity of many of them with moral norms and customary social norms, as legal norms configure and develop their own identity more and more, there are more and more legal regulations that are no longer in harmony with moral norms or customary ones.

The analysis of the relationship between legal norms and moral norms has resulted in two great theories:

- Moralistic theories about law;
- Theories of legal positivism.

“According to the first orientation (moralistic conceptis of law), law and morality are seen as two facets of a phenomenon: morality is subjective ethics, and law appears as objective ethics.”<sup>3</sup> Understood in this way, legal norms must be in harmony with moral norms, norms that deviate from moral principles and are considered unfair.

Moralistic theories about law present the normality of the harmony of law with morality, the legal norm thus being the state-legislated form of the moral norm, which is thus given stability and a higher degree of respectability at the social level. The general interest of society (which the legislature constantly pursues) is thus closely linked to its moral values.

The close connection between law and morality is a requirement that does not only concern elements of the history of law, of the specificity of the content of the first legal norms, which took over many of the provisions of moral norms; this is a requirement of the justness of legal norms, which, in the light of moralist theories, greatly approximates the legal provisions to the moral ones, thus avoiding situations in which “law” and “justice” are no longer in harmony.

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2 Mircea Djuvara, *Teoria generală a dreptului. Drept rațional, izvoare și drept pozitiv* (General theory of the law. Rational law, sources and positive law), All Beck Publishing House, Bucharest, 1999, p. 374.

3 Nicolae Popa, *Teoria generală a dreptului, Ediția a 3-a* (The general theory of law, 3rd edition), București, Editura C.H.Beck, 2008, p. 112.

Also, legal norms that contain provisions contrary to moral norms generally accepted in a society, generate the risk of social tensions.

According to the second orientation (the theories of legal positivism), “the law is detached from any other reality, it is a construction in itself, the state being the only reality that it correlates with. The state is the only basis of law; in the absence of state, the idea of law is unthinkable.”<sup>4</sup>

According to this view of the law, the general (prevailing) interest of the society must be permanently taken into account by the state, in the process of drafting normative acts, regardless of whether or not these legal norms are in harmony with the moral principles respected in such society or with moral principles in general.

However, legal positivism does not provide a predictable perspective related to the specificity of a society that is gradually shaped by legal norms that are no longer in harmony with the moral norms of that society. The legislator may consider (in the activity of normative construction) that the general interest of the society, at a certain moment, may only be focused on political or economic priorities, completely ignoring the moral principles that could be respected in that context. In such a normative context, significant changes occur in social relations and human conduct, in general, compared to the individual and societal specificity of a society governed by compatibility between legal and social moral norms.

## **2. Perspective on the origin of human nature and its reflection in the specificity of regulations on the international protection of human rights**

The specificity of the content of the legal norms in the field of international protection of human rights is determined by the vision of the international legislator on the consensus of the states regarding the most effective and adequate instruments for the protection of human rights. These norms have supranational character, the fundamental human rights being considered essential and permanent, beyond territorial or temporal limits. This means that the foundation of the protection of these rights is above any potential different view of one state or another, aimed rather at the violation of human rights, regardless of whether political, economic or other arguments are invoked to justify such attitudes.

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4 *Ibidem*, p. 113.

The protection of the human being through norms of international law is based on a much deeper system of values than the vision related only to the social context referred to status and role, in relation to which, in domestic law, the states regulate rights and obligations for the natural person, as an individual subject of law. The protection of fundamental human rights at international level is based on respect for the human being as a value in itself, above any social, economic, political context, etc. in which man would be more or less important. In light of such regulations, man is more than just a natural person, citizen, worker, migrant, refugee, client, beneficiary, etc. The protection and respect of human rights are rooted in the intrinsic appreciation of human value.

In the interpretation and implementation of normative acts for the protection of human rights, a very important role is played by the analysis of the socio-political context and the case-law in the field:

“In many cases, correct interpretation and implementation of the conventional rules are possible only in the light of the case-law developed on the basis of them. In this way, the role of international case-law as a formal source of international protection of human rights is increasingly important.”<sup>5</sup>

Along with the socio-political context and case-law, the understanding of moral-religious values regarding the human being represents another very important landmark in understanding the fundamentals of the normative acts for the protection of human rights.

The need to adopt normative acts on the protection of human rights applicable worldwide was determined in particular by the human drama of an unprecedented magnitude, as a result of the Second World War. Basically, the action of the states of the world, despite the limits of the legal norms, has disregarded the human being until almost complete annihilation.

“Every year, the International Human Rights Day reminds of the time when the Universal Declaration of Human Rights was enacted in Paris, i.e. 10 December 1948. However, the International Human Rights Day starts to be celebrated from 1950, when, with the Resolution adopted by the United Nations Assembly 423 (V), both the states and the non-gov-

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5 Corneliu-Liviu Popescu, *Protecția internațională a drepturilor omului (International protection of human rights)*, București, Editura ALL Back, 2000, p. 30.

ernmental organizations were invited to remember this day every year. The significance of enactment of the Universal Declaration consists in the unification and proclamation, for the first time in the history of humanity, in a single document, of the human rights in a moment marked by the losses of human lives in the second world war and by the tragic consequences left by the war. Eleanor Roosevelt, the first President of the Human Rights Commission of the United Nations and the one that supervised the draft of the Universal Declaration of Human Rights, has suggestively named it International Magna Carta.”<sup>6</sup>

In the vision of Christian thought, the protection of human rights is primarily based on the appreciation of the human being, as a result of divine creation:

Then, God said: “Let us make man in our image, in our likeness; let him rule over the fish of the sea, over the birds of the sky, over the cattle, over all the earth, and over all the creepers that move on the earth”<sup>7</sup>.

Viewed and understood in this way, in the Christian vision, the human being contains in its very existence the set of fundamental rights (the right to life and to physical and mental integrity, the freedom of its conscience, the freedom of thought and opinions, etc.) that must be legislated, applied and respected in any country and at any time of history. The protection of these fundamental human rights is, therefore, not a ‘privilege’ which one state or another would offer or would not offer, on a discretionary basis.

Also, the Christian perspective on all the norms that shape human conduct is that of moral-legal, domestic and international normative harmony. Thus, the essential aspects related to the protection of the person, the family and the child, the protection against trafficking and exploitation of the human being, the protection of the physical and mental health of the person, etc. must be correlated, both internally and internationally.

“Child protection is based on compliance with the principles enshrined in the Charter of the United Nations, the Rights of the Child, the Romanian Constitution, the specific legislation in the field, the guarantee of the creation of the conditions for the growth, development, and edu-

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6 Claudia Constantinescu, „Stand Up for Someone’s Rights! The Nelson Mandela Rules”, în *Revista de Asistență Socială* (in the *Social Assistance magazine*), Vol. XVI, Nr. 1, Iași, Editura Polirom, 2017, pp.107-108.

7 *Genesis* 1:26.

cation of the child. The legislative framework for child protection derives from the International Convention on the Rights of the Child, to which the Romanian State has acceded, the provisions of the principles enshrined in the Romanian Constitution and is ensured mainly by Law no. 272 of June 21, 2004, on the protection and promotion of children's rights"<sup>8</sup>.

In the domestic law on rights and obligations, institutions and procedures, there is a reflection of the provisions on child protection in international norms. In practice, the implementation of the content of such norms also implies the observance of social, moral and religious norms specific to society, but especially specific to the family in which the minor lives. In such a context, it is relevant whether legal norms and moral norms are in harmony (the vision of moralistic theories) or whether the two categories of norms start from different premises. At the same time, the upbringing and education of the minor also according to moral-religious norms (along with the legal ones) determine different results in his formation, compared to his education only through the prism of the imperatives of the legal norms.

Respect for the human being as an intrinsic value extends beyond the norms of protection of fundamental human rights, in all the components aimed at protecting the human being, in the context of social, economic relations, health protection, etc. Protection measures against exploitation, forced labour, trafficking in human beings, illicit drug trafficking and consumption, etc. are regulated.

"Although human trafficking blatantly violates human rights, having serious impact on the people involved in this phenomenon, on their families and last but not least on the entire society, it is a constantly expanding phenomenon."<sup>9</sup>

The analysis of the report of the efficiency of the imperatives of the legal norms compared to that of the moral and social norms in the regulation of family relations, in the upbringing and education of the minor, requires finding the best solutions for the development of its pro-social conduct. It is relevant whether the legal rules regulate and protect the best

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8 Monica Luminița Alexandru, *Current issues of child protection in Romania*, București, Editura PRO Universitaria, 2020, p. 9.

9 Monica Luminița Alexandru, *Asistența și reintegrarea socială a victimelor traficului de persoane (Assistance and social reintegration of victims of trafficking in human beings)*, București, Editura Universității din București, 2013, p. 9.

socio-moral instruments for the upbringing and education of the minor or whether they establish new rules on completely different bases.

“The fact that a child learns violence in the family is precisely proof that the modern family is one that produces violence unpredictably, is exposed to a contextual turbulence that family management cannot control or reduce since it propagates transgenerationally through learning. [...] The management of turbulence is thus strongly affected by the fact that the law appears as the source of the rule of law, when it is consecrating it. That’s why, when the order changes, the law also changes. The law is only the order reflected and supervised, not at all the root of the order.”<sup>10</sup>

The socio-moral principles of the functioning of the family and of the upbringing and education of the minor thus become the core to be protected by legal norms. The destructive elements that cause changes in this core determine vulnerabilities that primarily materialize in the risk of the antisocial conduct of the minor.

“The scourge of drugs is one of the most complex, profound and tragic phenomena of the contemporary world. Drugs are harmful substances for humans, and the phenomenon of addiction increases the risk of these negative effects, whether it is physical, mental illness or social exclusion, as a result of hard-to-accept behaviors.”<sup>11</sup>

Although there are many domestic and international normative acts, which, by their provisions, seek to prevent and combat both human trafficking and illicit drug trafficking and consumption, these phenomena are constantly expanding. Their existence and development are closely-linked to the impairment of socio-legal and religious institutions, the most important of which is the institution of the family. Vulnerabilities created against the background of this reality predispose to the existence of negative social phenomena of the type listed above. Analyzing these mechanisms and others like them, we wonder if in a society where moral, religious norms and social customs are no longer observed, can we achieve a large-scale

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10 Claudia Constantinescu, *Leadership și Turbulență (Leadership and Turbulence)*, București, Editura Universității din București, 2016, p.40.

11 Monica Luminița Alexandru, „Motivația renunțării la consum și rolul tratamentului substitutiv în atingerea și menținerea abstenenței foștilor consumatori de heroină” (Motivation for quitting use and the role of substitution treatment in achieving and maintaining the abstinence of former heroin users), în *Revista de Asistență socială (in Social Assistance Magazine)*, No. 2/2019, București, p. 85.



pro-social conduct only through the regulations of the legal norms or is it necessary to have a harmony of the legal norms with the social, moral and religious ones?

## Conclusions

Human conduct is governed by several categories of rules. Naturally, they interact with each other, each claiming their primacy, depending on the system of social values or individual priorities. In the vision of the main guidelines on the relationship between norms, moralistic theories confer superiority to moral norms (which validate the fairness of the content of legal norms that are in harmony with moral norms), while legal positivism claims the superiority and independence of legal norms, in relation to other categories of norms (moral, religious or social customs), by virtue of the legitimacy of the legislator (as a state power) to decide with responsibility which are the most appropriate normative contents for the general interest of society at a given time, regardless of whether or not these legal norms are in harmony with the other categories of rules.

The Christian vision of the origin of man sets the primacy of respecting and protecting the human being as an act of divine creation, a central element that should form the basis of normative acts of international protection of human rights. From this perspective, it is necessary that man be respected and protected as a value in himself, above his socio-economic status or roles, above the majorities of conjuncture that would place the vision of man on other grounds, above socio-political contexts or opportunities that may attempt normative repositioning and the socio-moral perspective on totally different bases.

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