

HUMAN RIGHTS IN THE ERA OF GLOBALIZATION

Aurora Ciucă*

Abstract

Two forms of universalism, two global phenomena, Human Rights and Globalization involve states in different manners.

The way globalization acts on the economic, political rights and which are the visible consequences of this process and, at the same time, which is the role of human rights in the context of globalization are some of the questions which we intend to meditate on in these pages.

Keywords: human rights; globalization; democracy; development; citizenship.

* Professor Aurora Ciucă, Ph.D., is the Dean of the Faculty of Law at "Mihail Kogălniceanu" University, Iași, Romania
Contact: Tel. +40 232 212416; + 40 724 073397; Fax +40 232 279821;
aurora_ciuca_2000@yahoo.com

Human rights and globalization are two forms of universalism, two global phenomena which, in their continuous transformation, involve in different manners the world's states.

Globalization produces opportunities and initiates changes that affect the juridical order which the International Human Rights Law is part of. This process is possible in a world where the political, cultural, economic and social relations cannot be limited by the national borders or by the state actors' will. Technological development, communications, new international economic and commercial agreements increase the role of international organizations and of transnational corporations, the changes at the level of international relations affect people, communities and states.

The way globalization acts on the economic, political rights and which are the visible consequences of this process and, at the same time, which is the role of human rights in the context of globalization are some of the questions which we intend to meditate on in these pages.

The term "globalization" was introduced by the Organization for Economic Co-operation and Development (OECD) in 1985 with reference to the process of integration of the global market by means of new economic and financial policies. The collapse of communism, the end of the Cold War, the transnational companies, the technological and informational progress opened a new stage for global communication.

The definitions of globalization are multiple and contradictory. We are dealing with a political, social, but above all, an economic process¹.

Economic globalization, as "market" for the actors to trade in goods and services, has led to the creation of institutions of global nature affecting the sovereignty of the states in that they lose control of some instruments (financial, monetary, etc.). Of course, the exchange of products has existed for centuries, but our days, it is accelerated by the development of transportation, technology, communication, computerization. The states are no longer the main and unique actors of globalization, being surpassed by the number of transnational corporations and intergovernmental institutions.

The doctrine distinguishes between the globalization "from above", performed at the state level and at the level of the main agents of capital formation and the globalization "from below", which includes the involvement at local level, civil society formation and the role of NGOs in the formation of the globalized civil society².

¹ Alex Y.Seita, Globalization and the Convergence of Values, 30 Cornell International Law,1997, p. 429.

² Richard Falk, The Making of Global Citizenship, in Global Visions: Beyond the New World Order, Jeremy Brecher Eds., 1993, p. 39.

The new and old global institutions acquire an increasingly important role at global level: the World Trade Organization, the international NGOs, G7, IMF (International Monetary Fund) IBRD (The International Bank of Reconstruction and Development) but also Microsoft, CNN, EU, the Nobel Prize etc. At the same time, globalization means creating a global civil society interested in the values and norms of humanity, in justice, in human rights protection.

Globalization universalizes, this meaning the unification of societies but, at the same time, generating the relativisation of national or community identity. On the other hand, globalization particularizes, by promoting individualism and pluralism.

In turn, human rights have exceeded the national jurisdictions of states and have become part of international law, having a universal character. The global international mechanisms (the Human Rights Council, the Human Rights Committee, the Committee Against Torture etc.) or the regional ones (the European Court of Human Rights, The Inter-American Court etc.), jurisdictional or non-jurisdictional, opened the individuals' the way to the international arena as main actors, meant overcoming the state borders and authority in the fight against the violations of their rights.

Human rights are part of the globalization process but they are also distinct from it³. The progress in communication has brought new perspectives to the world, has united people in aspirations and has made people gather in solidarity against injustice. However, there are some disadvantages in addition to such benefits, which are visible at the level of the environment, of the living standards⁴, at the level of family as an institution of stability, threatened by the new models or even with extinction, of the private life no longer coping with the interferences, of the life within the community etc.

Law is globalized and, at the same time, human rights are too.

We are noticing an increasingly alive dialogue between the juridical systems (the Romano-Germanic and the *Common-law*), between different legal orders (that of the Community law and the national law or that of the International Law of the classic type). In Europe, the Court of Justice of the European Union and the European Court of Human Rights are examples of collaboration between the human rights and the market. These international jurisdictions, which, so far, have not been organically related, after having initially ignored each other, have begun to refer to each other's case-law⁵, which obviously benefits the

³ Ibidem.

⁴ Patrick Artus, Marie-Paule Virard, *Globalisation, Le pire est à venir*, La Découverte, Paris, 2005, p.13

⁵ Aurora Ciucă, The European Court of Human Rights and the Court of Justice of the European Communities. Some specific features and human rights approach, *The Scientific Bulletin of „M.Kogălniceanu” University*, no. 17/2008, p.72.

development of the European law. As known, the Treaty of Lisbon recorded the challenge formulated a few years ago concerned with the EU accession the European Convention on Human Rights. We are talking about a process already under way, which will mean a new phase in the history of human rights.

A certain form of globalization can be seen at the level of the international criminal courts, required to meet the need of punishing the authors of the most serious international crimes (against humanity, against peace or war crimes), where different people, opinions, legal systems and cultures have merged. *Ad-hoc* international criminal tribunals (for prosecuting crimes in the former Yugoslavia and Rwanda), created on the basis of some resolutions of the U.N. Security Council, the International Criminal Court, which appeared in a conventional way, are examples of the force of the juridical acculturation process, but also of the phenomenon of globalization in this area. Internationalized courts or “hybrid jurisdictions” (such as those in Sierra Leone, Kosovo, Cambodia, Lebanon) are, in turn, vehicles of this phenomenon: the boundaries between national and international levels are exceeded, the rules and principles of the Romano-Germanic system meet those of the *Common-law* system, the national judges with the international ones etc. Moreover, justice becomes a means to pacify the international community, to create some spaces of dialogue.

The impact of science on human rights and the need to cover large areas of *non-law* or to find logical arguments and solutions determines the states to practice a permanent connection to other legislations, to stay informed, to abandon the isolation imposed by the strict respect for state sovereignty⁶, invites us to reflect on the concept of *globalized judiciary system* or on the validity of the concept of *juridical order* (given the dilution of the role of the national legislator and the reinforcement of the relationship between legal systems).

The distinction between national and international becomes increasingly difficult and the globalization of law acts on the juridical systems as a true fertilizer. Let's take a look, for instance, only at the effervescence produced by the Human Rights Act (1998) which makes the provisions of the European Convention on Human Rights directly applicable in the United Kingdom of Great Britain, which imposes re-reading and reinterpretation of the *common-law* precedents in the light of the case-law of Strasbourg⁷.

The impact of globalization on some categories of human rights

Globalization affects differently the internationally recognized human rights: civil, political, economic, social, cultural, the solidarity rights (the right

⁶ Julie Allard, Antoine Garapon, *Les juges dans la mondialisation. La nouvelle révolution du droit*, Édition du Seuil et La République des Idées, 2005, p.30.

⁷ J.Allard, A. Garapon, *op. cit.*, p.38.

to peace, to development, to a healthy environment⁸).

The economic rights are those that must grant a person a certain standard of living and access to development (as a right having an individual and a collective dimension). Although, logically, any economic growth (which presupposes the access to food, health, and housing by high employment and adequate salaries) should be followed by a greater protection of the economic rights, the reality is different. The investments in some countries (e.g. the African countries) come from globalized institutions (IMF, IBRD) or transnational companies and are directed to specific projects (the construction of highways, commercial companies etc.) neglecting aspects concerned with the education or the health of the population. On the other hand, the investors seek to obtain quick profits to their own interest and not to the interest of the states involved, and usually the most affected by the decisions and the priorities of the governments are the members of the poorest communities in the country. In addition, the fact that the globalized institutions use their own expertise to persuade the national governments and the involvement of the national factor is minimal, directly affects both the state sovereignty and the human rights. Finally, it should be added the risk of increasing the social inequalities by protecting the interests of the urban elites in some countries, while leaving the poor sections of the population exposed to economic exploitation.

Cultural rights and global communication. The almost instantaneous transmission of information via satellite, the Internet communication transcends the national borders. The information on human rights is thus disseminated throughout the whole world, passing also over the political systems of the states, impeding the governments' tendencies to present in a different light the possible violations of the rights they are charged with. Information allows immediate action of NGOs or even the intervention of other states to protect the rights.

Political rights. Democracy and development are in an evident interaction. Democracy is the foundation of good governance, which is a measure of development. People's participation in political decision-making has direct implications on the quality of their lives and is part of the right to development.

In the ratio between economic growth and democracy, positive and negative aspects can be identified. Typically, the globalized institutions and the

⁸ To these categories (the initial label of „generations of rights” being obsolete) a part of the doctrine tries to juxtapose that of „the rights to human dignity against science abuses”. For details, A.Ciucă, The Concept of Dignity of the Human Being in Bioethics and Biolaw, *The Romanian Review of Bioethics*, vol. 8, no. 3/2010.

transnational companies require the partner states to meet a minimal set of conditions which are reflected at the level of respecting the democratic rules and of the transparency of the governments' or the local authorities' actions. The positive consequence may be that of determining some changes in order to attract some investments. Though, on the other hand, the perception of the political power and of the national identity is affected and the imposed conditions can lead to the distortion of the internal resources or programs.

The biggest problem is the neglect of issues concerning human rights, or that of preservation of some cultural elements within the communities. Most globalized institutions do not have in their statutes and regulations provisions to that effect. As a result, any violations of the rights of persons that a transnational company, corporation, institution etc. is charged with, will be harder to remedy via existing mechanisms which are based on the individual-state (or agent of the state) relationship. It is the states' obligation to ensure, through legislative measures, the protection of the people under their jurisdiction, regardless of the author's nature. The few exceptions are notable: the founding treaty of the European Bank for Reconstruction and Development stresses the need for development based on the democratic values. Following the criticisms of the pressure groups, recently, some conditions concerning human rights or environmental protection have also been included among the conditions imposed by the large institutions or companies. At the same time, on all possible channels, the companies and institutions are required to include at all decision-making levels and in the international treaties (such as the Multilateral Agreement on Investment and the Marrakesh Agreement Establishing the World Trade Organization) express clauses regarding human rights protection.

Perhaps the most relevant link between globalization and the political rights is represented by *the European citizenship*. It reunites the particular and the universal to the benefit of the human being⁹ (in all the 27 EU Member States) who may present him/herself in light of all his/her identity circles.

The European construction determines the rethinking of the concepts of citizenship and of nation-state. The creation of the single market, the free movement of persons, capitals, goods, services, and the single currency, the exchange of information, the legislative harmonization or standardization represent true challenges for the countries. Citizenship develops a sense of responsibility that exceeds the internal dimension. Compared to the classical concept, which emphasize the antagonism between the insiders and the outsiders or between "us" and "foreigners", by identifying and marginalizing the latter, the new concept is not based on contesting the other. Moreover, the

⁹ Pascal Bruckner, *The Tyranny of Penitence*, Trei Publishing House, 2006, p. 164.

trend is one of expansion, of strengthening of the term “*global citizenship*”¹⁰. The workers from the EU states or other categories of immigrants live together with the citizens of any state enjoy equal treatment in the health, education and employment systems that are they have a common status. The economic and financial globalization determines the globalization of the life forms, of the mentalities of the individuals¹¹.

On the other hand, the single market and the Schengen system have blurred the states’ borders, have spiritualized the borders in the sense of the idea formulated by N. Titulescu as early as 1932¹². We can talk about a “deterritorialization” of the states with a direct action on the sovereignty, which appears in new formulations¹³.

Citizenship has become the fundamental status of the nationals of the EU Member States. The initial idea that the “economically uninvolved” citizens are not under direct applicability of the provisions concerned with the establishment of the residence on the territory of the Member States, receives the response of the European Court of Justice¹⁴ which has decided that this right is generally applicable, and it may be limited only by the secondary legislation and through the force of the principle of proportionality. This came after the Court had previously stated¹⁵ that the freedom to work is important not only for creating the common market, but also as a human right to have a certain level of living.

A number of rights are granted to the citizens by the Treaty on the Functioning of the European Union: the right to access to the European institutions’ documents, the right not to be discriminated against on grounds of nationality, the right to free movement and residence and work throughout the Union, the right to vote, the right to stand in local and European elections in any Member State under the same conditions as the nationals, the right to petition the European Parliament and the Ombudsman, the right to diplomatic and consular protection, the right to address the European institutions in one of the official languages of the Union.

¹⁰ The involvement, the activism, the responsibilities of the global citizens intend to create a global solidarity, a “spirit” of the global citizenship, to initiate and support reforms, to create a global business elite, to found some structures independent of the states and a new political community. See Michael Byers, *The Meaning of Global Citizenship*, 2005, (www.internationalization.ubc.ca/gcss.htm#Meanings)

¹¹ Jörn. Rüsen, Hans-Klaus Keul, Adrian-Paul Iliescu, *Human Rights at the Meeting of Cultures*, Paralela 45 Publishing House, 2004, p.159.

¹² N. Titulescu, *Diplomatic Documents*, Politică Publishing House, Bucharest, 1967, p. 400.

¹³ Bogdan Aureescu, *The New Sovereignty*, ALL Beck Publishing House, 2003, p. 114.

¹⁴ Case C-413/99, Baumbast and R vs. Secretary of State for the Home Department, para.85-91.

¹⁵ Case 53/81, D.M.Levin vs Staatssecretaris van Justice.

Instead of conclusions

Do human rights have to adapt to globalization? Or is it necessary to reinforce the international systems of protection? The international mechanism, as pointed out, was set in motion. The fact that the generalization of the clauses for the protection of the rights is imposed in the economic agreements and contracts represents an important step. On the other hand, bringing multinational corporations before international or state jurisdictions for human rights violations is a sign of reinforcement. There remain open the paths to bring human rights up to date and also those of international cooperation which goes beyond the vision of a globalized law only as a response to the aspects of the market economy, the competition, and which ensures strong connections between the economic, social, criminal etc. aspects.

REFERENCES

- Alex Y.Seita, Globalization and the Convergence of Values, 30 Cornell International Law,1997
- Richard Falk, The Making of Global Citizenship, in Global Visions: Beyond the New World Order, Jeremy Brecher Eds., 1993
- Julie Allard, Antoine Garapon, Les juges dans la mondialisation. La nouvelle révolution du droit, Édition du Seuil et La République des Idées, 2005
- Patrick Artus, Marie-Paule Virard, Globalisation. Le pire est à venir, La Découverte, Paris, 2005
- Aurora Ciucă, The European Court of Human Rights and the Court of Justice of the European Communities. Some specific features and human rights approach, The Scientific Bulletin of „M.Kogălniceanu” University, no. 17/2008
- A.Ciucă, The Concept of Dignity of the Human Being in Bioethics and Biolaw, The Romanian Review of Bioethics, vol. 8, no. 3/2010
- Pascal Bruckner, The Tyranny of Penitence, Trei Publishing House, 2006