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FOREWORD

The 3rd millennium has started with renewed attention by the international community on such issues as racism and racial discrimination. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance that took place in Durban, South Africa, in the year 2001, was only the first international event devoted to these topics. It was followed, as a result of the World Conference and the Declaration of Durban adopted on the occasion, by the setting up, in 2002, of the UN Working Group of Experts on People of African Descent – a group of five experts – that is concerned with issues related not only to Africans but also to people of African descent living on other continents than Africa. The Group's 4th session will be shortly followed by the World Conference on African and African Descent Issues, Racism and racial Discrimination, to be held on 11-12 November in Vienna.

Therefore, a brochure devoted to Africans and African descendants and dealing with a number of issues related to the topic is not only a natural undertaking given the increased international attention attached to the subject, but also a necessary one, providing the reader with the main developments in the field and an overview of Africans and African descendants' struggle against slavery and racial discrimination.

In fact, this is but a natural and necessary continuation of the series of activities initiated and organized by the Romanian Institute for Human Rights in collaboration with the Romanian Association for the United Nations, in partnership with governmental structures and non-governmental organizations during the International Year of Fight Against Racism, Racial Discrimination, Xenophobia and Intolerance. These include the International Colloquium of Bucharest of 24-25 March 2001, preceded by workshops and followed by other reunions and types of activities – research, training, information and consultancy.

The Declaration of Bucharest, the final document of this preparatory reunion of the World Conference of Durban, was yet another Romanian contribution to the reinforcement of the international effort to fight these equally harmful and persistent phenomena.

Prof. Dr Irina Moroianu Zlătescu

HISTORICAL LANDMARKS

The beginnings of the monstrous institution of slavery fade away in the darkness of time. The Antiquity used slaves as the main labour instruments and merchandise for trade. They originated in the prisoners of inter-tribal struggles, war prisoners, and the poorest social strata. Slavery was practiced all over the world, in Europe, Africa, and Asia. After the American continent had been discovered, slavery of the blacks allowed for the progress an economic development of the "New World" and this is how the largest black Diaspora in the world started.

The institution of slavery was officially in effect till late 19th century, even though it continued to be illegally practised a long time afterwards.

In time, particularly in the 18th century, abolitionist concepts promoted by illuminated personalities and progressive societies and organizations started to emerge.

The Dutch Parliament voted abolition in 1870, while in 1876 abolition of slavery was irrevocably proclaimed in the Dutch Indies. In Portugal, slavery was suppressed under three decrees in 1856 in the colonies and in 1878 throughout the kingdom. In Spain, under the pressure of the riots in Cuba, abolition of slavery, in all the colonies, was proclaimed in Cortes in 1886; liberation of the African slaves took place with no redress for

their owners. In Brazil, the final official abolition took place in May 1888, after it had been officially partly abolished several times before. In England, abolition of slavery took place in 1833, in France in 1848, in the United States in 1865 after the end of the Civil War.

In Africa, mainly on the Eastern coast, Arab slave traders practised slavery with blacks, their number rising according to some estimations to 300,000. It is worth mentioning that England forced the sultans of Mascat and Makullah on the coasts of the Arabian Peninsula as well as the sultan of Zanzibar to abolish slavery altogether, while also closing several slave markets (1872-1873). Hindered in the East, slave trading was oriented to the North through Tripolitania. In this respect, in 1880 England concluded a Treaty with the Porte, which prohibited the trade with African slaves throughout the territory of the Ottoman Empire.

It was the Portuguese who initiated the traffic with Africans, first captured in the regions on the western coast of the continent.

While at first the Catholic Church took no clear position against slavery, on the contrary it justified it under two papal bulls, later on Pope Leon XIII, in a papal encyclical letter requested Catholic priests to pronounce themselves and take action in favour of the abolishment of African slaves trading. An anti-slave Society was created in France, establishment of an international militia meant to combat the slave traffic in the Congo River area was planned, and a financial body to support such actions was created. According to article 4 in the Statutes of the Society, such means should have been of "an exclusively moral, religious and peaceful nature".

One cannot approach the topic proper by without a few considerations, brief ones, obviously, on the millenary history of the African continent, a continent that was the main source of the black Diaspora. Archeologists placed the beginnings of this history as far back as the 6th millennium B.C. They were able to decipher the life of the population of shepherds who lived on the territory of present-day Saharan Desert. The Neolithic tools, the abundance of fossils, the engravings and the cave paintings are evidence in this respect. Neolithic traces were also discovered on the territory of present-day Egypt, where, starting in the 4th millennium B.C., the Egyptian civilization developed along the Nile Valley. Desertification of the Sahara resulted, among other things, in the separation of the North – Maghreb – from black Africa, about the 2nd millennium B.C. In the 1st millennium B.C., about 846-814, Carthage created an empire in the North that was later destroyed and occupied by the Romans. Maghreb, which had become a Roman province, was in its turn conquered by the Vandals, who were driven away by the Byzantine armies, which in turn yielded to the Arab conquest of the 7th century. The entire region was Islamized and, by means of caravans, the Arabs also entered part of black Africa. Not long after that, the period followed when African States were formed, some of which became genuine empires such as Ghana, the old kingdom Ouagadou that knew its apogee in the 9th century, Mali with the apogee in the 13th century, Songhai with the apogee in the 14th century, all Islamized, Benin with its apogee in the 15th-16th centuries, Congo and a few more. South Africa was also populated in prehistory and later occupied by Bushmen, Hottentots and Bantu.

It was later that what is known as the colonial period started on the African continent. First, it was the Portuguese who established trading ports along the Ocean shore. In the 16th and 17th centuries, such trading agencies became more numerous: English, Dutch and French trading ports emerged as well, while the inner part of the continent remained still unexplored.

The 16th century was characterized by the conflicts of interests among the European powers that quarreled about territories, while in late 16th century a real dividing of Africa took place, the moment when the large colonial empires were established.

In the period between the 16th and the 19th centuries and, to a lesser extent, even before the 16th century, the traffic with blacks began to develop and become bigger from one year to another.

The first African presence in Europe according to the historical records goes as far back as the beginning of the Arab invasion to the Iberian Peninsula, namely, the year 711. It is possible that Africans from the North of the continent and the Sahara area should be present in some regions of our continent as a result of trading.

Once the Portuguese entered Africa in 1415, the period of the European penetration was inaugurated and so was the deportation of blacks, first to Portugal. In the period between 1580-1640, Portugal succeeded in imposing a genuine monopoly on the traffic with slaves. Then the Dutch took the lead, later France, in 1701, while from 1713 on it was England that took the lead only to become the biggest slave trader in the world. According to some estimations, 700 to 900 African slaves were brought every year in the second half of the 15th century. It is estimated that about 100,000 black slaves existed in Portugal and the territories under its domination in early 17th century.

Soon the benefits of the traffic with blacks became a royal prerogative. As a result, the Spanish governments signed treaties or contracts with various private persons or foreign companies – the so-called *asientos* on supplying African slaves for the oversea colonies. Such *asientos* became more and more frequent. The Portuguese Crown instituted a similar system of *contratos*. The Portuguese Governor of Angola committed himself to supply the oversea colonies with 4,250 slaves every year and pay an important sum of money to the king. Another Portuguese who had been granted a further concession for a period of 8 years was to provide 3,500 slaves every year. According to the terms of other concessions granted to other Portuguese, 3,500, 2,500, 24,500, 4,000, etc., slaves were to be supplied every year. The black slave traffic assumed aberrant proportions. For instance, according to the terms of a contract concluded with the Portuguese company of Guinea for the period 1696-1701, *diez mil toneladas de negros*, which means 10,000 tons of blacks, were to be supplied. It is worth mentioning that all these contracts were concluded *in el nombre del santisima Trinidad*, that is, "in the name of the Holy Trinity". The companies paid certain amounts of money to the Crown for each black slave. Such a contract provided for the obligation that the transportation should have been done only by means of Spanish or French ships whose crews should have been made up of Catholics.

The contract concluded between the kings of France and Spain came to an end in 1713, a time when the English Crown obtained the monopoly for 30 years. Under the treaty concluded with the king of Spain, the so-called *asientos*, the English Party committed itself to supply Spanish America with "144,000 pieces" of both sexes, of any age, or "4,800 tons" annually. Later

on, England, under the pressure of a fierce competition, took the lead in the traffic with blacks, succeeding in one single year, 1786, to supply America with approximately 38,000 slaves. France came second. It is only under a Decree of 27 July 1973 that it committed itself to suppress the immunities granted in favour of the traffic, but the effective suppression occurred no sooner than 4 February 1974 under another Decree. A *senatus consultum* of 30 May 1802 restored the black slave trade.

It is estimated that approximately 12 million black slaves were sold to the American intertropical regions during those 320 years. The average number of persons on board a ship is estimated to 150, which would mean that approximately 80,000 ships crossed the Atlantic Ocean.

Black slaves were destined not only to the oversea colonies, but also to some European countries such as England, Spain, Portugal, France, and Venice. Their presence as servants, workers on building sites, mines, farms, workshops, body guards, etc., was more and more numerous. The urban environment offered them certain advantages: they could ransom their freedom, run away, cultivate more easily a community's spirit, create their own forms of organization such as religious fraternities, they could celebrate certain events in more or less numerous groups, procure money to pay the ransom, they could even buy lands, burial grounds and, after liberation, even assume public offices, mainly in Spain.

The presence of Africans in England also led to the emergence of some abolitionist positions. In the second half of the 18th century, several trials gained their fame for having defended blacks that had run away and were later recaptured. It was a period when, even though slavery hadn't been abolished, the

number of slaves decreased to approximately 15,000. In France, black slaves were less numerous and they were used as servants or even soldiers with a less tough life as compared to other European countries, with the exception of Venice where, some historians claimed, slaves had enjoyed legal protection provided that they had been baptized.

It is no doubt that in America the situation of the slave was the hardest. First slavery was limited to the Antilles area, and Central and South America, being associated with the development of the agricultural regions. From 1660 on, slavery was institutionalized in the English colonies as well, such as those in North America. The competition among the slave-holding powers led to colonial wars between them, such as were those of 1627 and 1655 between England and Spain.

The various forms of fight for freedom of the slaves mainly took place in the regions where they were more numerous. In British Guyana black slaves were 90% of the local population. They were numerous in Jamaica, Haiti, Brazil, and less numerous in Cuba. In North America, the blacks were not the majority in two states, Mississippi and South Carolina. Ample riots took place in the Caribbean, Jamaica, Guyana, San Domingo, Mexico, Panama, Columbia, Venezuela, Brazil, Peru as well as other places and in the United States of America. Some of these riots, in which the Creole population also took part, were partly successful. There were groups of blacks who obtained their freedom as a result of the riots.

The French Revolution that proclaimed "freedom, equality, fraternity" encouraged the liberation movements. In 1791 and later in 1794-1802, two big riots took place, one of which was that of Haiti led by Toussaint Louverture, for whose defeat an

army under the command of marshal Leclerc, Napoleon's brother-in-law, was sent.

In Asia, the slave trade is even older. There is evidence that the traffic with Africans was practised as soon as early 1st millennium. First, blacks were exported from the African Horn region, in the eastern extremity of the African continent, to the Indian Ocean. Since documents lack, it was appreciated that as early as prehistory there were exchanges and contacts between the populations living on both shores of the Red Sea. Islamization in the Indian Ocean and the Red Sea areas played an important role with trading and therefore the slave traffic. The evidence includes: a revolt of the slaves in Mesopotamia in the 9th century; in China, the presence of black slaves is attested; Peter the Great bought black slaves from the Constantinople slave market; the presence of black servants in Russia is attested. Arab countries used to be real slave markets. In many islands in the Indian Ocean there also existed numerous African slaves. It was estimated that approximately 160,000 black slaves were brought between 1670-1810 to the Indian Ocean archipelago mainly made up of present-day Reunion and Mauritius islands. In 1808, only in the Reunion Island were there almost 53,700 slaves. Black slaves also reached Malaysia. Africans were also registered in India, some of whom even came to hold important offices in the administrations of certain rajahs or even in the army. In a period of political instability caused by struggles for power in various regions of India, black personalities became even sovereigns, important military chiefs, builders of monuments, mosques, channels, irrigation systems, etc. Africans also settled in the Portuguese possessions, and the British ones along India's coasts. Black Jews, descendants of black slaves,

settled in Malabar, on India's southwestern coast, in the 17th and 18th centuries.

The traffic with blacks was and still is unanimously regarded and condemned as a crime of huge proportion. Once it entered in the body of international law as far back as early 19th century, numerous acts issued by the European offices included pros and cons in relation to this kind of traffic. Others supported it and even the Catholic Church did so, under the pretext of Christianization. There was an older justification for that in the form of two papal bulls of 1454 and 1456, which presented the Portuguese expansion in Africa as an action meant to Christianize the entire African continent that was known at the time. Moreover, slavery was presented as something to the benefit of the autochthonous population.

In the last quarter of the 18th century, an anti-slavery movement developed in England. In 1772, a decision by the Crown stated that it was illegal to detain a person in slavery on the territory of the British Isles.

It is worth mentioning that, during the Independence War, the American army also included combatants formed of groups of black slaves – a phenomenon that was also characteristic of the English army. This resulted in the liberation from slavery of numerous blacks and the abolitionist movement initiated a process of resettling the liberated blacks in Africa, in Sierra Leone (1787) and later in Liberia (1822).

In that same year, in the United States of America, an African pastor founded the Free African Society, with religious and also social objectives. Other societies, associations and organizations were created as well and they all contributed to the gradual shaping of a community's identity.

At the Congress of Vienna of 1815, the representatives of Austria, France, Portugal, Prussia, Russia, Spain and Sweden signed a declaration against the traffic with Africans. Such declarations were reiterated at the Congress of Aix-la-Chapelle of 1818, and the Congress of Verona of 1822. Despite such declarations, approximately 60,000 slaves were transported to Brazil in 1822. Portugal issued a law that prohibited the traffic with the except for the destination of its own colonies; in 1842, however, it gave permission to the English vessels to inspect the Portuguese ones with the obligation to destroy or sell the ships caught *flagrante delicto*. The traffic with slaves was assimilated to piracy and the respective slaves were to be freed. Nevertheless, in 1849 50,000 more African slaves were brought to Brazil. In Madrid, the government prohibited the traffic even though it continued in the years that followed. In France, abolition was promised under the Treaty of Paris of 1814. On his return from the Elba Island, Napoleon declared it abolished. However, during the Restoration, France refused to participate in a league England had proposed to the Great Powers that was to assimilate the slave traffic to piracy. France limited itself to the enactment of a law in 1825, which provided for the punishment with fines, imprisonment or deportation of the French who were to carry on the trafficking.

Abolition of the traffic with African slaves is one of the articles in the Constitution of the United States of America. However, the above-mentioned article was implemented as late as 1807. It is only under a Treaty concluded with England in 1842 that the United States committed itself to participate (art. 8) in the surveillance of the African coast by a naval force. It was decided under a number of treaties concluded by England with

the Netherlands, Sweden, Denmark, Russia, Austria, Prussia, the Kingdom of Naples, Toscana, Sardinia, the Hanseatic towns and a few others that such traffic should be discontinued.

There was an idea that action had to be taken not only against slave buyers, but also against those who sold them. More specifically, these were small local chiefs, tribal chiefs, etc., who would sell their nationals or prisoners taken in various tribal battles. Conventions were signed with the small kings of Gambia, Madagascar, Abok, Sierra Leone, Congo, Gabon, etc. For instance, on behalf of England's Region, a ship captain concluded with "King" Bell of the village Bell in Cameroon a convention whose art. 1 provided that "starting from the date of this treaty, the selling and transportation of slaves or other persons whatever they be shall be altogether discontinued on the territory of King Bell and everywhere where his influence extends, and that such persons shall not be transferred from any point within King Bell's territory to another region, island or possession of another prince or high-and-mighty..." In order to cover the losses of King Bell, the ship's captain was bound to deliver every of five years: "60 rifles, 100 cloth pieces, 2 barrels of gunpowder ..." as well as other trifles.

Such conventions were concluded with the local chiefs in the eastern coast regions of Africa, with the imams of Mascat and Zanzibar, with Arab sheikhs from the western shore of the Persian Gulf and others as well. Starting in 1845, France also joined such treaties.

A Commission of investigation appointed by the House of Commons in England found that 26 treaties related to the suppression of the traffic with blacks were in effect in 1853 between England and other States with 65 additional treaties and

conventions concluded with various African chiefs. Some of these treaties provided for the mutual right to field visits and the jurisdiction of a joint commission, others provided for the right to field visits with a national jurisdiction, and others enshrined mutual obligations to maintain squadrons along the African coasts.

Permanent diplomatic missions and commissions of investigation were organized, all for the same purpose. A relatively rich activity was carried on in France. Guidelines were issued, credits were requested, and conventions were negotiated, all published in the "Colonial Magazine". 33 volumes of such documents were published in the years 1843-1857; as a result, the efforts taken in this respect could be traced.

The 20th century saw a consolidation of the African Diaspora community's spirit, one to which the presence of the representatives of some African countries in various groups of the black Diaspora made a contribution as well.

The struggles for independence that took place on the African continent proved to the whole world and to the African Diaspora that the new States were capable of governing themselves as self-standing entities and making their contribution to the world's civilization and culture.

Using the experience accumulated in the colonies on the continent, these representatives made an important contribution to the dynamization of the aspirations for freedom, to the struggle for full recognition of their rights and dignity as citizens with equal rights and duties to those of the populations amid which they lived.

Along centuries, the blacks in the Diaspora, despite the sufferings they had to endure, managed to keep their race

identity, also maintained through the links, mainly affective ones, with their origin countries, the countries of their forefathers. The intellectuality that came up from among the former slaves, the mass of the black population, have expressed and are still expressing their aspirations for total emancipation by means of protest movements, by means of actions carried on at local, national or even international level, by means of firm attitudes.

From a potential reality, the emancipation of the African population has become nowadays a hardly deniable fact. This emancipation was not a gift from outside. It has been obtained as a result of great difficulties and was also supported by the Pan-African movement. The pre-war period was full of events concentrated in the national liberation movements.

Researchers and the specialists in the field showed that the African Diaspora in America, Europe and Asia was formed in two different ways. One is the traffic with slaves transported across the Atlantic Ocean, the Mediterranean Sea and the Indian Ocean; this is the main cause both as far as the number of persons and the length of time are concerned. The other cause, a more recent one, is the voluntary immigration of population from Black Africa and from the North, and is rooted in the colonial system. In order to escape the economic, political and social oppression imposed by the colonial countries, many Africans immigrated across the Mediterranean Sea hoping for a better life in Europe's big cities. This is primarily the case with France and Belgium. For instance, during the war of Algeria, approximately 450,000 Algerians immigrated to France. Another explanation for the immigration is the wish for a better training that could be achieved in the big European universities. Many of the African students settled in the respective European countries when they

finished their studies. Such phenomena happened during the inter-war period and are still happening today. However, it is not only students that expatriate themselves, but also other categories such as various specialists, technicians, teachers, businessmen, artists, etc. This is what one may call the brain exodus; nevertheless, immigrants also included much more modest categories such as servants, people employed to perform various services, street sweepers, workers with no qualification at all or with a poor qualification, with a poor education or even illiterates, and persons carrying on many other legal or illegal activities. The category of political exiles, those fleeing because of civil wars or border conflicts, those charged with political offenses, etc., can neither be ignored.

The organization of the Pan-African movement gave new impetus to the national liberation movements on the continent as well as the Africans in various countries of the Diaspora. For instance, the emergence of racist attitudes in Europe and the imperialist war waged by Mussolini's Italy against Ethiopia stirred a firm disapproving reaction. The Pan-African movement determined clarification of the doctrine and wider protest activities of the Black Diaspora. In 1936, an association for the support of the Ethiopian people and awareness wakening for the cause of this country was founded in England. Other organizations were created for similar purposes in 1934 and 1937. It should be mentioned that the support of the black Diaspora for the Ethiopian cause was primarily a financial and a moral one. Protest demonstrations and meetings were organized, articles in the press were published, appeals in favour of Ethiopia were released, newspapers, essays and manifests were multiplied, and fund collections were organized.

Publications dealing with economic, political, social and educational issues emerged as well. In 1944, the Pan-African Federation was created; among other activities, it organized an important Congress in Manchester in 1945. The Federation was followed by further associations and organizations with agencies militating for the cause of Africanism. At a certain moment, the slogan "Blacks, let's unite!" was released. Personalities in the Diaspora took action at diplomatic level in the form of letters, petitions, contacts with governments and political people open to defend the interests of the blacks. The Congress of Manchester of 1945 had the significance of a highly important moment with the African countries' struggle for freedom and the coordination of the actions carried on in favour of the populations on the continent and the Diaspora.

Similar actions were continued in the years that followed. In 1964, the Organization of Afro-American Unity was created; one of its objectives was a closer collaboration with the Organization of African Unity (OAU). The black Diaspora throughout the United States has intensified its struggle for the renaissance and assertion of African identity at all levels of the social and political life, through education, the study of the history, lifestyle and traditions of the blacks, and by organizing cultural, political, arts, sportive, anti-racist, and mutual assistance associations in various sectors of the social life. Such forms of manifestation were practically felt in all the American States, the northern the southern and the central ones.

Africans are pretty numerous in Europe as well. In 1983, about 1.6 million North Africans lived in France. England also has an important number of Africans mainly coming from the Antilles, continental America and Africa.

Regional organizations and the United Nations Organization included among their priorities the issue of decolonization as well as other connected issues. At the beginnings of the world organization, the presence of the representatives of African countries was very modest. There existed only 4 theoretically independent countries: Ethiopia, Liberia, Egypt and South Africa. They had not one single non-standing seat in the Security Council. In its Resolution 1991 (XVIII) of 17 December 1963, the General Assembly assigned 5 of the 10 seats of non-standing members in the Security Council to Africa and Asia.

The United Nations Organization played three main roles in relation to Africa: a "collective imperial power", inherited from the Society of Nations; an ally to the liberation movements; and, a partner in the field of development. As far as the first role is concerned, the Trusteeship Council was the main body that supported decolonization, not without difficulties. Thus, the first two roles went strictly hand in hand, which made their differentiation a difficult task. This was mainly illustrated by the events in Togo and the more serious ones in Congo, with the coups d'états, the execution of Patrice Lumumba, the secession of Katanga, the death of Dag Hammarskjöld, Secretary General of the United Nations, etc.

The United Nations Organization played an important role by supporting the acceleration of the decolonization process, both in the northern countries and in black Africa. Such role can be illustrated by the pressures the UN General Assembly exercised in the development of the Algerian crisis, which in 1954 turned into open war. The opposition of France, which also was the holder of a seat of standing member of the Security Council, was intense. France would invoke art. 2 par. 7 in the United Nations

Charter that excluded interference by the United Nations with the internal affairs of the Member States and therefore the United Nations were not in a position to interfere with the Algerian crisis, since Algeria had been integrated into the metropolitan territory for 125 years. The Algerian issue triggered a new anticolonial mentality within the world organization. Virulent anti-imperialist African groups were formed, also supported by India and most Asian countries. A group of African countries initiated a campaign against the apartheid practised in South Africa, which made the United States vote in favour of a resolution that condemned that State. Finally, on 1 April 1960, the Security Council passed a resolution demanding that South Africa should abandon its apartheid policy. Other resolutions against the colonialism practised in Africa were passed by the General Assembly on request by the African delegates. They were resolutions related to the events in Angola, Ghana, Cameroon, Nigeria, etc.

The United Nations Organization also supported the economic development of African countries, particularly by means of the collaboration with the Organization of African Unity. In 1958, the United Nations created the UN Economic Commission for Africa in order to speed up the economic and the social development of the African continent. The United Nations and the OAU as well as their specialized institutions, such as, for instance, the World Health Organization, UNESCO, the International Labour Organization (ILO), and a few more others took efforts to support the economic, social, cultural and, obviously, political development of African countries in view of their consolidation.

Meanwhile, numerous Africans from the continent's countries maintained close relations with Afro-Americans. Generally speaking, the structure of these relations led to no concrete results. A number of causes, such as ideological divergences, geographical distances, communication difficulties, national priorities, economic constraints, etc., prevented the creation of international structures that would have been necessary to the collaboration among the blacks. Some support came from the Diaspora, which, by means of manifestations, conferences, publications, studies, the press, etc., exercised pressures upon governments so that the latter may understand the problems of Africans, make a contribution to finding solutions and support those policies and programmes that are profitable to African populations. Such a role was played by Trans-Africa as an Afro-American pressure group that has a publication, Trans-Africa Forum, which is circulated all over the world and enjoys the appreciation of such international bodies as OAU, etc.

A FEW JURIDICAL GUIDE MARKS CONCERNING AN EFFECTIVE PROTECTION OF THE HUMAN RIGHTS OF PEOPLE OF AFRICAN DESCENT

In order to correctly fit the topic in the context of the existing realities, a number of both historical and juridical and political clarifications and delimitations are necessary in our opinion. Even though some of them may seem superfluous, as they are too well known, their absence from a logical, coherent demonstration, based on scientific arguments could lead to confusions or distortions of the investigation.

Therefore, here is the first preliminary remark we deem as necessary:

Minorities, to which, undoubtedly, people of African descent living in the Diaspora belong, were formed in various historical periods, under various circumstances, and therefore their status differs from one country to another, from one continent to another.

For instance, the pressure of the European migration towards other continents, such as North and South America or regions of South Africa, had undesired effects upon the indigenous populations, whose survivors are still the most vulnerable

amongst minorities. These are what we call today autochthonous, indigenous, aboriginal, Inuit and other peoples.

Chronologically, they were followed by those minorities formed as a result of the slave trade with Africans to the Americas and the regime to which they were subjected for several centuries and it is to this category that the disadvantaged minorities in most countries of North, Central and South America belong (see first part of this study). We are not going to insist on the categories minorities that were formed later, such as those created by the colonial regime as a result of the need of skilled manpower in certain regions, or migration from poor to rich countries.

Despite all differences, two perceptions are common to the members of all minorities: the sufferings and discriminations of the past make necessary measures to prevent them happen again; the second one is that the historical injustice whose victim a minority was should be redressed by means of a special status.

Although racist theories collapsed, certain behaviours from segregation to violence are still persisting, and so are racial, ethnic or national conflicts, in a world on the verge of globalization.

On the other hand, it has been established that race, ethnicity, and nation are social or anthropological categories that meet the need for belongingness, one capable to preserve individual or group identities, in other words, an identity self-defence reaction against globalization.

In terms of the topic dealt with, we consider as relevant a number of international regulations whose main objective, or one of whose objectives, is elimination of racial discrimination,

documents that are well known as a matter of fact, a reason for which we would only like to mention them.

Without including a special clause in terms of minorities' protection, the Charter of the United Nations solemnly proclaimed respect for human rights and fundamental freedoms, with no distinction based on race, sex, language or religion. It was for the first time that principles of equality and non-discrimination were laid down as part of the rights and freedoms of all individuals rather than part of the special measures related to the protection of minorities.

This approach is also to be found in the Universal Declaration of Human Rights, adopted on 10 December 1948, which, just like the Charter, includes no express provisions related to minorities. Concomitantly, the General Assembly adopted the resolution entitled "Fate of Minorities"[1] where it declared that the United Nations Organization couldn't be indifferent to the fate of minorities, but it was difficult to adopt a uniform solution to this complex and delicate matter that presented peculiarities in every country where it was applicable. Resolution 523/B (VIII) of 24 February 1952 proclaimed that prevention of discrimination and protection of minorities were two of the most important fields of activity for the world organization.[2]

[1] Resolution 217 (III) of 10 December 1948.

[2] Similar provisions are also included in the Convention on the Prevention and Punishment of the Crime of Genocide (1948), ILO Convention 107 on Aboriginal and Tribal Populations (1957), UNESCO Convention Against Discrimination in Education (1960), Convention on the Elimination of All Forms of Racial Discrimination (1965), International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), Convention Against Apartheid in Sport (1985), UNESCO Declaration on Race and Racial Prejudice (1978).

The first universal regulation on the rights of persons belonging to minorities was included in art. 27 of the International Covenant on Civil and Political Rights, adopted 18 years later, on 16 December 1966, with the following wording:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

This has been so far the unique international legal norm proper, of general application, in terms of the rights of persons belonging to minorities. Its force also comes from the large number of countries that ratified the Covenant, as well as the Covenant's mechanism of individual communications/ complaints, which can be filed by persons under the jurisdiction of a State party to its First Optional Protocol, in relation to a violation of the rights enshrined by the Covenant.

Consecrating the practice developed by the UN bodies, the UN Human Rights Committee, based on art. 40, paragraph 4, adopted on 6 April 1994 a General Comment on Article 27 that makes a number of clarifications that confirm the prevalent political and conceptual approach.

Thus, the Committee remarks that the right is acknowledged to persons belonging to minority groups, without the condition of citizenship or permanent residence having to be met; it is a distinct and complementary right in relationship to all the other rights provided for by the Covenant. Also, a distinction is made between the right to self-determination, which is acknowledged

to peoples and is dealt with in Part I of the document, and the rights protected by art. 27, included in Part III of the Covenant.

Even though it is worded in negative terms, art. 27 nevertheless acknowledges the existence of a right and imposes respect thereof. Therefore, States parties are bound to acknowledge this right and protect the free exercise thereof, while indicating in their reports what has been done in this respect. Positive measures may be needed for the protection of the identity and rights of members of minority groups "*to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group*".

As far as the holders of the rights are concerned, it was shown that art. 27 of the Covenant refers to the rights of individuals, of persons, not on the rights of the groups, while they are distinct and complementary in relationship to all the other rights they shall enjoy under the Covenant and can therefore be claimed on the basis of the Optional Protocol.

These rights should be protected as such, without being mistaken for other individual rights acknowledged to each and everyone, while they cannot be legitimately exercised to such an extent that is incompatible with the other provisions of the Covenant.

However, the first document to exclusively refer to the issue of minorities is the Declaration on the rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly in December 1992, after ten years of debates within the UN Commission on Human Rights.

The Declaration provides among others: the right to the existence and the national or ethnic, cultural, religious and linguistic identity of minorities; the right to participate effectively in cultural, religious, social, economic and public life; the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation; the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities; the right to have contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

At the same time, States are requested to take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. Also, States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country as well as national policies and programmes, with due regard for the legitimate interests of persons belonging to minorities, etc.[3]

An important place for the development of the legal framework lies with the Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965, which defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic

[3] See **Irina Moroianu Zlătescu**, *Protecția juridică a drepturilor omului*, Ed. I.R.D.O., Universitatea Spiru Haret, București, 1996, pp. 144-145.

origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

States parties commit themselves to eliminate any form of racial discrimination, to punish the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, to prohibit racist organizations and racial propaganda or incitement to racial discrimination.

Under the Convention, the Committee on the Elimination of Racial Discrimination was created whose purpose is to examine the periodic reports submitted by States on the legislative, judicial, administrative or other measures adopted for the application of the Convention and to formulate suggestions and recommendations presented annually before the UN General Assembly in the form of reports. The development of a speedy procedure allows the Committee to request States information on any situations for examination. The Convention also provides for a procedure for the examination of individual complaints, applicable on condition that the States should expressly accept it.

The same definition of discrimination and the obligation to have it eliminated is laid down in the Convention Against Discrimination in Education, adopted in 1960 by UNESCO.

We should also mention UNESCO Declaration of 1978 on Race and Racial Prejudice, which, among others, proclaimed the right to cultural identity and, let us emphasize, the need for positive actions with the treatment of disadvantaged and discriminated groups, including migrant workers, as well as the Convention of 1973 on the Suppression and Punishment of the

Crime of Apartheid, where inhuman actions, committed with the purpose of maintaining the domination of a social group upon another one and systematically oppressing the latter, including racial segregation and discrimination practices, are declared crimes against humanity. Likewise, organizations committing them are declared criminal organizations.

Unlike the Convention for the Elimination of All Forms of Racial Discrimination, which enjoyed the largest number of ratifications of all UN instruments, the latter Convention has only a small number of States parties. This can be mainly explained by its exclusive relation to the situation of South Africa. In spite of the fact that its provisions are still topical, there is a tendency to ignore them.

We should also mention the International Convention of 1990 on the Rights of All Migrant Workers and Members of Their Families, according to which States shall provide them acknowledgement of many rights and freedoms, respect for their cultural identity, equality of treatment as far as education is concerned, integration of their children with the educational system of the country and the possibility to study their mother tongue and culture.

The issue of religious identity is inseparable from that of the identity of persons belonging to national or ethnic minorities, characterized, among other things, also by religious specificity, as compared to the majority and other minorities.

By way of consequence, the protection of the religious identity is a constitutive part of the protection of the identity of persons belonging to minorities.

Religions have always been a fundamental element with the identity of persons and groups as well as binder of the communities where groups and nations live and with which they identify themselves.

Belongingness with a religious minority involves an individual choice. Any person, whatever his/her status, irrespective of the fact that he/she is or is not a citizen of that particular country, shall be free to decide whether he/she wishes or not to belong to a minority group, and if so, which particular one.

Everyone shall be entitled to practise and profess his/her own religion. This situation refers to persons belonging to an established minority group, who may practise their religion or belief individually or in common, in other words they may exercise in common their religious rights and freedoms, whatever their citizenship or status.

Re-iterating the provisions of the Universal Declaration of Human Rights, art. 18 in the International Covenant on Civil and Political Rights adds as guaranties the prohibition of any coercion which would impair one's freedom to have or to adopt a religion or belief of his choice, as well as the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

According to the provisions of this article, freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

According to art. 4 in the International Covenant on Civil and Political Rights, States may not derogate from the religious rights and freedoms even when an exceptional public emergency threatens the existence of the nation.

The provisions under article 18 shall be corroborated with other provisions of the Covenant, such as those referring to the prohibition of any discrimination, particularly based on such ground "*as race, colour, sex, language, religion*", included in art. 26, and also those under the next article, 27, which consecrates the right of persons belonging to ethnic, religious and linguistic minorities, "*in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language*".

According to the previously mentioned General Comment 23 (50), adopted by the UN Human Rights Committee, States parties shall not limit the rights provided for under art. 27 to their own citizens (5.1.). Moreover, they are bound to provide acknowledgement of these rights and protect them against any violation, while submit periodic reports.

It may be even necessary to adopt positive measures for the protection of the identity of a minority and of the rights of the members of this group to develop their own culture and language and practise their own religion, provided that these measures were based on objective and reasonable criteria and were compliant with art. 2(1) and 26 in the Covenant, both referring to non-discrimination in respect of both the treatment applied to the various minorities and the majority.

We should remind under the Optional Protocol to the International Covenant on Civil and Political Rights, the Human

Rights Committee was authorized to receive and examine complaints from natural persons who claim to be victims of violations of any rights provided for by the Covenant, therefore including those provided for under articles 18 and 27.

Provisions regarding religious freedoms are also included by all the conventions combating discrimination. These include ILO Convention 111 on the elimination of discrimination in respect of employment and occupation and the previously mentioned UNESCO Convention of 1960 Against Discrimination in Education.

As far as the existence of religious groups is concerned, it has been protected ever since 1948, under the Convention on the Prevention and Punishment of the Crime of Genocide.

There is still need for an overall legal document exclusively devoted to the religious rights and freedoms, even though the UN General Assembly adopted a decision for the elaboration of such a Convention as far back as 1962. Finally, a declaration was given priority, namely, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was adopted under Resolution 36/55 of 25 November 1981. For the purposes of this document, the terms **intolerance** and **discrimination** mean "any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis". This definition is inspired from the one given to 'racial discrimination' by the Convention of 1965, while the document as a whole re-

iterates the rights, the principles and the norms included in the previously mentioned international instruments that preceded it.

The Declaration of 1981 consecrates the principle of non-discrimination based on religion or belief, by the State or any other institution, persons or group of persons, while it refers to individuals without mentioning the existence of religious groups or minorities. However, as appreciated by certain experts in the field, this document, which includes conduct obligations of unquestionable value, is at the same time an important "*step forward for the securing of a certain protection to religious groups*".

Since 1986, the Commission on Human Rights has been submitted an annual report on the observance of religious freedoms.

More recent documents dealing with minorities' issues lay emphasis on the protection of identity, without ignoring religious freedoms as such.

Thus, the UN Declaration of 1992 on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities enshrines the States' obligation to "*protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities*", encourage conditions for the promotion of that identity and adopt appropriate legislative and other measures to achieve those ends (art. 1), while specifying that nothing in the Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, "*including sovereign equality, territorial integrity and political independence of States*" (art. 8).

At regional level, all-inclusive documents such as the European Convention on the Protection of Human Rights and Fundamental

Freedoms, adopted in Rome in 1950, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights, which consecrate the principles of equality and non-discrimination also based on race, national origin, language, and religion, a number of documents and special references were adopted to combat discrimination in different fields.[4]

In this context, we also deem it necessary to mention, for the sake of illustration, a domestic regulation, namely, Law 434/2001 also known under the name of the "Taubira Law", after the first name of its initiator, adopted in France on 21 May 2001, which examines a number of connections with the international legal framework.

Let us just remind that, in 1998, Christiane Taubira, Deputy of French Guyana, submitted a legislative proposal where she labeled slaves trade and the slavery of the black as "crimes against humanity". The proposal also requested that this historical phenomenon should be more thoroughly dealt with in school textbooks and that the possible "negational" approaches be penalized, that a national day should be chosen to remind this black page of history, while it also foresaw the commitment of international tribunals to adopt this qualification and the calculation of the redress necessary in the logic of imprescriptibility. The text of article 5 of the proposal read as follows: "A committee shall be established, made up of qualified personalities, tasked to estimate the suffered prejudice and

[4] See Declaration Regarding Intolerance – A Threat to Democracy (1981), Declaration Against Racism and Xenophobia (1986), Resolution on the Struggle against Racism and Xenophobia (1990), Declaration on Anti-Semitism, Racism and Xenophobia (1990), Declaration on Human Rights (1991), Declaration on Racism and Xenophobia (1991).

examine the terms of the redress owed as a result [au titre] this crime. The competencies and the missions of this Committee shall be established under a decree by the State Council".

However, the terms "prejudice" and "redress" disappeared from the text of the law that was passed in 2001, which in its art. 5 stipulates that the Committee of personalities shall also include representatives of the associations defending the memory of the slaves, while the Committee shall be tasked "to propose, throughout the national territory, places and events that should guarantee the perenniality of the memory (!) of this crime for the next generations".

The structure, competencies and missions of the Committee shall be established under a decree by the States Council, which "shall acknowledge slaves trade and slavery as crimes against humanity".

Let us remind that on 9 December 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide that took effect on 12 January 1951, which in its art. 2 defines genocide as follows: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

The method adopted in the United Nations system is to establish a control procedure for each instrument, the various mechanisms being provided for in the respective instruments.

Thus, there are six different procedures in the conventional framework for the examination of the submitted reports, each related to one single treaty.

This system of reports includes those provided for under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishments or Treatments.

Other procedures have narrower application – this is the case with the previously mentioned one related to the implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid, or are relatively recent – the case of the Experts Committee established under the International Convention Against Apartheid in Sports.

We shall limit ourselves to mentioning that the Convention for the Elimination of All Forms of Racial Discrimination provides that States are bound to submit their first report one year after the Convention takes effect and afterwards, every two years and, additionally, whenever the Committee requests it. The Committee is entitled to request States Parties complementary information (art. 9 paragraph 1).

In its turn, the Convention on the Elimination of All Forms of Discrimination Against Women provides, after the first report due in the year following the year when the Convention takes effect, for periodic reports due "every four years" as well as on request by the Committee (art. 18, paragraph 1).

In the late 1990s (1998), the CERD Committee passed the proposal of the States Parties to make the periodicity of the reports comply with the one operating under the Convention on the Elimination of All Forms of Discrimination Against Women, namely, detailed reports every four years and short reports within this interval.

As far as the content is concerned, owing to the great differences and the need for comparativeness, the bodies tasked to examine the reports elaborated standard questionnaires or a kind of handbooks in the form of principles and rules.

In fact, the International Convention on the Elimination of All Forms of Racial Discrimination provides that the reports shall refer to "*the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention*" (art. 9 paragraph 1).

In its turn, the International Convention on the Elimination of All Forms of Discrimination Against Women provides for the same with the only difference that it refers to measures adopted 'to give effect' (not 'which give effect').

As far as the International Covenant on Civil and Political Rights is concerned, it provides for reports on "the measures they have adopted which give effect to the rights recognized herein" and "on the progress made in the enjoyment of those rights" (art. 40 paragraph 1), indicating, as the case may be, "the factors

and difficulties, if any, affecting the implementation of the present Covenant" (art. 40 paragraph 2). In fact, as a rule the reports include answers to the questions asked by the Committee, including those related to insufficiently elucidated aspects in the previous reports.

Let us remind that the UN procedural system for the *mise en œuvre* of human rights, with its interactions and influences, was dealt with in an ample critical analysis published by its author, Agnès Dormenval, under the title "Procédures onusiennes de mise en œuvre des droits de l'homme: limites ou défauts?" in Publications de l'Institut Universitaire de Hautes Études Internationales – Genève. Let us also mention the Report of the Conference on the rights of people of African descent in America (Montreal, 27-30 December 2001) presented by Cecilia Thomson from the International Center of Ethnic Studies, which refers to the role of regional and international mechanisms for the protection of human rights, as well as Prof. Anne Bayefsky's report on "The UN Human Rights Treaty System: Universality at the Crossroads", of April 2001.

Examining the above-mentioned mechanisms and procedures applicable in terms of the protection of the rights of people of African descent, the Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance provide an adequate framework for the understanding of racial discrimination issues faced by people of African descent, historical and continuing victims of the transatlantic, Mediterranean and India Ocean slave trades, recognized as such under paragraph 13 of the Declaration

We particularly bear in mind that a thorough analysis of the *de jure* and *de facto* situation of this community turns out a difficult task due to its diversity, its needs and expectations, as well as its poor "visibility" in terms of accessible information.

This is the reason why gathering all relevant information both at international and national levels, both from governmental and non-governmental sources and corroboration of this information is a prerequisite for a thorough examination of the situation and the solutions. Also, the preoccupation for the full and effective access of people of African descent to the legal system, including such means as special training, presence into and experience gained from within the system, is likely to give impetus, beside the general educational measures, to a more effective use of the existing mechanisms for the protection of the specific rights and the new mechanism foreseen to monitor and promote all their rights.

We believe that, in order to optimize the use of United Nations mechanisms for the elimination of discrimination against people of African descent, it would be necessary that the major treaty monitoring bodies should pay particular attention to the situation of people of African descent and request governments to provide specific information relating to this group in their periodic report.

Such a wording also covers discrimination based on belongingness to one gender or another, through the mechanism of the Convention on the Elimination of All Forms of Discrimination Against Women.

One may also consider the appropriateness of other reports than the periodic ones, on the measures taken by the governments to support these communities.

In conclusion, let us remind that:

– Equality in rights and non-discrimination covers the whole range of rights and freedoms, while it is an essential element with an international standard regarding the rights of persons belonging to minorities and the protection thereof;

– Measures meant to provide conditions for certain groups or persons needing protection to equally exercise their rights and fundamental freedoms are not to be considered discriminatory, even though they may imply a different treatment, which should however be maintained only until the desired objective, namely, equality is attained before inequalities are generated, and, of course, under such circumstances that the cultural identity of people of African descent, including that of the group they make up, should be preserved.

It is, of course, predictable that, under such circumstances as the accentuation of the globalization and localization processes, the new economic, social, juridical and political relations should impose new approaches, particularly in the sense of a more rapid adaptation of the measures to be taken to the local needs and specificity.

The concern the African States, the USA, the Latin American, European and Asian States, on the one hand, and the non-governmental organizations, on the other hand, show for the situation of people of African descent and the elaboration of a legislation that protects them varied in time and space and materialized in the elaboration of local norms.

At regional or universal level, these issues have been included in general norms.

Studying the historical evolution of people of African descent in Africa and other continents in order to identify the specific issues, one finds that things are different from one continent to another, from one country to another, people of African descent either being the majority, a disadvantaged majority, or a disadvantaged minority.

In recent years, some UN Member States, under the pressure of national and international non-governmental organizations, have taken greater interest in the examination of the possibility to elaborate a special legislation, one to evince the contribution of people of African descent to the creation of the common values of humanity.

With the assistance of the representatives of States and with the valuable contribution of NGOs, we hope an inventory of the national regulations, and also an inventory of the proposals for the improvement of the legislation existing in various countries will be possible to achieve, so that we should be able to evaluate the way Sates adopt and adapt the existent standards to the concrete situations, different from one country to another, from one region to another, in relation to the evolution of the status of people of African descent.

At the same time, this will enable us to identify the problems that would make necessary the elaboration of new international standards with special reference to people of African descent.

Two kinds of human rights mechanisms are to be found with the United Nations monitoring system – a conventional one, and an extraconventional one – which react against violations of human rights at individual level and the systematic violation of these rights by the UN Member States. Thus, the Human Rights

Committee, the Committee against Torture and the Committee for the Elimination of Racial Discrimination are authorized to accept individual complaints by the citizens of the States that ratified the provisions referring to individual communications.

Let us remind that in 1967 the Economic and Social Council adopted Resolution 1235 (XLII) that authorized the Human Rights Commission and its Sub-Commission of fight against discriminatory measures and protection of minorities to examine any information referring to flagrant violations of human rights and fundamental freedoms. In 1970 the Economic and Social Council adopted Resolution 1503 (XVLIII) that established a mechanism to respond to complaints by individuals, frequently referred to as "Procedure 1503". According to this procedure, substantially amended in the year 2000 to the effect of an increased efficiency ("Procedure 1503 revised"), the Commission on Human Rights has the mandate to examine serious violations of the rights and fundamental freedoms taking place in whatever State in the world. Any individual or group considering to be a victim of such violations or directly experiences them in a trustworthy way, is entitled to submit a complaint. In case a non-governmental organization submits such a complaint, it shall take action in good faith, in conformity with the principles acknowledged in the field of human rights and have direct evidence of the situation it describes. The documents submitted for examination by the Commission are confidential. In case serious violations are found, the Commission is entitled to investigate the situation through independent experts of international reputation, whom it authorizes to examine, monitor and report about the situation in various countries or assigns

thematic mandates related to certain phenomena and regions of the world and the task to make and submit reports. This independent, extraconvantional system of investigation allows for subtler actions of finding human rights violations suffered by individuals.

The Office of the High Commissioner for Human Rights has also devoted a special fax number (0041-22-917-0092) where alluded violations of human rights may be signaled. The line receives every year about 200,000 communications denouncing violations.

UNESCO and ILO examine allusions of discrimination in their respective field of competence, as well.

PERSONS OF AFRICAN DESCENT AND THE MEDIA

Media reports become extremely sensible when directly connected to ethnic, cultural and religious relations or directly referring to them.

The way the media presents incidents within the area of these relations, the actors that are involved and the leaders of opinion can influence the public's response, the common perception of such relations and even peoples' behaviour.

Such an enormous influence power characterizing the media, particularly the audio-visual, when used in a negative way, irresponsibly or incompetently, may nourish the racist and intolerant discourse rather than cultivate tolerance, understanding and respect for the dignity of human beings in their diversity.

As shown in the Declaration adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, of 31 August – 8 September 2001 of Durban, by promoting false images and negative stereotypes of vulnerable individuals or groups of individuals, certain media "have contributed to the spread of xenophobic and racist sentiments among the public and in some cases have encouraged violence by racist individuals and groups. A reason for concern is also the negative influence the use of the new information technologies,

such as the Internet, for purposes contrary to respect for human values, equality, non-discrimination, respect for others and tolerance may have, particularly upon children and youngsters.

The effects the "hatred discourse", propelled by a certain area of the media, had in various conflict zones, from strained relations to instigation to conflicts or escalation thereof, are well known.

Other, long-term effects, mentioned by researchers and analysts, are increased isolation, individualized perception upon those public life areas that affect social organization forms and co-habitation, acceptance of violence through the media validating or aggravating violence and hostility areas characterized by instability and lack of social cohesion, validation of certain negative principles and attitudes, prejudices and fears, feelings of insecurity, cultivation of indifference towards immigrants and minorities, which becomes manifest in the form of unintended support given to racism, not just in its violent, extreme aspects, but also at the deeper level of prejudices.

While the discourse of the media can and actually does have such negative effects, it also has the ability to combat such phenomena and attitudes by adhering to a system of values and principles and assuming social responsibilities the roots of which are to be found in the very impact the media has upon the public.

The legal limitations of the exercise of freedom of speech through the media, exhaustively and restrictively laid down in the international instruments, of which we would like to only mention here the International Covenant on Civil and Political Rights (arts. 19 and 20), and the International Convention on the Elimination of All Forms of Discrimination (art. 4), which

enjoyed the largest number of ratifications, alongside the domestic legislation, can only protect those values that are required in a democratic country from direct and explicit attacks against them.

Hence, the importance of the deontology of ethic codes and the press self-regulating mechanisms addressing not criminality, but morality with the exercise of the profession that should characterize trade unions, employers and professional organizations. The latter ought to impose norms, values and principles that should become landmarks with the elaboration of the journalistic work, complex and subtle as it is, through the context it creates, one that may increase or diminish the impact of its constitutive elements as well as the positive measures taken to train journalists and those in charge with the media.

The relationship between the media and persons of African descent is, in our opinion, a particular aspect of the lager framework of the media-minorities issues.

This is the reason why the conclusions drawn by a number of ample, methodical studies devoted to the topic are of particular interest. These include the Report on "Racism and Cultural Diversity in Mass Media. An overview of research and examples of good practice in EU Member States, 1995-2000", elaborated by the European Research Center on Migration and Ethnic Relations (ERCOMER) and edited by Jessika ter Wal (Vienna, February 2002), which includes in the end a number of recommendations which, in our opinion, have relevance and applicability to our area of preoccupations. Mention should be made, however, that their effectiveness depends on a correct and

definite adaptation to the peculiarities of each particular group and the local context.

These recommendations, based on an analysis of negative and positive practices alike, reported by Member States of the European Union, indicate ways cultural diversity can be promoted through the media as well as the fact that professionals and media organizations, advisory bodies, political organizations and ethnic minorities organizations should work together to attain the following objectives:

• increased visibility and accessibility for ethnic groups and immigrants, particularly in the media with larger audience, with the elaboration of routine news and all informative genres;

• more possibilities for the investigation journalism and introduction of positive patterns and forms of news instead of the prevailing negative pattern, focusing on "problems";

• increased awareness about the need to crosscheck the information coming from official sources, to comment upon the speeches of great impact delivered by political personalities and officials not just from the official point of view;

• encourage initiatives in the field of training and programs aiming to increase access to and participation in and improve representation of ethnic, cultural and religious minorities in the media;

• encourage collaboration and exchange of information between the media and organizations of persons of African descent such as to promote ethnic, cultural and religious diversity in the media.

As far as forms and genres are concerned, it is recommended that investigation journalism, documentaries and full-length

films be stimulated for the purpose of knowing and accepting ethnic, cultural and religious diversity. Such forms can offer information about the life of persons of African descent, personal interviews and life stories, confessions which are likely to increase credibility, lead to closer relations and shake off prejudices, just the same way as amusement radio and TV broadcasts such as music, games, contests and humour, can make a better contribution to goodwill and sympathy between persons belonging with different cultures.

Focus with news packages and topical snapshots broadcasts can be moved from exoticness and sensational aspects in the lives of persons of African descent to reporting about current events and presentation of these persons in non-stereotypical attitudes, as well as other types of news and reports than the negative ones.

Of the wide thematic range the general information media has at hand, the social and the cultural segments seem best suited to increase visibility and familiarization with persons of African descent. It is in the hands of the heads of the various news, written media, radio and television channels to give increased importance to these fields.

In order to get such results, the adoption of training programmes is necessary: on the one hand, training programmes for persons of African descent to facilitate their access to journalist profession and, on the other hand, special programmes for students, journalists, publishers, managers and producers on discrimination theme as well as cultural diversity, the analysis of how media discriminates, prejudices and stereotypes being also included.

Another way of action that proved to be efficient is mass media monitoring from the viewpoint of visibility and positive and negative presentation of the group and its members. This monitoring can be achieved by projects of certain study centers, non-governmental organizations having concerns in the field.

Capitalization of these monitoring findings can be carried out by both sensitization campaigns of public opinion, mainly press, radio and television units and accurate diagnosis of the situation and sensitive zone identification to enable the efficient and well-informed action to remedy the shortage.

If many of the reproaches with the mass media are certainly well-founded, there are some others resulted from the so-called badly placed expectations.

The largest audience undoubtedly goes to the general information publications, mainly radio and TV. It becomes to state that some reproaches, including, those made by militants of non-governmental organizations results from a regrettable misunderstanding of specific working ways.

"The journalist" – said one of the greatest Romanian journalists of the inter-war period, "is not a teacher delivering from his desk and keeping a rod in his hand. He transmits education between a joke and a front page article, between a reportage and a caricature". This way of acting as an educator is quite efficient as it is based on persuasion of facts, the "bricks" that "build up" a newspaper or a broadcast.

Lack of an adequate publicistic dress makes the message vanish. The new message does not come to its destination end and it is no more perceived.

Educational nature should be the producers "secret".

In the pages of a largely printed newspaper, an exciting commentary on actual breaches violations of rights or abuses, discriminating expressions meant to hurt rights or interests as well as human dignity, published on a quarter of a column, makes greater services and it is more efficient from educational standpoint than a theoretical doctrine article printed on a wider space, as it meets better the public's expectations.

In case of specialized publications or channels of proximity media addressed to a specific public segment, separate target groups according to the expectations of which they set up the topics, approaching ways and language, the situation is different.

Article 27 of the International Covenant on Civil and Political Rights and Article 1 or 4 (2) of the Declaration on the Human Rights of Persons belonging to the National, Ethnic, Religions and Linguistic Minorities of the UNO, passed on consent by the General Assembly in 1993 and Article 5 of the International Convention on the Elimination of All Forms of Discrimination, under which governments have to ensure the freedom of expression to the persons belonging to the minorities, the right to enjoy their own culture, have equal access to public property and private services, enjoy equally education, as well as prepare and participate in cultural activities.

The positive obligation of governments to warrant minorities the equal access to public broadcasts with that of the individuals belonging to the majority is stronger when ethnic or national minority lived on the country territory for a long time. In case of persons of African descent also meeting this characteristic, the obligation amplifies as a consequence of the long-term prejudices suffered during the history.

Minorities' access to the mass media also involves some percentages of air time according to the minority share and the possibility they produce programmes for public stations by themselves where they are prevalent in the respective zone and there is no other real opportunity of private channel broadcasting.

Referring to the enjoyment of the right to freedom of expression, the Declaration of Durban pointed out the requirement that all States should recognize the importance of community media that give a voice to victims of racism, racial discrimination, xenophobia and related intolerance.

In the report entitled "Possible Strategies and Means of Facilitating the Peaceful and Constructive Solution of the Issues Involving Minorities"[5], the UN Sub-Commission for discrimination prevention and protection of minorities made one of the most authorized interpretations of the international standards of the following terms: "Majoritarian groups should find out about minority group's cultures so that they might evaluate these cultures as generally enriching the society".

On the basis of their own culture and language, the members of different groups must enjoy the right of participating in the community's cultural life, producing and enjoying arts and science and protecting their cultural heritage and traditions, having their own mass media and other communication means as well as equally access to publicly controlled and state-owned mass media.

On the other hand, pursuant to Article 19, the International Center against Censorship, a non-governmental organization of an incontestable reputation, included the recommendation no 10 in conformity to which "Government has to attenuate the impact

[5] UNO E/CN/4 Document/Sub. 2199/34, 10 August 1993

of any 'language of hatred' providing a maximum diversity of broadcast viewpoints" into the recommendation set taken from the international legislation and practice.

Thus, Article 19 points out that the best antidote for "the language of hatred" is a comprehensive speech from different sources that reflects a diversity of viewpoints. The most efficient way of spreading it is the independent public corporations that can get larger audiences.

When independent bodies grant a licence, they should take into account the need of providing a viewpoint diversity.

If authorities, pursuant to Article 20 of The International Covenant on Civil and Political Rights, have the duty of prohibiting any urge on national, racial or religious hatred that can be an incitement of discrimination, hostility or violence, station must not be punished for broadcasting the opinions of the persons urging on hatred or violence providing that they do not support these viewpoints, broadcast contrary opinions or express publicly disagreement to the already-expressed opinions, as well[6].

When any topic regarding mass media rules is taken into account, it is impossible the fundamental postulate of freedom of expression to be eluded.

There is a subtle delimitation between a justified discontent towards a paper or a radio or TV programme and illegitimate pressure exerted on publishers and journalists. The capacity of identifying accurately this delimitation is essential. As it can not

[6] Article 19, The International Center against Censorship, Mass Media and Freedom of Expression. Guide of Journalism, Phare, Bucharest, 1997, p. 73.

be defined by law, the only way of finding it out is the experience.

There are many ways whereby different groups can influence mass media and mass media in their turn can learn to become more responsive to the public's concerns.

Non-governmental means of ensuring social responsibility of press can be divided into four categories, according to Claude-Jean Bertrand's opinion.

The first category aims at the long-term solution of most of the issues namely public and journalists' education; it follows criticism, the oldest, easiest and most frequently used method, monitoring and access to mass media, "absolutely necessary for every group should correct the errors and fill mass media lacunae."[7]

From the wide range of MARS, we mention deontological codes, journalists' associations, press committees, that in some countries are made of public representatives besides employers and journalists who watch code compliance, deontological audit organized for the editorial staff's awareness-raising on deontological principles and rules, internal criticism or content-evaluation commission, Japanese-origin (Shinshashitsu) institutions consisting of a journalist team intended for daily content analysis in order to correct deontological errors, a part that in the USA is played by the internal criticism, by ethics coach, generally speaking, i.e. deontological board that usually is installed in the editorial office. Other MARS used are media columnist, a mass media criticism-trained journalist, and critical

[7] Claude-Jean Bertrand – An Introduction to Written and Spoken Press, Polirom, 2001, p. 225 – 240 (Romanian version of "Médias. Introduction à la press, la radio et la télévision", Ellipses Edition Marketing, 1999).

magazine dedicated entirely or about to the mass media of a country or town, observing groups supported by non-governmental organizations for long-term monitoring studies and research on mass media published in scientific journals or books.

Among the (non-governmental) means to ensure mass media social responsibility, more useful from Afro-descent groups' viewpoint seem to be:

– The contact committee that intermediates the relation between journalists and certain groups or institutions facilitating mutual understanding of exigencies also finding compromise, on the one hand, and the local press council that allow discontent and wish expression as well as learning how mass media function by regular meetings of consumers and media channel executives, on the other hand.

– Press Ombudsman institution that gains ever more ground in the North America and other continents, as well, is also in charge of receiving public's complaint assessment and inquire or requests and then issues the results.

Finally, other means to ensure social responsibility of mass media consist in different actions of organized and militant consumers whereby pressure can be exerted on mass media owners and legislators, from a newspaper or radio or TV boycott, to letter campaigns, street demonstrations, but mainly conferences, seminars, soundings and initiation by minority groups of their own press, bulletins, local associative stations, cyber-space sites.

Recognizing the positive potential and important role of press, numerous observers have often pointed out the side-slips, sensational and negative news appetite, commercial nature of the

information means, and mainly violence incitement, racial hatred and discrimination that are not law-incriminated, mainly infringement of equality and democratic spirit nondiscrimination principles, rules of the state of law characterized by the respect to human right, dignity and tolerance spirit cultivation.

But, as J.P. Marthoz pointed out in his conclusions regarding mass media at the International Seminar on Tolerance, May 1995, Bucharest "a dispassionate examination of the media reveals that they are not simply made up of scandal sheets, gossip channels and rumour mills, in none of our countries is the market concerned exclusively with worthless programmes and the crudest head-lines. It also rewards quality journalism – a craft that is courageous, independent and dignified and forms the linchpin of democracy".

At last, the extend in which mass media fulfill their responsibilities of promoting human rights depends on journalists' professionalism, publishers and employers' availability and their public's activism, as well.

Recognition that information means legitimately subject to an economic logic, does not mean that publishers, directors of publications and radio-TV channels have the right of departing from responsibility the mass – media have in a democratic society.

It is their duty to bind themselves effectively within the press enterprises they manage as well as professional organizations they belong to, to eliminate intolerance language and spirit and to cultivate tolerance, respect of message form and content diversity, select information and how the information is approached.

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