PROTECTION AGAINST RACISM AND DISCRIMINATION

Translation: Valeriu Andrei Rendec

Descrierea CIP a Bibliotecii Naţionale a României
MOROIANU-ZLĂTESCU, IRINA
Protection against racism and discrimination / prof. univ. dr. Irina Moroianu Zlătescu. - București : Editura I.R.D.O, 2011
ISBN 978-973-9316-92-7

316.647.82

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ISBN: 987-973-9316-92-7

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PROTECTION AGAINST RACISM AND DISCRIMINATION

Romanian Institute
for Human Rights

Romanian Association
for the United Nations

FOREWORD

The present book deals with several of important issues related to racism and racial discrimination, while directly referring to a distinctive group of persons, an extremely numerous one, the Afro-descendants. According to the estimations of specialists, this is a group of over two million persons, most of who live on the American continent, but in other parts of the world outside Africa as well.

In a suggestive evocation, Ms. Mirjana Najcevska, Chair Person of the Human Rights Council Working Group of Experts on People of African Descent, compared the situation of Afro-descendants with the Serbian folk tale of Bash Chelik, whose life force was hidden away in a bird that was in the heart of a fox that lived in a cave hidden in a distant mountain. As Ms. Najcevska pointed out, it seemed that the historical roots, the prejudices and the stereotypes nourishing discriminatory gestures and attitudes were equally deeply hidden.

Such discriminatory manifestations continue to affect the lives of numerous persons of African descent in many ways, under most various circumstances and in very different social environments, being an obstacle against the full exercise of their economic, social, cultural, civil and political rights. No matter how long and difficult the way to Bash Chelik's cave may be, covering it is vitally important.

This is the context defining the book of Ms. Irina Moroianu Zlătescu, jurist, specialist in human rights, having a rich experience as a researcher with and Director of the Romanian Institute for Human Rights, a national institution with powers in training, research, information and consultancy. Her academic activity intermingles with the activism characterizing the civil society in the form of cooperation with the Romanian Association for the United Nations (ANUROM) as well as other non-governmental organizations. The melting of such preoccupations is also reflected in the contents of present book, which deals with the fundamental rights of persons of African descent both in terms of the pertinent international regulations and a rich literature in the field, while at the same time makes permanent connections and references to the fruitful work of the United Nations Working Group of Experts on People of African Descent whose member she was from its very first session, a Working Group established in 2002, under Resolution 2002/68, based on Paragraph 7 in the Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance that took place in Durban in the year 2001. The Group, consisting of five experts from various geographical areas of the world, a basis for fruitful dialogue, analysis and expertise, included numerous topics of major interest on its agenda, some of which are dealt with in this book in the form of studies made and further developed by the author as part of her activity in this framework.

Their publication in one volume is so much more welcomed in a period of evaluation and vigorous relaunching of the fight against racial discrimination in a new phase of its progress. A decade after the Conference of Durban, 2011 is the International

Year of People of African Descent, proclaimed as such by the United Nations General Assembly under its Resolution 64/169. The purpose is to strengthen the national measures and the regional and the international cooperation in favour of persons of African descent, to guarantee the full exercise of their rights, to ensure their participation and integration in all fields of social life as well as to provide better familiarization with their heritage, culture, history and traditions.

The same major objective is served by the International Day for the Elimination of Racial Discrimination (21 March 2011), focused on Afro-descendants, by the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade (25 March 2011), as well as the 10th annual session of the Working Group of Experts on People of African Descent, which includes a thematic discussion that seeks to contextualize this International Year.

In this context, the book authored by Prof. Dr Irina Moroianu Zlătescu may rightly be considered a Romanian contribution to the world campaign held under the logo: "People of African Descent: Recognition, Justice and Development".

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HISTORICAL LANDMARKS

One cannot approach the topic of the historical dimension of the Afro-descendants issue 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 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 evaluations, 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 1793 that it committed itself to suppress the immunities granted in favour of the traffic, but the effective suppression occurred no sooner than 4 February 1794 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 practiced 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 anti-colonial 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 practiced 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 practiced 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.

LEGAL PROTECTION OF HUMAN RIGHTS AGAINST RACISM AND DISCRIMINATION

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]

The first universal regulation on the rights of persons belonging to minorities was included in art. 27 of the International Covenant

[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).

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 that States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities; the right to participate effectively in the 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 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

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

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 that, 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]

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[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).

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 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 o 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, the Mediterranean and the Indian 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 among, 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 discriminatorily, 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 assigned 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.

EMPOWERMENT OF WOMEN

The ‘empowerment of women’ topic is circumscribed to the vast issue of equality and non-discrimination, in a zone where equality of gender, the rights of persons belonging to national minorities, equality of opportunities and treatment in terms of political rights, and the closely related issues of democracy and the rule of law, interfere.

Dealing with such a topic is a sign of the preoccupation for the implementation of the fundamental principles of equality and non-discrimination, the norms and the standards laid down in treaties and other international documents related to human rights, particularly those adopted in Durban, and, at the same time, acknowledgement of a deficiency that can only be diminished and removed by the common effort of all.

As a matter of fact, by its very objective, such as clearly comes out from its wording, namely, to sustain and promote women of African descent to gain access to the political and democratic processes, the topic assumes acknowledgement of the disadvantages accumulated by this category of persons and the development of policies and practices helping difficulties to be overcome.

However, as has been proved, legal provisions, even though equitable and clearly formulated, cannot provide equality by

themselves. To eliminate the gap between the situation *de jure* and the situation *de facto*, guarantees, perseverant political action and concrete economic and social measures as well continue to be needed.

We have to admit that genuine equality can only be guaranteed through access to the public life, at the decision-making levels, and increased participation in public life. Nevertheless, it is equally true that women's access to public life, no matter whether they belong to the majority or to a minority, depends on their economic independence and their access to education and culture.

In other words, the full exercise of the political rights depends on the effectiveness of the economic, social and cultural rights, such as it does on the response of society, the change of mentalities and the fight against prejudices and intolerance.

Are there prejudices related to Afro-descending women's capacity to participate in the political and democratic processes? There surely are, even though the phenomenon is following a decreasing curve. Just as there still are prejudices related to women's capacities and aptitudes in general, irrespective of their ethnicity.

Nevertheless, in the case of Afro-descending women the situation has certain peculiarities which we are not going to insist upon, since they have been object of much discussion in the framework of our Working Group. This is the precise reason why there's need for special attention, concrete and practical measures to encourage their participation in the political and democratic life.

The challenge we have to face from now on is not only to resolutely fight against discriminating practices but also – a much more difficult to attain objective – to use positive measures,

including those pertaining to education, to increase Afro-descending women's opportunities to assert their political rights as well as to increase the role they play for the renewal and progress of the societies they live in.

The right of all persons to equality before the law and protection against discrimination is a universal right acknowledged by: the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination against Women – CEDAW (1979), the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), as well as the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), Protocol 12 to the European Convention on the Protection of Human Rights and Fundamental Freedoms (2000)[5].

The European legal framework for the protection of persons who are subject to discrimination is represented by Directives Nos. 43/2000/EC and 78/2000/EC adopted by the European Union Member States.

Article 7 in the Universal Declaration of Human Rights has a significantly different wording: *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

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[5] Also see **Irina Moroianu Zlătescu,** *Drepturile omului – un sistem în evoluţie*, Editura IRDO, Bucureşti, 2008, p. 170 et seq.

To clarify the concept of non-discrimination within the limits of scientific truth and of brevity, one should first consider the definition of the notion of 'discrimination' and the explanation of its contents in its evolution.

Discrimination means a different treatment applied to a person by virtue of that person's belonging, real or presumed, to a certain social group.

Discrimination is an individual action, but if the members of the same group are systematically treated similarly, it is also a social pattern of aggregated behaviour (Michael Banton, 1998)[6]. In social sciences, the term generally refers to a *prejudicing treatment, with adverse effects upon the one it is applied to*.

The **notion of discrimination** *denotes the sum total of attitudes and behaviours by which certain individuals are denied the rights and the opportunities enjoyed by other individuals and groups within the same political society*.

This is the main meaning of **negative discrimination.** *The extreme form* of national, ethnic, religious, racial, etc., **discrimination** is the *segregation*.

In order to be considered discriminatory, an action or a fact has to meet two conditions:[7]

– to be based on the race, nationality, tongue, ethnicity, beliefs, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, or belonging to a disadvantaged category, of the person against which it is exercised;

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[6] *Dicţionarul sărăciei* (Dictionary of Poverty) – 1999-2000, coordinator Cătălin Zamfir, authors: Mălina Voicu, Bogdan Voicu, Adrian Dan, Simona Ilie, Manuela Stănculescu, Luana Pop, Monica Şerban.

[7] *Idem.*

– to pursue or result in the violation, limitation or denial of the exercise, under equal conditions, of one of the respective person's fundamental rights.

The research performed so far revealed that there are several types of **discrimination.**

Specialists generally make a distinction between *direct discrimination* and *indirect discrimination* (Michael Banton, 1998). The former type occurs when the different treatment is generated intentionally, while the latter type occurs when such treatment is based on a previous unfair decision.

According to Directive 43/2000/CE on the implementation of the principle of equal treatment of persons irrespective of their racial or ethnic origin, ***direct discrimination*** occurs when a person is treated less favourably than another, was or could be treated in a similar way, on grounds of racial or ethnic origin.

The same Directive as well as Directive 78/2000/CE on the creation of a general framework in favour of equal treatment in relation to employment define ***indirect discrimination*** as the circumstance under which an apparently neutral provision, criterion, or practice put certain persons at a disadvantage.

One of the fields where discrimination is often present is that of the ***public social services*** (for example, social assistance services, healthcare services, educational services, institutions tasked to maintain public order). **Discrimination** is present here due to the discretionary power of the public servants working in these institutions (Michael Lipsky, 1980).

In his analysis upon the *relationship between the servants of public institutions and the clients thereof,* Michael Lipsky identifies a number of circumstances when differentiated treatment may occur between the clients and certain groups of

clients who are potentially favoured. Thus, with the distribution of resources, the clerks will be tempted to favour those clients who seem to have more chances to be elected according to the bureaucratic eligibility criteria. Also, bureaucrats will incline to favour those from whom, as a result of interacting with them, they may obtain a certain gratification. This is the case of those who are similar, on one dimension or another (for example ethnic or racial), to the respective clerks. A *differentiated treatment* is more likely to occur when there are several applicants for the respective resources and no control is exerted upon the way those resources are allotted, as well as under such circumstances when the clerks are in a position to decide whether certain clients respond to the treatment better than others. Given the fact that the work of public servants involves pretty much stress, they will make use of *stereotypes* to simplify their work and act in conformity with those stereotypes.

Racism is a type of discrimination based on the belief that there is inequality among the races, that there is a biologic superiority of one race, and also on the belief that the 'superior' race is legitimate in its hegemonic desires, and is legitimate to preserve an ideal of "purity" or "authenticity". Such beliefs take various forms, such as exclusion racism, domination racism, racism proper, or the racial theory.

As the relationship between the individual and his social universe is primarily based on the dimension of the profession, exercise thereof confers not only the individual identity and legitimacy within the social universe, but also circumscribes him, within the limits of the social relations, his range of action, delimited by the status of each profession.

In this respect, exercise of a profession is a type of social relation, while the professional universe is a subset of social relations, which make up the social system on each stage in its development.

A normal society is one that offers each person the possibility to function as one of its members. For instance, a low level of education narrows the range of potential movement, becoming an essential handicap. Thus, poverty entails social exclusion of the unemployed, in their capacity as poor persons, from participation in the community's activities.

In the case of long-term unemployment, social exclusion functions as follows:

– lack of financial resources entails impossibility to spend one's spare time by participating in the community's activities;

– lack of a group to belong to (the working place group).

Such situations are closely related to the lack of social integration as well, which adversely influences communication abilities, the ability to exercise the social roles and the individual's attitude in relation to the norm system.

The European Union, whose experience in the field is of interest in our opinion, adopted a new open method to coordinate social inclusion actions that led to significant success. The common communitarian objectives to combat poverty and social exclusion were defined by the European Council of Nice (December 2000). By June 2001, each Member State had elaborated its own national plan of action (a two-year plan against poverty and social exclusion), based on a common framework that in turn was based on the objectives established by the European Council of Nice. A new communitarian programme of action meant to encourage cooperation among the Member States

in their fight against social exclusion was adopted by the European Commission, the European Council and the European Parliament.

It is at Laeken where the priorities and the orientation of the efforts and the cooperation at communitarian level during the implementation of the first national plans were defined.

The European Project refers to a global undertaking regarding the fight against social exclusion:

– on the one hand, the economic development policies should be accompanied by specific integration policies;

– on the other hand, it is necessary to implement the measures guaranteeing sufficient resources for all and promotion of access to education, professional training, jobs, homes, collective services and healthcare.

The communitarian Programme of Fighting Social Exclusion (2002-2006) is part of the open method of coordination and refers to sustaining cooperation among the Member States through:

– better understanding the social exclusion phenomenon, particularly by means of comparable indices;

– elaboration of policies meant to promote mutual exchanges of experience, in the context of the national plans of action; development of the capacity to efficiently deal with social exclusion and poverty and promote the new approaches, particularly through networking at European level, while promoting dialogue between all those interested;

– action for the most vulnerable;

– mobilization of all those involved.

The Report elaborated by the European Commission following examination of the national plans identified several

key elements, dealt with at various levels by the European Union Member States, including:

– development of a labour market favourable to social inclusion, while having a job should be a guranteed right;

– guarantee of resources and incomes proper to a decent living standard;

– fighting educational handicaps;

– protection of family solidarity;

– guarantee of equal access to high quality services (healthcare services, transportation, protection);

– better distribution of services;

– restoration of disadvantaged regions.

Within this process it is indispensable to reach common indices.

In the present-day context, governments, international bodies and organizations consider education to be one of the most efficient means to attain higher living standards, and to lessen and prevent the various phenomena having a long-term adverse impact.

Analyzing these issues, we have identified and present for consideration several final targets, general and specific objectives:

– Provision of elementary and secondary education has the purpose of helping young women to discover and benefit from their own intellectual, affective and physical abilities, needed either to continue their studies, or to harmoniously integrate into the lives of their societies;

– Implementation of "new education", which implies the elaboration of pedagogic and social strategies specially devoted to the population segment that is disadvantaged or at risk;

– Reaching the school curricula in the form of recommendations or independent study modules, disseminated through the modern media: TV, radio, websites, etc.;

– Introducing intercultural education into educational curricula as alternatives designed in various pedagogic formulae: modules of complementary instruction (formal – informal), guiding recommendations, methodological guidance, fundamental writings about the big problems of the contemporary world.

In this respect, we deem as welcome a number of measures, of which we would like to mention the following by way of example:

– Making a quantitative and qualitative analysis to identify and assess the situation as far as participation in the compulsory schooling process, as well as participation in the secondary education of adult young women who have discontinued their studies;

– Re-designing the school networking in a flexible way by the authorized institutions in collaboration with organizations representing the civil society;

– Conceiving a package of intensive school curricula to prevent school abandon; also, conceiving compensating school curricula for the students excluded from normal social life as well as curricula to sustain the study of the tongues and the cultures of minorities;

– Achieving an efficient partnership between the State's institutional structures and non-governmental organizations whose object of activity are target population groups; also, an efficient partnership with other social actors and/or the specialized international organizations;

– Achieving and efficient strategic partnership between the central and the local authorities, on the one hand, and those interested (the local community, the leaders of Afro-descendants, NGOs working in the field, international bodies, etc.), on the other hand.

As large a number of participants as possible should be involved. Particular importance should be attached to the participation of the administrations in the Member States, the local and the regional authorities, the specialized services; also, to social partnerships, organizations providing social services, non-governmental organizations, universities and research institutions, national offices of statistics, the media and the actual or the potential victims of discrimination or social exclusion based on gender and/or race.

Conclusions

The empowerment of women of African descent depends on the effectiveness of equality of rights, of their protection against discrimination, not only at civil and political level, but also, and all the more so, at cultural, educational and economic level.

Promotion of Afro-descending women in the public life depends on their economic independence and their access to education and culture.

To provide their equality of opportunities there is need for a common action at international and national levels, interstate and state levels, and the level of non-governmental organizations, among which those of Afro-descending women should play a particularly active role.

According to art. 1 in the International Convention on the Elimination of All Forms of Racial Discrimination (1969), racial

discrimination consists in “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”.

Afro-descending women are subject to a double discrimination: both racial discrimination and gender discrimination.

The conceptual clarification required by the notion of equality of gender is necessary in such context when an analysis of the women-oriented anti-discriminatory measures taken by the public administration is proposed.

Equality of opportunities for women and men means the equal level of visibility, autonomy, responsibility and participation of the two genders *in* and *as part of* all the sectors of public and private life. The concept of equality of gender, excluding any references to the sex-related differences, is simply opposed to the concept of inequality of gender, meaning differences between the life conditions of women and men.

Equality of gender has been long ago defined – and this is often still the case – as offering girls and boys, women and men, equal rights *de jure,* equal opportunities, equal conditions and treatment, in all aspects of life and in all social fields.

Nevertheless, it is acknowledged at present that equality of rights *de jure* does not necessarily entail equality *de facto*. An essential step in the process of defining equality of opportunities was represented by understanding the fact that the lives of women and men are very different, to a certain extent, because of women’s reproduction capacity.

However, the issue was not limited to this difference alone. It should be added that this difference was not supposed to adversely affect women’s and men’s conditions of life and was not supposed to entail discrimination; on the contrary, given the

biologic difference, an equal distribution of the economic, social and political forces should be achieved. *Equality of women and men does not mean their similarity or identity, nor should men's conditions and standards of life be established as norms.*

To define equality of women and men and be able to further operate with this concept, a closer examination of the concepts equality of women and men is based upon is necessary. Thus, two aspects are essential: *the social construction of gender* (masculine and feminine) and *the relationship between the sexes*.

The masculine or the feminine gender, generically named in the specialized language GENDER, socially *differentiates* the aspects attributed to the individual identity starting from the psychological characteristic features of women and men. Gender *studies* the way individuals think, how they feel and what they believe they can do or not because of the concepts defined by the society as masculine or feminine. Gender also refers to the position of women and men in relationship to one another.

The distinction between the terms *sex* and *gender* is justified by the fact that *gender* is used to describe, therefore from a social point of view, certain characteristic features, while the word *sex* describes those characteristic features that are biologically determined. It follows that gender refers to men or women, the relationships between them, their society, their community and the way the latter have been socially constructed. A function based on sex is men's capacity to inseminate and women's capacity to give birth. In contradistinction, raising a child involves the role of gender, as both women and men can assume the same responsibilities. To deal with it does not mean to deal with equality of sexes, but equality of gender.

The role of gender influences the division of labour (which, in turn, invests the already exiting relationships with the authority of law) and the access to resources, benefits, information and decision-making.

All aspects of life are defined as roles of gender: the effective analyses of gender relationships will intersect the various gender interests inside and outside the family and the various programmes focus, for example, on healthcare, economic development, education and humanitarian assistance.

In addition, gender differences define the individual identity from the earliest stages of life, to which the analysis of gender relationships is applied and which is relevant for all ages.

The observance of human rights – in general – and women's rights – in particular – represents a field always open to the improvement of the general framework. However, the legal provisions, however equitable and clear, cannot ensure, by themselves, a genuine equality of opportunities; this is the reason why the political should intervene in the sphere of the economic and why there is need for active policies in the field to be implemented through the *public administration*.

The exercise of the rights is still facing resistance on behalf of various States, there still exist discrepancies between national legislations and the international norms and their implementation continues to be ineffective quite often. **To achieve the objectives, action should be taken to shape consciences, to elaborate and improve the legislation and to monitor implementation thereof <u>in and through the public administration</u>.**

Promoting the principle of equality of opportunities for women and men constantly, systematically and jointly is a

relatively recent preoccupation of the international community, even though various aspects of equality between women and men have been previously evoked through several international declarations or treaties, that is: *the Universal Declaration of Human Rights (1948), the Convention on the Political Rights of Women (1952), the Convention on the Citizenship of Married Women (1957), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Declaration on the Elimination of Discrimination against Women (1967).*

Nevertheless, one may say that the legal acknowledgement and the attempt to protect women's rights and eliminate discrimination at international level first occurred in 1919, once Convention No. 3 on the protection on maternity was adopted. The notions of *equality of opportunities* and *equality of treatment* started being used in 1958, when the International Labour Organization adopted the Convention on discrimination in the field of labour and the exercise of profession. However, these notions continued to be used for a long period of time only in the field of labour relations, mainly referring to employment, conditions for promotion, professional training, and dismissal.

A new approach, at international level, of equality between women and men occurred after the United Nations General Assembly had proclaimed the first ***Women's Decade "Equality, Development, Peace"***, in the period 1975-1985 and particularly after women's rights had been acknowledged as part and parcel of human rights, on 18 December 1979, when the United Nations

Organization adopted the ***Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).***

Ratification of the Convention, under which women's social, economic and political rights were established, was a first step towards the effective promotion of equality of opportunities for women and men in all fields of activity, for States committed themselves to elaborate **new laws** and apply special measures and actions allowing for the **modification of the social** and cultural **structures** that perpetuate forms of discrimination. For assessment of the progress they achieved, States present periodic reports to the specialized structure of the United Nations.

Council of Europe's preoccupation to achieve an even closer union among its members, in order to protect and promote the ideals and the principles that are their common heritage and to favour their economic and social progress, particularly by defending and developing the fundamental human rights and freedoms, was transposed in time into numerous European binding instruments, of which the following are essential for the promotion of the principle of equality between women and men: *The European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) with its Additional Protocols, The European Social Charter (1961),* and *The European Social Charter Revised (1996).*

Equality of opportunities for women and men is also dealt with in the ***European Union Treaty*** *(The Treaty of Maastricht, in effect since 1993)*, and in the second rank legislation – the communitarian directives on equality between women and men – which have to be added the jurisprudence of the Court of Justice of Luxemburg.

Once ***The Treaty of Amsterdam*** *took effect (1999),* ***the European Union has decisively committed itself to promote equality between women and men*** *(gender equality)* ***and integrate gender equality at all levels and in all communitarian activities*** *(gender mainstreaming process).*

The European Union Member States adopted *The European Social Agenda,* whose priority objective is to modernize the European social model. One of the latter's fundamental elements is promotion of equality of opportunities and treatment for women and men.

The Community framework strategy on gender equality (2001-2005) pursues to integrate the gender perspective into all the European Union's policies and programmes, alongside promotion of specific actions in favour of women.

The 5 major objectives of the Strategy refer to: Equality in economic life, Equal participation in the decision-making process, Equal access and full enjoyment of social rights, Equality in civil life, and Change of gender roles and stereotypes.

The main instruments considered by the European Union for the implementation of these objectives are: *Implementing the gender equality plans, Introducing of the legislation specific to equality of opportunities,* and *Integrated approach to gender equality to induce structural changes at the level of society.*

The promotion of equality of opportunities for women and men is also part of the European Strategy on the management of labour, adopted in November 1997 by the Employment Summit of Luxemburg. Since 1975, a number of directives meant to clarify and develop this principle of communitarian law have been adopted.

In addition, the Commission adopted a Directive on the obligation to produce evidence in the gender discrimination law cases. According to this Directive, those who are accused of discrimination at the working place are obliged to prove that the equality of treatment principle has not been violated. Nevertheless, the Commission, aware of the fact that the mere application of these provisions was not enough to promote equality of opportunities *de facto,* initiated, in partnership with the Member States, multi-annual and successive Programmes of action. It was also in the framework of the Commission that the Consultative Committee on Equality of Opportunities for Women and Men was created under **Decision 82/43/CEE** of 9 December 1983.

In relation to non-discrimination, The Draft Treaty Establishing a European Constitution mentions the following in its Title III, Art. II 23:

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under represented sex.

The most investigated fields where discrimination is at work have been *the educational system, the labour market,* and *habitation.*

These socially vulnerable groups also become economically vulnerable (S. M. Miller, 1996).

Those women who are target of prejudices and discrimination within a certain society will face difficulties to integrate themselves on the labour market (they will fail to find jobs

corresponding to their qualifications or will be paid less than those belonging to advantaged groups), and will face difficulties with obtaining public benefits. All these make them economically vulnerable entailing their belonging to groups characterized by high risks and poverty.

We would like to point out that the **principle of non-discrimination** demands for the prohibition of any differentiation, limitation or annulment of human rights, at various levels: political, social, educational and cultural, labour use, labour remuneration as well as any other field of public life.

“Fighting discrimination becomes more and more important in the framework of the regulations related to the human rights norms”.[8]

To **reduce discrimination** *strategies* were developed to provide *equality of opportunities* for the persons belonging to groups traditionally subject to discrimination in regions systematically underrepresented.

In *the United States,* such strategies are called ***affirmative action,*** while in Great Britain they are known as ***positive discrimination.***

These strategies do not mean a “reversed discrimination”, but are meant *to provide equality of opportunities for all citizens,* irrespective of the group to which they belong.

Positive Discrimination and **Affirmative Action** imply, on the one hand, *acknowledgement of the disadvantages accumulated by the respective groups and, on the other hand,*

[8] **Adrian Năstase,** *Foreword* – Dictionary of Terms related to Discrimination, All Beck Publishing House, Bucharest, 2003.

development of policies and practices to help overcome the difficulties (Neil Thomson, 1997).

Multicultural approaches use the syntagm *"positive discrimination"* meaning to grant additional rights to communities disadvantaged by previous discriminatory practices.

The main fields on which the strategies for the elimination of discrimination have been focused are *the labour market, education, and habitation.*

First we have to take into account that human rights do not belong to abstract persons that are alone before the States, but to socially placed individuals, facing problems, the needs of present-day life, the randomness of the economic conjuncture, the anxieties of unemployment, or, less frequently, lack of medical care in case of diseases, and the dangers of social exclusion.

Let us also remind the risks posed by the marginalization of young people, women, immigrants in search for jobs, as well as inequality of wages and, last but not least, the disparity of cultures.

To cut it short, individuals are facing nowadays loss of identity under the circumstances of globalization, while every nation is taking efforts to survive, to get richer and cohabitate with countries having a different judicial and political culture.

Equality of all before the law allowed for building democracies where the arbitrary, even though not fully defeated, has at least been denounced. In these societies the individual has obtained, as a result of an uninterrupted struggle, theoretically at least, the right to participate in the life of the city, irrespective of

his ethnic, linguistic, or religious origin, without any distinction as to gender, cultural level or social position.

In practice, the rules of equality of rights could never be entirely accepted. To help the disadvantaged, the principle of equality of rights has been lately substituted by the principle of equality of opportunities. While the ambition in a democratic society has always been to ensure political equality, for there is no democracy without equality of rights, the fundamental structural inequalities of nature, the social and the economic inequalities can only be removed by providing an equality of opportunities, so that equality of opportunities might pave the way to equality of rights.

Political equality is the easiest to achieve in a democracy; social and economic equality, as long as individuals are born unequal, is practically impossible to achieve, even though the principle of equality of rights is to be found in all modern constitutions. It is the law that attempts and quite often manages to compensate for nature's structural and fundamental inequalities.[9]

Renowned specialists in the field of public law wonder whether the constitutional principle of equality, which is to be found in most modern constitutions, is above other constitutional principles, followed by a number of interdictions to differentiate among persons that would entail discrimination. The principle of equality is one pillar of the rule of law; it requires equal treatment of the candidates for a political or an administrative position, equal access to the media of the various political parties' nominees during the electoral campaigns.

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[9] See **J. Robert,** *Rapport général, 1er Congrés de l'ACCPUF,* Paris, 1997.

Some European constitutions provide for the taboo nature of the fundamental rights, while the domestic law incorporates the international texts that place the principle of equality above the constitution.

Such African countries as the Republic of Senegal, Rwanda, and Burkina Faso, as well as a number of European countries that followed a recommendation by or enjoyed assistance from the European Commission of Democracy through Law (the Venice Commission), have integrated the Universal Declaration of Human Rights and the International Covenants on Human Rights into their constitutions. Likewise, the African countries have integrated the African Charter on Human and Peoples' Rights into their constitutions, while the European countries have integrated the European Convention on Human Rights.

It is our belief that the principle of equality of rights should be maintained, for, as some authors have recently pointed out, it is the best barrier against the arbitrary; nevertheless, it will fail to achieve its object unless we tried to remove or dominate present-day inequalities. We may even ask ourselves whether we should not accept certain inequalities of law just for the sake of making certain inequalities of opportunities disappear.

In societies based on profit, focusing on the latter, there is a need to protect the weak in order to eliminate the frictions that occur. Even though proclaimed for more than two hundred years, the principle of equality has remained a simple yet nice promise to the crowds who believed in it. It became a reality when in an increasing number of countries the jurisdictions started to impose respect on public authorities, when the principle of equality came to be included in constitutions and national special laws.

However, certain confusions and even differences occurred between neighbouring, close notions such as: justice, equity, indivisibility, proportionality; delicate yet indispensable distinctions can also be made between formal equality and real equality, equality before the law and equality in law, civic equality and social equality, equality of opportunities and equality of outcomes, etc. This led to the conclusion, in jurisprudence, that the principle of equality is not absolute and the law-maker was able to introduce certain differentiations in treatment, mainly based on the existence of differences of situations or for general interest reasons.

RACIAL PROFILING AND THE INTERNATIONAL FRAMEWORK PROHIBITING RACIAL PROFILING

In his report to the Commission on Human Rights[10] at its sixtieth session, the Special Rapporteur on contemporary forms of racism said: "In a number of countries, certain racial or ethnic minorities are associated in the minds of the authorities with certain types of crimes and antisocial acts, such as drug trafficking, illegal immigration pickpocketing and shoplifting … Racial and religious profiling, in view of its widespread practice in all continent, and especially of the responsibility borne by the central law enforcement agencies, appears as an alarming indicator of the rise of a racist and discriminatory culture and mentality in many societies".

In his turn, the Special Rapporteur on discrimination in the criminal justice system said in 2005 that in considering human rights violations in general, and more particularly violations of the right to non-discrimination in the criminal justice system, it may be observed that it is within the security services and more particularly the police that the most serious, the most flagrant and

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[10] In its Resolution 60/251 of 15 March 2006, the United Nations General Assembly decided that the Commission should be replaced by a Human Rights Council.

the commonest violations occur. Some claim that these are only individual, isolated acts; others assert that violations by the police are structural by nature and reflect trends in society. It is true that when there is endemic racism towards a specific group in society that group is often stigmatized by the police, but over and above individual behaviour it has been proved that police brutality and discriminatory treatment of certain groups have become institutionalized.

Moreover, discrimination is not confined to the police but is also practised by other participants in the criminal justice process. Since minority groups are underrepresented in the administration of justice, police stereotypes vis-à-vis certain groups can be found in the decisions of those who design criminal policy and in those of prosecutors and judges. It is an established fact that offences involving members of stigmatized or marginalized groups are more severely punished. The disproportionate impact on indigenous populations and on certain groups stigmatized by crime of the system of minimum penalties and mandatory imprisonment applied in certain countries to certain offences confirms this trend. Statistics and facts show that race, colour and place of origin are decisive factors in the application of the death penalty. It has also been established that disparities in incarceration are the consequence of slanted criminal policy and a tendency for the members of vulnerable groups to be prosecuted and imprisoned more frequently.

Racial profiling is a new term for an old practice known by other names: institutional racism and discrimination, and owes its existence to prejudice and the stigma directed against certain groups. Racial profiling is usually defined in a law enforcement context. A study published in *Canadian Review of Policing*

Research defined the racial profiling concept as “a racial disparity in police stop and search practices, customs searches at airports and border-crossings, in police patrols in minority neighbourhoods and in undercover activities or sting operations which target particular ethnic groups.” Several studies show the close relationship between race and the unequal treatment applied to racial minorities in each step of criminal justice as a whole, from interrogatories down to arrest, detention, accusation, conviction, sentence pronouncement, execution of the imprisonment sentence and sentence to death.

Everything starts with the discretionary decision made by the law enforcement officers to target a person not because that person committed a crime, but because of that person’s skin colour. Basically, race is treated as a piece of evidence for having committed the crime, while certain population segments are targeted as possible authors of the crime only by virtue of race, based on the false assumption that the great majority of crimes are committed by racial minorities. Not only does such a practice infringe upon the principle of equality before the law, but also upon the international commitments to eliminate racism and racial discrimination.

Prior to reminding the main reference points in the field, it is necessary to point out several ideas, such as follows:

● Racial profiling, as defined under paragraph 72 of the Durban Programme of Action as well as in other documents or authors’ pertinent works, is, obviously, a serious infringement of human rights, particularly the right to non-discrimination, to equality before the law, the right to personal freedom and security, to presumption of innocence and, primarily and ultimately, an infringement of the supreme value meaning human dignity.

● By way of consequence, racial profiling can be addressed by the provisions in the general treaties, particularly the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the whole lot of treaty provisions referring to the protection of minorities as well.

● The principle of non-discrimination and its corollary, the principle of equality, is applicable to all human rights and fundamental freedoms. Not only are the victims of discrimination with the administration of justice violated the above-mentioned rights, but they can also be denied, as it often actually happens, other rights as well, including economic, social and cultural ones.

● The provisions in the international human rights instruments make up and provide for just a general framework with the racial profiling approach. For the prohibition of such practices to be effective, and the phenomenon to be eradicated, there is need for specific legislative strategies, to be adopted not only by the States parties of the treaties, and for optimization of the control mechanisms and procedures; also, there's need for the support of professionals in the police and the administration of justice in general so that such behaviour codes be promoted that cultivate respect for human dignity, equality, and non-discrimination.

● It is undoubted that there's need at present for a guide of good practices to be made known and accessible to all those working with the police, particularly, and with the administration of justice, generally.

The visibility of racial profiling, which the effective fighting against the phenomenon also depends of, can benefit from the creation of a professional climate where the interest in the eradication of this form of discrimination is manifest.

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" 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.

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 in March 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.

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 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.

According to the previously mentioned General Comment 23 (5.0), 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.

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.

Beside the periodic reports procedure, the Human Rights Committee, tasked to supervise and monitor the implementation by States parties of their obligations under the International Covenant on Civil and Political Rights, can examine the communications submitted by States parties in relation to other States (a practically unused procedure) and, at the same time, according to the Optional Protocol, shall receive individual communications and elaborate general comments to summarize its jurisprudence.

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 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.

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).

As was mentioned in a previous chapter, 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.

Since space limitations prevent us to further develop this topic, let us only remind here that the UN procedural system for the implementation of human rights, with its interactions and influences, was and still is subject of an ample analysis.

Beside the bodies under the seven fundamental treaties, including those two previously mentioned, there is a second type of mechanisms that are at work in the United Nations system – the special thematic procedures, initiated in 1980 and consisting in the Special Rapporteurs or the Working Groups authorized to

make an inquiry on the situation in a certain country or on a certain topic; in contradistinction with the system of the bodies under the treaties, with the Special Procedures system there are no such mechanisms as reports submitted by the States, while most of the information conveyed to the Special Rapporteurs and the Working Groups comes from NGOs.

We shall mention again in this context Procedure 1503, thus named after the number of the Resolution (1503) of 1970 by the Economic and Social Council, a name that has been kept after the revision of 2000, on the basis of which the Procedure was established. As far as the Communication Procedure is concerned, it is universally applicable, for it may consider any violation of human rights as laid down in the Universal Declaration of Human Rights, as long as it is flagrant, constant and systematic, the specificity of the Procedure consisting in that it examines situations rather than individual communications.

In such a short period as June 2005 to June 2006 over 34,000 communications were examined.

Let us remind here that Resolution 60/251 by the General Assembly, which was the debut of the reconstruction process, of the UN institutional reform, a document that instituted the Human Rights Council to replace the Commission on Human Rights (§ 1), provided (§ 6) for the keeping of the Special Procedure system, of the mechanisms and the Communication Procedure while also pointing out the need for a larger revision and reform, with special emphasis on the Communication Procedure 1503.

In order to see the initiated processes brought to an end, the Human Rights Council decided in its first session that the Special Procedure system, including, for instance, Procedure 1503,

should be maintained for one more year. In addition, it was decided that an open-ended working group should be established to formulate concrete recommendations on the revision and, where necessary, improvement and rationalization of all mandates, mechanisms, functions and responsibilities in conformity with Resolution 60/251.

In its declaration of 28 September 2006, the President of the Special Procedure Coordinating Committee (established in 2005) pointed out several key messages in the common position adopted by the mandate holders (communicated on 23 June 2006) in relation to the future of these procedures and their place in the context of the United Nations reform, including participation of the Committee or its representatives in the Working Group on Mandate Review and in Universal Periodic Review constituted in the framework of the reform.

At present, the treaty bodies system, made up of the seven fundamental human rights treaties, which lay down the international standards for the protection and promotion of human rights, has entered, at last, after 15 years of attempted reform, a dynamics of change, having to overcome: the delays related to the reports; a certain redundancy with the requirements formulated by the treaty bodies, which has resulted sometimes, owing to the nature of the instruments and the overlapping of certain areas they cover, in the fact that State reports submitted to different bodies dealt with the same topic; the diversification of the various bodies' working methods, which entails difficulties for the States in terms of adequacy; the adoption of new instruments, which involves creation of new bodies that have to be taken into consideration with the elaboration of the norms at

world level; the delays accumulated with the individual communication procedures, accepted by four bodies.

Under the circumstances, various solutions have been advanced and debated upon, such as the elaboration and implementation of a set of harmonized instructions related to the reports for the whole lot of bodies established under the human rights instruments, so that the latter may function as a unified system, launched by the Secretary General in March 2005 (in his report entitled "In larger freedom: towards development, security and human rights for all") and resumed by the High Commissioner in the Plan of Action for the year 2005, "An Attempt to Turn Rhetoric into Reality", which proposed a unified standing body. The reactions of the States and the treaty bodies were quite different, some positive, others hostile and others reserved, explainable by fear for the loss of the bodies' specificity and transformation of the unified body into a tribunal at international scale.

Consultations in this respect are still going on, while a reform of the system is imminent.

It is salutary that the reform of the United Nations has strengthened the role of the High Commissioner for Human Rights. At the world summit of late 2005, the Member States committed themselves to support this process, so that the HCHR may successfully respond to her enlarged mandate and the corresponding expectations. Her strategies – commitment with various countries, leadership and partnership – are based upon the supposition of a change with the human rights protection system, which should take place at the level of States, meaning that the advancement of human rights should be assumed by the national institutions, by the civil society and by the international

system, such as they are based upon the development of the means of intervention.

It is in this international framework that the racial profiling issue is situated; an issue that, due to the signals and the efforts of international and national organizations and institutions, has become more visible and where some progress has been achieved.

We believe that premises have been created for this profound process of renewal that the United Nations Organization is undergoing to achieve a huge progress with the effective combating of racial discrimination, in general, and racial profiling in particular.

ACCESS TO EDUCATION

Alongside with the civil and political rights, and the economic and social rights, the cultural rights is an inseparable part of the system of rights and fundamental freedoms proclaimed under the Universal Declaration of Human Rights.

This category of rights, in the absence of which both the human being and society as a whole would be deprived of essential attributes of their existence and development, is referred to by two complementary articles, which complete and conclude the series of the rights laid down in the Declaration.

The first one consecrates the right to education, together with a number of guarantees, which are absolutely necessary for the right to education to be actually exercised.

Thus, according to the provisions of the first paragraph of this article – Article 26, "everyone has the right to education. Education shall be free, at least in the elementary and basic stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit".

According to the debates that preceded the adoption of the final text of the Declaration, the rights and the guarantees included in this article should be understood to the effect that all persons have the right to education. Both the elementary

education, addressing children, and the basic education, addressing those adults who were not able to attend an elementary school, should be free of charge, while education at other levels should be free of charge to the extent possible.

Elementary education should be compulsory, meaning the duty of the State, the community and the family to provide the child with the actual opportunity to attend elementary education, with no restriction in respect of the selection of the school. Even though technical and vocational education is not compulsory, its generalization should be desirable.

As far as access to higher education is concerned, it should be open to anyone, without discrimination, the sole criterion to be taken into account being the candidate's merits.

In the context of Article 22, referring to the right to social security, which, beside the economic and social rights, also implies enjoyment of the cultural human rights, "indispensable for his dignity and the free development of his personality", the practical achievement of access to other levels of education than the elementary and the basic one depends on the national effort and the international cooperation, while also taking into account each country's resources.

Education – as the second paragraph of Article 26 provides – "shall be directed to the full development of the human personality", taking into account the physical, the intellectual, the moral and the spiritual development, as well as "the strengthening of respect for human rights and fundamental freedoms".

This latter provision actually refers to the entire contents of the Declaration and is in consonance with the statement in the Preamble according to which the effective implementation of the

rights and the freedoms laid down in the Declaration shall be primarily achieved through teaching and education.

Also, education "shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

Finally, paragraph 3 of Article 26 acknowledges the right of the parents, primarily in relation to other persons or institutions, including the State, "to choose the kind of education that shall be given to their children". This is about juvenile children and inclusion of this provision does not mean a restriction, but, on the contrary, given the compulsory nature of elementary education, it guarantees freedom of choice in terms of the parents' religious and non-religious convictions. At the same time, the right to private education shall be observed in all cases, which does not diminish the State's rights and duties in terms of education.

Education and information concur in the development of a culture of human rights. As a matter of fact, according to Article 27 of the Declaration, "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits"; at the same time, the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".

An approach on the topic is inseparable from the whole set of human rights rules that are applicable in the field, particularly the Universal Declaration of Human Rights (art. 26), the special provisions in the International Covenant on Economic, Social and Cultural Rights (art. 13-14), also in the Convention on the

Elimination of All Forms of Discrimination Against Women (art. 10), the Convention on the Rights of the Child (art. 28 and 29).

In this context, a special place is held by the UNESCO Convention against Discrimination in Education, meant to contribute to the elimination of discrimination and the promotion of equality of opportunities and treatment for all. Adopted in 1960, this Convention is important for the extensive definition of discrimination in education it includes, laid down in art. 1, which reads as follows:

"For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

....

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man." (art. 1.1)

The term "education", for the purposes of the Convention, refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given (art. 1.2).

We purposely mentioned this article for two reasons: one is that people of African descent, owing to the disadvantages accumulated because of racism and racial discrimination, are vulnerable to discrimination, not only on grounds of race and

colour, but also birth, economic status, religion and language, while women cumulate all these disadvantages with that of gender discrimination.

The second reason is equally disquieting: in spite of the 47 years since the adoption of the above-mentioned Convention, a period during which new instruments and documents, policies and programmes were adopted, the phenomenon is still persisting, and its seriousness and extension have been emphasized in our debates.

This proves how important it is to promote those measures, of various types, whose implementation should give substance to the principles and the norms in everyday life.

In its conclusions and recommendations on access to education, the Working Group on People of African Descent included a number of measures needed to achieve effective equality and fight discrimination, the promotion and adoption of which are precisely meant to attach substance, reality and specificity to the application of the principles of equality and non-discrimination, of the norms and standards in the field of education.

On the one hand, it is about those measures that aim, through affirmative policies and actions, based on monitoring the data by means of fairly designed and fairly used instruments, at providing effective access to education at all levels, including higher education, for people of African descent, which is at present hindered by serious obstacles and difficulties.

On the other hand, it is about the complex of measures proposed for adoption and implementation, on the basis of an evaluation of the failures of education but also of the positive practices accumulated, particularly in the framework of

UNESCO's programmes and projects, measures meant to provide better knowledge, by the society, of the cultural values and heritage of people of African descent, the contribution of people of African descent to the world's history and civilization, and also provide increased respect for all these.

Such an educational undertaking is undoubtedly a long-term one; nevertheless, so will be the results, expected to improve the social climate by eliminating racist prejudices and stereotypes, as well as the obstacles against the respect owed to dignity, identity and the whole of the fundamental rights.

An important clarification for a correct and realistic approach and evaluation of the previously mentioned issues is made by the recommendation according to which:

"States should mainstream the rights of people of African descent into the education strategies for achieving the Millennium Development Goals and adopt positive measures to achieve this objective".

On the occasion of UNESCO's release, on 28 November 2007, of the sixth edition of the 2008 Global Monitoring Report on Education for All (EFA), which is a midway evaluation of the progress achieved with the EFA objectives, the Director General of the organization, Koïchiro Matsuura, said the following:

"We are steering the right course but as education systems expand, they face more complex and more specific challenges. The latest EFA report clearly identifies these challenges: reaching the most vulnerable and disadvantaged, improving learning conditions, and increasing aid".

It is obvious that it is in this same context, of great challenges, that access to education of all types and levels for people of African descent is to be considered.

In fact, by means of its conclusions and recommendations, the Working Group identified and indicated actions and measures responding to their specific requirements.

"Education for All by 2015: Will we make it?" is the question asked by the 2008 edition of the Report, presented at the seventh meeting of the High Level Group on Education for All that took place in Dakar, on 11-13 December 2007.

The participants included primarily the poor quality of education and the high costs of instruction among the problems that the achievement of this objective depends on.

Correcting inequality with access to education of people of African descent is undoubtedly a process, but it is a process that should be accelerated and one that needs evaluations of the results achieved and re-evaluations of the priorities, the methods and the resources.

This is the reason why we can see in the contents of the above-mentioned recommendations a guidebook that will need periodic review for the route to the target – achievement of the equality objective – to be as direct and straightforward as possible.

It is obvious that an effective equal access to education, the diminution and eradication of the disadvantages accumulated by people of African descent along history because of racism and discrimination is a prerequisite of equality of chances in the exercise of the other human rights, be they economic, social and cultural, or civil and political, including access to all levels of decision making.

THE MEDIA AND DISCRIMINATION

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.

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 the 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 media monitoring from the viewpoint of visibility and positive and negative presentation of the group and its members. This monitoring can be achieved by certain study centers, non-governmental organizations taking interest in the field.

Capitalization on the findings can be achieved by campaigns – mainly in the press, also on radio and television – and by accurately diagnosing the situation and identifying the hot zones to enable efficient and well informed action to be taken.

While many of the reproaches against the media are undoubtedly well-founded, there are also others coming from the so-called badly placed expectations.

The largest audience undoubtedly goes to the general information publications, mainly radio and TV. It can be said that some reproaches, including those made by militants of

non-governmental organizations result from a regrettable misunderstanding of the 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 wand in his hand. He delivers 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, on facts, the "bricks" that "build up" a newspaper or a broadcast.

Lack of an adequate publishing dress makes the message vanish. The new message does not come to its final destination 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 better meets the public's expectations.

In the case of specialized publications or local channels addressing specific public segments, target groups according to whose expectations they set up the topics, the approach and the language, the situation is different.

According to 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, Religious 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, governments have to ensure to persons belonging to minorities freedom of expression, the right to enjoy their own culture, equal access to public property and private services, equal access to education, as well as participation in cultural activities.

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

Minorities' access to the media also involves some percentages of air time according to the minority's weight and the possibility that, in those regions where they are prevalent and there is no other real opportunity of private channel broadcasting, they should produce programmes for the public stations by themselves.

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"[11], the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities made one of the most authorized interpretations of the international standards in the following terms: "Majoritarian groups should find out about

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

minority groups' 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 should 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 media and other communication means as well as equal access to publicly controlled and state-owned media.

On the other hand, pursuant to Article 19, the International Center against Censorship, a non-governmental organization of an incontestable reputation, included Recommendation No. 10 into the recommendation set taken from the international legislation and practice. According to it, "Government has to attenuate the impact of any "language of hatred" providing a maximum diversity of broadcast viewpoints".

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 through independent public corporations that can get larger audiences.

When independent bodies grant a licence, they should take into account the requirement that a diversity of viewpoints should be ensured.

If authorities, pursuant to Article 20 of The International Covenant on Civil and Political Rights, have the duty to prohibit any urge on national, racial or religious hatred that can be an incitement to discrimination, hostility or violence, a station should not be punished for broadcasting the opinions of the persons urging on hatred or violence provided that they did not

support these viewpoints, broadcast contrary opinions or publicly expressed disagreement to those opinions[12].

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

There is a subtle delimitation between a justified dissatisfaction in relation to a paper or a radio or TV programme and the illegitimate pressure exerted on publishers and journalists. The capacity of identifying this delimitation accurately is essential. As it can not be defined by the law, the only way of finding it out is the experience.

There are several non-governmental means that can be used to ensure the social responsibility of the media: deontological codes, journalists' associations, press committees, which in some countries include public representatives in addition to employers and journalists and whose task is to watch for compliance with the codes. Other such means include a deontological audit, which is meant to increase the editorial staff's awareness of the deontological principles and rules, in-house criticism or content-evaluating commissions, or an institution of Japanese origin (Shinshashitsu) consisting of a team of journalists whose task is to perform daily analyses in order to correct any possible deontological errors. In the USA, such analyses are performed by the in-house criticism teams – an ethics 'coach' so to speak – i.e. a deontological board that is usually established in the editorial office. It is also worth mentioning such means as media columnists, journalists trained to cast a critical eye on the media,

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

magazines specialized in reviewing the national or the local media, as well as watch groups supported by non-governmental organizations to make long-term studies and research about the media, which, when accomplished, are published scientific journals or books.

As far as the Afro-descendent groups are concerned, the following seem to be the most useful non-governmental means meant to ensure social responsibility of the media:

– The contact committee, which mediates the relationship between journalists and certain groups or institutions specialized in finding compromises, on the one hand, and the local press council, which allows for dissatisfactions and wishes to be voiced in the framework of regular meetings between the consumers and the media executives, on the other hand;

– The Press Ombudsman, which has been gaining ground in North America and other continents as well. This institution is authorized to receive the public's complaints, assessments, inquiries or requests, to make its own investigations and to communicate the results of such investigations.

Finally, the social responsibility of the media can also be increased by means of various actions organized by consumers or by militants, who thus put the owners of the media and the legislators under pressure. Such actions can include boycotts targeting a certain newspaper or a certain radio station or TV channel, letter campaigns, street demonstrations, etc. However, as it seems, conferences, seminars, lobbying, and establishment of minorities' own press, bulletins, local stations, or web pages are the most efficient means to achieve the objective of ensuring the social responsibility of the media.

While acknowledging the positive potential and the important role of the media, numerous observers have often pointed out that, unfortunately, the media are also characterized by side-slips, appetite for the sensational and negative news, having a profound commercial nature. However, the most harmful effects of the media are those related to indirect, dissimulated incitement to violence, to racial hatred and discrimination, which is not incriminated by the law. Such attitudes are violations of the principles of equality, democratic spirit, non-discrimination, and the rule of law, characterized by respect for human rights, dignity, dignity and cultivation of a spirit of tolerance.

But, as J. P. Marthoz pointed out at the International Seminar on Tolerance (Bucharest, May 1995) in his conclusions regarding the media, "a dispassionate examination of the media reveals 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 headlines. It also rewards quality journalism – a craft that is courageous, independent and dignified and forms the linchpin of democracy".

Finally, the extent to which the media fulfill their responsibilities of promoting human rights depends on the journalists' professionalism, the publishers' and their employers' availability, and their public's activism as well.

Acknowledgement of the fact that the media are legitimately subject to the logic of the economic does not mean that publishers, directors of publications and of radio/TV channels have the right to depart from the responsibility the media should have in a democratic society.

It is their duty to accommodate themselves to the needs of the press enterprises they manage as well as to the professional organizations to which they belong, to eliminate intolerant language and spirit, and cultivate tolerance, respect for the form of the message and the diversity of the content, to carefully select the information and the way the information is approached.

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E/CN.4/2003/WG.20/Misc.8 "Promoting Affirmative Action in the Americas: Progress and Challenges" by Ms. Zakiya Carr-Johnson

E/CN.4/2003/WG.20/WP.2 "Promotion et signification des lieux de mémoire de l'esclavage", by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance of the Commission on Human Rights

E/CN.4/2003/WG.20/Misc.7 "Unite against Racism" by Mr. Patrick Gasser

E/CN.4/2003/WG.20/Misc.9" Realising the Right to Education for People of African Descent in Latin America" by Ms. Angela Haynes

E/CNA/2003/WG.20/WP.1 "Some Personal Thoughts on Reparations and People of African Descent", by Mr. Georges Nicolas Jabbourt, Member of the Working Group of Experts on People of African descent

E/CN.4/2003/WG.20/Misc.10 "Preliminary Observations on Violence Affecting Africans and People of African Descent in some Regions of the World" by Mr. Peter Lesa Kasanda

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