



Practical and Theoretical Controversies of the Dichotomy of Rights and Liberties

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Abstract: The main **objective** of this paper- work is to analyse the classification of human rights, highlighting the controversial matters referring to the categories of rights from the first and second generation. **Prior Work** This research's arguments are sustained in the specialized literature according to which a certain classification can engender only negative effects, tending to minimize the importance of economic, social and cultural rights by their integration in an inferior category of rights. **The Approach** used in this study is complex: survey, observation and case study. **The Results** of this research reflect the interdependence of fundamental rights and liberties, irrespective of the category in which they were included by the international community. **Implications** The results of this research are of interest to law school students, teachers and researchers in the legal field. **Value** The key contribution to this paper consists in a different approach in the issue of classification of human rights and interdependence of fundamental rights and liberties.

Keywords: Human rights; liberties; interdependence of human rights

1. Rights and Liberties of Man. Concept and Features

The rights of man, the rights of the citizen, the rights and fundamental liberties are concepts which must be subjected to a minute analysis so that the characteristics of each of them are underlined.

In the meaning of the Universal Declaration of human rights, the rights of man represent those rights which spring from the inherent dignity of the human being.

In the preamble of the Universal Declaration of Human Rights, adopted at 10th December 1948 by the General Assembly of the United Nations, it is provided that ignoring and disdaining of human rights led to acts of barbarism which stir up the

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human consciousness. The acknowledgement of the inherent dignity of all members of the human family and of their equal and inalienable rights constitutes the foundation of liberty, justice and peace in the world.

The concept of human rights has been rendered in the course of history by means of numerous interpretations and definitions. From a socio-political viewpoint, the rights of human beings represent a concept attributed to human beings as principal holders of universal rights.

The rights of the human being are those minimal rights from which an individual must benefit from, rights opposable to the state as well as to other public authorities only in the virtue of the fact that their holder is part of the human family.

In the paper *Human rights, the religion of the end of a century*, professor Adrian Năstase defined this concept in this manner: human rights are those prerogatives conferred by the internal law and recognised by the international law to each individual in his reports with the group and the state which give full expression to some social fundamental values and which have as a purpose the satisfaction of some basic human needs and of some legitimate aspirations in the social, political, cultural and historic context of a certain society.

From an international perspective, by means of the rights of human beings there are being evoked the rights of human beings endowed with reason and conscience to whom are acknowledged his natural rights as inalienable and indefeasible rights.

1.1. The Rights of the Citizen

The existence of the human being in a society organised as a state is rendered through three phases from a judicial point of view: a citizen, a foreigner or a homeless. (Iancu, 2002, p. 3)

By integrating in a certain social and political system, the man becomes a citizen and benefits in this quality of a series of rights regulated and guaranteed by means of the fundamental law of the state whose citizen it is.

Thus the concept of human rights has a far wider interpretation compared to the rights of the citizen, the first being valid universally and applicable to all human beings whereas the rights of the citizen are applicable to some distinct categories: *human beings integrated in a certain group organised by the state function on the basis of a framework of judicial, religious and moral rules etc.* (Tomescu, 2014, p. 14)

The citizens of a certain state have the ability to enjoy all the rights established in the fundamental law of the state to which they belong.

With a reference to people without citizenship, homeless or foreigners, these categories will benefit from certain rights foreseen by the fundamental law of the state, on a regular basis by the indispensable rights of the human being.

1.2. Fundamental Rights

The fundamental rights are those subjective rights which pertain to any human being and which are essential to the life, dignity, moral and physical integrity of the human being, rights which are consecrated legally on a national and international level, guaranteed and acknowledged by the fundamental law and which are opposable to the state as well as to other authorities.

The Constitution of Romania regulates in art 15 the universality of the fundamental liberties and rights. In accordance with this article, the citizens benefit from the rights and liberties consecrated by means of the Constitution and by other laws and they have the obligations foreseen by those.

The subject of the universality of human rights must be approached from the perspective of the relationship universalism – individualism.

The collocation human rights refer to the man regarded as an emancipated individual who belongs to a society whereas rights which are acknowledged to him stem from the universality of the human race.

By means of the subjective character of the fundamental rights one can comprehend the aptitude of their principal holders to present a certain conduct and to impose a corresponding conduct to the other participants at the judicial reports as well as to enjoy the protection of the state in realizing their legitimate requests.

The human rights have been defined before as being those essential rights of the human being which comprise essentially the social, cultural, civil, political and economic rights considered rights of the first generation. (Dictionary of Human Rights. Annotated with jurisprudence 1957-2013, 2014, p. 295)

Jean Jack Rousseau, in his paper **Discourse on the origin and foundation of inequalities between people** underlined the character of **essential rights** for people of the fundamental rights: *the rights of man are essential gifts of the nature which nobody cannot touch in any way.*

The character of essential rights of the fundamental rights was mentioned in defining this concept, some authors defining fundamental rights as being those rights established by the Constitutions and which are determined for the judicial statute of the citizen. In the absence of these rights, moral, physical and social welfare would not be possible.

Fundamental rights are established judicially, being regulated in the national and international law systems in case of not abiding by them some judicial sanctions are being applied. (Predescu & Vlădoiu, 2014, p. 13)

The principal holder of the fundamental right has the capacity to realise **his interests in his reports with the powers of the state, from this perspective the rights of man take on the value of privileges.**

We conclude by underlining the lack of any sense of the existence of the human rights if these are not enrolled in the constitutional systems of states thus obtaining the character of fundamental rights because the human being cannot exist independently of a certain society organised within a state for a political system run by judicial norms.

1.3. Fundamental Liberties

Freedom represents that faculty which every man has to act freely, autonomously, in accordance with his own will (internal freedom) as well as the possibility to act according to his wishes (external freedom). Freedom represents the capacity of the human being for self-determination, to choose freely his personal conduct.

Art. 4 from the Declaration of human rights and citizen rights from 1789 defines freedom as being the possibility to do all that does not harm others. Exercising the natural rights of every human being does not meet limitations except for those which ensure to the other members the possibility to enjoy the same rights. These limits can be determined only by law.

In broaching the concepts of human rights and fundamental liberties one must take into account the question if these concepts designate the same categories of rights.

In the French specialized literature, it was underlined the fact that the fundamentality of the rights and liberties does not reduce itself to their provision in the Constitutions of these states. Limitation of public liberties to the meaning of warranties was accentuated by the promoters of the concept of fundamental rights. (Desplats, 2010, pp. 3-16)

Fundamental liberties are those liberties foreseen intently by the Constitution, thus benefitting from a privileged status under the aspect of their protection and warranty. (Crouzatier – Durand, 2009, pp. 9-12)

Civil rights and fundamental warranties are bestowed upon citizens for the exercise of public liberties.

The concept of public liberty was assimilated to the concept of privilege which belongs to its holder to act in accordance with his own will, to choose a certain conduct that does not imply any responsibility from the part of other people in connection with the action, omission and the state of fact to which the liberty refers to.

The roots of the concept of public liberties are identified in the second part of the XIX century concomitantly with the acknowledgement of rights and liberties of man in his collective and social activities, beyond the reports established between man and state (the liberty of reunion, the liberty of manifestation, the liberty of meeting and the liberty of association etc.)

1.4. The Existing Report between Fundamental Rights and Liberties (Purdă & Diaconu, 2012, pp. 14-27)

In case of some possible conflicts which may appear on the basis of the coexistence of a right with a fundamental liberty, there comes up the issue of differentiating these notions.

Fundamental liberties represent subjective votive rights in the constitutional systems of the state together with the fundamental rights of man.

The rights of human beings and fundamental liberties are not placed on the same plan and do not share the same content. The rights of human beings represent a minimum of prerogatives necessary for the self-determination whereas public liberties are prerogatives which ensure the security of the individual, his protection, representing true claims for society. (Morange, 2007, p. 147)

In the specialized literature controversial opinions have been formulated under the aspect of the concept of rights and fundamental liberties as well as the relationship which exists between these concepts.

Some authors have minimized the normative value of these liberties considering that liberty cannot be considered a right because this would not imply any constraint in the face of others which is essential in the case of rights.

The report between rights and liberties was underlined in the analysis of Hohfeldian type, liberties being placed on the same plan with rights, because it entails the obligation of all people not to bring impairment to the exercise of freedom.

Subsequently, a person has the liberty to gaze in the garden of his neighbor, a liberty which does not entail any obligation to do or not to do this thing. This person is free to choose if he or she gazes or not into the backyard of his neighbor, the latter having some obligations which do not expel all forms of interference.

In this example, from the Hohfeldian perspective, there are three hypotheses of freedom:

- The liberty to gaze in the backyard of the neighbor;
- The liberty not to gaze in the backyard of the neighbor;
- A right against interference with this liberty. (Rainbolt, 2006, p. 30)

To a certain liberty, a perimeter of rights which have the role to protect the faculty of the principal holder of the liberty to exercise the respective liberty is associated.

In other words, liberty has complex contents, implying more rights and more liberties. In order to render the complexity of liberty we exemplify article 10 from the Chart of fundamental rights of the European Union¹: the **Liberty of thought, of consciousness and of religion**². In accordance with this article: *Any person has the right to freedom of thought, of consciousness and of religion. This right entails the liberty to change his religion or conviction as well as the liberty to manifest his religion or conviction individually or collectively, in public or in private, by means of cult, of studies, of practices and the fulfillment of rites.*

¹ Proclaimed by the European Parliament, The European Council and the European Commission at 12 December 2007 and it was published in J.O.C from 26 October 2012.

² The liberty of consciousness is guaranteed by the Constitution of Romania, in art 29: The liberty of thought and of opinions as well as the liberty of religious beliefs cannot be confined under any form. Nobody can be constrained to adopt an opinion or to adhere to a religious belief, contrary to his opinions.

(2) The liberty of consciousness is guaranteed, she should manifest in the spirit of tolerance and reciprocal respect.

(3) Religious cults are free and they are organized in accordance with their own statutes, in the conditions of the law.

(4) In relationships between cults there are interdicted any forms, ways or actions of religious strife.

(5) Religious cults are autonomous towards the state and they enjoy their support, including the support of religious assistance in the army, in the hospitals, in penitentiaries, in asylums and orphanages.

(6) Parents or tutors have the right to ensure, in accordance with their own convictions, the education of their underage children for whom they hold responsibility.

Thus we observe that this liberty implies more actions: thought, speech as well as other fundamental rights and liberties, as well as: the right to express religious faith (art. 11- the freedom of expression and of information, the right to associate with other people and to form religious associations (art. 12 - the freedom of meeting and of association) etc.

Moreover, the freedom of religion reclaims other rights as well of the nature to ensure protection against discrimination on grounds of religion (Peers, Hervey, Kenner, & Ward, 2014, p. 153) (art. 21 – non-discrimination) or against any trespassing of the dispositions of art. 22 from the Chart referring to cultural, religious and linguistic diversity.

At least under the aspect of contents, we consider that there are differences among fundamental rights and fundamental liberties of human beings.

Freedom confers the possibility to its principal holder to choose between acting or not in a certain way and towards this freedom, the third parties must abstain from any action of the nature to abridge or limit it in any way. In this case, the holder of the freedom has an active role. He must choose between doing or not doing something; he has the possibility to adopt or not a certain conduct, a certain behavior.

Liberties imply rights which can be exercised by their principal holder but without reclaiming any obligation from the part of other people in their exercise. For example, the liberty of a person to express himself freely does not reclaim the intervention of other people. This person is free to choose between expressing itself or not. The liberty of expression comprises the liberty of opinion, the liberty to receive and to transmit information and ideas without the intervention of public authorities and without keeping account of borders.

The exercise of a liberty by its principal holder must keep account of abiding by the rights of other people. For example, the liberty of a person to smoke runs through to the limit of respecting the rights of other people who do not smoke. A person is free to choose between smoking or not and in the case he or she chooses to do this thing, he must abide by the liberty of others who chose not to smoke and their rights to health or a healthy environment. Fundamental rights, representing claims of individuals in society, confer to their principal holders in report to the state a diminished role. Public authorities must ensure abiding by fundamental rights – the right to health, the right to work, the right to a dwelling house.

From this perspective, the law offers to the individual some liberties and privileges and imposes upon others a conduct by which it should not bring impairment to their exercise.

Fundamental rights determine the liberties which the citizens have in their relationship with the state. With reference to the universality of public liberties, the relationship universalism – individualism met in the case of fundamental rights transforms into the triad universalism – individualism – collective will.

The common denominator of these concepts is the fact that they both presuppose the existence of a society. Aristotle underlined the fact that *man is social by his nature* and that the family is the first step of association of human beings; association of more families leads to the creation of villages and cities; the union of more villages and cities bring forth the state and any association is done with the purpose of an indistinct welfare.¹

Ion Deleanu averred that: *a truth harps on nonetheless above all conceptions, doctrines, philosophies: the human being is an essentially social being; the human being cannot be understood as a human being outside his social environment; any other understanding is a mere speculation.* (Deleanu, 1991, p. 57)

In the jurisprudence of the Court of Justice of the European Union, the distinction between fundamental rights and fundamental liberties in case of conflict, although the Court has underlined the necessity of finding a consensus between the two quarrelling interests², tilts the scales in favour of some rights which in certain cases limit the exercise of some liberties.

Subsequently, the Court has decreed that the right to a strike should limit the circulation liberty. More to the point, in the SCHMIDBERGER³ cause, a cause which put forth the problem of the conciliation necessary to the protection of fundamental rights in Community with those which are issued from a fundamental liberty established by means of treaty and more precisely, the problem of the respective field of application of the liberty of speech and of meeting, guaranteed at articles 10 and 11 from CEDO and of the free circulation of merchandise when the first of these liberties are invoked as a justification of a restriction regarding

¹ Aristotel, *Politica/Politics*, apud (Pușcă & Pușcă, 2004, p. 8)

² Benoit – Rohmer Florence, *Values et droit fondamentaux dans la Constitution, Cahiers de droit europeen*, 2006, nr. 7- 8/ *Values and fundamental rights in the Constitution, European law Notebooks*, 2006, no 7-8, apud (Apetrei, 2010, pp. 106- 107)

³ CJCE, Judgment of June 12, 2003, available at <http://www.ier.ro/sites/default/files/traduceri/62000J0112.pdf>.

this last liberty. The Court underlines the fact that neither the right to the freedom of speech nor the right to a peaceful meeting, guaranteed by CEDO do not appear – contrary to other fundamental rights established by the same Convention, as well as the right of any human being to life or the interdiction of torture, as well as of punishments or inhuman or degrading treatments – as absolute prerogatives, but rather they must be considered in report to their role in society. Furthermore, the exercise of these rights can be restricted on condition that they respond in genuine to some objectives of general interest and foreseen that they do not constitute, taking into account the purpose followed by these restrictions, a disproportionate and intolerable intervention which would bring impairment to the very substance of the protected rights. (to see, for that matter, Decisions from April 8th 1992, Commission/Germania, C-62/90, Rec., p. I-2575, point 23, and from 5th October 1994, X/Commission, C-404/92 P, Rec., p. I-4737, point 18) .

In another cause, The Court of Justice of the European Union, has decreed the possibility of **derogation from a fundamental liberty in order to abide by a fundamental right**. In the cause OMEGA SPIELHAUS, the German authorities interdicted a game which allowed the simulation of some shootings with a fire weapon upon some imaginary people, invoking the impairment brought to human dignity. This interdiction was thwarted by invoking the impairment of the freedom regarding the performance of services and the free circulation of merchandise. (Apetrei, 2010, pp. 106-107)

Regardless of the way in which they are defined, between the concepts of rights and fundamental liberties there is no judicial difference, both categories having subjective character, pertaining to natural persons and the state has the obligation to establish their conditions of exercise by means of a judicial system determined and articulated so that it ensures the balance between general interest and their exercise. (Dumitru, 2008, p. 6)

2. Categories of Fundamental Rights

The main criterion in accordance to which the classification of fundamental rights is realized is: their principal holder; their contents, their historical evolution, the domain to which they refer and their way of exercising.

2.1. In accordance with their Main Holder or the Beneficiary of Fundamental Rights we distinguish:

a) General rights and specific rights;

General rights are those rights acknowledged to all people.

Specific rights are acknowledged to some categories of persons in accordance with some particularities – persons framed in the working field, women, children, elderly people etc. (Predescu & Vlădoiu, 2014, p. 14)

b) Individual and collective rights;

Individual rights are acknowledged to any person no matter if their exercise is done individually or collectively – the right to association.

Individual rights comprise within both civil rights as well as political rights, protecting life, liberty, equality, security, moral and physical security of the person, property etc.

This category of rights is sub classified in:

- Rights and warranties of equality – it refers to the exercise of rights and liberties equally for all people, without discrimination.
- Rights and warranties of freedom – it refers to the right of each person to act in accordance with his own will, the authorities of the state having the obligation not to intervene in their exercise.
- Rights and warranties of judicial security – the individual must be protected of any abusive or arbitrary intervention from the part of the authorities of the state. (Lopez, 2004, pp. 45-51)

Collective rights¹ belong to individuals which are part of a certain group and which are main holders of them collectively.

¹ At the level of the European Union it was adopted the Directive 2014/26/UE of the European Parliament and the Council from 26th February 2014 regarding the collective administration of author rights and their connected rights and the granting of multi-territorial licenses for the rights over

We consider relevant, in understanding the collective rights, the approach of author Tom Campbell, in accordance to which the groups have the right to a real social existence independently of the characteristics of each of their members. Members of the group can have certain rights which other individuals do not possess. For example, the supporters of a certain football team have the right to wear the colors which represent that team. Beyond this simplistic approach of collective rights, the author mentions the example of ethnic groups. They have the right to learning but they can also have the right to learn in a certain language, a benefit which only the members of an ethnic group from a certain institution of learning enjoy whereas other individuals which are not part of that ethnic group do not enjoy. The right to learn in a certain language is a common *asset* of the group and not a sum of goods of the individuals in that group. (Campbell, 2011, p. 175)

2.2. In accordance with their Contents, Fundamental Rights are:

a) Civil and Political Rights

This category of rights has stood at the basis of the adoption of the European Convention of the Rights of Man. What is characteristic of civil and political rights is the fact that they have a determined contents, their principal holder is determined and they are opposable to the state which, relative to the majority of these rights, has the negative obligation not to intervene or to act arbitrarily.

Civil rights are the mandates which the individual has in his relationship with the society – the right to life, the right to private life, the right to security, the freedom of speech and the right to an opinion. **Political rights** confer to their holders the possibility to participate in administering the state and society – the right to citizenship, the right to elect and to be elected. (Dictionary of Human Rights. Annotated with jurisprudence 1957-2013, 2014, p. 295)

These rights can be individual as well as collective. For example, the freedom of speech and the liberty of opinion give birth to the freedom of association and the freedom to choose freely their representatives. (Jaque, 2013, pp. 132-133)

International documents which establish civil and political rights are: The Chart of the United Nations¹, The Universal Declaration of the Rights of Man², The

musical works for use online on an internal market. The purpose of this instrument is to establish the requirements applicable to organisms of collective administration in order to ensure standards of high governance, financial administration, transparency and reporting.

¹ Signed at San Francisco on 26 June 1945 and entered into force on October 24, 1945.

² Adopted on 10 December 1948 by the United Nations General Assembly resolution 217 A III.

International Pact regarding civil and political rights¹, The European Convention of Human Rights².

In art. 6- 27 from the *International Pact regarding civil and political rights* are regulated by a series of rights from this category such as: the right to life; the interdiction of torture and of inhuman and degrading punishments; interdiction of arrest or detainment in an arbitrary way; the right to freedom of thought, freedom of conscience and of religion; the right to freedom of speech; the right to a peaceful meeting; the right to take part in public matters, to vote and to be elected.

The Committee of human rights represents the control mechanism of respecting these rights, its decisions do not have coercive or sanctioning value but they only represent points of view. This control mechanism was developed by means of the **First Facultative Protocol to the International Pact** with regard to civil and political rights, protocol according to which the victims of trespassings of one of the rights included in the Pact may address by means of written communications to the Committee of Human Rights after spending all internal ways of attack.

b) Economic, social and cultural rights

At the end of XVIIIth century, the French Declaration of human rights recognised this category of rights by the use of some concepts such as : the pursuit of happiness, *equality, fraternity, the right to create syndicates, the right of collective negotiation, work condition in safety etc.*

On a global level, the first institution created for the defense of this category of rights was the International Organization of Work.³

The Universal Declaration of Human Rights, by reiterating the fact that the foundation of freedom, justice and peace in the world is represented by the acknowledgement of the inherent dignity and of equal rights of all members of the human family and regulates a series of economic, social and cultural rights as well as civil and political. Thus in articles 23- 27 there are stated economic, social and cultural rights : the right to social security, the right to work, the right to free choice of work, the right to equitable and satisfactory conditions of work, the right to protection against unemployment, the right to an equitable retribution which would ensure the man and his family an existence in accordance with human dignity and

¹ Entered into force on March 23, 1976, ratified by Romania by Decree 212/1974.

² Adopted in 1950. Amended 15 Additional Protocols. Ratified by Romania by Law no. 30/1994 (Official Monitor no. No. 135 of 31 May 1994).

³ Created in 1919, it becomes the UN specialized agency in 1946.

completed at need by other means of social protection; the right to a level of living which would ensure his health and welfare and that of his family; the right to learning; the right to take part in the cultural life of the collectivity etc.

The Conditions of the Universal Declaration of Human Rights with regard to economic, social and cultural rights are established in detail by the Pact with regard to economic, social and cultural rights, adopted by the General Assembly of UNO in the year 1966¹.

The international community concentrated its attention in the year over rights of certain social categories: racial and ethnic groups, women, children, elderly people.

Social rights cover essential aspects of life: work, health, education, aspects corresponding to basic needs of human beings. The existence of these rights and their respect ensures to any person a decent level of living specific to his dignity and not only his survival.

Moreover, these rights concern social protection, the shield of social risks: diseases, illness, old age, unemployment, the stage of being a widow, pollution etc. (Aliprantis, 2010, p. 3)

2.3. In accordance with their criterion of historical evolution:

a) Rights of first generation – civil and political rights

b) Rights of the second generation – economic, social and cultural rights

c) Rights of the third generation (rights of solidarity) – the holder of these rights is the national and international community, (Figuroa, 2012, p. 134) the concept of human rights surpassing the individual sphere and migrating into that of humanity and of future generations (Dictionary of Human Rights. Annotated with jurisprudence 1957-2013 2014, p. 295) the right to development, the right to a healthy environment.

The emergence of this category of rights reflects the reality of the Third World, the global redistribution of power and of other values and abilities. This category of rights comprises: the right to political, economic, social and cultural determination; the right to economic and social determination; the right to participate and to benefit from the common patrimony of humankind; the right to peace, the right to a healthy environment, the right to natural resources etc.

¹ Adopted by the UN General Assembly resolution 2200A (XXI).

2.4. In accordance with the field they refer to:

a) **Negative** rights – which impose a correlative obligation to third parties to abstain from any intervention in exercising these rights by their holder. For example, the right to free expression of a person reclaims the negative general obligation to abstain from any action which might interfere with the exercise of this liberty.

b) **Positive rights** – are those types of rights which impose a correlative obligation which resides in an action from the part of third parties (persons, institutions or the state). (Orend, 2002, pp. 31–32)

2.5. In accordance with their way of exercising:

a) **The right to an autonomy,**

b) **Rights of participation;**

c) Benefits. (Lopez, 2004, pp. 45-51)

3. Controversial Aspects with Regards to the Classification of Human Rights

A first issue that has prompted controversial discussions in the specialized literature refers to the classification of human rights into civil and political rights (rights of first generation) and economic, social and cultural rights (rights of second generation).

Some authors have considered the category of economic, social and cultural rights, the poor relative from the international family of human rights. Although an essential part of the equation of human rights, it has been sustained the fact that the international machinery of human rights is much more powerful for civil and political rights than for economic, social and cultural rights. In the same sense, it has been argued the fact that the encroachment upon civil and political rights are considered to be far more serious than massive and systematic encroachments upon economic, social and political rights. (Leckie & Callagher, 2006, p. XIII)

With reference to the classification of human rights into the two categories, civil and political and economic, social and cultural, it has been argued that from a practical standpoint, it is difficult to identify a coherent and consistent criterion of this classification. Thus, rights from both categories are indivisible and

interdependent, they can be individual and collective and they belong to the human being and they define his dignity.

In connection with the interdependence of rights and liberties pertaining to these categories, the following example was underlined: the liberty of expression may, in certain situations, belong only to privileged persons, comparative with the right to education which belongs to all persons and which makes possible the exercise of the freedom of speech. Per a contrario, the right to education is meaningless if the person does not possess the freedom to create and interchange information. None of these rights and liberties is not useful to the person if he or she is deprived of health or does not have a dwelling house. (Leckie & Callagher, 2006, p. 12)

Another discussion has been aroused by the statement according to which civil and political rights would correspond to negative rights whereas economic, social and cultural rights would belong to positive rights. In accordance with these interpretations, for the exercise of civil and political rights there is no need for any action or intervention from the part of the state. Some authors have fought against this affirmation underlining the fact that for the manifestation of certain civil and political rights such as: the right to security, the right to a public trial, the right to an asylum in case of persecution, the right to free elections, the intervention of the authorities of the state becomes necessary, these rights belonging to the sphere of positive rights.

4. Conclusion

With a likeness to rights from the first generation which are not totally negative, neither the rights from the second generation are not entirely positive. For example, the right to choose does not reclaim an action of the state to be ensured of its exercise. It is true that the majority of rights from the second generation reclaim the intervention of the state because these rights refer to necessities with a pronounced material character. (Calude & Weston, 2006, p. 12)

Another remarkably interesting observation concerns the dual character of rights from the third generation. Thus, if we may discuss about the individual right of all states to ensure a new international order it would eliminate any obstacle in the path of the economy of states and of social development and we may talk about the individual right of any person to benefit from a policy based on the satisfaction of human needs.

The majority of rights from the third generation have a pronounced aspirational character, have an ambiguous statute within the framework of international norms regarding human rights. (Calude & Weston, 2006, pp. 22-23)

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