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**The Democracy as a Regime that  
Promotes Human Rights!**

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**The Democracy as a Regime that Promotes Human Rights!**

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**Abstract**

Political systems and policies of one country are considered functional in the cases when their activities, purposes and objectives are beneficial for the society and create justice. There are numerous factors that impact the system and promotion of democracy, as well as the relationship between democracy and human rights. Factors that are worth mentioning would be: the previous regime, especially in the Eastern bloc, the economy, the involvement in the political life, etc. Human rights are fundamental and undisputable rights, which should form the foundation for the functioning of a democratic state. Despite the human rights concept being discussed for centuries, there is always room for debate. A democratic state has the duty and legal obligation to include civil, political, social and economic rights in its policies. All rights herein are affirming the declaration of human rights, which is officially accepted by many countries. The state cannot identify its democratic system without acknowledging and affirming these rights, which have been expressed in the constitution, regarded as the highest law of a country, other laws and acts with the sole purpose of protecting them against any infringement.

This paper will address the impact of globalization on democracy and human rights, as a process that is widely spread over many countries, to achieve a goal in itself in promoting, protecting and consolidating human rights and democracy. The main factors of globalization are also going to be treated as a concept and phenomenon supported by theories that protect and oppose it, as well as the relationship between democracy and globalization.

**Keywords:** Globalization, Democracy, Human rights, Society.

## Introduction

The Democracy is in itself a concept, which is both simple and complex but at the same time it is important for its contemporary approach and its impact on human rights. The concept of Democracy is characterized by a dynamic nature due to current political and social changes. Different levels of democracy are present in different places all over the world. A research by Freedom House determines the rights and the level of democracy almost all over the world during a specified period of time and its level of influence on particular pre-specified factors<sup>1</sup>. The Democracy is represented by many elements, characteristics and aspects and it can be defined as the main mechanism of governing, representing the interests of the majority although we need to mention that the minority plays a key role.

The study of law and the developments in the democratic system constitute the foundation and the reasons why many states that were in totalitarian systems, were transformed and adopted a democratic spirit of governing, worth mentioning places such as the Eastern Europe and the Balkans.

The political systems and the politicians of a state are considered functional in cases when their actions, aims and their objectives guarantee the welfare for the society transforming it into a fair society. The factors that have an impact on the 'system' and 'promotion' as well as the relation between democracy and human rights, are: 1) the political system, 2) the economic system, 3) the system of justice and 4) over-all involvement.

The human rights are fundamental for the well functioning of a state with high level of democracy. Even though the concept of human rights is an ancient concept, there is still place for argument. A government with high level of democracy has the right and legal obligation to include the civil, political, social and economic rights. All the above rights are affirmed in human rights declaration which is officially accepted by many countries in the world. No state can identify its democratic system without the acceptance and affirmation of these rights. They are also stated in the Constitution, which is considered the most important establishment of precedents to protect these rights from any encroachment.

This paper will discuss the impact of globalization on democracy and human rights as a process which is widely spread over many states to achieve a single aim: the promotion, protection and consolidation of the rights and democracy. The discussion will include the main factors of globalization, its approach as a concept and phenomenon, the theories which protect and oppose it, as well as the relations between democracy and globalization.

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<sup>1</sup>Puddington, A. *Freedom in the world 2013: Democratic breakthroughs in the balance*, (June 2014), 30-35 DOI= <http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet.pdf>

## **Democracy as a Mechanism for the Protection of Human Right**

During the late 19th and early 20th century, the world would see a “boom” in democracy. The human rights, which until then were not so widely known and practiced, started to be notable. During this period, quite a few states were governed by a dictatorial system, representing the “encroachment” system of the human rights. The democratic system aims at representing a system which protects and promotes these rights.

The human rights in a fair state today are considered fundamental rights that are protected to guarantee the welfare in a society. Therefore, until today, democracy is seen as the best governing system for their realization.

The individual with all his/her rights is for the democracy the foundation of its existence. Democracy cannot exist if its foundation is not the basic principle of the “citizen”, a principle that cannot "survive" in totalitarian systems because their focus is a political system that produces no civil rights but on the contrary, constrains them ever more. This aspect highlights the construction of society, politics and economy on strong social foundations and on a high degree of institutionalization.

The above stipulations can lead to the conclusion of what exactly are the human rights and his/her freedom. According to the manual published by Unity Nations it can define as follows<sup>1</sup>:

- The right of citizens to choose their governing system via the Constitution or other democratic means.
- The right to participate in politics.
- The right to vote.
- The transparency and accountability of institutions.
- The rule of law, including legal protection for citizens' rights, personal safety, independence of judiciary.
- The right to equal access to public services.

All judiciary orders over the world represent it through the highest acts of a state, needless to mention the constitutions and laws, which aim to protect and promote these rights as guaranteed protection against different external factors. One of the most important conventions is the European Convention of the Human Rights. The 10<sup>th</sup> of December is not coincidentally noted as the international day of human rights, which coincides with the anniversary of the universal declaration as an important base document.

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<sup>1</sup> Gallagher, A., *Manual on Human Rights Monitoring An Introduction for Human Rights Field Officers*, university of Oslo , chapter 1, DO = <http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/current/kap1.pdf>

## Globalization and the Human Rights

Before discussing the impact of globalization on human rights, it would be important to highlight initially the concept of globalization. The term "globalization" has been generally used to stipulate the today's world changes in different aspects and fields. The case of globalization is an economic, social and ideological one and it is running at full speed which is consequently affecting millions of people around the world.

The discussion on the effects of globalization on human rights is seen through the economic sense because as a process it includes, mainly, the economic sphere<sup>1</sup>. The state always aims at protecting the economic rights of their states, respecting them and at the same time fulfilling all their duties towards them. Based on the above sentence, it is important to clarify something between protection, respect and fulfillment. The state has an obligation to protect the economic rights of a citizen as well as to handle the negative consequences that derive from them. The economic rights on the process of globalization are seen in two aspects: (1) the optimistic aspect and (2) the pessimistic aspect<sup>2</sup>.

1. The optimistic aspect views globalization as a process which helps the liberalization of trade which not long ago was narrow and restricted to only between certain states (based on the history where communist countries contracted trade deals only with other communist countries). The liberalization of the trade would mean the demolition of restrictive barriers, the widening of the capital of the companies which, until now had a local presence, would stretch their force abroad. It would be possible to sign contracts between many parties such as between many multinational companies. All these factors made possible that the economic rights are treated as fundamental rights and are redirected towards the newly created spirit.
2. According to the pessimistic aspect, the critics consider the process of globalization as the well-being of the developed countries<sup>3</sup>. This spirit aims at minimizing the effect of this process as a process which shrinks the economy of the developing countries. The big companies would have the influence and the impact on the country with the weakest economy. This spirit stipulates that the governments reduce their role in economy and

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<sup>1</sup>Rhoda, E., Howard-Hassmann.,(2010) *Can Globalization Promote Human Rihgts?* The Pennsylvania State University Press. Page 5

<sup>2</sup>Goodhartd, M., (2013) *Human Rights Politics and practice*, Richards, D L& Gelleny, R D.,*Economic Globalization and human Rights*, Oxford university press, second edition, 180-181

<sup>3</sup>Goodhartd, M., (2013) *Human Rights Politics and practice*, Richards, D L& Gelleny, R D.,*Economic Globalization and human Rights*, Oxford university press, second edition, 181-182

they focus on to the promotion of international investments. As a result, globalism in economy determines the workers and the citizens of the developed countries<sup>1</sup>.

The above aspects express the impact of globalism on the economic rights spheres which are tightly connected with the fundamental human rights.

### *The Impact of Globalization on Human Rights*

The international laws on the protection of human rights have a main role in protecting in an individuals and groups from any encroachment which could be either from the state or any other organizations. The latest all inclusive changes but in unique way based on the trade liberalization beyond the borders, free economy and employment as well as the privatizations are all known as elements of the globalization process. With globalization we would understand the enlargement of the world integration in a space much wider from a cultural, social and economic point of view. Mainly in the developments of the last century, the companies which recently had a national character would be seen now in a global presence. Consequently, it can be said that, as a result of globalization the world is becoming smaller and we are living in a "global village"<sup>2</sup>.

As it is accepted, the process of globalization stretches its effects on fields such as the right of employment, social rights, etc. Therefore, its biggest consequences would cover the right of employment and the economic rights. The states, as the main keeper always aims at adapting these global changes in the promotion and protection of human rights through the implementation of different laws. In addition, its role lays on the developments of political mechanisms to promote the free trade and globalization<sup>3</sup>.

The Human rights in a globalised world are accepted to impose a major effect on the followings<sup>4</sup>:

- international security
- trade across national borders
- non-partisan dispute settlement that is incorporated across borders
- free movement of people across borders and
- hold dual or multiple nationality

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<sup>1</sup>Goodhartd, M., (2013) *Human Rights Politics and practice*, Richards, D L& Gelleny, R D.,*Economic Globalization and human Rights*, Oxford university press, second edition, 181-182

<sup>2</sup>Humphrey, J.,*International Arbitration: Following in the Footsteps of Globalization*, Navigant, 1-2 DOI= [http://www.navigant.com/~media/WWW/Site/Insights/International\\_Arbitration\\_Disputes\\_Investigations.ashx](http://www.navigant.com/~media/WWW/Site/Insights/International_Arbitration_Disputes_Investigations.ashx)

<sup>3</sup>Benedek, W., De Feyter, K., and Marrella, F., 2011. *Economic Globalisation and Human Rights*. Cambridge University press. 5-7

<sup>4</sup>Pendleton, M D., 1998 *A new human rights-the right to globalization*. Fordham International Law Journal. Volume 22. issue 5. article 6. 2052-2054. DOI=http://www.atiner.gr/docs/Paper\_Guidelines.htm

In addition, the United Nations which from a functional point of view have the right to monitor the human rights treaties, stipulate that the economic globalization under no circumstances should limit the legal duty of a state to monitor, respect and promote its human rights. However, they fear for the impact of the global trade on human rights<sup>1</sup>. Free trade must penetrate through global financial operation, there should exist multilateral agreements and at the same time the state should provide the necessary platforms to create some economic relief.

### *Human Rights Laws in front of Globalization*

The Human rights before such a powerful expansion of globalization can only be analyzed after the Second World War. Before this period, the standards of international law for the protection of human rights were almost nonexistent. Moreover, they were only known in the philosophical field from various philosophers such as Aristotle, Montesquieu, etc. At this time, the analyses of human rights were done more on a national rather than international level<sup>2</sup>. The 2nd World War constitutes the border between the national rights which existed before it and the international rights created after the war. It is the impact of the Holocaust that laid the fundamental impact of the international laws. At this time, the charter of United Nations took over the protection of human rights at the international level by establishing principles for the protection of human rights against cruel behavior from the state. The UN Charter is followed by the Universal Declaration of human rights, which in itself was a bill for the protection of rights all over the world. Since its preamble its aim and function are clearly stated as: "Whereas Recognition of the inherent Dignity and of the Equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world".

The Universal Declaration of the human rights would constitute a beginning for the opening of the road for the creation of other conventions derived to the basis and the implementation for the protection of the international rights. Conventions which we can mention are the International Convention on the civil and political rights, conventions on genocide, torture, international agreements on the economic, social and cultural rights: racial discrimination, Rights of Children, Rights of Refugees etc.

Universal declaration of human rights would constitute the foundation for the creation of other conventions for the implementation and protection of international human rights. Such as: the International Covenant on Civil and Political Rights, the Convention on the basis of expenditure and genocide, Torture, International Covenant on Economic, Social and Cultural Rights,

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<sup>1</sup>Benedek, W., De Feyter, K., and Marrella, F., 2011. *Economic Globalisation and Human Rights*. Cambridge University press. 8-9

<sup>2</sup>Shestack, J J., 1997. *Globalization of Human Rights Law*. Fordham International Law Journal.. volume 21, issue 2. Article 28. 558-560. DOI= <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2263&context=ilj>



Racial discrimination, Right of Children, Rights of Refugees, etc.

These conventions regulate the fundamental human rights and all member countries which have signed it are obliged to accept and implement them in the best possible way.

Apart from the United Nations, other mechanisms exist for the protection of fundamental human rights mentioning the European Union, Council of Europe (Coe), Organization for Security and Cooperation in Europe (OSCE).

### **The Human Right, Globalization and International Arbitration**

The globalization process is a determinant factor in inclosing the businesses with a multinational character and as a result there emerges the existence of the legal agreements with a foreign element. Therefore a logic derivation is obtained that wherever there is a business need there is also disputes between parties and if there are disputes there most certainly will be a violation of the business rights. As a result of my research on the different options of the dispute settlements such as the international arbitration, I would like to express an approach on the impact of the arbitration on human rights.

The Human rights were consolidated by the Declaration of Human Rights created by the United Nations as an answer to the Holocaust which can be identified as the biggest encroachment of the human rights. On the other hand, international arbitration was promoted as a result of the rise of the global trade and big economic investments.

The international arbitration exists and takes place in parallel with the norms of the human rights, it even exists at the same place where the rights exist and are promoted. By analyzing them as different concepts, firstly the international arbitration as a process for the settlement of disputes freely from the parties. On the other hand, there exist the rights of entities or corporation to choose the institutions for the settlement of disputes or for the interpretation of their contacts. International arbitration has been analyzed and still continues to be treated by the creation of many treaties and international norms which regulate in an explicit way its actions and the effects it has on individual country that has accepted them.

The Human rights and International arbitration are used not in a few cases as key factors. On the one hand the investors have claimed that their rights have been violated by the treaty, but at the same time the governments have claimed the infringement of their citizens' rights. The relation between arbitration and European Convention on Human Rights is focused on providing procedural guarantee, primarily on Art.6 (1). European Court of Human rights in Strasbourg and the European Commission as well as the national courts, have judged a series of cases in the last 20 years and have showed the relation that exist between this provision and the will for choosing arbitration<sup>1</sup>.

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<sup>1</sup>Benedek, W., De Feyter, K., and Marrella, F., 2011. *Economic Globalisation and Human Rights*. Cambridge University press. 5-7.

The arbitration is a procedure which represents the neutral interest of the parties involved. Sometimes the entities will address themselves to the Forum of Arbitration to expel the court jurisdiction of the one's country and at the same time making possible for one of the arbitration types to emerge. Not recognizing the procedural law can lead to the violation of rights of the other party because decisions have often been in favor of the local party.

## **Conclusion**

As a conclusion, it should be emphasized that the broad legal protection of human rights has not only a national character but also an international presence and this is as a result of a long-term conflict between individuals who cared about the "Human Right".

The development of democracy, the consolidation of its interaction with human rights becomes increasingly stronger. The two concepts can never be seen isolated from each other. The democracy aims at building a governing system that is fair to everyone, by ensuring the protection and promotion towards the realization of basic human rights. It is precisely the latter that raises strong foundations for the democracy and its implementation. The degree of democracy in a country is proportional to the degree of protection, promotion and respect of human rights.

The democracy, human rights and fundamental freedom of the individual are characterized as dynamic, and this comes as a result of the nature of the society which goes parallel with the time and historical development. Even in the most democratic societies where the rights protection is at its highest levels, there is still a kind of pressure on governments so that these standards are highly protected. In countries of the former communist bloc, their transition is mainly associated with changes in social structure, increase interpersonal trust, distribution of power, improvement of government legitimacy, etc. The democratic system has always provided more space to people and empowers them. These standards laid their effect even across borders through the process of globalization. The globalization as a process affects economic growth and building democracy.

Despite that until some time ago, this phenomenon was not entirely known and studied; today it has turned into the process which represents the rights and freedoms in every aspect of it. Since then there have been taken place a series of important steps and are approved a series of conventions for the protection of human rights. Often, they have been forcing states to implement and in many cases to change their legal framework in order to adapt to local conventions, in cases where national laws appeared in conflict with international law.

## References

- Benedek, W., De Feyter, K., and Marrella, F., 2011. *Economic Globalisation and Human Rights*. Cambridge University press. 5-7
- Gallagher, A., *Manual on Human Rights Monitoring An Introduction for Human Rights Field Officers*, university of Oslo , chapter 1, DOI=<http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/current/kap1.pdf>
- Goodhardt, M., (2013) *Human Rights Politics and practice*, Richards, D L& Gelleny, R D., *Economic Globalization and human Rights*, Oxford university press, second edition, 180-181
- Humphrey, J., *International Arbitration: Following in the Footsteps of Globalization*, Navigant, 1-2 DOI= [http://www.navigant.com/~media/WWW/Site/Insights/International\\_Arbitration\\_Disputes\\_Investigations.ashx](http://www.navigant.com/~media/WWW/Site/Insights/International_Arbitration_Disputes_Investigations.ashx)
- Pendleton, M D., 1998 *A new human rights-the right to globalization*. Fordham International Law Journal. Volume 22. issue 5. article 6. 2052-2054. DOI=[http://www.atiner.gr/docs/Paper\\_Guidelines.htm](http://www.atiner.gr/docs/Paper_Guidelines.htm)
- Puddington, A. *Freedom in the world 2013: Democratic breakthroughs in the balance*, (June 2014), 30-35 DOI= <http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet.pdf>
- Rhoda, E., Howard-Hassmann.,(2010) *Can Globalization Promote Human Rihgts?* The Pennsylvania State University Press. Page 5
- Shestack, J J., 1997. *Globalization of Human Rights Law*. Fordham International Law Journal.. volume 21, issue 2. Article 28. 558-560. DOI= <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2263&context=ilj>