# ANALYSIS OF THE INTER-AMERICAN HUMAN RIGHTS PROTECTION SYSTEM

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***Abstract***

*For a nation to have longevity and prosper, it must provide and benefit from protection, as the inter-American regional system, one of the three major systems for establishing and guaranteeing human rights, succeeds in doing. This system, although it does not enjoy the complexity and effectiveness of the European one, is old, benefiting from diverse and strongly consolidated mechanisms and instruments. French and English inspirations, over time, but also the influence of numerous factors and difficulties of a social, political, cultural and economic nature, created the inter-American system for the promotion and protection of human rights as it is today.*

***Keywords:*** *Inter-American system, human rights, American Declaration, French Declaration, inalienable rights, UN Charter, Universal Declaration of Human Rights*

***JEL Classification:*** *[K37; K38]*

## 1. Introductory aspects

Fundamental human rights are found and evolve, from a regional point of view, within three great protection systems, respectively: inter-American, European and African, but we can also mention the Islamic system, whose main instrument for the defense of human rights was only adopted in 2004. Due to the age of modern democracy in the United States of America, but also to the fact that the respect for civil rights and liberties is a characteristic of the democratic political regime, the choice of the inter-American protection system is justified in order to benefit from a historical-comparative analysis.

Since the ideological and temperamental similarities between Northern and Southern Americans are significant, sharing traits such as idealism, optimism, and belief in progress, they clearly differentiate the peoples of these continents from those of others (Fox, 1968, pp. 369-384). It is precisely these unitary characteristics that have allowed the United States to consolidate its position among the great powers of the world.

The protection of human rights within the inter-American system benefits from sources such as: the American Declaration of the Rights and Duties of Man, the Charter of the Organization of American States and the American Convention on Human Rights, the latter constituting the main legal instrument of defense on the American continent. In addition to these, there are also several international

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legal instruments with a regional character, the most important being the American Convention on Human Rights and the Inter-American Convention for the Prevention and Suppression of Torture. Thus, the inter-American mechanism shows efficiency, also establishing a jurisdictional system with competence regarding the resolution of individual and interstate requests.

In ensuring human rights, specialized international tribunals are used whose object is the defense of fundamental rights and the sanctioning of states that have violated these rights, the inter-American protection mechanism being based on two institutions, respectively: the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. It should be mentioned that the existence of two bodies with jurisdictional powers presents the disadvantage of the possibility of formulating different interpretations (Moldovan, 2021, p. 172).

When we talk about the system of specific bodies regarding the promotion and respect of human rights at the inter-American level, we refer to the Organization of American States, successor to the Pan American Union. Within this international governmental organization of European inspiration, are found: the Inter-American Commission on Human Rights - which aims to promote and defend the legal prerogatives and privileges recognized to the human being and the Inter-American Court of Human Rights - as an autonomous judicial body and the main regional judicial mechanism for monitoring the protection of human rights in the inter-American regional system, which can adopt binding decisions for the states that have accepted its jurisdiction in the field of human rights.

However, the differences between North America and South America in terms of human rights should not be neglected, with the rise of the United States and the decline of Latin America.

## 2. Brief history of the inter-American protection system

The Déclaration des Droits de l'Homme et du Citoyen (Declaration of the Rights of Man and the Citizen) from 1789 was a source of inspiration for similar writings in Latin America, but also in various European states. Thus, in the middle of the 20th century, in Bogotá, the American Declaration of the Rights and Duties of Man is adopted, the first important regional international document in human history regarding human rights, followed shortly by the notorious Universal Declaration of Human Rights[1] of the United Nations.

The American Declaration can be considered one of the most distinctive human rights instruments ever adopted by an international organization. The original objective of the Inter-American Juridical Committee, the main drafter of the declaration, was to create an instrument that would have the status of a convention to oblige contracting states to guarantee the proper implementation of human rights standards. However, unable to overcome objections based on state

[1] Adopted on December 10, 1948, by Resolution 217 A at the third session of the United Nations General Assembly.

sovereignty, hemispheric governments chose not to make the American Declaration binding on its signatories, nor did they create any institutional mechanism for the faithful observance of fundamental rights and freedoms (Ghidirmic, 2019, p. 100).

The initial lack of binding character of the 1948 Declaration, due to its adoption in the form of a simple resolution, did not prevent the representative document from becoming the cornerstone of the inter-American system of human rights protection. In the jurisprudence of the two bodies charged with promoting respect for fundamental freedoms, its significance has, in fact, been constantly reaffirmed throughout the Western Hemisphere. Assuming that no state in the region should remain outside the scope of human rights norms, both the Court and the Inter-American Commission on Human Rights gave the American Declaration ex post facto legal value. In other words, the American Declaration of the Rights and Duties of Man is a true source of international obligations for states that have not yet ratified the American Convention on Human Rights, the main legal instrument of protection on the American continent, adopted within the Organization of American States, in San Jose, in 1969 (Moroianu Zlătescu, 2007, p. 28).

But we can go even further in time, namely in 1776, when the Declaration of Independence of the United States of America was ratified, the first regional document in which reference is made to inalienable rights, such as life, liberty and happiness, but also equal rights.

## 3. The functioning of the inter-American regional system under the aegis of the UN

Ensuring respect for human rights required the organization of mechanisms and instruments capable of controlling the actual implementation, the actual translation of the texts that enshrine them, and on the one hand to promote them and on the other hand to protect them (Moroianu Zlătescu, 2007, p. 28). Thus, we must remember the United Nations Declaration of January 1, 1942, on the conviction of the defense and preservation of human rights and justice both in the signatory countries and in other countries, but also the United Nations Charter, signed in San Francisco on June 26, 1945, among the objectives of which is the development and encouragement of respect for human rights and fundamental freedoms. The latter treaty establishes the most important international organization in the world, the United Nations Organization, founded on October 24, 1945, after the Second World War, with the United Nations General Assembly as its main organ, which adopted and proclaimed on December 10, 1948, the Universal Declaration of Human Rights.

The Universal Declaration was largely inspired by the French jurist René Cassin and had the role of stipulating fundamental human rights and freedoms in a post-war context. The Declaration was conceived as a "common ideal to be attained by all peoples and nations", not having the force of an international treaty with legal

implications in case of a deviation or violation, but its provisions were later taken up and expanded in various international treaties. It should be stated that the reference document emphasizes the fact that "it is essential that human rights are protected by the authority of the law", respectively that they are protected by a legal regime.

The United States and Latin American countries were among the signatories of the Universal Declaration, one of the most important and influential human rights instruments, in the drafting of which an essential role was played by Eleanor Roosevelt, the first lady of the United States of America who served as the first president of the Human Rights Commission, marking a significant stage in the evolution of internationally recognized human prerogatives.

Regarding the inter-American system, the consecration and guarantee of human rights operates within the Organization of American States, the main international intergovernmental organization at the regional level, with the Charter of the Organization of American States, with subsequent amendments, as its constituent treaty. The main organ of the Organization, with a jurisdictional character, is the Inter-American Court of Human Rights. This international court specialized in the matter of human rights was established by the American Convention relative to human rights, which presents a general material competence, a territorial one limited to the inter-American regional level, a contentious competence, but also an advisory one.

Last but not least, we would like to emphasize the fact that for the possibility of the effective exercise of fundamental rights and freedoms, the establishment of a system of guarantees at the regional level was required, with the aim of ensuring the effectiveness of legal prerogatives. Thus, the institution of constitutional litigation must be mentioned as a mechanism for ensuring and guaranteeing fundamental rights and freedoms at the regional level, the control model of American origin being the first system of guarantees, according to which the control of the constitutionality of laws is ensured through the courts and the second model being the European one, according to which the exercise of the control of the constitutionality of the laws is ensured by specialized authorities of constitutional jurisdiction (Grigore-Rădulescu, n.d., p. 25).

## 4. The European influence of human rights on the inter-American system

Although the US has only observer status in relation to the Council of Europe, it has the opportunity to participate in the meetings of the Committee of Ministers and intergovernmental committees and benefits from the influence of European regulations, so increased in recent years.

The European Court of Human Rights in Strasbourg, which is not an institution of the European Union, but a body of the Council of Europe, offers an additional level of protection in case of alleged violations of the rights stipulated in

the European Convention on Human Rights[2]. It should be mentioned that the first one was established by the very content of the European Convention, which constitutes a legal practice also implemented in other regional human rights protection systems.

Given that the European system for the protection of human rights crystallized under the auspices of the Council of Europe, it asserted its chronological primacy in relation to the African system or the inter-American system for the protection of human rights, the establishment of the African Court and the Inter-American Court competent in the field of human rights was carried out according to the European model (Berna, 2020, p. 10). Therefore, in the content of the American Convention on Human Rights, the means of protection and the competent bodies can be found, through Article 33, the Commission and the Inter-American Court of Human Rights, their attributions being expressly recognized in solving problems arising from the observance by the contracting parties of the commitments assumed by ratifying the Convention.

## 5. Common law and the American legal system

An interesting phenomenon took place in the United States of America, when the common-law, brought by the English colonists, underwent an interesting process of evolution, adapting to the federal structure of the United States and the American way of life, resulting in a legal system different from the original one (Moroianu Zlătescu & Bulgaru, 2011, p. 5). It should be noted that the "common law" system is the second great contemporary legal system, the product of long evolution and pragmatic thinking.

The law of the United States of America is the result of the transplantation of English law to the American continent. The structure of the sources, the main institutions and the way of reasoning that characterizes the English jurists are similar. As for the differences, they are due, first of all, to the federal structure of the United States, which gives its law significant particularities. As a result of a special evolution, American law conceives certain institutions differently. Although the system of sources of law is similar, the weight occupied by each of them in the whole system differs considerably from that of English law.

The acquisition of independence in 1776 marked the birth of American law. The animosity that was created in the relations with the former metropolis greatly facilitated the penetration of some concepts and a legal mentality inspired by French and German law.

If the rules of common-law and equity were generally accepted as such, those of statute-law, representing the written law of the former metropolis, were rejected. A new state legislation emerged instead, designed to replace the English one.

[2] Instanțe și organisme extrajudiciare naționale, https://e-justice.europa.eu/176/RO/national _courts_and_other_ nonjudicial_bodies, accessed January 11, 2024.

The federal structure of the United States imposed a peculiarity from the beginning on the new legal system. Thus, the legislation of the states within the federation is added to the legislation of the union.

The 10th amendment to the United States Constitution, adopted in 1791, establishes the principle of legislative competence of the federal states. The federal bodies only exceptionally have the power to legislate, namely only to the extent that they are based on a text of the Constitution (Moroianu Zlătescu & Bulgaru, 2012, p. 5), but as this rule has been interpreted very broadly by the federal courts, an increasing number of situations where federal authorities have been recognized as competent to legislate have been accepted.

Undoubtedly, the most important problem that this specific structure raises is that of the control of the constitutionality of laws. According to the American Constitution, the Supreme Court of the United States has the task of controlling, by means of a special appeal, the conformity with the fundamental law of the normative acts issued by the various member states of the Union. Through this appeal, the Supreme Court can rule, annulling the laws of the federal states, to the extent that they are unconstitutional.

It should be noted the important place that the law occupies in the system of sources of law. Thus, American law remains a law of precedents, but with the quantitative prevalence of normative acts in relation to the situation in the English system.

The question is whether or not there is a common law of the United States, but the answer comes from the Supreme Court of the United States, which ruled that there is no federal common law, but only a common law specific to each state.

Perhaps the most interesting aspect regarding American law, unlike English law, is the fact that it also knows the possibility of jurisprudential revitalization, a form of "self-critical" expression of the decisions made. Thus, the Supreme Court of the United States and the supreme courts of the individual states are not required to respect their own decisions, thus being able to rule differently in other cases.

Finally, it should be emphasized that a prominent place in American legislative law is occupied by the constitution. If the United Kingdom does not even today have an actual written constitution, this being formed by several categories of legal norms related to statutory law, jurisprudence and constitutional custom, in the United States the constitution is regarded, undoubtedly, as a fundamental act.

## 6. Comparison between the Declaration of the Rights of Man and the Citizen of 1789 and the Declaration of Independence of the United States of America of 1776

The 18th-19th centuries represented, perhaps, the most dynamic historical periods, both from a social and geopolitical point of view. One of the results of this dynamism were two documents of particular importance in changing the vision of the socio-political field, respectively: the Declaration of Human and Citizen Rights,

which laid the foundations of modern democracy in France, and the Declaration of Independence of the United States of America. These documents have some common features, but also some differences. Thus, we must also talk about the codification of human rights in domestic law and the constitutions of the states in question that included the codification of human rights, respectively: the American Constitution of 1776 with subsequent amendments and the French Constitution during the Revolution, considered to be the most advanced constitution, codifying numerous human rights (Moroianu Zlătescu, 2012, p. 10).

The modern concept of fundamental rights of the citizen was launched with the French revolution, respectively the Declaration of the Rights of Man and of the Citizen of August 26, 1789. The declaration had Jean Jacques Rousseau, Voltaire and Diderot as "founding fathers", promoters and predecessors of the spirit of the French revolution, and was influenced by the Declaration of Independence of the United States of America, adopted on July 4, 1776 (Bahrin, 2012, p. 19).

Both the Declaration of Independence of American origin, and the Declaration of the Rights of Man and of the Citizen of French origin, arose from the public unhappiness determined by the non-respect of the fundamental and inalienable rights of the human being. If the Declaration of Independence undermined the governing principles formalized normatively in the long-lived Constitution of the United States of America and laid the foundations of a democratic political system, in which power is held by the people, exercised for them and under their control, the Declaration of Human and Citizen Rights was the basis for the formation of a new vision, which became universal on the fundamental rights and freedoms of the human being (Ionescu, 2012, p. 16). Both documents are of significant importance, because the first represents a democratic constitutional model of governance, and the second represents a model of transposition and fulfillment of human prerogatives and respect for people's freedom, equality and civic solidarity.

At the same time, both the American Declaration from 1776 and the French Declaration from 1789 represent documents with significance for the history of humanity, which affirmed the imperative of human rights, thus valuing the principles belonging to natural law, constituting the first legislative achievements (Moroianu Zlătescu & Demetrescu, 2003, p. 14-20).

The main significant difference is represented by the circumstances in which the two documents were drawn up. Thus, if the Declaration of the Rights of Man and Citizen appeared in the context of the French social revolution for the abolition of the old regime, the Declaration of Independence of the United States of America came on an external background, the victory of the colonists in the battle of Yorktown and the Peace of Paris, consecrating a new state, namely the United States of America. A decade later, the latter declaration formed the basis of the US Constitution.

Another difference is related to the way in which the two documents were promulgated. In the case of the French Declaration, the document was drafted and

voted by the National Assembly, a bourgeois one that represented the will of the people. As for the Declaration of Independence, it was drafted and signed by the political and economic elites of the colonies united in the images of the founding fathers of the United States of America, namely Thomas Jefferson and Benjamin Franklin.

Last but not least, there is a difference related to the initial structure of the two documents. Therefore, the Declaration of the Rights of Man and the Citizen contained a preamble and a total number of 17 articles, which combined provisions on the rights of people, citizens and society. In contrast, the Declaration of Independence of the United States of America was presented in the form of an undivided text.

Since the two documents were written at a short distance on the temporal axis, we consider that they had some influences, at least from an ideological point of view, both being of Enlightenment influence and having as their theme the idea of social solidarity and the natural rights of man, a political philosophy promoted by John Locke. Thus, according to the principles of natural law, the declarations of the French and American revolutions recognize man as a human being and a citizen, possessing natural and intangible rights.

## 7. Case study - The protection of inalienable rights within the inter-American system

The famous preamble of the Declaration of Independence stated that: "We hold these truths to be self-evident, that all men are equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness. That, in order to secure these rights, Governments are instituted among men, deriving their powers only from the consent of the governed. That when any form of government becomes destructive to these ends, it is the right of the people to modify or eliminate it, and to establish a new Government, establishing its foundation on such principles and organizing its powers in such form, as shall appear to them most likely to produce Safety and Happiness. Thus, several first-generation rights are highlighted, which constitute the hard core, and at the same time, the common heritage of the states that have joined the European Convention on Human Rights.

Individual rights can be classified using several criteria (area of coverage, addressee or content), most often using the temporal criterion, so we talk about different generations of rights, depending on the moment of their enshrinement and the analysis of fundamental rights is carried out with references to the provisions of domestic law, but also to international instruments of protection.

The most important right, being part of the category of inviolability, is the right to life, being considered the supreme right of the human being, the most natural human right (Vicşoreanu, 2014, p. 10). In other words, the right to life is part of that "hard core" of human rights that cannot be violated under any pretext and that are applicable not only in peacetime, but also in case of public danger that threatens the life of the

nation, as well as in case of war or threat to independence or state security. It must be emphasized that the derogatory provisions of the instruments for the protection of human rights should not have an effect on this right of humanity which is part of the "hard nucleus". It is the reason why the military must know and apply the regulations regarding human rights in crisis and war situations, they have important prerogatives in this field (Chirtoacă & Cauia, 2008, p. 187).

The analysis of the right to life involves both the concrete way in which it is enshrined in the various international protection instruments, in the domestic legislation specific to the various branches of law, but also in the ECtHR jurisprudence. Regarding this right, different solutions are identified in relation to taking life, including the controversial euthanasia or assisted death. At the same time, there are other legal situations limiting the right to life, such as the execution of a court sentence, specific to legal systems that also include the death penalty. Other limitations of the right to life are legitimate defense or repression of violent disturbances or insurrections, situations in which the use of force must be absolutely necessary, and resort to it only after all other means have been exhausted.

Within the inter-American system, the protection of the right to life, along with the right to liberty and property, is found in Amendment V of the Constitution of the United States of America, as follows: "No person shall be bound to answer for a capital crime or other infamous act except upon a declaration or indictment issued by a Grand Jury, unless the crimes are committed during periods when the accused is serving in the land or naval forces or in the militia, in time of war or public danger; no person will be threatened with life or bodily integrity twice for the same act; no person shall in a criminal case be compelled to testify against himself, nor be deprived of life, liberty, or property without following the natural course of procedural law; no private property shall be taken for the public interest without just compensation."

Regarding the right to freedom, right in the first Amendment of the American Constitution, reference is made to freedom of speech, press, assembly, religious freedom, but also the right of citizens to petition the governors.

Liberty is another right as important and with as significant relevance as the right to life. Implicitly, freedom gives us the right to choose, to express our opinion, as everyone has the right to have their own opinion, but not ultimately, we have the right to physical freedom, to move without restricting our space. Although we have this right guaranteed, it must be exercised moderately and civilly, otherwise we risk violating other rights.

The First Amendment is extremely influential in American jurisprudence, and the exceptionalism of the United States of America rests precisely on this freedom of speech. It must be said that America enjoys greater freedom of speech than the vast majority of other democracies in the world, especially because of the current jurisprudence, which is extremely permissive with lying, unfounded accusation and incitement to hatred and despite the American culture wars that lead both conservatives and progressives to propose various restrictions on free speech.

It must be emphasized the extreme sensitivity of Americans when speaking or infringing on freedom of speech. "For Americans in general, free speech is not only a legal principle, but also a spiritual one. As society becomes secularized, some non-religious and political values become more sacred. Americans fixate on free speech because it helps them define themselves in contrast to the Soviet Union and other communist countries during the Cold War," says Dan Gordon, professor of history at the University of Massachusetts Amherst.

Historians and political science professors usually recognize two broad paradigms for interpreting the First Amendment, namely: a maximalist view that free speech is a right with intrinsic value, and a somewhat more utilitarian view that free speech is a good thing insofar as it helps citizens govern themselves and democratically (Sibii, 2021).

It should be borne in mind that the two inalienable rights - the right to life and the right to liberty - enjoy the protection of Amendment XIV, which deals with the defense of rights and the definition of the citizen's status, but which also imposes the prohibition of states to restrict the privileges of citizens. Therefore "no state can deprive any person of life, liberty or property without following the natural course of legal procedures; nor shall he deny to any person under his jurisdiction the equal protection of the laws."

There are states, such as those of America, which we believe can enjoy a privilege conferred by their constitution, that of guaranteeing them the right to the pursuit of happiness. This inalienable right is enshrined, along with other natural rights, in the Declaration of Independence, adopted by the Philadelphia Congress on July 4, 1776 (Ionescu, 2012), p. 16). Thus, the Declaration is the first normative act with constitutional value of a democratic state that talks about the human right to seek happiness (Ciochină-Barbu, 2017, p. 322).

The right to the pursuit of happiness allows each individual the opportunity to pursue the fulfillment of human prerogatives in relation to his aspirations. They depend on each individual, on their perception of the actual situation. Thus, we can affirm that the guarantee of happiness falls within the competence of the individual and not of the state (Danileţ, 2021).

Although happiness has many definitions, due to the fact that it can be seen from many perspectives by each individual, it still remains an enigma, the fundamental proof of which is that although we are allowed to seek it, it is not embodied in a particular thing or situation.

It should be pointed out that the idea of the pursuit of happiness is not expressly provided for in the American Constitution, and it is up to the Supreme Court of the United States to recognize the ideals of "life, liberty, and the pursuit of happiness" in the Declaration of Independence.

As for the concept of "happiness" in the opinion of the American courts, it is seen differently in the cases encountered in the jurisprudence of the American states, as is also evident from the case of Territory v. Ah Lim 24 P. 588 (Wash.) - 1890, in which the Washington Supreme Court rejected the defendant's

argument that his right to pursue happiness was secured by smoking opium in the privacy of his home. The Court declared that "the state manifests an interest in the intellectual condition of each of its citizens, society being nothing but an aggregate of individuals. The moral or intellectual side of society rises or falls in proportion to the moral or intellectual level of its members." "Opium-smoking is a detestable, disgusting, and degrading practice, so that it is becoming dangerously common among the youth of the country, and its typical symptoms are imbecility, squalor, and crime...If the state concludes that a certain practice is dangerous to the moral, mental and physical well-being of citizens, to such an extent that it is apt to become a burden on society, it has the undoubted right to limit the commission of that act by citizens." Similarly, the Alabama Supreme Court held in Sheppard v. Dowling 28 So. 791, 795 (Ala. 1899) state prohibitions on the sale of liquor – "The law does not permit the pursuit of happiness in this way. The feeling of ecstasy would result from drinking liquor, but the law does not approve of such a passion which involves harmful consequences for society" (Hindawi, 2016).[3]

## 8. Conclusions

It is necessary to distinguish between the sources of consecration and protection of human rights at the international level and those existing at the regional level, such as the American, European, African and Arab, with the specificities that are retained for each of the mentioned regions.

The presentation of the regional systems and the mechanisms for monitoring the promotion and protection of the human being offers a perspective of how the law effectively contributes to the promotion of fundamental human prerogatives. At the same time, the human rights protection mechanisms at the regional level represent tools through which citizens can hold the state accountable.

Through the analysis, we wanted to highlight the importance of the sources of legal protection of human rights at the regional level, especially the case of the inter-American consecration and guarantee system.

Finally, we believe that it is necessary to identify effective measures in the future to allow the inter-American system to play a more prominent role in the promotion and protection of human rights.

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7. The American Convention on Human Rights
8. The American Declaration of the Rights and Duties of Man
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