

FROM CULTURALIZATION OF HUMAN RIGHTS TO THE RIGHT TO CULTURE

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Summary: The notion of culturalization of human rights is a fairly new issue, arising from the changes in the area of application and understanding of international law as well as from the signs of growing sensitivity to the sphere of culture, but also the need to take into account the broad cultural context. As a result of these changes, international organizations, courts and institutions pay more attention to the role of culture in human rights. Based on this, we can observe the emergence of the concept of the right to culture as one of the fundamental human rights. The process is facilitated by civilizational, social and structural changes. The legal sanctioning of the right to culture is prevented by a complex mosaic of diverse interpretations of the notion of culture and the rights derived from it. The form of the 'right to culture' and the chance for its implementation can only be constituted by progressing evolution of human rights and will depend on the direction taken in revision of the catalogue of these rights.

Budziszewska, A., Da culturalização dos direitos humanos ao direito à cultura. *Boletim do Núcleo Cultural da Horta*, 24: 43-54.

Sumário: A noção de culturalização dos direitos humanos é um tema relativamente recente, suscitado pelas alterações na área de aplicação e interpretação do Direito Internacional, assim como pela crescente sensibilidade relativamente à área da cultura, e, também, pela necessidade de ter em conta o contexto cultural mais abrangente. Como resultado destas alterações, as organizações internacionais, os tribunais e as instituições têm em maior atenção o papel da cultura nos direitos humanos. Com base nestes pressupostos, podemos testemunhar o surgimento de um conceito novo de direito à cultura como um dos direitos humanos fundamentais. Este processo é facilitado pelas mudanças civilizacionais, sociais e estruturais. O sancionamento legal do direito à cultura é dificultado, todavia, por um complexo mosaico de interpretações da noção de cultura e dos direitos dela derivados. O articulado do 'direito à cultura' e a hipótese da sua implementação só podem ser concretizados pela progressiva evolução dos direitos humanos e dependerá da orientação a ser dada na revisão do elenco destes direitos.

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Palavras-chave: Culturalização, Direito Internacional, Direito à Cultura, Tribunais Internacionais, Direitos Humanos.

The article has been inspired by the publication by Federico Lenzerini titled *The Culturalization of Human Rights Law*¹, which discusses the evolution of human rights as a result of extensive inclusion of the role of culture in international law in the sphere of human rights.

The publication is an attempt to answer the question about the nature of human rights and the direction of

their evolution. It describes the notion of culture as the driving force behind changes, through incorporation of cultural aspect into international law. The theses presented in the publication fit well within the context of the ongoing debate on the reformulation of the role and perception of international law², whose traditional no longer meets the needs of contemporary societies.

1. THE INFLUENCE OF CULTURE ON THE EVOLUTION OF HUMAN RIGHTS

The relationship between culture and human rights already has a long tradition and commonly functions as ‘cultural rights’, included in the package of second-generation human rights. This qualification, however, is not clear and sufficient. We have to remember that the very notion of culture is broad, heterogeneous and multidimensional³, and additionally complicated by cultural diversity

and the functioning of different legal cultures next to each other. Cultural rights therefore have to be subject to the same determinants, although it is self-evident that culture and human rights are interdependent, interrelated and that they affect each other⁴. But this interdependence is not permanent and final. There are two reasons for this: First, human rights are a

¹ Federico Lenzerini, *The Culturalization of Human Rights Law*, Oxford, 2014.

² See: M. Koskenniemi, *From Apology to Utopia*, Finnish Lawyers’ Publishing Company 1989; and A. Paulus, “International Law After Postmodernism: Towards Renewal or Decline of International Law?”, *Leiden Journal of International Law* 2001, vol. 14, no. 4.

³ A. Kroeber and C. Kluckhohn gathered 196 different definitions of culture. See: *Culture. A Critical Review of Concepts and Definitions*, Cambridge, 1952.

⁴ See e.g.: Y. Donders, “Do Cultural Diversity and Human Rights Make a Good Match?”, *International Social Science Journal* 2010, Vol. 61, Issue 199, p. 15; D. Ayton-Shenker, “The Challenge of Human Rights and the International Protection of Cultural Diversity: Some Theoretical and Practical Considerations”, *International Journal of Minority and Group Rights*, Vol. 14, 2007, p. 231; R. D. Schwartz, *Human Rights in an Evolving World Culture*; and A. A. An-Na’im, “Problems of Universal Cultural Legitimacy for Human Rights”, in: An-Na’im and Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives*, 1990, p. 331.

fairly new issue, and therefore have a rather experimental status so far⁵; only the future will reveal and shape their actual nature. Second, we need to remember that the notion of culture is also subject to constant evolution, transformation and adjustment to social changes. Consequently, the approach to the function played by culture in human rights is changing as well, and so does its impact on the evolution of these rights⁶. This element is so important that some even believe that culture plays a central role, is the driving force⁷ stimulating the evolution of human rights⁸. Therefore, the growing role of cultural determinants in international law and

human rights may not be passed over in the discussion on the future shape of the latter⁹. So where is the evolution of human rights heading? In the opinion of Lanzerini, the current reinterpretation of the application of human rights standards is the consequence of the idea of cultural pluralism. Therefore, when writing about the culturalization of human rights (although without defining it), he brings to our attention the process of evolution of human rights, in which they change from a traditional universal idea to a multiculturalist idea, which makes it necessary to interpret these rights in line with the needs of specific societies and individuals¹⁰.

⁵ H. J. Steiner, "The Youth of Rights", *Harvard Law Review*, Vol. 104, 1991, p. 917.

⁶ See: A. Pollis and P. Schwab, "Human Rights: A Western Construct with Limited Applicability", in: Pollis and Schwab (eds.), *Human Rights. Cultural and Ideological Perspective*; and A. Bleden Fields and W.-D. Narr, "Human Rights as a Holistic Concept", *Human Rights Quarterly*, Vol. 14, 1992.

⁷ F. Lenzerini, *Culturalization of...*, op. cit., p. 145.

⁸ Cf.: J. Symonides, "Cultural Rights: A Neglected Category of Human Rights", *International Social Science Journal* (1998), 595; J. Symonides, "Cultural Rights", in: J. Symonides (ed.), *Human Rights. Concept and Standards*, 2000; F. Francioni and M. Scheinin (eds.), *Cultural Human Rights*, 2008.

⁹ See: S. Borelli and F. Lenzerini (eds.), *Cultural Heritage, Cultural Rights, Cultural Diversity. New Developments in International Law*, 2012.

¹⁰ See: F. Lenzerini, *The Culturalization of...*, op. cit., p. 10. In his opinion, the analysis of human rights should start from the level of rights of individuals. He quotes the American Anthropological Association's 'Statement of Human Rights' – see: American Anthropological Association, J. Steward and H. G. Barnett, "Statement of Human Rights (1947) and Commentaries", in: M. Goodale (ed.), *Human Rights: An Anthropological Reader*, Wiley-Blackwell, 2009, p. 23. The document was produced even before the adoption of the UDHR (1948) and stresses that an individual develops his personality through culture because he is a member of a certain social group, which sanctions a specific lifestyle shapes the

2. DEPARTURE FROM THE WESTERN CONCEPT OF HUMAN RIGHTS

Lenzerini argues that human rights should not be equated with Western standards because despite the development of universal human rights, different regions still have different visions of their form and content¹¹ as well as an individual culture-determined need to interpret and implement them¹². A simple reflection on this phenomenon can also be found in the work of K. L. Zaunbrecher, who highlighted the various approaches to the evaluation of the same standards¹³, and R. D. Schwarz, who also stressed the special ways in which different cultures perceive and interpret human rights¹⁴. It seems, therefore, that the Western vision of human rights standards does not correspond with the needs of multicultural regions. This phenomenon is discussed by A. Pollis and P. Schwab (*Human Rights: A Western Construct with Limited Applicability*), among others¹⁵. While

stressing that the Western concept of human rights is not adequate to the reality of the multicultural world (the ‘non-Western’ countries), the authors refer to two categories of factors: ‘the cultural patterns and the developmental goals of new states including the ideological framework within which they were formulated’¹⁶. Furthermore, Pollis and Schwab point out yet another aspect of these rights, namely the correlations between individual rights and group rights, which often are in opposition. As an example of such ‘conflicts’, they quote, among others, Article 17 of the Universal Declaration of Human Rights, which holds that everyone (individual right) has the right to own property¹⁷. While this right is properly understood in the West, it is in stark contrast with cultures and traditions of other societies, for example, the Gojami-Amhara

behaviour of the individual and with which the individual’s fate is inextricably linked.

¹¹ *Ibidem*, p. 213.

¹² *Ibidem*, p. 213.

¹³ ‘What may be regarded as a human rights violation in one culture may properly be considered acceptable practice in another’, in: K. L. Zaunbacher, ‘When Culture Hurts: Dispelling the Myth of Cultural Justification for Gender-Based Human Rights Violations’, *Houston Journal of International Law*, Vol. 679, 2011, p. 688.

¹⁴ See: R. D. Schwarz, ‘Human Rights in...’, in: An-Na’im and Deng (eds.), *ibidem*.

¹⁵ Amanda Pollis and Peter Schwab, ‘Human Rights: A Western Construct with Limited Applicability’, in: Amanda Pollis and Peter Schwab (eds.), *Human Rights. Cultural and Ideological Perspective*, Westport: Praeger, 1979, p. 1.

¹⁶ *Ibidem*, p. 8.

¹⁷ The Universal Declaration of Human Rights, available at: <http://www.un.org/en/documents/udhr/> (accessed on: 17 February 2015).

of Ethiopia, where ‘there is no “right” to individual ownership of land’¹⁸ Socio-economic factors should also be considered important, as combined with culture they lead to the failure of the universal human rights and

the implementation of the Western standards and the role attributed to human rights for example in African countries, which contend with other kinds of problems¹⁹.

3. CULTURALIZATION OF HUMAN RIGHTS IN PRACTICE – JUDGEMENTS OF INTERNATIONAL COURTS

The awareness of the role of culture in human rights is reflected in the judgements of international institutions, courts and advisory bodies, which see the need to take cultural determinants into account.

The Human Rights Committee highlights this trend²⁰, giving a broad interpretation to Article 27 of the International Covenant on Civil and

Political Rights²¹. A review of the Committee’s judgements in this respect shows a tendency towards the protection of cultural rights (defined by tradition and custom) of indigenous peoples constituting a minority in the area they inhabit. A similar direction has also been chosen by the Committee on Economic, Social and Cultural Rights²², as well as by

¹⁸ A. Pollis and Schwab, *ibidem*, p. 9.

¹⁹ *Ibidem*, p. 12. See also: Grażyna Michałowska, *Problemy praw człowieka w Afryce (Human Rights Problems in Africa)*, Warszawa, 2008.

²⁰ *Ibidem*, p. 147.

²¹ See also: Sandra Lovelace v. Canada, Communication No. 42/1977, 6 June 1983; Ivan Kitok v. Sweden, Communication No. 197/1985, 27 July 1988; Lubikon Lake Band v. Canada, Communication No. 167/1984; Ilmari Lansman *et al.* v. Finland, Communication No. 671/1995, 22 November 1996, UN doc. CCPR/C/58/D/671/1995, 22 November 1996; Apirana Mahuika *et al.* v. New Zealand, Communication No. 547/1993, 27 October 2000, UN Doc. CCPR/C/70/D/547/1993, 15 October 2000; Francis Hopu and Teपोaitu Bessert v. France

Communication No. 549/1993, 29 July 1997, UN Doc. CCPR/C//60/D/549/1993/Rev.1, 29 December 1997; Leonod Raihman v. Latvia, Communication No. 1621/2007, 28 October 2010, UN Doc. CCPR/C/100/D/1621/2007, 30 November 2010.

²² See: *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, E/C.12/1999/5, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4.

regional institutions such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights. Because of the considerable ethnical diversity in the region the judgements of the two commissions concern the protection of and respect for indigenous peoples²³, invoking their specific traditions and histories²⁴.

The protection of cultural rights and culture in the European system of human rights, in turn, concerns primarily the protection of the rights of minorities²⁵. The position of the

European Court of Human Rights on culture as expressed in its judgements is much more restrained than the position of the Human Rights Committee or the regional instruments, even though culture is an important area of European policy²⁶. In Lenzerini's opinion, this restraint could be the result of anxiety about giving culture the fundamental and determining role because this would open the door to countless claims, including applications for recognition of group rights²⁷. The second reason could be the social and political problems with which

²³ See also: Grażyna Michałowska, *Status ludności tubylczej w Afryce w świetle międzynarodowych stosunków ochrony praw człowieka (Status of Indigenous Peoples in Africa in the Light of International Standards of Human Rights Protection)*, in: E. Halizak, R. Kuźniar, G. Michałowska, J. Symonides, R. Zięba, *Stosunki Międzynarodowe w XXI wieku (International Relations in the 21st Century)*, SCHOLAR, Warszawa, 2006; and Hanna Schreiber, "Międzynarodowa ochrona kultury i dziedzictwa kulturowego ludów tubylczych" ("International Protection of the Culture and Cultural Heritage of Indigenous Peoples"), *Stosunki Międzynarodowe-International Relations*, Vol. 35, 2007, pp. 141-160.

²⁴ Judgements of the African Commission on Human and Peoples' Rights, including: Communication No. 150/96, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, 1999, AHRLR (2000) 235; Communication No. 279/03, *Sudan Human Rights Organisation and another v. Sudan*, 2009 AHRLR (2009) 153; Communication

No. 276/2003, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, AHRLR (2009) 75. Judgements of the Inter-American Commission on Human Rights, see cases: *Marry and Carry Dann*, case 11.140 v. United States (Report No. 99/99, 27 December 1999); *Maya Indigenous Communities of the Toledo District*, case 12.053 v. Belize, Report No. 40/04 of 12 October 2004; *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001, Inter-Am. Ct. H.R. (Ser. C), No. 79 (2001).

²⁵ F. Lenzerini, *Culturalization of...*, op. cit., p. 193.

²⁶ See: Grażyna Michałowska, "Miejsce kultury w polityce Unii Europejskiej" ("The Place of Culture in the Policies of the European Union"), in: *Integracja europejska. Instytucje. Polityka. Prawo (European Integration. Institutions. Policies. Law)*, G. Michałowska (ed.), Warszawa, 2003, pp. 307-325.

²⁷ *Ibidem*, p. 203.

a considerable number of European states are struggling²⁸, all the more because cultural diversity in Europe is a source of antagonisms rather than profits²⁹. Marginalization of culture

can be, therefore, how states attempt to keep a tight rein on their multicultural societies in order to prevent potential conflicts³⁰.

4. FROM CULTURALIZATION OF HUMAN RIGHTS TO THE ‘RIGHT TO CULTURE’

The notion of culturalization of human rights, which concerns the broad context of recognizing the importance of cultural elements and developing human rights standards on the basis of cultural determinants, can provide the foundation for the emerging concept of the ‘right to culture’. So far, the right to culture itself is not anchored in law, but there is a broad array of various declarations, conventions and recommendations that speak of culture, cultural rights, participation in the cultural life, and broadly understood rights from which cultural rights are derived.

The right to culture can concern at least two areas and can be understood in at least two ways. First, the right to culture as the right of individuals to freely practice family and tribal customs and traditions and live in

accordance with the rules of the cultural group they belong to as well as to practice the culture (language, customs, lifestyle) they identify themselves with. The state’s role is to ensure the freedom of expressing this culture and to make it possible for many cultures to coexist. Second, the right to culture that is the common denominator and collective name for, among others, the traditional cultural rights from the package of second-generation rights (e.g., the right to participate in the cultural life of the community, the right to free research, the right to share in civilizational advancement, the right to free research, education, research, etc.) and, consequently, imposing an obligation on states to allow individuals to benefit from cultural property and ensure the survival of this property

²⁸ *Ibidem*.

²⁹ *Ibidem*, p. 204.

³⁰ *Ibidem*. See also: Hanna Schreiber, Anita Budziszewska, “W stronę prawa do kultury” (“Towards the Right to Culture”), in: E. Mikos-Skuza, K. Salaciński (eds.), *Ochrona dziedzictwa kultury w czasie konfliktów*

zbrojnych. 60-lecie konwencji haskiej i 15-lecie II Protokołu (Protection of Cultural Heritage During Armed Conflicts. 60th Anniversary of the Hague Convention and 15th anniversary of the 2nd Protocol), WCEO, Warszawa, 2014.

(care for material and non-material property, subsidizing cultural undertakings, establishing and maintaining museums and culture centres, cultural education, etc., as well as broadly understood access to these goods)³¹. The ‘right to culture’ in the first meaning is ‘scattered’ among many conventions and declarations and often is considered equal to group rights of national and ethnic minorities, indigenous peoples, or the right to self-determination. This concept is mainly characteristic of multiethnic and multicultural states (South America, Asia, Africa). In this interpretation of the term, the ‘right to culture’ refers to groups for whom their distinctive cultural identity remains an integral part of their way of life. The second interpretation of the right to culture is associated with issues such as cultural life, access to culture, cultural education, protection of cul-

tural and natural heritage, creative, literary and artistic activity, etc., which have the greatest chance to be realized in developed countries. An element of such understanding of the right to culture can be found in, for example, the Polish initiative of the National Centre for Culture and the city of Wrocław aimed at enshrining the ‘right to culture’ in the European Convention for the Protection of Human Rights and Fundamental Freedoms³² and the Charter of Fundamental Rights of the European Union³³. So far, the Polish project has been a stimulus for a discussion on the issue of ensuring access to high culture, participation in cultural and artistic life, which – according to the representatives of the National Centre for Culture and the city of Wrocław – should be confirmed in law³⁴. Unfortunately, under this interpretation, ensuring access to culture has an

³¹ See: Hanna Schreiber, Anita Budziszewska, “W stronę prawa do kultury...; and Bożena Gierat-Bieroń, *Prawo do kultury. Nowy obszar aspiracji obywatelskich*” (“The Right to Culture. A New Area of Civic Aspirations”), *Kultura współczesna*, No. 3, 2014, pp. 194-195.

³² Cf.: *Polska chce zapisania w Europejskiej Konwencji Praw Człowieka prawa do kultury (Poland Wants the Right to Culture Enshrined in the European Convention on Human Rights)* – an interview with the Director of the National Centre for Culture, Krzysztof Dudek, on the proposal of the

Centre and the city of Wrocław to enshrine the ‘right to culture’ in a Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, available at: <http://dzieje.pl/kultura-i-sztuka/polska-chce-zapisania-w-europejskiej-konwencji-praw-czlowieka-prawa-do-kultury> (accessed on: 13 December 2015).

³³ See: Debate on the right to culture in the Centennial Hall, see: <http://www.wroclaw.pl/debata-o-prawie-do-kultury-w-hali-stulecia> (available at: 13 February 2013).

³⁴ See: <http://wroclaw2016.pl/prawo-do-kultury/> (accessed on: 17 February 2015).

economic aspect as well, which raises questions about the activity of associations, culture institutions, local governments for which paid access to cultural achievements is one of the ways of operation. Furthermore, there is the crucial issue of copyright and distribution of cultural works. The notion of enshrining the ‘right to culture’ as the right of access to high culture in the European Convention for the Protection of Human Rights and Fundamental Freedoms is also justified³⁵ because this would make the right to culture a fundamental right and would trigger the relevant procedures aimed at guaranteeing these rights by the signatory states; we need to remember that the application of these rights is controlled by the European Court of Human Rights, whose judgements are bind-

ing for states and with which citizens of the signatory states may file individual complaints.

The debate on the ‘right to culture’ is not at all groundless, however, as shown by numerous court judgements and opinions of commissions working in the area of human rights. The significant role of culture is also underlined in the judgments of the Court of Human Rights. The Court is aware of the need to take into consideration and respect cultural differences as the basis for the peaceful coexistence of groups representing different cultures and of the significant role played by intercultural dialogue³⁶. The judgements of the European Court of Human Rights³⁷ confirm such rights as: the right of access to culture³⁸, the rights to artistic expression³⁹, the

³⁵ *Ibidem*, *Polska chce zapisania w Europejskiej Konwencji Praw Człowieka prawa do kultury...*

³⁶ See: *Aspects of Intercultural Dialogue in the European Court of Human Rights’ case-law* – report of the European Court of Human Rights of 2007.

³⁷ See: *Cultural rights in the case-law of the European Court of Human Rights*, Council of Europe/European Court of Human Rights, January 2011, available at: http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf (accessed on: 13 February 2015).

³⁸ See: case *Akdaş v. Turkey* (No. 41056/04, 16 February 2010), *Khurshid Mustafa and*

Tarzibachi v. Sweden (No. 23883/06, 16 December 2008), *Jankovskis v. Lithuania* (No. 21575/08), *ENEA v. Italy* [GC] (No. 74912/01, § 106, 17 September 2009), *Boulois v. Luxembourg* (No. 37575/04, § 64, 14 December 2010).

³⁹ See: case *Müller and Others v. Switzerland* (24 May 1988, Series A No. 133), *Otto-Preminger-Institut v. Austria* (20 September 1994, Series A No. 295-A), *Karataş v. Turkey* case ([GC], No. 23168/94, ECHR 1999-IV), *Alınak v. Turkey* (No. 40287/98, 29 March 2005), *Judgment in Vereinigung Bildender Künstler v. Austria* (No. 68354/01, 25 January 2007), *Lindon, Otchakovsky-Laurens and July v. France* ([GC], Nos. 21279/02 and 36448/02, ECHR 2007-IV).

right to cultural identity⁴⁰, linguistic rights⁴¹, the right to the protection of cultural and natural heritage⁴², the right to academic freedom⁴³, and the right to seek historical truth⁴⁴. However, so far there has been no right to culture per se.

Two noteworthy articles that should be mentioned in this context are *Liberalism and the right to Culture* by A. Margalit and M. Halbertal – which

was published in *Social research: An International Quarterly* 80(2) in 2004 and where the right to culture is understood as a group right and while it is ‘problematic’, it is also necessary in the functioning of the state⁴⁵ – and the related article by Chaim Gans, *Individuals’ Interest in the Preservation of their Culture*, “Law and Ethics of Human Rights. Multiculturalism and the Anti-discrimination

⁴⁰ See: Chapman v. the United Kingdom ([GC], No. 27238/95, ECHR 2001-I), (Muñoz Díaz v. Spain, No. 49151/07, 8 December 2009), Ciubotaru v. Moldova (No. 27138/04, 27 April 2010), Sejdić and Finci v. Bosnia and Herzegovina [GC], Nos. 27996/06 and 34836/06, § 43, 22 December 2009), Sinan Işık v. Turkey (No. 21924/05, 2 February 2010), Cyprus v. Turkey [GC], No. 25781/94, §§ 241-247, ECHR 2001-IV, Cha’are Shalom Ve Tsedek v. France [GC], No. 27417/95, ECHR 2000-VII, Dogru v. France, No. 27058/05, § 72, 4 December 2008, Ahmet Arslan and Others v. Turkey, No. 41135/98, 23 February 2010), Sidiropoulos and Others v. Greece (10 July 1998, Reports of Judgments and Decisions 1998-IV).

⁴¹ See: Senger v. Germany (dec.), No. 32524/05, 3 February 2009), Baybaşın v. the Netherlands (dec.), No. 13600/02, 6 October 2005), Ulusoy and Others v. Turkey (No. 34797/03, 3 May 2007), İrfan Temel and Others v. Turkey (No. 36458/02, 3 March 2009), Catan and Others v. Moldova and Russia (Nos. 43770/04, 9 June 2009, Podkolzina v. Latvia (No. 46726/99, ECHR 2002-II), Birk Levy v. France (dec.), No. 39426/06, 21 September 2010).

⁴² See: Beyeler v. Italy ([GC], No. 33202/96, ECHR 2000-I), Debelianovi v. Bulgaria (No. 61951/00, 29 March 2007), Kozacıoğlu v. Turkey [GC], No. 2334/03, 19 February 2009), Hamer v. Belgium, No. 21861/03, ECHR 2007-V, Turgut and Others v. Turkey, No. 1411/03, § 90, 8 July 2008; Depalle v. France [GC], No. 34044/02, § 81, 29 March 2010); Hingitaq 53 and Others v. Denmark (dec.), No. 18584/04, ECHR 2006-I).

⁴³ See: Sorguç v. Turkey, No. 17089/03, § 35, 23 June 2009), Cox v. Turkey (No. 2933/03, 20 May 2010), Lombardi Vallauri v. Italy (No. 39128/05, 20 October 2010).

⁴⁴ See: Chauvy and Others v. France, No. 64915/01, § 69, ECHR 2004-VI), Monnat v. Switzerland, No. 73604/01, § 64, ECHR 2006-X); Lehideux and Isorni v. France, 23 September 1998; Garaudy v. France (dec.), No. 65831/01, ECHR; Orban and Others v. France, No. 20985/05, 15 January 2009); (Dink v. Turkey, Nos. 2668/07 and others, 14 September 2010); Kenedi v. Hungary (No. 31475/05, § 43, 26 May 2009).

⁴⁵ A. Margalit and M. Halbertal, *Liberalism and the right to Culture*, *Social Research: An International Quarterly*, 80 (2), 2004, pp. 449-472.

Principle”⁴⁶. It should also be noted that the right to culture that Margalit, Halbertal and Gans write about concerns culture understood as lifestyle, ethno-linguistic background as well as traditions and customs, passed on for generations.

As we can see, the ‘right to culture’ is a vague, imprecise and very broad expression. Its understanding and interpretation depends on the cultural specificity of the given state and the perception of the role culture plays in the society, the country’s level of development and ethnic diversity. It seems that the right to culture understood as an aspect of high culture can be realized in highly developed countries, in which culture and cultural life are important enough for the country to be forced to create conditions conducive to its development. On the other hand, there are less developed, multicultural countries often struggling with problems of existential importance (water shortage, extreme poverty, internal conflicts, including ones caused by cultural differences) located in regions such as Africa, Asia, South America, or the Middle East. For these societies and regions

the right to culture will rather take the form of the right to retain their cultural ties and identities, the freedom to practice the customs and traditions cultivated for centuries.

The division of the right to culture into only two concepts is, of course, a considerable simplification, and we should remember that each of them contains different elements and components. One of these is the aforementioned Polish initiative, understood as the right of access to high culture. For a broader analysis of the nature of the right to culture we would need to review all the documents and international agreements that concern culture, and then list all the elements and components of the right to culture. An important place in this mosaic of diverse legal documents is occupied by the judgements of the European Court of Human Rights due to the role the Court plays in the European system of human rights protection.

The fact that countries are clearly wary of accepting the status of culture as the fundamental right shows that culture is in fact underestimated among human rights. It seems that countries are not yet ready to guarantee this right or are afraid of possible consequences and overinterpretation because it is unclear how to broadly interpret the right to culture, when ‘the concepts of broadly understood cultural rights, protection of cultural

⁴⁶Chaim Gans, “Individuals’ Interest in the Preservation of Their Culture”, *Law and Ethics of Human Rights. Multiculturalism and the Anti-discrimination Principle*, Vol. 1, Issue I, 2007.

property and protection of national heritage are inextricably interwoven, creating a vast array of legal standards with the common aim of protecting the source of these standards

and at the same time their object: culture itself⁴⁷.

⁴⁷See: H. Schreiber, A. Budziszewska, *W stronę prawa do kultury*, op. cit.