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Conflict of values in a global space, in the background of different view of natural law

Abstract

This article is dedicated to the importance of values and their perceptions of the different understanding of the natural law. It is essential to define the legal point of view, the context in which we explore the concept. It could be, for example, the context of natural or positive law, whether the context of subjective or objective law, etc. This define is especially important in understanding international instruments that are dedicated, for example, human rights, while drawing inspiration from different culture, different historical experience and perception at different sources of law. It is important to bear in mind the purpose of an international document, which must be capable of applicability. In order, not to create documents that are not signatories to the applicable due to misunderstanding and underestimation of the diversity of cultures and perception of terms.

Annotasiya

Bu məqalə dəyərlərin və onların təbii hüququn fərqli aspektindən dərk olunmasının əhəmiyyətinə həsr olunmuşdur. Anlayışı tədqiq ediyimiz kontekstdə hüquqi mövqenin müəyyən edilməsi vacibdir. Bu, misal üçün, təbii və ya pozitiv hüquq, eləcə də subyektiv və ya obyektiv hüquq kontekstində ola bilər. Bu müəyyən etmə məsələn müxtəlif mədəniyyətlərdən, fərqli tarixi təcrübə və fərqli hüquq mənbələrində qavrayışdan təsirlənilərkən insan hüquqlarına həsr olunmuş beynəlxalq alətləri anlamaq üçün xüsusilə əhəmiyyətlidir. Düzgün dərk edilməmə, mədəniyyətlərin və şərtlərin diqqətdən qaçırılmasına yoll verməmək istiqamətində imzalanma qüvvəsi olmayan sənədləri yaratmamaq üçün tətbiq edilə bilinən beynəlxalq sənədin məqsədini yadda saxlamaq vacibdir.

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Introduction

The term "value" is one of the most used terms in the theory of law. For man is the value of what feels right, great, beautiful or desirable, what is needed and important for him. It is something good, profitable for us. Throughout his life, man tries to create some values, protect them, and seek to maintain and develop. Fulfilling values gives meaning to our existence. Per John Finnis the knowledge is the value.[1] Klyde Kluckhohn appropriate to define value as explicit or implicit, for individual or group, characteristic imagination (concept) of desirable affecting choice possible way, means and objectives of activity.[2] Values represent a certain ideal of and command respect (they are attractive and their achievement is perceived as a necessity). They are so certain standards, individual or cultural (social, moral), by which are things, events or behaviour compared and approved.[3] For individual value is generally considered to be what is the subject of his needs, what is needed is derived from the relationship between the need and by what it can be satisfy. It is the same in society, and further in the rule of law. The rule of law has also sought to create, protect, preserve and develop values. This need is satisfied by law, thus fulfilling the rule of law. The hierarchical structure of these principles, however, is not static, and changes over time depending on the development needs of the society. Needs, in comparison with the values, are for society more primary, and therefore they are determined by them. Needs in society, as basic motives of behaviours, are inciting society to action to effect on state and its law. Values may thus appear as a sort of contrast in compare with needs, because values determine the direction of development and goal of an effort. [4] Per Dworkin, different values form a coherent system where together they do not compete but rather complement each other.[5]

If we look at the concept of value from a legal standpoint, it is essential to define the legal point of view, the context in which we explore the concept. It could be, for example, the context of natural or positive law, whether the context of subjective or objective law, etc. In the legal theory in general exists disagreement on the question "What is law?". The theoretical disagreement is problematic, which is the reason why most legal philosophers claim to be the only apparent disagreement. It can be concluded, that all practitioners, lawyers and judges, agree with legal bases. Ronald Dworkin called this view

[1] "To think of knowledge as a value is not to think that every true proposition is equally worth knowing, that every form of learning is equally valuable, that every subject-matter is equally worth investigating." John Finnis, Natural law and natural rights, 62 (2011).

[2] Clyde Kluckhohn, Velký sociologický slovník, 379 (1996).

[3] Miloš Večeřa, Sociologie práva, 130 (2006).

[4] Ivan Liška, *Hodnota princípov v právnom štáte:* Princípy v práve, Paneurópska vysoká škola, 125 (2015).

[5] Ronald Dworkin, Law´s Empire, 7-13 (1986).

on agreement of fundamental rights like "ordinary fact". According to Dworkin, law is flax matter of what previously decided legal institutions, such as legislative bodies, city councils and courts. And to any such body ruled that employees can claim compensation for injuries that caused them colleagues, so it is the law. If it decides otherwise, it is the law. So, the question of the law can always be that we will peer doing books where they kept records of institutional decisions. The law exists as mere facts and what the law is, does not depend on that, what it should be.[6]

I. Values and natural law

The law is normative legal system, and from other normative systems (religion, morality, internal rules of legal entities) do differ in their enforceability of law, as major subject in the territory. A feature of the legal system is the ability of enforcement of the law by public authorities, and the law is subordinated to all entities of legal relations, including the state. It´s important to discuss about issue of the modern rule of law, whose core is natural law theory and the idea of it, that human rights and fundamental freedoms belong to man, not taking into account the positive law seen as a applied and independent law. By these rights and freedoms, derived from natural rights of individual, are those, which are based on his intellect, character, or the "will of God". [7] These rights belonged to all, by not taking account of attributes such as social status or nationality. [8]

Natural law is understood as a law independent of the will of the people, universal and irrevocable, which can be justified by the idea that "law of nature can be identified people and practically implemented by again using only natural abilities - human mind. Natural law is therefore existing, by mind recognizable order, "the natural order of things" *(Rerum ordre)*. Natural law is preceding to variable law of people, and is standing over it. [9] It is expected from the law, that for the society, it will be basis of justice, freedom and equal conditions for its recipients. The relation between law and values would be placed in the content of law, which is created by values of normative legal system. Influence of values is felt also in the enforcement of the law by state, which is implemented, not only by sanctions, at the breach, as well as by preventive measures. Preventive measures are as a means of protecting the values contained in the law. The law that protects the values that society, at that time, prefers and prioritizes. Precisely the time factor plays an important role, because the character and perception of

[6] *Ibid*, at 22-23.

[7] We are talking about rights inalienable, inviolable, inalienable and imprescriptible.

[8] Miloš Večeřa, Teória práva, 106–107 (2006).

[9] Eva Ottová, Teória práva, 41 (2006).

preferred values of society (sometimes the values themselves) change over time and influence as well as on changes in the law. [10] In terms of law, ethics and philosophy value determines the criteria by which one considers its decisions. Values can be understood as subjectively appreciated needs, which in the law, are creating means, but also the ultimate purposes, to achieve other purposes. Values are formed by an objective factor - the value committed to specific need; and the subjective element - the result, of the process of subjective assessment of the needs, is the value. Between need and value exists inverse relationship. In the hierarchy of the system of values are those values that are currently unmet need, scant satisficed or as an appeared to subject (individual, company or social group). Values, that are at risk at any given time, thus shifted in the hierarchy of values at the leading partitions. Real need however, is not so important in this alignment, as rather the subjective valuation of the real, respectively supposed needs. As Aleš Gerloch correctly points out, it is possible in this connection give an example, that the basic and indispensable necessity of life, oxygen, doesn´t use to be stated on the scale of values[11], its necessity is not adequately priced in the state constitution, because it is in normal living conditions fully accessible. But already in such fundamental values, which until recently did not have to be protected by legislation, see nowadays changes.[12]

Part of the notion of "value" is a comparison of better and worse, good and bad, correct and wrong. Social values create space for classification. Perhaps all individuals must go through daily situations that require: judge, compare, evaluate, choose and confront. For positive in society it considers what is fair, honest, moral, ethical, or moral. "Value" therefore requires a distinction between worst and better way out. Legislative system should provide the necessary objective responses to subject and thus help to reach a right conclusion, conduct a better choice.

In the hierarchy of values of the legal system, in terms of anti-discrimination legislation, the value of freedom is in private law primacy

[10] *"Studies show variability of value orientation of people or social groups, and therefore variability in attitudes as a result of changes in value preferences."* Aleš Gerloch, Teórie práva, 247 (2009).

[11] Aleš Gerloch, Teórie práva, 247 (2009).

[12] Slovenia in year 2016 became the first country of the European Union, which has incorporated into its constitution the right to water. They literally in the Slovenian Constitution added the following sentence: "Water resources in the public interest, which is administered by the state. Water resources are primarily and permanently used to supply people with drinking water and domestic water, and in this sense water is not a commodity market. This change. in the value position of the society, demonstrates the EU citizens' initiative in 2014, through which excluded water supply and management of water resources from the rules of the European internal market. The guardian: Slovenia adds water to constitution as fundamental right for all (2016), https://www.theguardian.com/environment/2016/nov/18/slovenia-adds-water-to-constitution-as-fundamental-right-for-all (last visited 01.02.2017).

over value of equality. Number of values, but mainly value of freedom, is the value of a universal character, whose status is in the foreground, and that in most legal cultures. In other countries, are emerging values stemming from religion or tradition, that can be completely in contradiction with the values of the continental legal system (such as inequality: the situation of men and women in countries with Islamic legal system "Sharia", the Indian family law, in the Russian labour law, etc.)

II. The universalization of Western legal tradition

It is believed for centuries of Western culture[13] on its civilizing mission, which wants to bring freedom and enlightenment to nations, that, according its, were not so lucky to be born in the society of Western values. In international relations, it manifested in various forms - from colonization to conditioning the foreign aid by observance human rights and by democratization of the country. Even today, Western societies are trying to import its values and its culture to non-Western societies. These efforts tend them termed universalistic, in the understanding of non-Western societies it is a new colonialism and cultural imperialism. Due to the current protests and criticism of non-Western societies universalism concept is gaining more and more negative connotations. On the other side of the spectrum stood cultural relativism, which is one of the main points of criticism of Asian contemporary Western understanding of human rights.

Universalism as an ideology of Human Rights proclaims that human rights "are independent of place, ideology and value systems, and is therefore fully taking into account cultural specificities and absolutely excluded in all situations." [14] The theory of universalism is a relatively modern, it began to spread mainly after the Second World War in connection with the adoption of the Universal Declaration of Human Rights. Principles anchored in the Declaration are therefore attributed to universality and applicability in all cultures and societies, a departure from these principles is not justifiable for any reason. Wide dissemination of universalism, however, is particularly associated with the end of the Cold War - victory of the Western bloc should indicate the superiority of its values, which are distributed to regions in which previously have not been enforced, such as in the regions of Asia, North Africa and the Middle East. Values that universalism of human rights asserts, have their roots in the French Revolution, Christian universalism and philosophy of natural law - is thus rooted in the concrete political and philosophical premises, which come

[13] For purpose of this article will consider the West European, respectively North American.
[14] Fernand de Varennes, *The Fallacies in the "Universalism versus Cultural Relativism": Debate in Human Rights Law.* Asia-Pacific Journal on Human Rights and the Law, 83 (2006).

mostly from the West. [15] The idea of universalism is based on the conviction that human has the universal right to human dignity, which is often hampered by the state and must therefore be protected. Further, it assumes that people around the world share the need for freedom of thought and expression, the need of association with others, the need to develop their mental abilities, have adequate food, clothing and accommodation. [16] The concept of these universal needs itself thus contains the idea of universalism, but also elements of individualism in relation to the recipient. But there is a big difference between universal implementation of human rights, which de facto does not exist, and universal standard of human rights which can be discussed. In addition to the mentioned, there in the Western sense of human rights exists also conflict between individual and collective rights and the civil-political and socio-economic rights. Western individualistic concept of civil and political rights keeps their hegemony. This brings us to the crucial debate, about the universality of human rights, which is between universalism and cultural relativism. Universalists argue in favour of general applicability rights accord to idea of the universal essence of human nature. Cultural relativists, in contrast, spoke out against the individualistic notion of rights derived from Western legal tradition. They criticize the idea that the law would not necessarily be part of the culture from which it comes.[17] However, the concept of human rights does not expect universal rights, but the universalization of Western legal tradition.

In the opinion of Michael Ignatieff[18] was universalism (in the late 90s) of last century criticized by three directions - from Islam, from the West itself and from East Asia. Islamic criticism is particularly directed to the western secularization and family law, which is not in accordance with Islamic tradition.[19] Critique, which comes of the West itself, opposes imperialist attempts to dominate the rest of the world using the ideology of human rights. [20] Asian critique rejects the functionality of Western values in the Asian area in favour of promoting its own path for development and prosperity. Michael Ignatieff notes that while the Islamic critique is based on

[15] Michael Freeman, Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia, 44 (2000).

[16] Paul J. Magnarella, *Communist Chinese and Asian Values Critique of Universal Human Rights*: Journal of Third World Studies, 179–192 (2004).

[17] Which would mean, that at UN headquarters in New York and Geneva and the various declarations of human rights formulated and finalized, doesn´t exist particulate culture. But of course this particulate Culture exists at this level.

[18] Michael Ignatieff, The Attack on Human Rights, 102 (2001).

[19] Islamic criticism comes mainly from the mouth of the most orthodox religious leaders of countries like Iran or Taliban regime, universalization of human rights would bring attention to the individual, which is a concept that is rejected by Iran.

[20] Between Western critics belong example Samuel Huntington, Peter Schwab or Adamantia Polis.

the inability of Islamic states to benefit from the globalized economy, the Asian critique has basis just in the economic success of these countries. For proponents of universalism, it is the expression of the existence of certain shared set of values that requires every individual to live in human dignity. For opponents of universalism, by contrast, only it attempts to create a uniform world culture. [21] Another argument against the universality of human rights is their criticism as another form of modernization theory. Human rights are perceived as modern, as those that arose in Europe and thus depict the West as a place of progress. On the contrary, non-western cultures are perceived as backward, ruled by inequality, patriarchal systems and religious fundamentalism. Probably the best-known issue in this case is the question of the equality of women. Women are illustrated as victims of the culture in which they were born. Modernity, as without culture, it should set them free. Such views overlook the fact, that violence against women has many social and political causes, mostly local conflicts and inability of state. [22] Such culturalisation of the rights distracts from wider issues relating to inequality and bad government policies. In non-Western societies, can be identified indigenisation in which could be seen the tendency of traditionalism. This refers to the autochthonous cultural traditions, which seeks to revitalize and attaches them to the normative content. Traditionalism arises as a necessity of defence against the forces and ideas that could disrupt the existing political and social order, in this case against the universalism of western values. Traditionalism is often part of a broader political conservatism and attempt of local leaders to preserve the stability of the regime. Political elites are presented as successors of ancient traditions, such a tactic increases their legitimacy. That is why it is supported by cultural relativism and the highest official circles of countries such as in Malaysia, Singapore or Indonesia. Cultural relativism can thus arise, so to say assertively in response to the progress and the belief that the reason for this progress is currently home values. Or it can also be developed in a more defensive attitude, as trying to prevent other values increase in domestic system.

III. Conflict of values

Understanding of human rights may therefore be due to different values, culture and religion, thus giving rise to criticism of accepted international

[21] Michael Freeman, Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia, 45-46 (2000).

[22] For example: The group rape in Pakistan are not the result of Pakistani culture, but local (and international) politics. Female submission is based more on government laws on property and inheritance, or the dominance of men in the money economy than of patriarchal culture.

human rights documents. This is reflected the first time already in 1948 for the approval of the Universal Declaration of Human Rights. However, despite debate about the universal nature of human rights enshrined in the Declaration, none of the then representatives voted against. [23] Only Saudi Arabia abstained, but this can be evaluated as a certain gesture of political goodwill, whereas, during the debate raised a number of substantive objections. [24] The most serious complaints had to the provisions on free marriages. [25] Conflict of Muslim approach to the understanding of enforcement in the Declaration is clear. Saudi Arabia on this issue quite clearly expressed the view that the development of the draft of the Universal Declaration were largely considered the standards recognized by western civilization, while not "more ancient" civilizations, that have passed the stage of experiments and have established institutes such as marriage, which in the course century confirmed their development. [26] Obviously, the representatives of the country entered felt that in this case there is a proclamation civilization superiority of one over the other. However, the fundamental core of the conflict in the understanding of human rights is that the UDHR is a secular text stemming from human reason, the Muslim approach is looking for the original source of man in the will of Allah and the Koran, and understands them as the principles of the divine nature, which, unlike secular documents, are not subject to change.

Despite puzzled adoption of the Universal Declaration, the Muslim world didn´t conceive hatred for to search for an answer to the question of enshrining and protection of human rights. In 1976 was adopted the Universal Declaration of Peoples' Rights (Right of Peoples). This document is surprisingly secular versus others.[27] Thus creation of a regional system of cooperation countries, beyond their borders, providing frame for the adoption of document about Human Rights. Afterwards followed by other documents as the Declaration of Human Rights in Islam (1981), Islamic Universal Declaration of Human Rights (1981), Green Charter of Human

[23] It must be recalled that most of the countries that today we match to the Arab world at the time of the adoption of the Universal Declaration still under colonial rule. At the time of the Universal Declaration were members of the United Nations only in Egypt, Iraq, Lebanon, Saudi Arabia and Syria.

[24] Along with Brazil, they demonstrated opposed the excessively materialistic concept of the Declaration.

[25] Marriage was perceived by the Saudi delegation only in quantitative terms but qualitative aspect was not taken into account.

[26] Michael Ignatieff, The Attack on Human Rights, 103 (2001).

[27] Universal Declaration of Peoples' Rights:
http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm
There are individual provisions of recipients between individuals but are focused on the rights of nations. The document is full of proclamations to overcome colonialism, but its major drawback is the almost complete absence of pointing to individual rights.

Rights (1988), and last but not least the Cairo Declaration of Human Rights in Islam.

This latter document, adopted in Cairo in the year 1990, the above mentioned different in several respects. As the preamble of the Declaration implies, this document expressing the need for adopting a document on human rights, and in this sense it can be understood as a reaction of the Muslim world to the Universal Declaration of Human Rights from the year 1948. Unlike the Universal Declaration of Human Rights, it is not a secular document, which is in it is very clearly stated that this is a "contribution to the efforts of mankind to enforce the human rights to protect man from exploitation and oppression and to ensure the freedom and right to life in dignity in accordance with the Sharia."[28] In a similar vein, the text of the document bears. Ideological sources of the Declaration are not a natural law as is the case in Western documents, but the revelation mediated captured prophet in the Koran.[29] As for the actual legislative text, that begins with Rule 1, expressing, that all human beings are part of one family associated subordination to Allah and origin of the first man - Adam. "All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity. " [30] In contemplating this declaration, has to be seen its religious dimension, not just legal or political. The Declaration is not a legally binding document, but rather should be a model for legislation in the States. Unlike the previous document Arab Charter on Human Rights, it is applicable to the protection of human rights adopted within the framework of the Arab League. Thus, while the Cairo Declaration is a document that focuses on the whole Muslim world, the Arab Charter has had a regional instrument of protection of human rights within the Arab League. This goal, however, has fallen. In contrast to the Cairo Declaration, text of the Charter adopted in the year. 1994 was never put into practice as a legally binding document. The text of the Charter has been extensively rewritten in the process of preparing a version of the Charter of the year

[28] Cairo Declaration of Human Rights in Islam:
http://www.oic-oci.org/english/article/human.html.

[29] Cairo Declaration of Human Rights in Islam:
http://www.oic-oci.org/english/article/human.htm. This statement can be clearly inferred from the last paragraph of the preamble, which is an expression of faith in that fundamental rights, freedoms are an integral part of Islam and are inherently irrevocable, and no one can violate or ignore them because they are binding the commandments of God.

[30] Here we could see the conflict between this sentence and the preceding sentence about equality in religion. It looks like mix of ideas of universalism of General declaration of human rights with no secularity.

2004.[31] The pressure to perform this move comes especially from NGOs and the UN High Commissioner for Human Rights. The process of revising the Charter were also involved by independent experts and non-governmental organizations. Despite these steps, this Charter is also subjected to criticism, because it is still a certain compromise on certain rights, or at least the parts that were enshrined in the Charter because of their inapplicability in some countries of the region. In this criticism is seen a conflict in values and differences in the perception of human rights in Western society and in Muslim society. The criticism concerns the restriction of religious freedom, freedom of conscience and expression and the prohibition of capital punishment of youths under the age of 18 years, which is not absolute in Charter. The Charter indeed mentions Islam and its legal system as the basis from which derive principles such as equality, respect for human dignity and respect for life. In contrast to its predecessors, the Arab Charter on Human Rights adopts the principles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. [32] Art. 1 proclaims the need for promotion of human rights at the core of national interests and also goal is enshrined the principle of universality, indivisibility, dependence and interdependence of all human rights. The Charter, at the first glance, is alleviating the relativistic approach of the older documents. One of the disputed part of the Charter, which causes some tension today, the second paragraph of Article. One of the disputed part of the Charter, which causes some tension today, is the second paragraph of Art. 2, which rejects racism and Zionism, and all forms of foreign occupation. Especially the call to make every effort to combat these unfortunate events, especially in the context of the elimination of anti-Zionism, may cause some concern. The right to life is enshrined in Art. 5. Article 6 establishes restrictions on the death penalty. Under this article, the death penalty can be imposed only for the most serious crimes and pursuant to a final court judgment. Interesting is the formulation of Article 7, which on the one hand, prohibits the capital punishment imposed on a person younger than 18 years, unless it will be permit by laws in force at the time of the offense. The wording of the article is not clear on its effects. It is difficult to determine, whether Article 7 takes effect ex nunc, so that the entry into force of the Charter is not punishable by the death of a person under 18

[31] It was so because the Arab Charter on Human Rights has become the subject of much criticism from human rights organizations in the region as well as beyond its borders due to the fact that backfired in the fulfilment of international human rights standards RISHMAWI, M.: The Revised Arab Charter on Human Rights: A Step Forward, in: Human Rights Law Review, 363, 363 (2005).

[32] League of Arab States, Arab Charter on Human Rights, (2004): http://hrlibrary.umn.edu/instree/loas2005.html (last visited at 28.01.2017).

years, unless this person committed the offense for which the death penalty imposed before the time of effectiveness of the Arab Charter. The second option, which can result from the text of Article 7, is simply the one that, where at the moment of committing a crime for imposing the death penalty permitted by law to impose the death penalty to persons under 18 years, the death penalty may be imposed despite the effect of the Arab Charter. In this case will be important to answer the question: Which law has been applied at the moment of the crime? In this provision, would be desirable existence of an international judicial body type, that the case law precise and settled interpretation and application of this provision. In this case is going on about human life and the right to preserve itself, what is currently generally regarded as the right to the highest value. Significant in this case is that the brightness differences in interpretation can cause irreparable damage. In compare with provision of Arab Charter Article 6, paragraph 5, of the International Covenant on Civil Political Rights is saying clearly: Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. From the wording of the Covenant it is clear that at this point, death sentences to persons younger than 18 years is not permitted. What's more, despite its contradictory wording of Article 7 is not one of the provisions listed in Article 4, paragraph 2, as subjects, which can´t be derogated. The opposite applies if the right to life (Art. 5), which cannot be derogated from. The opposite applies with the right to life (Art. 5), which cannot be derogated from. It can therefore be said that, for example, in a situation of threat to national security, the limitations of imposing the death penalty contained in the Arab Charter on Human Rights passed, respectively depart from them in national legislation. Article 8 provides for protection against torture and inhuman treatment. States, that are parties to the contract, must ensure the protection against torture and inhuman treatment of each individual, which is located on their territory. If we compare it with the text of the International Covenant and Civil and Political Rights, we can see that Covenant is in the power of provisions a step further when he says, not only on the prohibition of inhuman and cruel treatment but also banning imposing such penalties.[33] Some principles of the protection from torture are not enshrined in the Charter, e.g. it is the lack of a ban on the use of evidence obtained by torture, or cruel treatment in legal proceedings against a person who has been torture or cruel treatment undergone. Also in the Charter, there is no provision that would prohibit the use of torture under any circumstances and in any situation, including the state of war, threat of war, internal political crisis etc. One of the partial

[33] International Covenant on Civil and Political Rights. Article 7, (published under number 120/1976).

topics in the perception of a conflict of values are the rights of women. Legal relationships Muslim countries to the status and rights of women often resonates as a problematic issue especially when compared with women's rights in the European system of human rights. As noted above, the Charter precludes any discrimination based on sex. Equally condemns the use of violence in the family, but remains on conservative positions regarding marriage. Article 33 is speaking in general about the protection of the family as the fundamental unit of society. The Charter stipulates that no marriage cannot be concluded without the full consent of the intending spouses. However, as regards the rights and responsibilities of spouses during marriage and its dissolution, charter them closer says nothing and leaves the treatment of the issue to national law states. The only explicit prohibition applies to the use of violence against women and children in family relationships Also the Charter resigned on the issue of equality between spouses and leaves free rein to national legislation which no further action can be explained by the Charter to traditional forms of family organization.

Conclusion

On the one hand, it is possible for the said lack Charter take a critical stand on the other, it is questionable whether pressure from international society does not cause rejection of the entire catalogue of human rights. The question also remains whether it would be appropriate to intervene in the centuries formed the traditions and values of the Muslim world, which could be at the expense of the applicability of the results of laws. In this case the international legislatures and politicians have to approach to the issue sensitively and empathetically, if they would fulfil their objectives. First, given the fact, that the community of Muslim states is created by countries at different stages of development and with different legal systems and different cultures. Otherwise, I could come to disappointment, if not taken into account because of the social and cultural reality in the territory, remained modern document taking into account universal human rights standards will be inapplicable and would apply only formally. Normatively anchored catalogue of human rights is qualitatively better basis for the promotion of human rights as a legal vacuum, or enforcement of a foreign model for the protection of human rights. The application of religious documents, principles of human rights normative documents can have in the long term serious deficiencies. Islam, as well as every major religion is not built as a solid monolith, and there are a number of directions in it and learnings. This inevitably affects the law, which is interpreted by different authorities, often from different conclusions. The second problem of this system is that it is a kind of revelation of God's truth and therefore cannot be subject to criticism and thus no changes. Only interpretation can be changed.

However, the dynamics of social development brings changes and the law has to reflect them, if it wants to remain functional and applicable. However, transnational sources of law, which establishes a standard of human rights protection can play an important role as a unifying element transboundary individual jurisdictions and thus create room for better protection of human rights, values of nations, which will contribute to regional development in regions, which has vicissitudes of internal conflicts.