

“PERMANENT” FUNDAMENTAL RIGHTS IN A LEGAL SYSTEM IN TRANSITION - THE CASE OF MACAU

I INTRODUCTION

Macau is undergoing a transitional period from a **territory under Portuguese administration** to the People's Republic of China resumption of full sovereignty as a **Special Administrative Region** - on 20 of December 1999 - in accordance to the “Joint Declaration of the Portuguese Republic and the People's Republic of China on the Question of Macau”, signed in Beijing in 1987.

This international treaty - named “Joint Declaration” - is deposited at the United Nations and lays down the fundamentals of this international transfer process (with implications in fields like the legal system, public administration, exercise of sovereignty powers, political structure, judiciary and fundamental rights, among others).

With the Joint Declaration it was initialised a transition period a tool of the process of the international transfer. A first *subperiod* will reach its end at 19 December 1999. After that date a second phase of the transition period will start and it'll last for 50 years; for this period the PRC undertakes to uphold a set of various binding principles, policies and provisions that are included in the Joint Declaration.

Presiding to this self limitation on sovereignty is the “one country, two systems” fundamental strategy for the reunification of China.

The PRC will establish a Special Administrative Region that will enjoy a high degree of autonomy and (will) enact a Basic Law that stipulates the basic policies stated in the Joint Declaration.

Any discussion of Macau's legal system during the transition - like the one focusing on fundamental rights - must, however, be preceded by a delineation of some of the ideas shaping the subject.

There is an overriding need to specify what is meant by 'transition', or 'transition period'.

This is one of the concepts which, together with the continuity principle, is necessary for gaining an overall understanding of the issue in hand.

In fact we will try to discuss the issue of fundamental rights in Macau on a *global* or integrated perspective, rather than a single/isolated approach. So we will try to understand the status of fundamental rights within the Macau transition and not specifically to present an overview or detailed view of the fundamental rights that are granted, less to discuss the technicalities of a given legal regime of a certain fundamental right¹.

II

THE TRANSITION PERIOD

There has not always been a single, clear, interpretation of the concept of transition or transition period. In fact, in its simplest, most basic construction, it has been suggested that the transition period began when the Sino-Portuguese Joint Declaration came into effect in January 1988 and will end on 19 December 1999.

In other words, the transition period will last for the same extended period of time as the transfer of sovereignty over Macau² from the Portuguese Republic to the People's Republic of

¹ My *Fundamental Rights in Macau - from Territory under Portuguese Administration to Special Administrative Region of the Peoples Republic of China*, LAWASIA/CCCS, Macau, 1997, also focused on some of the issues and problems raised in this paper.

² The Sino-Portuguese Joint Declaration refers to this period of time in Point 3.

China. Linked to this opinion is a lack of conviction as to the efficacy, or even validity, of the Sino-Portuguese Joint Declaration.

This restrictive interpretation culminates by proposing that the Sino-Portuguese Joint Declaration will cease to have effect on 19 December 1999. On the following day, as the transition period will have come to a close, it will no longer make sense to invoke the international legal document which created and regulated that same transition period. Effectively, if it is accepted that the Sino-Portuguese Joint Declaration is what legitimises the transition period, then it must also be true that once this period comes to an end, the Sino-Portuguese Joint Declaration will no longer have any purpose.

This view is based on an isolated, hermetic interpretation of Point 3 of the Sino-Portuguese Joint Declaration, which does not take into account the remaining text of the treaty.

In support of this approach, comparisons could be made with the Joint Liaison Group. Although it will last past 20 December 1999, it will only operate until 1 January 2001.³ Once again, Macau is following the path of Hong Kong⁴, the basic difference being that Macau's Joint Liaison Group will have around two weeks - barely enough time to tidy away the files - while their counterparts in Hong Kong have around two and a half years' of work. This theory does not, however, follow the letter and the spirit of the Sino-Portuguese Joint Declaration. In fact, transition period must be understood as meaning the entire time for which the contracting parties, Portugal and the People's Republic of China, will be bound by the international treaty they decided to sign.

The Sino-Portuguese Joint Declaration constitutes, without question, a limitation on the exercise of sovereignty over the enclave. It is, however, a limitation freely created and desired by the two sovereign states in the normal exercise of their international legal powers.

³ Sino-Portuguese Joint Declaration, Annex II, part II, point 4

⁴ For more on this issue and a critique, see MANUEL ESCOVAR TRIGO, *A Transição na Declaração Conjunta*, "População e Desenvolvimento em Macau", UM/FM, 1994, pp. 372-373 and notes 28 and 29.

There are two reasons why the existence of this limitation on China's full exercise of sovereignty cannot be used as a basis for arguing that the Sino-Portuguese Joint Declaration will cease to be effective. Firstly, this is a limitation which already affects the Portuguese Republic, and secondly it was freely agreed by both contracting parties. They are thus self-imposed limitations translated into convention.

The framework of the Sino-Portuguese Joint Declaration varies; it fluctuates in rigour depending on the situation in which it is applied and to whom it is being addressed. In other words, the ways in which it can be applied are variable.

Effectively, then, the obligations created by the Sino-Portuguese Joint Declaration vary according to whether they deal with Portugal or China.

First and foremost is the obligation to transfer the exercise of sovereignty over Macau from Portugal to China. Other obligations arise as a result of this.

Consequently there is a wide range of obligations, as provided for in the various sections of point 2: *"The Government of the People's Republic of China declares that... the People's Republic of China will pursue the following basic policies regarding Macau:"*. There follows a list of eleven important "policies" which will define the future Macau Special Administrative Region. The list closes with a twelfth which, while reiterating what is stipulated in the text of Article 2, stresses that *"The above-mentioned basic policies... will be stipulated in a Basic Law... and they will remain unchanged for fifty years"*.

In addition to the obligations binding the People's Republic of China and those binding Portugal, there are still others which are directed simultaneously towards both parties, such as the creation of a Joint Liaison Group *ex vi* Article 4 and Annex II, point 1.

One of Portugal's obligations consists of promoting economic development and preserving Macau's social stability.⁵

⁵ For more on this package of obligations, see ALBERTO COSTA, *Continuidade e mudança no desenvolvimento jurídico de Macau à luz da Declaração Conjunta Luso-Chinesa*, Revista Jurídica, nº 1, p. 54.

Now that the obligations enshrined in the Sino-Portuguese Joint Declaration have been identified - albeit not exhaustively - it is immediately apparent that they are not directed uniformly to both parties, nor are they to be fulfilled within a uniform period of time. Nor does this period expire with the transfer of the exercise of sovereignty. In fact, the obligations of the People's Republic of China and, indirectly those of the Macau Special Administrative Region, last throughout the fifty years following the resumption of [China's] sovereignty over Macau.

This is a second transition period, or *subperiod*.⁶

As such, in addition to the period which has already been described, and which is possibly easier to grasp, the Sino-Portuguese Joint Declaration effectively indicates another, longer, period under the terms explained.

In conclusion, it can be said that the Sino-Portuguese Joint Declaration enshrines a transition period stretching from its implementation to the last day of the fifty years following China's resumption of sovereignty over Macau. This period can be divided into a further two periods, the first lasting until 19 December 1999 and the second beginning on 20 December of the same year and lasting for fifty years.

It is important to remember that the validity and efficacy of this international treaty do not expire on 20 December 1999.⁷ On the contrary, a new period will commence marked by a shift in the principal holder of power from Portugal to the People's Republic of China.

The Sino-Portuguese Joint Declaration will remain a prominent source of law for the Macau Special Administrative Region.⁸ Its norms, characterised as "policies" embodying

⁶ See MANUEL ESCOVAR TRIGO, *op. cit.*, pp. 368 *et. seq.*; FRANCISCO GONÇALVES PEREIRA, *Declaração Conjunta, modelo de transição e reforma da Administração*, in *Revista Administração*, nº 11, pp. 78 *et. seq.*

⁷ Nor, obviously, with the approval of Basic Law. See, for example, MANUEL ESCOVAR TRIGO, *op. cit.*, p. 374. There is a further theory which is rather less current and which views the transition in two periods, the first beginning with the implementation of the SPJD and the second following approval of the Basic Law. This theory does not include a third transition period.

China's post-99 obligations, may genuinely constitute "material limits" on the legislative power responsible for drafting (and amending) the Basic Law.

Thus, GOMES CANOTILHO sees the Sino-Portuguese Joint Declaration as playing a role in **guaranteeing, directing, stimulating and interpreting** the future Macau Special Administrative Region.⁹

III

THE CONTINUITY PRINCIPLE

A paramount principle is the one of the continuity/maintenance of the present social and economic systems and the laws currently in force will remain basically unchanged.

Article 2, No 4, of the Sino-Portuguese Joint Declaration stipulates that **all the laws in force at the time of transition will remain in force and basically unchanged**¹⁰.

This principle is reinforced in Annex 1, III, of the Joint Declaration, which states that following the establishment of the Macau Special Administrative Region the laws, decree-laws, administrative regulations and other normative acts previously in force in Macau shall be maintained unless they contravene the Basic Law or are subject to any amendment by the Macau Special Administrative Region legislative body. An *identical* provision can be found in article 8 of the Macau Basic Law.

⁸ See ALBERTO COSTA, *op. cit.*, p. 64, note 7; JORGE COSTA OLIVEIRA, *A continuidade do ordenamento jurídico de Macau na Lei Básica da futura Região Administrativa Especial*, Revista Administração, n°s 19/20, pp. 24 and 25; Paulo Cardinal, among others, *O sistema político de Macau na Lei Básica — separação e supremacia do executivo face ao legislativo*, Revista Administração, n°s 19/20, p. 80.

⁹ J. J. GOMES CANOTILHO, *As palavras e os homens — reflexões sobre a Declaração Conjunta Luso-Chinesa e a institucionalização do recurso de amparo de direitos e liberdades na ordem jurídica de Macau*, O Direito, Oct. 94, pp. 7 and 8.

¹⁰ On this, JORGE OLIVEIRA, *ob. cit.*

The basic idea is to maintain the *way of life* of its population unchanged. This is intrinsically connected to the existing social system as well as to the system that guarantees the fundamental rights of its residents.

All fundamental rights and freedoms will be ensured as assures the Joint Declaration.

Also in this aspect, we find that the continuity principle is the guideline that one should and must follow, if one wants to abide by the “rule of law”; hence, the idea of “permanent” fundamental rights in spite of the transition of the legal system.

One can try to define this apparently paradoxical relation - transition *versus* continuity - as some kind of formula (a political and diplomatic one) created to assure some balance between the (full) resumption of sovereignty by a sovereign State and the respect of the history, culture (including the legal one) and specific identity of Macau. And more, it also helps to *irradiate* a vote of confidence to the future by respecting the past.

So, if its true that we are going to face a transition situation in Macau, it is also true that the transition will not eliminate what exists before December 1999, but, on the contrary it will - in a given way - maintain it, or continue it.

In accordance with this continuity principle, fundamental rights in Macau, together with its general regime will, or are supposed to, continue; fundamental rights will thus be “permanent” in spite of the legal transition. They will survive the political and legal transition in Macau, if the Joint Declaration and the Basic Law are duly observed.

IV

FUNDAMENTAL RIGHTS IN A TERRITORY UNDER PORTUGUESE ADMINISTRATION

Macau’s political status, structure and public law guidelines are defined, since 1976, by (parts of) the Portuguese Constitution and a special constitutional law: the Macau Organic Statute.

The Organic Statute in itself does not comprise any kind of Bill of Rights or any chapter on Fundamental Rights. However, through article 2 of the Organic Statute, the “Rights, freedoms

and guarantees” system of the Portuguese Constitution is applicable to Macau. These constitutional rights enjoy direct applicability (self executing) and are subject to a very special legal regime and status.

The Portuguese Constitution provides a wide and rich catalogue of fundamental rights, like rights and freedoms of association, of religion and belief, of demonstration, of strike, of unions, of petition, several criminal procedures guarantees, of personal integrity and the right to life. Besides the definition of the rights, the Constitution establishes also a machinery envisaged to fully apply and guaranty the fundamental rights, specially a type of those rights.

In fact, the Portuguese Constitution, by a group of articles - 12, 13, 16, 17, 18, 19, 20, among others -, provides a thorough and comprehensive regime. This regime is, as seen, applicable to Macau.

For example, article 18 - juridical force/legal enforcement - states that the constitutional provisions relating to rights, freedoms and guarantees are directly applicable to, and binding on, both public and private bodies; those rights may be restricted by law (hence not by an administrative regulation) only in those cases expressly provided for in the Constitution and restrictions shall be limited to the extent necessary to safeguard other rights and constitutionally protected interests and laws restricting these rights shall be general and abstract in character, cannot have retroactive effect nor limit, in extent or scope the essential content of the constitutional provisions.

Article 19 provides, namely, that it's not possible to suspend the exercise of those rights, except where a state of siege or a state of emergency has been properly declared; the proportionality principle must be applied and, in any case should not be possible to suspend the exercise of, among others, the rights to life, personal integrity, defence of accused persons, freedom of conscience and religion.

Article 20 provides, in its number 5 that *“To defend the personal rights, freedoms and guarantees, the law assures to citizens judicial procedures characterised by celerity and priority, in order to obtain an effective and in useful (due) time protection against threats or violations of those rights.”*

One must refer that, in accordance with the Portuguese and Macanese system, fundamental rights are divided into two major categories - rights, freedoms and guarantees, on one side, and economic, social and culture rights, on the other side inserted in a specific Title.

The first group is the strongest one, both in scope, extension and remedies available.

However, some of the economic, social and culture rights can be, and in fact are, considered to be of an analogous nature to the other group, in accordance with article 17 that states that the general system of rights, freedoms and guarantees comprise those set out in Title II (of the Constitution) and fundamental rights of an analogous nature. Furthermore, article 16 provides that the fundamental rights contained in the Constitution do not exclude any other fundamental rights provided for in the laws or resulting from applicable rules of international law.

This system of rights, freedoms and guarantees - a certain *reinforced* type of fundamental rights - established in the Portuguese Constitution is a very broad and dense one; thus the Macau residents enjoy a wide range of fundamental rights. As a reference, it is commonly said that the scope of the fundamental rights enshrined in the Portuguese Constitution is broader than the one established in the European Convention on Human Rights.

Besides the constitutional front-line - which tops the system - there are other sources of fundamental rights: International Treaties and Legislation.

To name some of the International Treaties, we can bring in here, besides the Joint Declaration, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, applicable with 3 reservations, as well as (recently) some ILO conventions are enforced and some on Discrimination or Child Protection.

One must stress that the system of relations of the Domestic Law with the International Law, Macau follows a monism system and a limited primacy of the international law - limited in the sense that it does not have primacy over constitutional norms but, on the other hand, it enjoys it over any norm of any other source like legislation and administrative regulations.

So, International rules cannot override constitutional norms and cannot be overridden by legislation or administrative regulations.

In the Macau legal system, legislation (laws and decree-laws) usually just regulate and specify in detail the constitutional fundamental rights. The importance of enacting legislation for the certainty of the citizens rights and their respect by the public entities are, naturally, undeniable. In fact, even with the existing constitutional framework one may still find *grey zones* or some obscurity that may enable, or make it easier to happen, the violation of fundamental rights, in spite of the direct applicability of the constitutional fundamental rights.

Sometimes, legislation itself establishes *ex novo* fundamental rights. One example that marks the recent Macau legal history is the creation by law of the *amparo* appeal (Germanic *verfassungsbeshewerde*, Hispanic *recurso de amparo*).

Several fundamental rights are regulated in Codes, such as Criminal Code, Criminal Procedure Code, Civil Code and Administrative Proceedings Code. But some fundamental rights are also created *ex novo* by some of these codes, like the case of some rules that are inserted in the Civil Code.

However, one must point that one can find lack of regulation of some other fundamental rights, namely labour rights - unions, strike - and access to information, to name some; also the case of *amparo*¹¹.

The *amparo* was created by a Portuguese Law in 1991. It must be noticed that at that time no idea of *amparo* existed in Portugal. The evolution of it, however, has not been under a unitary path. Sometimes it is well regarded, sometimes is abandoned alone to its fate. *Amparo* has been surviving in ambiguity. The lack of regulation endangers the survival or continuity of this fundamental right remedy and fundamental right in itself¹².

The constitutional rights may be restricted by law only in those cases expressly provided for in the Constitution and restrictions must be limited to what is necessary to safeguard other rights or interests protected by the Constitution. The restrictions cannot be of such a length that

¹¹ *Amparo* can have several possible translations like “support appeal” “special fundamental rights appeal (or remedy)” or “action for protection”. To provide an easy comparison or point of reference with a familiar common law juridical institution, think about the *Habeas Corpus* but envisaged to protect a wide range of rights.

We reach the field of what CAPPELLETTI, CASCAJO CASTRO or CANOTILHO name, with a very impressive and a synthetic capacity expression, “*jurisdição da liberdade*” something like the “*jurisdictio of liberty*” or “*liberty jurisdiction*”. The juridical institute of *AMPARO* holds a justified reputation for guaranteeing and protecting fundamental rights in the legal orders of a high number of diverse political systems and geographical locations. In terms of reputation one cannot avoid to remember here the “Magic” that comes associated with *amparo* (GARRIDO FALLA) or its “reputation of effectiveness” (KAREL VASAK).

¹² On this, my *The Judiciary and Fundamental Rights : a Dual Role - Guarantor and Breacher*, LAWASIA/CCCS, Bangkok, 1999; ARMANDO ISAAC, *Substantive constitutional restrictions on the limits to the sphere of jurisdiction of the Macau Special Administrative Region's Courts*, in *idem*.

invalidates the practical significance of the fundamental right to be restricted - shall not limit in extent and scope the essential content of the right.

Moving to the general regime of the *upgraded* fundamental rights, one should stress that laws restricting the fundamental constitutional rights shall be general and shall not have retroactive effects.

Fundamental rights considered to be analogous to the rights, freedoms and guarantees will benefit of the above framework even if they are established only in legislation as, for example, the right to amparo appeal.

In general, several remedies are available to the persons whose fundamental rights have been violated, depending on the given right and given violation:

- *normal* judicial review in the ordinary courts;
- an administrative complaint;
- appeal for an administrative review;
- appeal for a judicial review of administrative action;
- appeal to the Constitutional Court from an individual case under litigation;
- amparo.

Besides these judicial remedies, Macau legal system grants also the possibilities of:

- lodging a complain with the Public Information and Assistance Centre;
- a complaint lodged with the High Commission Against Corruption and Administrative Illegality (operating as something like the classic Ombudsman).

V
FUNDAMENTAL RIGHTS IN THE (FUTURE) SPECIAL ADMINISTRATIVE REGION OF THE
PRC

The Joint Declaration expressly guarantees a catalogue of fundamental rights to continue to be enforced in the SAR. Those rights were imported to the Basic Law.

The Macau Basic Law establishes a catalogue of fundamental rights of a significant extent. In fact, most of the rights that are today constitutionally granted or anchored are also present in the future principal constitutional law of Macau. *Speaking in terms of mere listings*, it is possible to confirm that almost all rights in the constitutional catalogue are reproduced in the Basic Law.

The Basic Law respected, in many ways, the existing catalogue.

However, some of the fundamental rights are not specially guaranteed/established in this constitutional law: the most important absence is the right to life; but also the guarantees in the administrative procedure and administrative judicial appeals, among others.

But the fragilities are wider. Albeit being established in the Basic Law, some of the rights are *just* enumerated and not given in a dense way. They are, sometimes, *merely* established.

For example, in the case of the freedom of religion we can find that:

The Portuguese Constitution establishes:

“Article 41

(Freedom of conscience, religion and worship)

- 1. The freedom of conscience, religion and worship is inviolable.*
- 2. No one shall be persecuted or deprived of rights or exempted from civil responsibilities or duties by reason of his or her convictions or religious observance.*
- 3. No one shall be questioned by any authority about his or her convictions or religious practice, except for the purpose of gathering statistical information that does not identify individuals, nor shall anyone be prejudiced for his refusal to reply.*
- 4. Churches and religious communities are independent of the State and are free to determine their own organization and to perform their own ceremonies and worship.*

5. *Freedom within a denomination to teach its religion and to use its own media for providing public information about its activities its guaranteed.*

6. ... ”

The Macau Basic Law states:

“ Article 34

Macau residents shall have freedom of conscience.

Macau residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public.”

More examples could be called in here, like the paradigmatic case of article 27 of the Basic Law:

“Macau residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.”

The *equivalent* rights are, in the Portuguese Constitution settled by, and in, articles 37, 38, 46, 45, 55, 56, 57, among others, that are connected to or develop aspects of those fundamental rights. It would be to *boring* to reproduce all those constitutional precepts in this paper. Anyway, these examples seem to be enough to substantiate our conclusion on the different density levels of both constitutional laws.

It does not assure the rules of exercise the fundamental rights, namely those of the limitations to their restrictions, that we've seen before. So, one may ask how will the situation be dealt. It's a very important issue, since through this avenue it may be very easy to reduce or substantially limit fundamental rights that are expressly provided in a given legislation. Furthermore, one may pose the possibility of a law such as one dealing with “security issues” or “internal affairs” or similar areas that can bring effective and important restrictions to fundamental rights.

Another grey zone is the possibility (or not) of remaining analogous fundamental rights, namely stipulated in other Basic Law provisions out of Chapter III dedicated to fundamental rights. For instance, can the rules inserted in article 128 - about religious organisations - be

considered rules about fundamental rights? Do they create, or extend the scope of, fundamental rights?

Moving to other topic we can find that the Basic Law, in article 40, expressly refers to the provisions of the International Covenants on Human Rights - International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, as well as to the International Labour Conventions (ILO, presumably) - as remaining in force and its implementation through specific laws of the Macao Special Administrative Region.

It also states that restrictions can only be prescribed by law and these restrictions may not exceed the applicable provisions of the Covenants. But, is this assurance or guarantee enough?

In my opinion, it's something but far from enough. In fact, one knows the Covenants and seldom they provide general rules on the exercise of fundamental rights. Besides, they are intended to provide the minimum standard, thus if Macau is located in a higher level - as it is now - it could even produce indirectly a downgrade of Macau's fundamental rights system. To prevent this kind of perils, both Covenants provide in article 5 a special provision granting that the Covenants shall not be use in order to impose more restrictions to fundamental rights if they did not exist in the domestic legislation - the "more favourable status" clause.

One more point of concern is the idea sustained by some - and in the very truth, if not imposed, at least allowed by article 40 - that the provisions of the Covenants will only be applied after being incorporated by domestic legislation. If this is considered to be correct, one find one more example of *noncontinuity* rather than the observance of the continuity principle.

A very important issue and not yet answered is the question brought by the fact that the Basic Law does not affirm it's own direct and immediate applicability - so, can the rights establish in it be directly invoked by a citizen? Even in the absence of legislation regulating the violated right? The answer seems to be negative in the light of a isolated interpretation of the Basic Law provisions (other interpretations seem to be possible). Once again, if that idea is correct, the continuity principle was *thrown to basket of forgetting*.

Will international human rights rules maintain their primacy over domestic legislation? Namely the International Covenants? Some other question that are relevant to our issue and that are not immediately, directly and undoubtedly answered by the supreme law of Macau SAR. If one follows the continuity principle International rules will have primacy; however, it seems

possible to defend the thesis of a necessary incorporation of international rules and thus moving to a dualism system...

Recently, the new Civil Code refers to the issue reclaiming the primacy of international Law. One should read in this not a mere private law rule but a general principle of Macau Law.

Will P R China report to the Geneva Committee in the scope of the International Covenants? It's very difficult to answer, and the fact that PRC is progressively acceding to the International Covenants does not guarantee anything.

VI

SOME POSSIBLE CONCLUDING REMARKS

In the light of the prior considerations and questions one may say that the legislation that regulates the fundamental rights will have an even more important role in the effectiveness of these rights.

In accordance with a non textual (and non juridical) based interpretation¹³, P R China claims that only the legislation enacted by the local bodies will benefit of the continuity principle established in the Joint Declaration.

Hence, since some of the fundamental rights are regulated by legislation enacted in Portugal and extended to Macau, there is a practical need of local enactment of new acts what, to a certain extent, it has been done.

Since the Portuguese Constitution will cease its applicability, it's desirable that local legislation fill the gaps then originated, namely in what concerns to the rules of the limitations to the restrictions to the exercise of the fundamental rights, even though if this legislation does not enjoy primacy over future one.

¹³ One may find now some exceptions - in the *Chinese* field - to this thesis: ZHAO GUOQIANG, *Continuation of Existing Macao Laws in the Macao SAR*, China Law, March 15, 1999, 72-74. The Portuguese doctrine always and unanimously defended this solution that only now was found by a Chinese scholar.

These laws and decree-laws should be of effective essence. They should not be just carrying the brand of regulation and guarantee of fundamental rights, operating like a *windowshelf* effect. They must be *real* laws governing fundamental rights and inserting guarantees and remedies.

A disrespect of fundamental rights in absence of law is less difficult than one with an existing and applicable law.

The enactment of a narrow and *limitative* legislation on fundamental rights is easier if there is no need to revoke a pre-existing law, specially if this one is a *generous* one.

The remedies available should be maintained and dully regulated.

The fundamental rights should be the object of publicity campaigns. The citizens should know better their rights and be informed of its extent.

The respect of the fundamental rights in the SAR, or at least some of them, are imposed by international law in two senses: trough the Joint Declaration and trough the system of the International Covenants.

Human rights are not to be just an internal matter of the SAR. P R China gave its international agreement - the Joint Declaration and, indirectly, the International Covenants on Human Rights.

One should face this issue, this task, neither as a full optimistic, neither as an absolute pessimistic approach. There are things to be done, some wont probably be done, but some goals may still be achieved.

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