

Legal instruments used by the public order and safety institutions in protecting human rights

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Abstract: *Level of protection of human rights achieved today is the result of a long history that has gone through several stages, from the earliest times to the present days. It was stated that human rights history goes along with the history of humanity, that its steps were marked by the development of philosophical and moral thought, by social, political and historical circumstances, that the rights that circulated throughout time have been articulated around the ideas that society used to set them, which would be the material sources, and the instruments through which they were put into practice, which would be the formal sources.*

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Introduction

A scientific approach of the moment the human rights occurred must start from two premises: one to declare the natural human sociability, another from the fact that power is inherent in any social organization, regardless of the type of organization [Irina Moroianu Zlătescu, Radu C. Demetrescu, p. 5].

One of the earliest dating is not possible; in order to make it clear one should look into how people view the world, in the relation between power and man and between man and divinity. From both these directions have sprang the moral commands, i.e. those human attitudes that define good or bad conduct, that prescribe rules of conduct that people must obey and comply with in their mutual relations.

Convincing people that as human beings they are entitled to certain rights, appears since ancient times and through the history of social thought. The idea that human beings possess by nature, certain rights came very early and was expressed by stoic philosophical concepts and jurisprudence, sometimes taking elements from the orthodox religion or from the rationale.

Since antiquity there have been ideas about the relative "natural legality" of people without being economically and legally implemented. Such concerns are to be encountered in ancient Greece to Hesiod, in "Works and Days", at the great jurist and legislator concerns Olan (594 BC).

Generalization of thought in ancient Greece actually materialized in the works of Aristotle "Ethics" and "Politics". Thus, in "Politics", justifying slavery, he fought with those who stated "*it is against nature to possess slaves, because only by law one becomes a slave or free. He estimated that this order is not based on justice but on violence*" [Ion Suceavă, 1991, p. 18-19].

The conclusion that comes out of the humanistic ideas of the philosophers in ancient Greece, Hebrew, Roman and so on, is that they mostly related to equality and freedom of free men and not slaves.

It was developed the notion of natural law, according to which human laws are imperfect replicas of an eternal and applicable Law and the whole cosmos and secular law has no value unless it corresponds to universal law.

A very important point is the appearance of the work of Thomas Hobbes "A defense of power and the King" which said that, in essence, people are equal in terms of physical and spiritual faculties and this equality must be recognized; thus he is announcing the two main theories of the time, the theory of natural law and the theory of social contract.

The ideas implemented in England on legal plan in "Petition of Rights" and "Bill of Rights" (1689), which claimed essentially "*the supremacy of Parliament, the right to free elections, freedom of speech, the prohibition of cruel punishments*" [Raluca Miga-Besteliu, 2008].

The first thinker that stated that world is subjected to objective laws was Montesquieu. In his work „The spirit of the laws”, he wrote that “*laws, in the broadest sense, are necessary relations that come out of the nature of things*”. The French philosopher defined liberty as the “right to do what the laws allow you”, underlining the fact that if a citizen could do what the laws prohibit he would not have the freedom for the others to do the same [Ion Suceavă, 1997, p. 26].

The theory of social contract reached a final point with the French philosopher Jean Jacques Rousseau who wrote in his work „Social Contract” that man was born free but everywhere he is in chains. With this contract he loses the natural freedom and the unlimited right to own everything he is appealing to him but gains the civil freedom and the ownership [Victor Duculescu, 2008, p. 12].

The first consecration of human rights was in an official document published in America during the war of independence of the British against the crown colonies. Thus, on June 12, 1776, in Virginia it was adopted "The Bill of Rights" which states "*all men are by nature equally free and independent and have certain inherent rights ... the right to life and freedom and the means to acquire and preserve property*". In the same year, on July 14, in Philadelphia, "Declaration of Independence of the United States" is adopted, which in the second paragraph provides that "*all men are created equal, with certain inalienable rights, among them life, freedom and the pursuit happiness. To ensure these rights, people set up governments which acquire legal power through consent of the governed*" [Dumitra Popescu, Adrian Năstase, Florian Coman, 1994, p. 87].

The most complete legal document that stipulates the concept "Declaration of the Rights of Man and Citizen" of 26 august 1789, adopted during the French Revolution. The title of this declaration was drafted by the first special commission appointed by the Constituent Assembly of the French Revolution and it reflects "clearly outlined dualistic vision among ideologues enlightened, inspired from the theory of natural law / human rights and social contract theory / right of citizens".

The first article of the declaration proclaims "... People are born free and remain free and equal in rights. Social distinctions may be based only on common utility ". Below are listed imprescriptible rights such as: liberty, property, security. According to the Declaration, "freedom is to be able to do anything that does not harm others." Express provisions relating to the exercise of legal rights are included, for instance the right to participate, directly or through representatives, in drafting laws as an expression of the general will to the presumption of innocence, freedom of speech and the press.

1. Philosophical, political and legal context

Understanding the full meaning of human rights institution requires knowledge of the humanistic ideas postulated since ancient times, human freedom and equality. Perception of the exact meaning of the legal institution of human rights implies therefore an understanding of the philosophical significance of these rights, the understanding of the moral and political content of any normative regulations in this area.

A research, even cursory, of the evolution and meanings of political thought emphasizes that the pursuit of freedom has been a constant feature of the whole historical process, the concern for defining the human position in society, manifested practically with manifestation of man as a thinking human being.

2. Civil and political rights enshrined in the “Declaration of Human Rights”

Apart from the rules enshrined in the UN Charter and in the acts constituting the specialized institutions of the UN system and the five generic tools that are called "International Charter of Human Rights", which regulates global issues of human rights and other around 50 international treaties, declarations and resolutions under the auspices of the World Forum, covering various specific fields at all levels.

In terms of civil and political rights there have been elaborated legal acts concerning the right to self-determination, the fight against discrimination, prejudice and intolerance, slavery and forced

labour, the fight against human trafficking, the protection of human rights and justice administration, the right to a nationality, to freedom of opinion and expression, etc.

For a clearer understanding of these rights there are required some preliminary explanations. First, they were stated in general instruments such as the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and some of them found their consecration in one or more independent instruments. The second observation relates to each of the rights listed. Of such political rights can benefit the citizens of a state, not aliens. This statement is found in Article 21 of the Universal Declaration of Human Rights which states that an individual can enjoy political rights only in his own "country", i.e. in the country of nationality. The point is more precisely formulated in article 25 of the International Covenant on Civil and Political Rights, which begins with the words ... "Every citizen ...".

Having political rights exclusively for citizens has its motivation in the fact that they relate to the exercise of sovereignty. Specifically it is the right of every citizen and willingness to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected and to have access to public service of his country.

The problems that have to be covered by independent international instruments [Ion Diaconu, 2007, p. 98] aimed at creating within each state, the requirements for the exercise of political rights in particular, the elimination of all forms of discrimination. Special provisions in this respect we find in the Convention on the Political Rights of Women of 20 December 1952 (the Convention is dominated by the idea of equality between men and women, which is stated "expressis verbis" in the first three articles. The first article stipulates: "Women will have , on equal terms with men, the right to vote in all elections, without any discrimination "), the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 and the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1966.

On the contrary, from the civil rights shall benefit both nationals and aliens. From the civil rights that represent the core of human rights shall benefit also the aliens and from other rights they shall have differentiate access according to the category they belong to: refugees, migrants, stateless individuals.

Among other civil rights there are:

- *the right to liberty and security of person;*
- *the right not to be imprisoned merely on the ground that he is unable to fulfil a contractual obligation;*
- *the right of every person who is in a state legally to move freely and to choose his residence;*
- *the right of everyone to leave any country, including his own country;*
- *the right to free access to the courts and courts of justice;*
- *the right to recognition of legal personality;*
- *the arbitrary or unlawful right to privacy, family, home or correspondence;*
- *the right to peaceful assembly and association;*
- *the right to a nationality;*

3. Legal instruments for the protection of human rights under the international law context

Contemporary international law establishes various obligations for Member States on respect for human rights and fundamental freedoms.

A number of general international law rules that have "jus cogens" character have crystallized, which essentially establish an obligation for states to work together to promote respect for fundamental human rights, to ensure the right of people to self-determination, equality human rights and to combat discrimination and practices contrary to these obligations.

The international community is concerned now more than ever to promote on the widest scale the human rights, the creation of a legal framework as diversified of international collaboration in this field, the development of a system as complete as possible of legal defense in different ways of the human rights in various fields and ensure implementing them, including infringements to the existing rules of law.

Today more than ever people are convinced that tends that only by obeying the fundamental rights [Gheorghe Popescu, Viorel Velişcu, 2008a] of every human being the major contemporary problems: security, economic and social development, national independence, etc., can find a sound and sustainable solutions.

Human interest towards international human rights issues is evidenced by the proliferation of recognized rights of the person (over 60), the large number of international legal instruments embodied (around 100), but also legal protection mechanisms and bodies to ensure compliance [Nicolae Purdă, Ştefan Țarcă, Viorel Velişcu, Loredana Pîrvu, 2008, p. 154].

Principles enshrined in these documents formed the basis of all modern states constitutions, which necessarily include a chapter on the rights and freedoms and served as the main inspiration in developing international legal instruments.

Systematic cooperation between countries to promote human rights as a whole emerged after the Second World War, as a consequence of meeting forces in the fight for democracy and social progress as a reaction against violations of these rights by fascist regimes that started the war.

It was found on this occasion that flagrant disregard for human rights endanger world peace and security and requires international collaboration to protect human rights.

Unfortunately, in recent years, in forums that deal with human rights these issues have various approaches, often political in nature, trying to exploit such problems for unilateral purposes, without taking into account the specific realities of each geographical area in each country.

Separation of human rights from the political considerations and their approach requires a global vision, tying them to other major issues such as peace and development as human rights are related to the human beings, their life and security.

For Romania after the 1989 Revolution which manifested irreversible option for a democratic society based on the rule of law, protecting and guaranteeing human rights is one of the cornerstones of the new regime. A proof is represented by the Constitution approved by referendum on December 8, 1991, which states and protects all human rights considered today as fundamental.

The Romanian Constitution also stipulates that the constitutional provisions regarding the fundamental rights shall be interpreted and enforced in accordance with the Declaration of human rights and the other treaties Romania is part and in cases of inconsistencies international provisions prevail [Nicolae Purdă, Nicoleta Diaconu, 2007, p. 82-87].

4. Legal instruments for protection of human rights made by the UN

Part of the social dimension of the new order of international humanitarian law, human rights and fundamental freedoms can find achievement only in the evolution of social conditions.

a) *Affirmation of the new vision in the work UN.* Making an assessment of UN activity, we can say that after sustained efforts made by developing countries, all other countries interested in economic and social progress, UN is growing more strongly to basic aspects of human rights: the recognition of equal rights of people and their right to decide their own fate, the right to free economic and social development. In other words, human rights can exist and find affirmation only to the extent that they are recognized and find their assertion in the national freedom and social conditions. Among the rights of people to dispose of themselves and human rights there is an organic relation, indissoluble, because individual freedom can only be conceived within the community of people and nations that are free. Debates at the UN thus revealed that only the disappearance of economic and social inequalities and the setting up of a system of equality for property and income creates conditions for the masses to be manifested in the sphere of social life, to enjoy legally guaranteed rights and freedoms. However, efforts to recognize and respect fundamental human rights have therefore a progressive and revolutionary character.

b) *Universal Declaration. Human rights covenants.* The rights and fundamental freedoms depend on two essential conditions: the level of development of productive forces and materials of nature of the society. The first document adopted at UN regarding the human rights and fundamental freedoms is the Universal Declaration of Human Rights (1948), developed in the early days of the organization's activities, which has a contradictory character: on the one hand it includes a number of

improvements related to international law, on the other hand it neglects a number of issues, especially those related to the struggle for national freedom. Thus, the Universal Declaration of Human Rights, in addition to declarative statements contained usually in the constitutions of bourgeois civil and political rights principles, include for the first time economic, social and cultural rights, recognizing that they are integral part of fundamental human rights. The establishment of an international pact was agreed upon with the principles of economic, social and cultural rights and the principles of the International Covenant on Civil and Political Rights, which have been adopted by the UN General Assembly, in 1966. Both pacts entered into force in 1976.

c) *The unitary character of human rights and fundamental freedoms and the importance of the adopted documents.* In this context, an issue of particular importance for understanding all human rights and fundamental freedoms, which find their consecration in the documents adopted at the UN, is the interdependence that exists between rights and duties. Between the individual and society there are inseparable relations embodied in rights and obligations of each side. Moreover, the Universal Declaration of Human Rights (1948), with the proclamation of the above mentioned rights [Dumitru Mazilu, 2009], also states that "*everyone has duties to the community because only in the community the free and full development of his personality is possible*". By their very nature, human rights issues can only be addressed by each state and each nation. International documents adopted so far have no doubt their importance in promoting human rights and fundamental freedoms.

5. Human rights in the constitutive instruments of organizations under the UN system

a) *Human rights enshrined in the International Labor Organization.* This is a specialized inter-governmental organization of the UN (since 1946) which was set up on April 22, 1919 with the aim to protect the dignity of workers. In order to put into practice the principles and objectives from the Declaration the organization carries out the following activities:

- elaborates conventions and recommendations related to the international labor norms;
- formulates principles and international programs to improve the working and living conditions;

b) *Human rights in the UN Convention for Education, Science and Culture (U.N.E.S.C.O.).* U.N.E.S.C.O. is a specialized inter-governmental organization which was set up on November 4, 1945. The aim of the organization [Gheorghe Popescu, Viorel Velişcu, 2008b] is to contribute to maintain international peace and security through education and culture by complying with the universal rights and freedoms.

c) *Human rights and the World Health Organization.* This is an intergovernmental organization with the status of a specialized agency of the United Nations, established in New York on July 22, 1946. The goal is to promote international cooperation, to raise people to the highest level of health.

d) *Human rights in the UN Chart of the Organization for Food and Agriculture.* This is a specialized agency of the United Nations, established October 16, 1945 with the aim to promote international cooperation. It has a technical character and aims at raising the living level of people in the Member States.

6. Promoting and safeguarding human rights by state institutions

All institutions of the state must take part in the universal and effective enforcement of all human rights.

International Covenant on Civil and Political Rights provides: "The States Parties to the present Covenant undertake, in accordance with their constitutional processes and with the provisions of the present Covenant, to take action to enable the adoption of legislative measures to translate into reality the rights recognized in the present Covenant which would not be still in force".

Human rights also imply a democratic political system, the only way anyone can exercise the right to take part in the public affairs of his country, directly or through freely chosen representatives.

Protection of human rights is based on the primacy of human rights [J.P.Humphrey, 2002].

The national system of human rights protection requires that one of the fundamental principles, the rule by which any restriction of fundamental rights and freedoms cannot be made except on the basis of a pre-existing law which must emanate from the legislature.

7. Human rights in administration and justice

One of the main issues which was looked into was related to the promotion of human rights in the activity of justice and administration. The importance of this issue resides in the fact that effective compliance of the fundamental rights and liberties, as they are enshrined in the international conventions mostly depend on the way these institutions carry out their duties and competencies in the field [Ștefan Țarcă, Viorel Velișcu, 2010, p. 34].

Conclusions

When we are talking about the institution of human rights we have in mind a whole range of activities which start with the setting up of the legal instruments that encompass the inherent rights of the people and the mechanisms to protect and guarantee them and continues with them being included in the domestic legal system and the creation of a national institutional framework in order to allow the effective enforcement of these laws.

References:

1. Dumitra Popescu, Adrian Năstase, Florian Coman, Drept Internațional Public, Casa de Editură și Presă „Șansa” S. R.L., București, 1994;
2. Dumitru Mazilu, Dreptul internațional public, Ediția a II-a, Vol. 2, Editura Lumina Lex, București, 2009;
3. Gheorghe Popescu, Viorel Velișcu, Evoluția reglementărilor comunitare privind cooperarea în domeniul justiției și afacerilor interne, la Sesiunea de comunicări științifice „Instituții juridice contemporane în contextul integrării României în Uniunea Europeană”, Universitatea Româno-Americană sesiune, 2008b;
4. Gheorghe Popescu, Viorel Velișcu, Protecția juridică a grupurilor minoritare, la Sesiunea de comunicări științifice „Instituții juridice contemporane în contextul integrării României în Uniunea Europeană”, Universitatea Româno-Americană, sesiune 2008a;
5. Ion Diaconu, Manual de Drept Internațional Public, Editura Lumina Lex, București, 2007;
6. Ion Suceavă, Omul și drepturile sale, Editura Științifică, București, 1991;
7. Ion Suceavă, Tratat de drepturile omului, Editura Științifică, București, 1997;
8. Irina Moroianu Zlătescu, Radu C. Demetrescu, Din istoria drepturilor omului, IRDO, București;
9. J.P.Humphrey, The international law of human rights, în „The present state of international law”, Kluwer, 2002;
10. Nicolae Purdă, Nicoleta Diaconu, Protecția juridică a drepturilor omului, Editura Universul Juridic, București, 2007;
11. Nicolae Purdă, Ștefan Țarcă, Viorel Velișcu, Loredana Pîrvu, Drept internațional public, Editura Universitară, București, 2008;
12. Raluca Miga-Beșteliu, Drept internațional. Introducere în dreptul internațional public, Editura Lumina lex, București, 2008;
13. Ștefan Țarcă, Viorel Velișcu, Drept internațional public, Editura Sitech, 2010;
14. Victor Duculescu, Protecția juridică a drepturilor omului, Editura Lumina lex, București, 2008;