Developments on the recognition and observance of human rights

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Abstract: Consecration of obligation that the individual not be violated certain rights was achieved as a result of a long evolutionary process in which were overcame outdated perceptions, elitist and totalitarian, which opposed the recognition of equality of men and the idea of respect for human rights and fundamental freedoms. The modern concept of “human rights” is the result of synthesis operations consisting of synthesizing advanced ideas from different countries with a rich moral and political content, made by prestigious lawyers. This notion is an update of the philosophical principles of humanist repeating elements of religious thought and general aspirations of freedom that were expressed with force in the seventeenth and eighteenth centuries.

Keywords: human rights; evolution; recognition; consecration; observance.

Introduction

At the beginning of human history, human rights were called “natural rights”, but later in the practice of some countries the concept has undergone some transformations on the terms used in order to express more precise the content of that concept [1]. Thus, the doctrine of specialty, or at the numerous meetings at governmental or non-governmental level, in addition to the concept of human rights are used notions as: universal rights, fundamental freedoms, fundamental rights, common rights, rights of citizens, duties of man's fundamental duties, rights of peoples, individual rights or human right.

From a legal perspective, the concept of “human rights” refers to individual rights [2] of the person regarding his position in relation to public power and other people, but they are a real legal institution, composed of a domestic and international set of rules that concern the promoting and ensuring human rights and freedoms, defending it against abuses of states and dangers of any kind [3].

Human rights are set globally or regionally by international conventions and on a national plan by constitutions and laws - in the center of preoccupation of bodies that consecrated them being those rights which guarantee the equality of all people, their ability to manifest unhindered under dignity and freedom, because man, as nature is a dignified and free being [4].

1. Evolution of consecration concerns and guarantee of human right

The history of human emancipation to recognize his rights must be seen first as a history of thought, rather than a history of social, political, economic institutions [5].

Man is viewed from a humanist perspective in the Gilgamesh Epic in Babylon, in the first half of the second millennium BC, and then in laws such as the Code of Hammurabi - King Semitic of Babylonian Empire - where are promoted social justice rules, crossed by a humanitarian spirit unmatched at the time.

The first written evidence relating to the legal recognition of fundamental human rights is the little cylinder of clay, which was engraved with cuneiform signs, edict by which Cyrus the Great (534 BC) granted Jews after the conquest of Babylon freedom of worship and the opportunity to return to their country to practice it.

Human beings appear to have rights in a moral society also in the major Indian epics: the Vedas, the Upanishads (about 560-480 BC), Sutras (of which a kind of legal manual is part of), Mahabharata, Ramayana and Puranas. Also, we find it in the Old Testament texts, permeated by ethical principles of social organization and laws, based on high religiosity.
Buddhist thought founded by Buda Sakyamunii, who lived about 2,500 years ago in India, seek spiritual remedies for evils haunting people, considering that not only men are created equal, but all beings. Everyone has the right to respect and nothing can justify an attempt on their lives, or their exploitation and humiliation. Buddha rejected the discrimination between people, differences are interchangeable. Rich and poor, kings and beggars, men and women should be equal, the only criteria being age hierarchy and personal merit.

In ancient Egyptian culture and civilization appeared Book of the Dead, a true moral code of human behavior in life and then teachings of Ptah-Hotep, which referred to the deep realities of the human soul. It also says that we should not use violence against the people “because they are born from the eyes of the sun, they are the flock of God” [6].

In ancient China, Confucius (Kung Fu Tzi - approx. 551-479 BC) claimed that a harmonious society cannot be possible unless the people who compose it are guided by high moral principles, because it should not be than an ongoing effort to better. The man at the center of its philosophical and moral system must love and respect their neighbor, morality is the first principle of the universe. Moderation in all, justice and humanity in particular are the main virtues that Chinese philosopher recommends.

In the first century AD, Chinese Buddhism, which encouraged the practice of charity and love of people, saw this concept as a way of saving human from suffering and needs. Greek philosophers believed human rights as fundamental, eternal and immutable, that any society must observe, as derived from the nature of things, and the law is only the expression of this nature [7]. Thus, human rights stem from natural law, are natural rights.

In the context of the expansion of economic, political and cultural aspects of ancient Greek sophists thesis advanced, revolutionary for the time, according to which the man is master of his fate and is not at the mercy of the gods, as was believed, not subject to supernatural forces [8]. They held that man has inherent rights of his nature, previous to any consecration of law, precisely because it is human, and their disregard would prejudice that nature.

Later appeared Stoic, Greeks and Romans thinkers, who, formulating a doctrine of natural rights, seeing as they enjoying all people, regardless of their social condition or where they are. Rights should not be confused with privileges, but they belong to all by the mere fact that they were all human beings endowed with reason [9].

2. Formation of human rights national and international law

Until the advent of “formal sources” of human rights, i.e. tools to express them and to ensure compliance, there can be only a “prehistory” of human rights in terms of legal.

The first document that outlines the elements of judicial protection of human rights was Magna Charta Libertatum, adopted in 1215 in England. Charter, which marked the starting point of what today we call “tools to promote and protect human rights” is not only a release from the king of the privileges of the English aristocracy, prelates (the Church of England), the City of London and all citizens of the kingdom, but also the first constitutional text, which guaranteed rights and freedoms of the people, stipulating, however, that no king is above the law, and his power is not absolute.

Great Charter of Freedoms practically shows an edict constitution under an agreement between the King John without Country and his rebellious barons, with a double meaning: the shape of contract between the king and the barons, later contributing to the social contract theory, and contained several principles (relating to prohibition of arbitrary arrest and the principle of legality) that became the cornerstone of the concept rule of law and a few centuries later inspired documents as: “The Petition of Rights” (June 7, 1628) to King of England by Parliament (stating that the free man cannot be forced to pay tax without the consent of Parliament, the free man cannot be cited against the law, soldiers and sailors cannot get abusive in private houses and others) and “Habeas Corpus Act”, a law imposed by the English Parliament on 26 May 1679, considered the second constitution of England after Magna Charta Libertatum.

Subsequently, the Charter was completed with Oxford regulations promulgated in 1258, which set out the obligations of directors to the people, establishing a procedure for complaints against corrupt administrators.

Later, under the influence of great thinkers concerned with human rights, have appeared other national documents that “Bill of Rights” (February 13, 1689) U.S. Declaration of Independence (July
Constitutions adopted subsequently in democratic countries, such as for example in the Netherlands (1798), Sweden (1809), Spain (1812), Belgium (1831), Denmark (1949) proclaimed the fundamental human rights and the means of ensuring their [10].

Consecration of the legal form of philosophical, political and social values, including on human rights, has intensified with the “Rebirth” due to the many changes in social, political life and mentalities generated by the emergence and expansion of the market economy and liberalism. Moreover, human rights are a modern idea which can be explained only in the context of a world with a certain level of development. To substantiate these rights in an earlier time is like trying to enlighten electricity in the seventh century.

In social practice, liberal theorists were the first to proclaim the equality of all people as the foundation of the concept of human rights and revolutions - American (1763-1791) and French (1789-1799) - have established for the first time in human history the principles: equality before the law, freedom of thought and human dignity.

In the mid-nineteenth century human rights began to be addressed internationally, first interstate conventional rules covering the humanization of war, fighting the slave trade (in general, human beings) and the protection of religious minorities.

Since the twentieth century, especially after the creation of the League of Nations were adopted several international rules on the protection of rights relating to: labor issues, protection of the rights of colonial peoples, the protection of ethnic and religious minorities, protection of foreigners.

Promotion of human rights has been addressed but as a major imperative of the international community only after the Second World War to prevent future atrocities like those committed by the Nazis. Thus, numerous universal or regional regulations were adopted, starting with United Nations Charter (June 26, 1945) and the Universal Declaration of Human Rights (December 10, 1948) - the first document of universal jurisdiction, which provides the fundamental principles of human rights: freedom, equality, universality and inalienability and express provisions on: the exercise of legal rights; right to participate directly or through representatives in drafting laws; freedom of speech; freedom of the press, freedom of assembly, etc.

Even if it was passed through a legally binding document, the Universal Declaration of Human Rights has had a huge echo, becoming a true international instrument underlying the formation of the most developed system of human rights known in history.

Principles enshrined in it were taken over constitutions of democratic states and numerous international conventions, thus gaining legal force.

Global regulatory developments on human rights protection has a rhythm accentuated their list continuously enriching; Legal Documentation Institute studies in Rome show that are currently covered 138 human rights and the list drawn up by the International System for Information and Documentation on Human Rights (HURIDOCs) listed 115 such rights [11].

However, mechanisms to ensure compliance and enforce diversified continuously, at national, regional and universal level.

However, many rights and freedoms enshrined in legislation have not so far found no effective enforcement in some areas of the world or between the guarantees stipulated and actual situations there is a considerable gap, failing in many cases the implementation of rights formally recognized.

According to the doctrine [12], guaranteeing these rights remained fragile due to political, economic, technological and institutional order, but consider that this phenomenon is due to the habits, attitudes and traditions that act as a brake on change, which would require measures to improve democratic mechanisms and those intended to lead to economic development in the regions.

Development of the field of human rights positive law led to the development of an autonomous science of human rights [13]. This is a special branch of social science that covers the study of relations between people, in terms of human dignity, in order to determine the rights and capacities that are necessary for every human personality development [14].

Human rights issues came directly but surely into the normative content of international public law, as well as a number of its branches: international humanitarian law, international criminal law,
international liability law, diplomatic law (through diplomatic protection) and international environment law.

Initially, human rights were regarded as forming a legal institution of public international law, but as result in the development of regulations has become a distinct branch: the international law of human rights [15], which is a distinct legislative assembly (as the Law of Treaties, law of the Sea, diplomatic and consular law, etc.) governed by fundamental principles of public international law generally, even if they have certain specific features.

Given the criteria underlying the legal system division into branches of law [16], we find that the international law of human rights is an independent branch of law, as it has a proper object of regulation: legal relations in the sphere of international protection of human rights, the beneficiaries of its regulations are primarily the people as individuals, not States Parties. Moreover, the development of international human rights within the general public international law is “a soft revolution that aims invariably the statist features of international law” [17].

In its evolution, international human rights law does not reflect a unified and immutable model, generally accepted as the rights axiological generator runs differently in each historical epoch, national valuation processes coexist and influence each other with what is performed internationally [18]. The national regulations adopted by countries form what is called “human rights with variable content” [19] by means of these differentiated content specific to each state realizing secure and effective protection of rights.

Human rights regulations relate both to internal order, as well as the international one summing and defining a set of rights and freedoms and obligations of people (each other), states (to protect and promote these rights), the entire international community (to ensure compliance in each country intervening in situations where human rights are violated in a particular state, which lacks measures to end violations and restoring the previous situation).

Conclusions

Positivist doctrine maintains that the only right is the positive one, being useless to seek the origins of human rights in natural law, but the starting point of any discussion on the freedom and rights lies usually in the theories of natural law [20].

Substantiation of human rights and freedoms only on positive law - their recognition depends only on the state - would open the arbitrary and totalitarian way [21], which can be faded only by the recognition of natural law, which attempts to link human rights to “higher principles” and human nature.

Along with the classical doctrine of natural law - that situate human rights of ontologically prior to the birth of the individual - and positivism, which positioning itself at the other extreme, consider that the rights are related only to state’s will, there is an opinion according to which the genesis of these rights is social, but it is in a prejudicial and extrajudicial phase, gaining only later by consecration and legal protection of those values, normative nature.

The claim that human rights would be the source only in nature, we believe that they only partially cover the reality, as the extent of the rights enshrined covers only the positive side of human nature, which involves rights and freedoms beneficial for everyone, but for the other fellow and society in general, and not the negative side of human nature.

There are some rights that are not dictated by the laws of nature, but may have its source, for example, in the “social contract”, governed by the need of individuals living together in common, and others can be derived from the development of science and technology, humanity following to adapt to it.

In conclusion, it could be argued that, in their evolution, human rights are based on positive human nature and laws of nature, but their regulation is achieved depending on the needs of social life, overall progress, the development of various communities (which generates some characteristic rights) and goals on the evolution of human societies on the civilization development [22].

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