

THE CONCEPT OF HUMAN RIGHTS AND FREEDOMS

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Abstract: In the literature, human rights are divided into "three generations". The first generation of rights includes civil and political rights, the second generation of rights encompasses social, economic and cultural rights, and the third generation of rights, encompasses the collective rights of peoples and communities. This latter category of rights arose from disasters caused by war, environmental disasters, and poverty. These phenomena have triggered an alarm system in terms of the right to development, peace, disarmament, the right to a healthy environment, and the right to self-determination.

It is difficult to formulate a definition of human rights. From a legal point of view, a right is a claim that man is justified in demanding for the simple reason that he is a human being. Human rights are based on fundamental values, such as dignity, equality, interpersonal existence, freedom, non-discrimination, tolerance, responsibility.

Protection of human rights is achieved through legal mechanisms through civil society. At international level, there are treaties, conventions that impose rules of conduct on states in the matter of asserting human rights and fundamental freedoms.

In Europe, the European Court of Human Rights is the institution empowered to ensure that States have fulfilled their human rights obligations.

In Romania, the regulation of human rights and fundamental freedoms is achieved through the Constitution of Romania, these being interpreted and applied in accordance with the Universal Declaration of Human Rights. The Constitution provides for the prior application of international regulations if there are inconsistencies between the international acts regarding the human rights and fundamental freedoms of which Romania is a signatory and the internal laws governing the rights of the citizen.

Therefore, the primary role in securing human rights and freedoms lies with the state, using its internal mechanisms, and when these prove to be inappropriate, international human rights protection systems ultimately intervene.

Keywords: Universal Declaration of Human Rights, Constitution, Rights, Freedoms, Equality

The simplest definition of human rights is represented by the rights a person has due to being a human being. It is not a complete definition, to which we add elements of Enlightenment: universality, equality, fundamental, do not depend on historical moments.

The Oxford Dictionary defines the minimum conditions for the definition of human rights, being inalienable moral rights, which are equally attributed to all persons, irrespective of race, gender, nationality.

The Declaration of Human and Citizen Rights, adopted in 1789, is the document that contains a synthesis of human rights.

Human rights are "usually understood as fundamental inalienable rights to which a person has an inherent right simply because he or she is a human being"¹.

Thus, human rights are defined as universal rights, which are applicable anywhere, regardless of territory, and equality, which are applicable to any person, irrespective of race, gender, nationality etc.

There are two types of human rights: natural rights and legal rights. Legal rights are applicable both in national law and international law.

Public policies around the world in the field of human rights have been strengthened by the doctrine of human rights in international practice, at international level, and by regional institutions in state policies.

The doctrine of human rights in international practice provokes, even today, debates about the nature, justification and content of human rights.

Many ideas arose from two events in the history of mankind, namely the Second World War and the Holocaust, which led to the subsequent adoption by the United Nations General Assembly of Universal Declaration of Human Rights in 1948.

The concept of human rights has developed in the early modern age. The forerunner of this concept was the concept of natural rights, which emerged as part of the medieval tradition and became prominent during the Enlightenment period.

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must act one another in the spirit of brotherhood"².

The definition of human rights stems from their associated characteristics, so that human rights are:

- a) Inalienable - can not be granted to another individual arbitrarily;
- b) Indivisible - can not be removed in favor of others;
- c) Interdependent - the guarantee of a right depends on the observance of other rights, human rights being bound together;
- d) Individual - human rights and fundamental freedoms are held by one person, whether they are exercised in a group or individually.

Man has rights and he also has the right to expect others to respect his rights.

The State can not adopt restrictive measures that hinder the human right to exercise its fundamental rights and freedoms, and human rights are guaranteed internationally.

Human rights and freedoms are recognized by states as fundamental, as they contribute to the development of human beings.

I. The subject of human rights

Human beings are subjects of law. Professor Rudolf von Jhering said, "The recipient of every right is man, for every right corresponds to a man's interest."

The person who participates individually or collectively in legal relationships is referred to as a subject of civil law. The subject of civil law is civil rights and obligations, according to

¹Sepulveda, Magdalen; van Banning, Theo; Gudmundsdóttir, Gudrún; Chamoun, Christine; van Genugten, Willem J.M. (2004). Human rights reference handbook (ed. 3rd ed. Rev.). Ciudad Colon, Costa Rica: University of Peace, page3

²Article 1 of the Universal Declaration of Human Rights of the United Nations

Article 25 of the New Civil Code: the man, viewed individually as a holder of civil rights and obligations. "

Each individual is a subject of law. In Romanian history, this term has undergone changes, given that in society, not every person is recognized as a subject of law. In order for a person to participate in a legal relationship (to be a subject of law), he should have legal capacity, have rights and obligations, which, according to Roman law, man was not born with such capacity. As evidence, slaves were not considered to be subjects of civil law, they were considered as things.

In Rome, though, although the Slav was not considered a subject of law, when he claimed his freedom, he had a representative who defended his interests in justice.

During the time of Emperor Claudius (41-54), the act of killing an innocent slave was sanctioned.

The distinction between person and objects was made by Roman law. The subsequent evolution of Rome determined the emergence of the notion of human person. But for a while, human rights have been dominated by inequality and dependence.

The abolition of slavery took place only in the 19th century. Today, it is international to ban slavery. According to the Universal Declaration of Human Rights of 1948, "No one shall be held in slavery or bondage; slavery and slave trade are forbidden in any form"³.

The civil death, provided in the code of Napoleon, was also removed in the middle of the nineteenth century, a punishment that also removes the status of a person's civil law subject. Civil death results from a criminal conviction with the imprisonment for life or voluntarily from religious practices. Although they were living beings, the civilian deaths were dead to the world, so he opened his succession, his marriage unfolded, and could no longer exercise his civil and political rights.

After 1864, this provision was removed, and the only form of loss of personality was natural death.

Throughout the 20th century, the notion of the subject of law and the development of human rights have been influenced by sociological, philosophical and psychological trends.

The evolution of these notions has been a significant momentum with the Universal Declaration of Human Rights, which treats the existence of the individual, his rights and ways of identifying him as a subject of law.

"Rule of law is any person to whom legal personality is conferred"⁴.

An important role in the development of human rights and the strengthening of the notion of a civil law issue has been played by the United Nations, by providing information on human rights, by providing means and tools, informing the subject of law - man - civil rights.

II. The universal nature of human rights

All people are entitled to exercise their fundamental rights and freedoms, regardless of time and space. The universal nature of human rights and freedoms stems from the fact that "they apply to all human beings, that state regulations must conform to universal principles when referring to Human Rights"⁵.

In the literature, it is stated that the universality of human rights and fundamental freedoms is applied at national, temporal and spatial level. Gregorio Peces-Barba Martínez, a

³Universal Declaration of Human Rights, 1948, art. 4

⁴ M. DOUCHY-OU DOT, Civil Droit. Introduction. Personnes. Famille, Dalloz, 2006, p. 141

⁵ Dan Claudiu Dănișor, Constitutional Law and Political Institutions, ed. SITECH, Craiova, 2002, p. 617

lawyer and a Spanish politician, considered that the universality of human rights and fundamental freedoms on a national level, human rights and freedoms are national and abstract, generally valid due to the moral criteria they are founding, thus being attributed to all beings human.

On a temporal basis, the universality of human rights and freedoms presupposes that human rights and freedoms are valid at all times.

Space-based, the universality of human rights and freedoms presupposes their extension to all political societies.

The constitutional system of Romania defines distinctly the rights, supreme values of man in art. 1, paragraph 3 of the Romanian Constitution of 1991: "Romania is a state of law, democratic and social, in which the dignity of man, citizens' rights and freedoms, the free development of human personality, justice and political pluralism are supreme values in the spirit of traditions the democratic people of the Romanian people and the ideals of the Revolution of December 1989, and are guaranteed"⁶.

Therefore, according to the Constitution of Romania, the supreme values are: human dignity, citizens' rights and freedoms, the free development of human personality, justice and political pluralism.

While it is stated that the universality of human rights limits their nationalization by means of supreme values, at the same time the specific character of the supreme values is supported by their constitutionalization.

In the legal space, universality is observed from different perspectives, that is why we can speak of universality, not universality in the dream of its uniqueness.

In the philosophical space, there are different directions that characterize universality, generating different social structures, proposing types of similar social ties that meet specific values.

Dan Claudiu Danisor, states that human rights and freedoms are timeless: "So all the criteria of the legal restraint of rights and freedoms must be judged by this timelessness. Necessity and proportionality, which ultimately is the key to the whole issue, should not therefore be time-dependent. As they are now judged, it must be possible to apply judgment at any time. This must be a limit to the judging of the pertinent legal character of any decision of constitutional jurisdiction in the field. The contextual nature of the decision must be merely procedural, never substantial, so supreme values would no longer have any normative meaning"⁷.

Michel Villey, however, said that although Human Rights are universal, they can become discerning, "human rights are never for all"⁸.

M. Walzer, a professor at Princeton, invoked surplomb universalism, stating moral values based on a passage in the Bible, expressing the Christian vision of humanity "is but God, one law, one justice, one concept of a good life, or of a good society or a good regime. "

The final statement of the Vienna Conference stated that "all rights are universal, interdependent and intimately linked. The international community must treat human rights in a global, equitable and balanced manner on the same footing of equality and giving them the same importance".

III. Current human rights problems

⁶ Romanian Constitution of 1991, art. 1, paragraph (3)

⁷ Dan Claudiu Danisor - Constitutional Law and Pulse Institutions, ed. SITECH, Craiova, 2002 p.619

⁸Michel Villey 0 Philosophie du droit, Dalloz, 2001, p. 115

International Law on Human Rights has evolved, starting from tools outlined in the 18th and 19th centuries, evolving in the face of concrete regulations. Following the conventions adopted by the United Nations and specialized bodies, different types of rights have been regulated, with a punctual nature:

- Specific rights regarding non-discrimination and equal treatment, social rights, cultural rights etc .;
- Rights of special categories of persons (children, women, refugees, foreigners, etc.);
- Rights of persons belonging to collectives (rights belonging to ethnic, religious, linguistic minorities).

The third generation of Human Rights also regulates other categories of rights, such as the category of complex rights, sustainable development, solidarity, etc.

Human rights are one of the most important issues of the United Nations. One of the UN's activities, in parallel with the process of universalisation of Human Rights, is to define the process of contextualizing them, trying to regulate human rights through the concrete situations of individuals and groups, referring, for example, to the situation of children during conflicts armed practices, practices that affect women's health, the sale of children, camouflaged by international adoption, etc.

Positive discrimination is one of the issues that the UN regulates, the documents in the field ensure the protection of people belonging to marginalized groups. On Art. 27 "In countries where there are ethnic, religious or linguistic minorities, the persons belonging to these minorities can not be deprived of the right to share their own cultural life with the other members of their group, to practice and practice their own religion or use their own language "contained in the International Covenant on Human Rights, the Human Rights Committee stated that" the use of these rights could entail positive legal protection measures and measures aimed at ensuring effective participation of members of minority communities in taking decisions in matters that concern them directly. "

Another document that regulates positive discrimination is, for example, the Convention on the Elimination of All Forms of Discrimination Against Women.

The contextualization of Human Rights does not mean, therefore, the waiving of standards, but, on the contrary, their strengthening. Some regulations in the field have responded to violations of human rights in different areas and cultures of the globe.

In the matter of Human Rights, there are confrontations about the relation between universalism and cultic relativism.

The debates on cultural relativism of Human Rights have emerged in several directions: some authors consider that the cultural relativism of Human Rights is identified in community studies and research, which "advocates defending a certain way, idealized life, against individualism and alienation on which liberalism of human rights is trying to impose on it"⁹.

Another direction for the universality of Human Rights belongs to the Asian countries, which outlines the fact that human rights would be easier to respect if they "reflect the cultural tradition" (Abdullahi An-Na'im, Sudanese, university professor).

Reactions to feminist movements have also been one of the ways in which the debate of universalism - cultural realism in the matter of promoting human rights is manifested. Universalism was accused of trying to impose the characteristics of the universal woman, ignoring the traditions and cultural concepts of women, especially in Africa and Asia. On the

⁹ E.R. Howard - "Human Rights and the Search for Community", Westview Press, 1994, p. 51

other hand, relativism was accused of trying to adapt human rights to various cultural conditions, favoring discrimination against women, especially in societies where traditions outline different roles of man and woman.

British sociologist N. Mouzelis said that "universal religions in the sphere of cultural life, the nation-state system and the more recent trend of global democratization in the political sphere, the massive migration of capital in international production and the economic sphere - all these, as well as the technologies that are linked, have led to a reality that is exactly the opposite of self-sufficient, culturally isolated society"¹⁰.

Nowadays, the central values of late modernity revolve around productivity in the economic sphere, democracy in politics, solidarity in the social sphere, autonomy and self-reliance in the cultural sphere. These values are not transhistoric, their general is a practical one, being used by as many people in different parts of the world as values that can overcome cultural relativism and lead to condemnation of the violation of Human Rights, irrespective of local traditions and cultures.

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¹⁰ N.Mouzelis-, "Towards a Transcultural Value System: a New Perspective on Relativism in the Responsive Community. Rights and Responsibilities" Vol.10, p.17