

SOME CONSIDERATIONS ON THE RESPECT OF HUMAN RIGHTS ISSUES DURING THE PANDEMIC TIMES

Raluca - Viorica, Lixandru¹

Abstract

The respect of human rights represents an imprecise structure. At European Union level, the concerns related to human rights regulation are quite recent. Human rights, democracy and the rule of law are the essential values of the Council of Europe.

The European Convention is a regional legal instrument for respecting human rights. It is also the qualitative synthesis of the international norms in the field, and its sources of inspiration were, in particular, the Universal Declaration of Human Rights and the International Covenants on Human Rights.

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Human rights in Europe have become more and more known, also influencing the states beyond the European borders. This process has also been strengthened by the trauma caused by two world wars, determining the need of the emergence of some international bodies and organizations to support the protection of these rights. The emergence of the international documents – starting from the Universal Declaration of Human Rights and the Pacts on human rights – were meant to mark in their provisions the fact that people are equal in rights and that they are born free and equal in dignity and rights regardless of race, language, sex, religion, national or ethnic origin or any other features. The first important step towards what did not bear the name of human rights protection was made at the end of World War I, but the strengthening of this protection was made after the Second World War (Gherghina, 2010).

The emergence of the Council of Europe was a milestone in developing the protection of human rights. Within the Council of Europe the fundamental text is represented by the European Convention on Human Rights and Fundamental Freedoms protection. Romania ratified through Law no.30/1994 Law (Official Gazette of Romania, Part I, no. 135 of May 31, 1994) the Convention for the defense of Human Rights and Fundamental Freedoms and of the additional protocols to this Convention, and through Law no.79/1995 (Official Gazette of Romania, Part I, no. 147 of July 13, 1995) it also ratified Protocol no. 11 at the Convention for the defense of Human Rights and Fundamental Freedoms on restructuring the control mechanism established through Convention.

This is reinforced by a number of additional texts, such as: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (November 26, 1987) which very well completes article 3 of the European Convention on Human Rights, the Framework-Convention for the national minorities' protection (Convention November 10, 1994), the European Convention on cross border television (Convention April 5, 1989), the European Convention on the child's rights, adopted on January 25, 1986.

The European Social Charter, Signed at Turin on November 18, 1961, entered into force on February 25, 1965, and was amended by several additional protocols, also complements the European Convention on Human Rights, establishing the civil and political rights. The Charter stipulates a number of social rights, such as the right to work, the right to organize unions, the right to collective bargaining which includes the right to strike, and not least the right to social security, the right to social and medical assistance, the rights of the

¹ PhD Lecturer, Constantin Brâncoveanu University, Pitești.

migrant workers and of their families to protection and assistance. The original text of the European Social Charter was completed with a revised European Charter, signed at Strasbourg on May 3, 1996 and entered into force on July 1, 1999, which brings together the rights established by the Charter of 1961 and the Protocol of 1988.

The European Union is a community of law having democratic vocation, a fact reflected in the principle according to which the observance of fundamental human rights is one of the essential elements of a state's belonging to the Union (Renucci, 2009).

The totality of initiatives of the EU bodies on human rights observance were first represented by the Single European Act (1986), in whose preamble references are made to the fundamental rights recognized in the constitutions and laws of the Member States, in the European Convention on Human Rights and the European Social Charter, which thus becomes the first EU treaty in which the principle of respect for human rights is mentioned.

On December 7, 2000, the Nice European Council adopted the EU Charter of Fundamental Rights. Being considered a modern document, the renewal of the fundamental rights protection was launched "around six core values: dignity, liberty, equality, solidarity, citizenship, justice" (Sudre, 2006).

The content of the EU Charter of Fundamental Rights provides a series of rights, such as: the right to life, to human dignity, the right to bodily physical and mental integrity, being mentioned the banning of using the human body as a source of income, as well as of human cloning for reproduction purposes, the banning of torture and inhumane and inhuman treatments, of forced or compulsory labor, the prohibition of human trafficking, the right to liberty and security, etc.

In human rights there was a series of important documents adopted by the Organization for Security and Cooperation in Europe during the Budapest summit in December 1994: the Helsinki Final Act of August 1, 1975, the Vienna Document from 1986, the Charter of Paris for a New Europe of November 21, 1990, the Copenhagen Declaration of 1992, and so forth.

Through the Maastricht Treaty, signed on February 7, 1992 and entered into force on November 1, 1993 and the Amsterdam one, signed on October 2, 1997 and entered into force on May 1, 1999 as well as the Nice Treaty and the Charter of Fundamental Rights, the Union got involved more in the sense of community protection of the human rights.

In the treaty establishing the European Union its preamble reiterates the importance of observing the human rights in the Community judicial order. Thus, article F explains the Union's commitment in this matter and this issue is inserted in the Treaty: "The Union shall observe the human rights as guaranteed by the European Convention of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, and as resulting from the joint constitutional traditions of the Member States, as general principles of Community law." Thus, the privileged position of the European Convention of Human Rights is emphasized, taking into account the constitutional provisions of the Member States. By article J.1 paragraph (2) final line, found in Title V – "Provisions on joint foreign and security policy", it is provided as objective of joint foreign and security policy the development and consolidation of democracy and of the rule of law, as well as the observance of human rights and fundamental freedoms.

The treaty amending the Treaty on the European Union, the treaties establishing the European Communities add a new paragraph to the preamble of the Treaty on the European Union, according to which the party States confirm their attachment to the fundamental social rights as defined in the European Social Charter signed at Turin October 18, 1961, and in the Community Charter of the fundamental social rights of workers from 1989. It also provides the expansion of powers of the European Communities Court of Justice in respect of protecting the fundamental rights and extending that power to the third pillar of the European Union.

The Amsterdam Treaty, reviewing the Treaty establishing the European Union, includes important provisions regarding the protection of human rights. The contents of the treaty establishes a general provision dealing with the non-discrimination based on sex, race or ethnic origin, religion or beliefs, disability, age or sexual orientation.

The Treaty of Nice (February 26, 2001) strengthens the protection of fundamental rights, intensifying the fight against discrimination.

The jurisprudence of the European Communities Court of Justice was an important factor in the development of the Community protection of human rights. The European Union has a lower activity in establishing the human rights and more extensive in defending them, through the work of the European Communities Court of Justice. Although there have been many initiatives, there are not yet law texts to specifically protect the human rights within the EU legal order.

In order to avoid conflicting interpretations and in order to unify the sources of inspiration of the European Communities Court of Justice the idea of drawing up a Charter of Fundamental Rights in the European Union (1999) was reached. The Charter represents a restatement of the general principles of Community law, including both the civil and political rights and the economic and social rights. At the same time, the Charter brings the issues of fundamental rights into the focus of the community's concerns, making them become essential. From an accessory of the construction of the Common Market, the protection of fundamental rights becomes the main interest of the whole legal document prepared under the Community law. This document could be regarded as fundamental European Act, a fact which results from its wording manner, which indicates that in the future the Charter will get such a value.

Although it was mentioned above, it should be stressed that one of the important documents on the protection of human rights in the European area is the European Convention of Human Rights and Fundamental Freedoms, being the first treaty concerning human rights (Gherghina, 2010).

The Convention has a special significance for international law of human rights and for the entire human rights movement, developed after the Second World War (Steiner, Alston, 2000; Leach, 2001; Pettiti, Decaux, Imbert, 1999):

- it was the world's first treaty on human rights;
- it established the first proceedings and international court where complains can be made in the field of human rights (in article 33 of the Convention an interstate case is regulated, and in article 34 the individual claims procedure);
- it is the most developed of all human rights systems;
- jurisprudence is more extensive and richer compared to any other international system.

The legal literature lists three reasons that led to the development of such a European human rights treaty (Keon, 1999):

- it was a regional response to the atrocities committed during the Second World War and the hope that by respecting the human rights, governments will no longer trigger as easily wars against their neighbors;
- both the Council of Europe (founded in 1949) and the European Union (formerly the European Communities) were based on the idea that the best way for Germany to become one of peace forces, along with Great Britain, France and other Western countries, was that of the regional integration and the adherence to a set of common values;
- another reason was to bring together the non-communist European countries in a common framework that is based on the same fundamental values and their consolidation when facing the communist threat.

The European Convention on Human Rights was signed on November 4, 1950 at the Palazzo Barberini in Rome. Then nobody could have predicted how successful would the

Convention be in the next 50 years. Today, the Convention includes more than 40 signatory states and a growing number of citizens resort to the Court; at the same time the importance of the Convention for the national legal order from the States of the High Contracting Parties is growing. Few are those who have foreseen the legal impact the Convention was to have on the traditions of their internal law.

But we also have to say that it was not immediately noticed what would be the legal relevance of the Convention in terms of the future development of the national law from the various countries involved. Over the first 25 years of existence the importance of the Convention was primarily theoretical. As a result of the direct confrontation with the systematic violation, on a large scale, of the most basic human rights by the Nazi regime, the European states were convinced that the effective protection of human rights could not only be entrusted to national authorities. It required the establishment of an international control mechanism. This political conviction strongly facilitated the introduction of a document, revolutionary at the time, a legally binding document concerning the human rights. For the first time in history an international monitoring mechanism was introduced, and the citizens could address complaints to an international tribunal concerning the human rights violations directed against their own states. It was an important step in the evolution of public international law, substantially altering the role assigned to the natural person in the classical international law.

Many states continued to consider the human rights issues as a matter of internal law, being one of the most delicate areas of political strategy. The atrocities committed in the Second World War emphasized the need for an international mechanism such as the European Convention on Human Rights, although the states continued to have concerns about the possible violations of such a treaty on human rights by certain elements even from within their societies. The Strasbourg institutions were aware of this ambivalent attitude, so that they acted with restraint and care in the first years of their existence. The fact that the states became accustomed in time with the existence of an international supervision mechanism (including the individual right of petition) proved to be a reasonable approach. Only when both the necessary confidence in the cautious approach of the Commission and of the Court and the cooperation of the High Contracting Parties were provided, the emphasis moved on ensuring a more effective protection of the complainants.

Just as in the first 25 years of existence the importance of the Convention is primarily theoretical, in the next 25 years it becomes more practical. The Court is becoming increasingly a legislative body with impact on the national policy of law in the Member States. The emphasis of the jurisprudence of the European Court of Human Rights moves towards the idea of offering as much as possible an *effective* protection of the rights protected by the Convention.

The European Court offers a dynamic, teleological and extensive interpretation of the Convention. The legal protection provide by the Court thus attracts more applicants. But, at the same time, we can notice an interesting change in the national mentality. Lawyers have begun to understand the significance of the Convention for their clients, so they began to resort more often to the Convention (justified or not) and the national judges must therefore submit their views on the compatibility of the legal stipulations with the Convention requirements, while the legislative bodies systematically check if the legislative proposals are made “according to Strasbourg.”

Conclusions

International human rights law began to develop once with the end of the Second World War. What caused the emergence of all legal instruments of universal vocation and regional vocation were the atrocities committed during the Second World War. The Universal Declaration

of Human Rights was one of the legal instruments of universal vocation of particular importance in the evolution of human rights. At European level, the protection of the human rights has been strengthened by the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and by many other regional instruments.

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