CONSIDERATIONS ON THE IMPORTANCE OF OBSERVING HUMAN RIGHTS WITHIN EUROPEAN STATES

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Abstract:

The detailed analysis of the institution of human rights and fundamental freedoms is necessary to know its role. The promotion of the human condition in the world leads to the innovative interpretation of this institution. The existence of so many international legal instruments aims towards a better protection of the human rights in contemporary society.

The issue of human rights has occupied an important role within the states, human rights violations being a common concern, especially in the former communist states.

The issue of human rights in Romania has emerged and developed very early. The changes made in Romania by the revolution of 22 December 1989 caused an intense process of amending the legislation in order to be correlated with the international standards.

Within European states human rights observance has acquired great importance, a matter which will be emphasised in the future as well. The European Court of Human Rights ensures the guarantee of respecting human rights in Europe, having as legal instrument the European Convention on Human Rights.

Keywords: *Human Rights, the European Convention on Human Rights*.

JEL Classification: K13, K39.

The concept of human rights includes a highly diverse range of rights, being debated both in doctrines and in the specialised practice. However, it currently represents a reinterpreted concept.

In the modern world it is important for a person to know his/her rights. It is sad that currently there are extremely many people who do not know which those rights are. Perhaps this is also the reason why human rights have generally begun to be promoted lately. It is absolutely necessary to be united with our rights.

The emphasis on human rights and their development existed at the end of World War II, when the atrocities of the Holocaust were revealed, where it is estimated that over 10 million people died. This fact in humankind history led to the creation of international standards of human rights protection and of systems that guarantee their observance.

The creation in 1945 of the United Nations is a landmark in the evolution of human rights observance.

Subsequently, the UN Charter (the UN Charter was signed in San Francisco on 26 June 1945, at the end of the United Nations Conference on International Organisation, and came into force on 24 October 1945. Romania ratified this Charter in 1955) – based on which the Human Rights Commission was established – and the Universal Declaration of human Rights (the Universal Declaration of human Rights was adopted and proclaimed by the UN General Assembly by resolution 217 A(III) of 10 December 1948. Romania signed the Declaration on 14 December 1955 when the R 955 (X) of the UN General Assembly was admitted among the Member States) have made a significant contribution in the development of the universal system of human rights observance.

Systems of human rights protection, similar to the European one, have created on all continents.

The European system finds its source in the European Convention on Human Rights (the European Convention on Human Rights was signed in Rome on 4 November

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1950, a Convention also ratified by Romania on June 20, 1994 by Law no. 30 of 18 May 1994 published in the Official Gazette no. 135 of May 31, 1994.

According to article 4 paragraph 1 of Law no. 30/1990, Romania has the following reserve:

Article 5 of the Convention shall prevent the application by Romania of the stipulations in article 1 of Decree no. 976 of 23 October 1968 regulating the military disciplinary system, provided that the term of imprisonment does not exceed the limits set by law in force.

Article 1 of Decree no. 976 of 23 October 1968 states: "For the deviations from the military discipline, stipulated by the military regulations, the military commanders or chiefs may apply the disciplinary sanction with imprisonment to servicemen up to 15 days."), which is the most important and best developed treaty in this area.

On other continents, human rights protection systems have not been as successful. On the American continent states have adopted an Inter-American Convention on Human Rights and a judiciary system that guarantees their observance, which however did not have the same success as the European one. In Africa, countries have adopted the European model, which although in recent years has made some progress, still remains without use.

The issue of human rights has occupied and continues to occupy an important place within the states, as well as within international bodies and meetings, becoming nowadays a widely spread topic, the compulsory reference of any modern speech (Sudre, 2006). Since it is so vividly debated in the contemporary world, it seems to be very familiar to many people, but it really it is a great enigma because it involves two fundamental questions about these: ignorance of the issue and its real non-application.

The self-limiting of the legal science to the analytical approach has led the law theory to neglecting its fundamental task, which is seeking for the essence of law and justice. Philosophers have tried to fill this gap and proposed an impressive number of speculations on the nature of law and justice. (...) An investigation into the functions performed by law and justice within the different types of social groups would therefore lead to a better understanding of their intrinsic nature (Schwarzenberger, 2010).

This topic about the protection of human rights is dealt with by the science of public international law in a separate chapter, but also in many of the internal law branches, such as: the international protection of human rights, constitutional law, civil law, labour law, family law etc.

Public international law deals with this subject in terms of the way in which the international bodies and organisations are involved in this issue.

The international human rights proclamation is more recent and comes from written sources, respectively several legal texts adopted at national and international level after the Second World War (Corlăţean, 2012).

In time, the human rights and fundamental freedoms have found their legal establishment in a number of international treaties and conventions. We mention some of them as examples: the Final Act of the Congress of Vienna (1815), which guaranteed the religious freedom and some civil and political rights for certain communities; the Treaties of Paris (1856) and Berlin (1878) on the protection of the Christian religion; bilateral and multilateral international agreements on the limitation and prohibition of slave trade.

Human rights protection is better stated in the conclusion of the peace treaties following the First World War.

"The international law of human rights" appeared in the second half of the twentieth century. This branch of law "differs considerably from the traditional international law, in that people are considered to have internationally guaranteed rights, but as individuals, not as citizens of a particular state. This concept led to the adoption of

some international legal instruments for the protection of individual rights and to the creation of certain international institutions whose competence includes the protection of individuals against violations of their rights by the states (Selejean-Guţan, 2004).

Violation of human rights during the Second World War was "a deliberate instrument of domestic policy and even a precondition" of the rise of the fascist systems (Robertson, Merrills, 1994).

The issue of human rights in Romania emerged and developed very early. Under the influence of the Renaissance in Transylvania, as well as in Moldova and in Ţara Românească humanistic ideas were developed contained in the works of Neagoe Basarab, Petru Cercel, Despot-Vodă, Nicolaus Olahus, Johannes Honterus etc.

In the eighteenth century the first acts of political organisation of the Romanian Countries appear, which include references to the human rights, among which we mention as examples: "Pravilniceasca Condică" printed in 1780 by Alexandru Ipsilanti; Suplex Libellus Valachorum written in 1791 at the initiative of Romanian bishops in Transylvania; the Civil Code of Scarlat Callimachi – 1817; Legiuirea Caragea – enacted in 1818, which was the first code of laws in Ţara Românească; the memoir of "cărvunarilor" – 1822, which was the first political and legal document of the Romanians that regulated a system of the rights and freedoms of man and citizen (Iorgovan, 1994); the Organic Regulations adopted in 1831 in Wallachia and in 1832 in Moldova, the Proclamation of Izlaz adopted in 1848 by the revolutionary movement in Ţara Românească, etc.

During the Revolution of 1848, the issue of human rights has begun to acquire a modern character, being underlined in the following years by our country's first modern constitution, the Constitution of 1866 and the Constitution of 1923.

During the reign of Alexandru Ioan Cuza other legislative stipulations were adopted as well, such as the Civil Code – 1865, the Criminal Code – promulgated on October 30, 1864 and implemented in 1865, the Code of Criminal Procedure, in which some principles were included, such as: the principle of punishment legality; the principle of the right to defence; the principle of equality before the law, etc.

The vast majority of treaties, conventions and international agreements on human rights were ratified during 1944-1989, although in many cases the internal normative act was not in line with the international provisions (Romania ratified the International Covenant on economic, social and cultural rights and the International Covenant on civil and political rights by Decree no. 212/1974, which was published in the Official Gazette no. 146/20.11.1974).

The changes made in Romania by the revolution of 22 December 1989 caused an intense process of amending the legislation in order to be brought up to the international standards. This process is still ongoing, targeting the criminal code and the code of criminal procedure, and also a number of special laws containing criminal provisions, such as the laws on human trafficking, trafficking and consumption of illicit drugs, money laundering, electronic commerce, corruption etc.

The protection of fundamental rights in Romania has several difficulties. In comparison with the European Convention and the Strasbourg Court, it is necessary that the state overcomes the threshold of a minimum obligation of enforcing the judgments delivered against it and of assuming the role of primary guarantor of the fundamental rights' effectiveness, which is an obligation ensuing from their objective character (Bercea, 2009).

Romania is a party both of the treaties specialising in human rights and of other international treaties related to human rights.

Our country is a party of all international treaties with universal and general value, such as: the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International

Covenant on civil and political rights, aiming at abolishing the death penalty, the Optional Protocol on the international Covenant on Civil and Political Rights; specialized universal international treaties, such as: the Slavery Convention, the Convention on the Prevention and Punishment of the Genocide Crime, the Convention on Women's Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments; specialized regional international treaties, such as: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities, etc; international treaties related to human rights to which Romania is a party: the United Nations Charter and the Statute of the International Court of Justice, the Constitution of the International Labour Organisation, the United Nations Convention on Education, Science and Culture, the Statute of the Council of Europe; specialised international treaties on human rights that Romania signed, but not ratified: the European Social Charter, the European Charter for Regional or Minority Languages, the Convention for the Protection of Individuals with regard to the automatic processing of personal data, etc.

According to article 11 paragraph 2 of Romania's Constitution, international treaties ratified by the Parliament, according to the law belong to the internal law. The constitutional provision does not refer exclusively to international treaties on human rights, but takes into account all international treaties ratified by the Parliament.

According to Romanian internal law, even at constitutional level, the direct applicable character is expressly established, within the domestic law, of the international treaties on human rights, ratified by the Parliament, which, being part of internal law, are acts of internal law (Bercea, 2009).

According to paragraph 1 of article 20 of the Constitution, the interpretation and application of constitutional provisions on human rights are established in the light of the international treaties in this field. Reference is made to the Universal Declaration of Human Rights and the two International Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Article 20 paragraph 2 of the Constitution states that if there is conflict between the covenants and the treaties on fundamental human rights of which Romania is a party, and the internal laws, the international regulations shall take precedence.

There are two situations (Bercea, 2009): the situation in which the international norms are more favourable and the situation in which the international standards are more restrictive in relation to the internal legislation. Thus, thanks to the principle of subsidiarity of human rights international protection, in the event of conflict between the international and domestic regulations, the international ones will prevail to the extent to which they are more favourable. The internal rules, more favourable, which provide greater protection of human rights at internal level, will not be removed from the application of more stringent international norms that ensure a minimum level of protection.

In the event of a possible conflict between an internal standard of human rights protection and one stipulated in the Convention or between two international norms, domestically, the judge will appreciate the more favourable provision cited by the interested party. In the case of the international conflict, this may occur between the provisions of the Convention and those of the UN International Covenant of 1966 regarding civil and political rights, to the extent to which it would concern the rights and freedoms guaranteed by both treaties, the State in question being part of both, although the conflict is apparent: the Court can only apply the Convention provisions (Bîrsan, 2006).

The European Convention on Human Rights has primacy, not only because of the principle of the primacy of international law itself, but also because it is enshrined in a constitutional provision (article 11 paragraph 2 and article 20 of the Constitution). This

ensures effective and concrete guarantees for implementing the Convention norms in domestic law, both in terms of quality of the national law and in its interpretation and application, the jurisprudence of the European Court of Human Rights having an important directive role (Voicu, 2001).

The European Convention on Human Rights, considered as the most complex and advanced international legal instrument on the protection of fundamental rights and freedoms, also has the role of standard in interpreting constitutional provisions on human rights, a role that the Constitutional Court has increasingly stated in many of its decisions (Tudorică, 2003).

The situation of the European Convention on Human Rights in the states' domestic law involves a great diversity. Thus, in countries such as Ireland, these rules are not part of the domestic law because the international standards are considered to have legal value only in terms of interstate relations (Sudre, 2006).

In other Member States of the Council of Europe (Malta, Finland, Sweden, Norway, Denmark, the UK) the application of the Convention stipulations was made indirectly, following the transposition into domestic order by a special law. Furthermore, in countries such as Germany, Bulgaria, Spain, France, the Netherlands, Portugal and Belgium, the European Convention is incorporated directly into the national legal order by the effect of the national constitutional provisions (Sudre, 2006).

With regard to the status of the European Convention in relation to the Romanian legislation, it results from the combination of the provisions from article 11 and article 20 with those of article 1 paragraph (5) of Romania's Constitution, the latter enshrining the supremacy of the fundamental law over all other laws. Therefore, in terms of the legal force, the stipulations of the European Convention cannot be positioned above the provisions of the Constitution of Romania; it would have the nature of a law which is positioned immediately after the fundamental law and before the other categories of normative acts (Muraru, 2007).

The reasons for the dynamic of the process of incorporating into the domestic law the fundamental rights and freedoms has been slow, especially at the level of ordinary courts of law, they are of a different nature. Firstly, the difficulty of applying the Convention has occurred because of the lack of any official information system on the Court's jurisprudence, the judges thus limiting themselves to stating sometimes the compliance of the internal law acts with the provisions of the Convention. Secondly, there was a strong reluctance of the judges towards a certain court and supranational legal text. This phenomenon is not unique, occurring in different intensity levels in other Member States of the Council of Europe as well (Chiriţă, 2008).

The European Convention had and still has a great influence on the Criminal Code, the Criminal Procedure Code, and the special laws with criminal content, as well as the content of organic and ordinary laws.

The Universal Declaration of Human Rights becomes legally binding in the Romanian internal law based on article 20 paragraph 1 of the Constitution and it is integrated to the constitutional block, having the same legal force as the human rights international treaties of which Romania is a party.

The human rights remain a matter of national competence of each state, increasingly becoming also object of international cooperation (Diaconu, 2001).

We emphasise the fact that the development of the concept of human rights was actually the synthesis of the ideas from different countries, written by prestigious lawyers who left behind valuable research and study works.

The regulation of the human rights issues in achieved today in the world on two levels:

- internationally, through international legal instruments;
- internally, through internal law regulations of the world's countries.

Referring to the political dimension of the protection of human rights, we can say that it is simply the result of the reception at state and international level of the human aspirations, which tend to be protected by all means available to the human society. Therefore, it can be easily concluded that first of all the issue of human rights is a social one.

Despite these aspects, we still have to admit that for certain groups of the population this issue remains an unknown, abstract, theoretical or partially noticed topic, the significance of these rights not being sufficiently perceived for the state's development, as well as for the citizens' lives.

The concept of "human rights" is relatively imprecise (Renucci, 2009). This ambiguity comes from the fact that the science of human rights is a discipline specific to the humanities, whose object is to study the relationships between people based on human dignity, causing the appearance of rights and freedoms that are necessary for the development of human personality (Mathieu, 1995).

The interest that this precious legal institution has lies in the fact that without those rights a democratic society cannot be achieved, a prerequisite for each individual's assertion both internally and externally.

An important aspect is that of placing the human rights issues domestically or internationally.

The human rights compliance can be a matter of international law, since this field is regulated by international agreements, it ceases to be an issue related to the domestic jurisdiction of states.

Geographically speaking, the international protection of human rights is applicable both universally and regionally (Dinh, Daillier, Pellet, 1987).

The existence of the principles that belong both to the domestic law and to the international legal order can place this field both in the field of law and in that of international law.

Based on the sovereignty they have, the states may sign, in any field, including the one of human rights protection, international conventions through which they start relationships with other states. Those conventions create for the signatory states the obligation to respect and protect human rights, but also for the international community to ensure the compliance of these rights and freedoms.

The issue of the real protection and defence of the human rights was translated into reality by the creation of specialised political or judicial courts, including the establishment of an International Criminal Court for the most serious prejudice to the human rights (Oberdorff, 2010).

The fact that the international regulations are prevalent does not mean that human rights are taken out of states' national jurisdiction. The citizens can benefit from the rights contained in the Convention only if those rights are accepted by states to which they belong, by their inclusion in the national legislation or by the ratification of these conventions. The people's rights and freedoms arise from the transposition of the international stipulations into the domestic law. Having a universal nature, the human rights must be respected by every citizen. In case of violation of these rights by a state body or by a private person, the state has the duty to intervene to protect the victim and his/her harmed interests, which leads to the need of applying the national law, to defend the equality of rights of all citizens.

Concerning the ways that can guarantee the compliance of human rights internally, in the Constitution, article 20 provides that: "(1) Constitutional stipulations with regard to the citizens' rights and liberties shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties that Romania is part of.

(2) In case there are any inconsistencies between the covenants and treaties on the fundamental human rights of which Romania is part, and the internal laws, the international regulations shall take precedence unless the Constitution or internal laws include more favourable provisions," and article 11 paragraph 2 states that: "The treaties ratified by the Parliament, according to the law, belong to the internal law."

The text of the Constitution emphasises the "pacta sunt servanda" principle (the compliance in good faith of all international treaties), as well as the fundamental constitutional principle in the legal guarantee of the human rights in our country.

The protection of the human rights is "a special branch of the social sciences that studies the relationship between people based on human dignity, establishing the rights and faculties whose totality is required for the flourishing of every human being's personality" (Cassin, 2005).

We consider that the issue of human rights compliance will be a highly debated topic in Europe of the 2020s because there will always be attempts to violate human rights or violations of human rights.

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