THE RIGHT TO LIFE IN THE INTERNATIONAL HUMAN RIGHTS LAW

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Abstract

The express regulation of the right to life in the national and international legislation and in the CEDO practice is based on stipulations which mention the facts which represent acts constituting violations of the right to privacy, as well as the legal means available to a person to defend his right to privacy. Even if the meaning of the notion of life varies from one age to the other or from one social group to the other, the international legislation on the matter establishes the defence means applicable in the case of violating a right, which the courts are summoned to apply according to the specificity of each situation. The right to life represents an inalienable attribute of the human being and it is an essential element in the system of the fundamental rights and freedoms defended by the European Convention on the matter, life being exactly the condition required in order to exert all the other rights and freedoms.

Keywords: *the right to life, national legislation, legal means, inalienable attribute, fundamental freedom, rights and freedoms.*

"In reality, abortion is a defeat of the individual and of the civil society. Through it the life of a human being is sacrificed for the sake of some lower value goods, often citing reasons inspired by the lack of courage and confidence in life… This is one of the most worrying consequences of theoretical and practical materialism which, by eliminating God, ends up also eliminating the human being."

December 25, 1986, Pope John Paul II

1. INTRODUCTORY ASPECTS OF INTERNATIONAL HUMAN RIGHTS LAW

1.1 Introduction

The present paper presents the fundamental principle of human rights, as well as its phenomenology, respectively *The right to life.*

The rights of the individual are "usually perceived as fundamental inalienable rights *"to which one person has an inherent right simply because he or she is a human being."* Human rights are considered as being universal (they apply everywhere) and egalitarian (they are the same for everybody). These rights may exist as natural or as legal rights, both in the national and in the international legislation.

The doctrine of human rights in international practice, within the international law, global and regional institutions, in the states' policies and in the activities of non-governmental organisations represented a cornerstone of public policies around the world. It stated that: "in case the public discourse of the society during periods of global peace is said to have a common moral language, than it is the same with that of human rights."

The right to life represents an inalienable attribute of the human being and it is an essential element in the system of the fundamental rights and freedoms defended by the European Convention on the matter, life being exactly the condition required in order to exert all the other rights and freedoms. But, despite its absolute character and the undisputable valorisation of this right, certain limitations are admitted and there are still some uncertainties regarding the boundaries of the right to life, international texts stating the right to life but without defining life (DONNELLY, 2013).

An essential condition requirement in order to have rights is to be recognised as a human being, as a person. Especially, the issue of the beginning of the protection of the right to life is difficult and delicate, because there is no undisputable scientific definition regarding the beginning of life. From this point of view, Article 4 from the American Convention of human rights is to be remembered, as it clearly stipulates that "the right to life is generally protected starting from conception."

1.2 The notion and the traits of the international human rights law

Human rights represent rights that people have because they are people, regardless of sex, race or nationality and they are different from the rights that people have through law. This is why the fundamental rights of the individual are unalienable and they cannot be withdrawn or restricted.

Therefore, human rights are intrinsic to human beings, unalienable (some of them within the limits of the law) and legally appliable. Basically, the idea of human rights and of restricting them appears in the relationship between the individual and the state, but discussions also appeared regarding organizations' respect for human rights and even at the individual-individual level.

Although, human rights are intrinsic to the people with the above-mentioned characteristics, they are also rights codified in conventions, codes, laws. There is also a delimitation here. We speak about "*human rights*", but also about *human rights in the sense of the laws* namely "*human rights law or international human rights law.*"

Since in Romanian there is no clear linguistic delimitation, as our legal systems tends very much to refer to "*natural rights,*" we do not have a clear separation between the concept and the international law of human rights. This is why a distinction has to be made between what can be included in human rights and what may also belong to the human rights codified through different conventions or laws (DRAGANU, 1998a; DRAGANU, 1998b).

The concept of human rights is relatively new (in comparison to human history), but, throughout time, attempts were made to create some "*rights*" which belong only to the people, are universal and can equally be applied to everybody. Because of the structure of the history so far – wars, conquest, slavery, it is difficult to define those attempts from the beginning of the concept of human rights, but they can therefore be taken into consideration. Some of the first ideas for conferring equal rights or the rights that we now call human rights emerged in the Islamic world with *sharia*. Therefore, one of the first documents which we can say that it encompassed human rights was *Magna Car,* followed by statements of rights from England, the United States of America and France (SEPÚLVEDA et al., 2004).

A strong element which took the idea of enactment further were the conventions from the humanitarian right – the Geneva Convention and the additional protocols. The most important document in the history of the human rights is The Universal Declaration of Human Rights, a document which promotes a series of human, civil, social and economic rights, which should represent the basis for stability and freedom in the world (BALL & GREADY, 2006; DUCULESCU, 2000).

1.3 The International protection of human right manifested through the promotion of the European Convention for defending human rights and the fundamental freedoms in the Constitutions of the member states

The way in which the legal systems establish the relationship between the international and national law was influenced by various factors, such as: the legal traditions of neighbour countries, the individual history and the international integration level of the given system. In the second half of previous century a clear preeminence of the international law on the national regulations imposed the obvious tendency of legal development in Europe.

The high level of solidarity on behalf of the European countries regarding the protection of the fundamental rights, manifested through the promotion of *The European Conventions for defending human rights and fundamental liberties,* with the title of the European Constitution in the matter, respectively the large integration of a number of 27 states within the European Union influenced the national approaches of the relationship between national, international and the right of the European Union.

A significant number of European constitutions give an obvious primacy to international law. The relevant constitutional rules are, however, not completely uniform on this matter. Therefore, some accept the primacy of international law in general, others in the field of human rights or in

cases where international law has direct effect. Many of them include explicit dispositions regarding the general rules of international law and of the international treaties and some refer to it in an implicit manner (PURDA, 2001).

Most often, this type of dispositions regulates the balance between the general norms of that respective international law (or only the international treaties) and the internal law norms. The explicit dispositions, which regulate the relationship between the fundament law and the constitutions themselves, are not so numerous.

It is extremely likely to be able to present the existence of a large consensus and of a significant number of European states in which international law prevails over national regulations. However, this statement is not necessarily true when we speak about the relationship between international law and national constitutions. Constitutions are seen as the main guardian of the fundamental national values and expectations, and states are extremely cautious and restrictive when establishing the relationship between their own constitutions and international law (SHAW, 2008).

1.4. Human rights and the European Union

Europe and the European Union represent an exception from what we have mentioned so far through the existence of the internal system of the European Union and of the European Court of Human Rights.

An extremely important principle of the European Union is that *it undertakes to uphold democracy and human rights in its external relations in accordance with the principles of liberty, democracy, respect for human rights, fundamental freedoms and the rule of law.* The European Union aims at integrating all preoccupations regarding human rights in all its policies and programmes and it has various policy instruments in this area for specific actions – including the financing of specific projects through its financial instruments (BEITZ, 2009).

The members of the European Union adopt, following their accession, the set of norms and regulations already existent in this system. The EU member states also agree to uphold certain rights that have to be ratified in the national law of the state, so that these norms are applied and respected and any violation entails to "punishment," either we speak about fines, certain restrictions or prison.

The European Court of Human Rights is based, just like the EU, on a treaty – The European Convention of Human Rights, by which the signatory States have undertaken to respect certain rights and have accepted the jurisdiction of the Court, thus accepting and allowing the Court to engage in the internal affairs of the State ("State jurisdiction") by ensuring that the rights of the Convention are respected.

Of course, another significant difference from the national jurisdiction is the fact that the notification must come from the victim, as there is no self-notification or notification from the prosecutor's office. At the international level we can also speak about the Inter-American Court of Human Rights and the International Criminal Court (DAMIAN, 2012; DUCULESCU et al., 1999).

The treaties concerning the fundamental rights do not reduce the protection level of human rights guaranteed by national law. Article 53 of the European Convention on Human Rights stipulates: "Nothing in this Convention shall be construed to limit or infringe any human rights or fundamental freedoms which may be recognized under the laws of any Contracting Party or any other Convention to which that Contracting Party part". Similarly, Article 53 of the Charter of Fundamental Rights in the European Union stipulates that: "There is nothing in this Charter that may be interpreted as restricting or prejudicing human rights and the fundamental freedoms recognized, in their respective spheres of application by the law of the European Union, the international law and the international commitments to which the Union, the Community it is a party of or all Member States, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutions of the Member States" (BERGHER, 2003; DELEANU, 2006).

1.5. The context and the applicability of the fundamental human rights in international law

From a historical perspective, human rights initially appear as an internal limitation of the

sovereign power. Later one, they were declared and protected at international level.

Obviously, it would have proven counterproductive for the international standards regarding human rights to reduce the possible higher national standards. A contracting state whose constitution stipulates a superior level of protection, will not violate an international obligation that imposes less protection on it.

Beyond the context of the legal hierarchy, the international mechanisms for human rights protection stipulate a certain harmonization of the rights of the individual recognised at a national, global or regional level. The internal development of human rights in the states which are part of the European Convention on Human Rights played a significant role in the interpretation the Convention by the European Court of Human Rights. As it is known, the European Court of Human Rights interprets the Convention as a living instrument (POP, 1995).

The general development tendency of the fundamental human rights within the internal systems of States Parties has, in some cases, played a decisive role in determining the content of rights and freedoms. The European Court of Human Rights facilitates the transgression of national limits by the social answers offered to human needs, they therefore becoming relevant at an European level.

Therefore, the main elements used by the Court in interpreting the Convention are the general development tendencies of the States Parties, the judicial and political development within the Council of Europe and the jurisprudence of the Court itself. However, this fact does not suggest the desire of the European Court of Human Rights to impose an absolute uniformity on the fundamental rights in all State Parties. If a general trend of evolution cannot be detected within them, if the Council of Europe remains silent and if, finally, the issue in question generates cultural and religious differences within the Member States, they will be granted a limited legal space - a margin appreciation - in order for the interpretation of the law to be adjusted to national expectations (BIRSAN, 2006).

Human rights seem to elude a strict and general judicial hierarchy. The international treaties and the international organisations which protect human rights institute the international standards and a certain degree of harmonization of the human rights at the national level. The national Constitutions can protect the higher standards of human rights, as well as certain characteristics of the fundamental rights resulting from situations such as the national historic experience or the cultural and religious context.

We can therefore state that the notion of *fundamental rights* has two acceptations. It firstly refers to, *on a substantial level,* the rights and freedoms which belong to the individual, which form the ontological primacy of the human being within the society and the group the individual is part of. *On a forma level,* the fundamental rights represent rights and freedoms that are imposed on the legislative, executive and jurisdictional powers, because they are protected by the constitution of the state and the treaties to which it is a part of. The fundamental rights have undergone a ascendant evolution and we can speak about authentic generations of rights (FREEMAN, 2002; VIDA 2006).

2. CATEGORIES OF HUMAN RIGHTS. CLASSIFICATION CRITERIA FOR THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

2.1. Categories of human rights. Classification criteria

The need to classify and enumerate the fundamental rights appeared only after these rights were proclaimed through statements of rights and especially through constitutions. The specialised literature presents some classifications. The most authorized classification, for its time, belonged to Pollegrino Rossi, during a time when France forced the teaching of the constitutional law. Therefore, it presented three categories of rights: private, public and political. Another often encountered classification is the one that divides the fundamental rights into two groups: civil equality and individual freedom.

Paul Negulescu divided public freedoms into two categories: primordial or primary freedoms

and secondary or complementary freedoms. The first category forms *the inviolabilities*, meaning those rights which ensure life, the individual's movement possibility and his physical safety. In this category we include the right to life, the inviolability of the person, the inviolability of the home, the right to free movement, the right to marriage and the right to family and child protection (GLENDON, 2001; NĂSTASE et al., 2000).

The second category is represented by *the socio-economic and cultural rights*, meaning those rights that ensure a person's material and cultural development, allowing it to take part in social time. In this category we include: the right to work, the right to rest, the right to learn, the right to material and old-age insurance, illness or incapacity for work, young people's rights to the state's insurance of the conditions necessary for the development of their physical and intellectual skills, the right to property, the right to inheritance, the right to a decent standard of living, the right to enjoy the best physical and mental health one can achieve.

A third category of fundamental rights is composed of *the exclusive political rights*, meaning the rights that, through their content, can be used only for the citizens' participation in the management of the states, for governing or for certain electoral rights.

A fourth category of fundamental rights is composed of *the socio-political rights*, meaning those rights that can be exerted by the citizens at their choice, both in order to ensure their material development and for the purpose of their participation in state leadership, namely: the freedom of conscience, the freedom of speech, the freedom of the press, the right to associate in strikes, the freedom of assembly, rallies and demonstrations, the secrecy of correspondence and telephone conversations and the right to information.

The fifth category is composed of the rights of guarantee, meaning the right to petition and the right of a party injured in an illegal act performed by a state body to ask the competent bodies, under the conditions provided by law, to annul the act and repair the damage (IGNATIEFF, 2001).

2.2. The inviolability of human rights

In the category of inviolability we mention: the right to life, the inviolability of the person, the inviolability of the home, the right to free movement, the right to marriage and the right to family and child protection.

The right to life firstly refers to the fact that *no one can be deprived of his life in an arbitrary manner*. Forbidding the death penalty expresses the dominant present tendency in the world. The death penalty represents not only a violation of human natural rights, but it is through its nature a cruelty that has rarely proved to be just and never effective.

The Universal Declaration of Human Rights establishes in article 3 that "*every individual has the right to life, freedom and the inviolability of the person*."

2.3. Human rights and freedoms or Citizen rights and freedoms

We often come across the notions of "human rights and freedoms" and "citizen rights and freedoms." Both are however correct. The distinction between them consists in the holder of the rights. In the case of human rights and freedoms, the holder is the man seen in his quality of a human being. It is not important if he a citizen, foreigner or stateless person. All rights and freedoms are protected and guaranteed regardless of one's belonging to a state or not. In the case of the rights and freedoms of the citizen, the holder is the person seen in his capacity as a citizen. The sphere of human rights and freedoms is always greater than that of the rights and freedoms of the citizen. The practice also uses phrases such as "freedoms and rights" and "fundamental rights and freedoms". The fundamental rights and freedoms are, it their turn, rights and freedoms. The element which distinguishes the fundamental rights and freedoms from the rest of rights and freedoms is that they are included in the fundamental laws of the states. The selection for the inscription in the text of the fundamental law, among the great category of the rights and freedoms that a person has, represents the will of the constituent power. There is no rule regarding the selection of the catalogue of fundamental rights and freedoms (ISHAY, 2008).

Each state and every constituent power have the freedom to select from all rights and freedoms those rights and freedoms that are to be included in its own Constitution.

2.4 The universal and indivisible character of Human Rights

The universal and indivisible character of Human Rights is also expressed in the establishment of a minimum standard which all states have to accept and transpose into laws and no derogations are allowed except through laws and well-stated public reasonings. Equality in rights is another feature of the regulations in this area.

The universal declaration and the pacts regarding human rights state that all people are equal in the eyes of the law and that they are entitled to be protected by the law. The law has to forbid any form of discrimination and guarantee equal and efficient protection to all individuals against any form of discrimination, especially of that on grounds of race, colour, sex, language, religion, political or any sort of opinion, national or social origin, wealth, birth – fields in which the worst kind of inequalities appeared in previous societies. Equality in rights is one of the most important rights, the very foundation of guaranteeing human rights (VLADOIU, 2006) .

Within this broad conception there are a series of specific regulations regarding the rights and freedoms of women, children and youth, people of other races or colours, people belonging to minorities, or aimed at eliminating discrimination and creating conditions. so that they can enjoy equal rights with other members of the society.

However, equality means not only eliminating discriminations, but also privileges. In the light of these ideas, it is inadmissible to claim a privileged regime for aliens and to use such claims as a pretext for coercive actions against another state or for other acts of violation of its sovereign rights. At the same time, discriminations towards foreigners are also inadmissible, such as those against immigrants, as well as the claims to grant a special, privileged status to groups of people living on the territory of a state, in relation to other parts of its population, as in the field of the protection of minorities, beyond the natural limits of their specific rights (MOYN, 2009).

The indivisibility and the interdependence of human rights are taken into account in all regulations, because today there are no longer rights, such as the political ones, which significantly influence the exercise of other rights, such as the civil, economic, social or cultural ones, as the guaranteeing of a right is included in the fundamental warranties of exerting other rights.

The achievement of a harmonious balance between the individual and the society also characterises the international regulations on human rights, between affirming these rights and the society in which they actually exert there is a tight connection, as the achievement of rights outside obligations to the society is not possible, only within the community the free and full development of the human being can be achieved.

Therefore, the right to life, besides the other fundamental human rights represents an inalienable characteristic of the human being and it is an essential principle in the system of fundamental rights and freedoms defended by the European Convention on the matter, life itself being the necessary condition for exerting all the other rights and freedoms. However, despite its absolute character and the incontestable valorisation of this right, certain limitations are admitted and some uncertainties continue to exist regarding the boundaries of the right to life, international texts stating the right to life without defining life (MURARU & TANASESCU, 2002a; MURGU & STOICU, 2007b).

The first conditions in order to have rights is *to be acknowledged as human, as person*. The issue of the beginning of protecting the right to life is especially difficult and delicate, since there is no undisputable scientific definition regarding the beginning of life.

2.5 The right to life holder

Art. 2 of the Cv.E.D.O guarantees the right to life for every human being. This right is not absolute; it provides for certain exceptions, such as: the execution of a death sentence (a punishment applied until 2002), self-defense, arrest or the escape of an imprisoned person and the repression of an insurrection.

2.6 The scope of the right to life

The protection of the right to life is guaranteed by the Human Rights European System of Protection for every individual, from the moment of birth until the person's death. By death it is meant the physically ascertained death, not the judicial declaration of the death or the disappearance of a person. Cv.E.D.O. guarantees the right to life, but without establishing when the protection of this fundamental value begins. If art. 4 of the American Convention on Human Rights (Cv.ADO) stipulates that the right to life must be protected from the moment of the Cv.EDO conception - just like all other international instruments for the protection of human rights protect the living being, not the one that is about to be born.

3. CONCLUSIONS

The right to life represents the individual's most important attribute and right and it is protected by the law in almost the entire world. This right is an essential one, included in the Universal Declaration of Human Rights and in the Fundamental Law of the state – the Constitution.

In order to ensure the right to life, the state is obliged to: create a safe environment, as well as healthy and safe life conditions. At the same time, through its institutions – the police, the prosecutor's office, the court, the medical and social work services and the child protection – pips the actions which endanger the life of the individual. This means that, in a democratic state, anyone who does not respect others' right is held accountable before the law.

The express regulation of the right to life in the national and international legislation and in the practice of CEDO is based on provisions which mention the facts that represent violations of the right to privacy, as well as the judicial means that a person has at its disposal in order to defend his or her right to private life.

Even if the meaning of the notion of life varies from one era to the other or from one social group to the other, the international legislation on the matter establishes the applicable means of defense in the event of the violation of this right, which courts are summoned to apply according to the specificity of each situation.

In conclusion, we mention that the notion of human rights claims to encompass some essential aspects for human development and the society's change of perception when it comes to the individual's fundamental rights and freedoms in the legislative and institutional practice of a particular country. Human rights represent the rights of a human being endowed with reason and conscience and to whom his or her natural rights are recognized as inalienable rights.

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