

The Concept of Human Rights in the View of the Ancient Greek Philosophers until their Establishment in the National Legislation

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Abstract

Undoubtedly, human rights are connected to the modern history of humanity. Yet, a deeper research shows us that a concern of humanity for the idea of individual freedoms was present even in Antiquity. Human rights represent today the most important factor of law configuration as this is a complex factor which contains also moral and religious sources which it legally protects.

The establishment of the concept of human rights is granted the highest attention at the European level; thus, art. 3 of the statute of the European Council stipulates in essence that there must be accepted the principles of the lawful state and the principle according to which each person under its jurisdiction should enjoy fundamental human rights and freedoms.

Keywords: *human rights, society, system, culture, law*

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We cannot speak today of law, of systems of law, of law application, without referring to human rights. Nowadays we talk about a “culture” and a “philosophy” of the human rights. Regardless of epithets, it is a reality the fact that in the last decades the issue of the human rights has become a political and social topic of high interest. [1]

Undoubtedly, human rights are connected to the modern history of humanity. Yet, a deeper research shows us that a concern of humanity for the idea of individual freedoms was present even in Antiquity. Human rights represent today the most important factor of law configuration so that it is a complex factor which it legally protects.

1. The Ancient Greek thinkers and the human rights

The historical practice demonstrates that in any community and in any period of time, there is a regulator system, which results from the material conditions of people’s life, as well as from their mental patterns, designating for each individual the own

sphere of activity, connecting people through a series of bilateral and mutual relationships, so that the claims and obligations could correspond. [2]

Paradoxically and unacceptably in the modern society, the Ancient Greece, where great philosophers lived and contributed to the formation of the concept of human rights, allowed the slavery. Yet, Plato, Protagoras of Abdera, Solon, Sophocles, and other important philosophers of Peloponnesus considered that people benefited of rights a prioric to any law and that these rights were specific to the human nature. These noble and significant ideas made from "zoon politikon" a superior being nowadays, who places in the centre of every law the individual fundamental rights and freedoms, as a guarantee of the lawful state.

According to Irina Moroianu Zlătescu and Radu C. Demetrescu, the Greek philosophers considered the human rights as those fundamental, eternal and immutable rights, which the human society has to comply with; in other words these are rights emerging from the nature of things, and law is only the expression of this nature, the natural law being undoubtedly the oldest orientation in the field of law [3]. Thus, human rights emerge from the natural law and are natural rights. [4]

Solon (640-558 BC)

Solon was one of the greatest law-makers of all times. Complex personality, he was a poet, strategist, politician, law-maker and one of the fathers of democracy. [5] We can state that he promoted the right to defense and the free access to justice and law supremacy, which in our times are specific to any lawful state. Thus, as prof. univ. C. Stroe and N. Culic show, Solon's constitution established "the right granted to any citizen to represent himself in court as a defender of the aggrieved people... and the main source of democracy... the right to appeal (at any decision of an authority) to the people's court". [6]

Heraclitus of Ephesus (ca.535-475 BC)

He was a Greek philosopher before Socrates, descendent from a family of sacerdotal kings of Ephesus. Understanding the positive effect of the normative acts in the life of polis, their role to maintain the social order, Heraclitus was a promoter of compliance with the laws, practically supporting the supremacy of the normative acts, an idea applied by any democratic modern state.

As the relatively recent doctrine shows, according to the philosophy of Heraclitus, existence is an uninterrupted change and transformation in compliance with certain laws. The same thing happens in the social life, where breaking the laws destroys the society. Law is an arbitrator whose supremacy should not be broken by anyone. [7]

Socrates (469-399 BC)

An important personality of ancient worlds and universal culture, Socrates did not leave any written line for the next generations, but his conceptions and thoughts that promoted strongly the idea of justice, and incriminated the injustice, were recorded by others who managed to configure the image of this man of rare modesty who stated: "The only thing I know is that I do not know anything".

According to prof. I. Craiovan, Socrates promoted the compliance with the laws, which the sophists despised, and not only the written laws, but also the others, which although they were unwritten had the same value everywhere and were imposed by gods to people. Hence, Socrates states his belief in a superior justice, for whose validity it is not necessary any positive sanction, any written formula. The compliance with the laws of the state is also a duty, for him, as the good citizen has to obey also the bad laws, for not discouraging the bad citizen to break the good ones. [8]

Aristotle (384-322 BC)

Aristotle was born in Stagira (the reason why he is also called the Stagirite), a town in the Chalcidice peninsula in the north of the Aegean Sea. His father, Nichomachus, was the court physician to the Macedonian king, Amyntas II, the father of Philip II and the grandfather of Alexandre the Great. His mother, Phaestis, came from an aristocratic family.

Losing his father in the childhood, Aristotle spent his first years in Stagira and Pella, and at 17 years he entered Plato's Academy, where he remained for 20 years, first as a student and then as a professor. Having a vast culture, Aristotle is considered the founder of logic and of psychology.

Aristotle promotes the principle of equality between people, and for him the notion of law equals to the idea of equality and legality, and justice should be perceived as a supreme, perfect virtue, which has to be exercised in the favour of the others. [9]

Certainly, we could not left out of the line of great philosophers of Ancient Greece Democritus, who considered that justice had to give satisfaction to all people, and Plato, for whom justice represented the compliance with the laws, and injustice was equal to unhappiness.

For the philosophers in the ancient Peloponnesus, nothing from what is connected to law and its institutions is allowed to step outside the sphere of good, equity and morality. They used to dream about an ideal state, where people could be equal and could comply only with laws and justice. Law could not be conceived outside the sphere of the individual fundamental rights which guarantee the full equality of all people.

2. The human rights from the Middle Ages until their establishment in the positive law

If the jurist is directly interested in the positive law of human rights, he cannot ignore in interpretation the philosophical and moral fundamentals of this phrase and cannot make abstraction of the ideological and political “environment” which raises the problem of the defense of the main human rights and freedoms.

The lawful state is the supreme guarantor of the protection of human rights, by promoting and protecting the social equity and the segregation of powers. In the literature some authors consider that we cannot conceive the state without law or law without state, to the extent to which the state “creates” or “etatizes” the general norms of behaviour in society, transforming them in “law”, and law – at its turn – “norms” the state conferring it a certain institutional structure, well determined attributions and functions [10].

The beginning of the establishment of the individual human rights and freedoms, which will transform into the notion of human rights, emerged as a form of fight against the feudal absolutism and against other forms of state abuse. In this regard, the first text known in history is Magna Charta (1215 AD), which was proclaimed in England by King John of England, and which enumerated the privileges granted to church, to the town of London, to merchants and feudal dignitaries. It is essential the fact that this document stipulates that “no freemen shall be taken or imprisoned or disseised or exiled or in any

way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.” Similar provisions can be found in the Bill of Rights or Habeas Corpus Act, in the seventeenth century, both establishing the freedoms of the accused or the imprisoned people, as well as the necessity of an appropriate justice regarding the legality of the measure.

In the ancient Rome, Seneca talked about the self-improvement of people taking into account the idea of justice and equality between people, and Cicero showed that the role of the state was to protect the rights in the letter and the spirit of law.

The merits to raise the human dignity at the rank of social value belong to the school of natural law characterized by the idea that law is a means of accomplishing justice and equity. According to the jus naturalists, people are sociable beings by nature, are born free and organize their life on the basis of a social contract that limits the powers of the state. The state has as main mission the compliance with laws and providing equality and freedom to citizens. The founder of the theory of natural law was Hugo Grotius, who emphasized the idea that people have rights and obligations that emerge from the human nature. In the centre of his research on natural law, there are Aristotle’s ideas, according to which man is good by his nature, and the need of the norm of law, of the rule of conduct results from man’s instinctive need to live in the society.

Later the illuminists elaborated the concepts that launched the values of the French Revolution. Montesquieu sees in the segregation of the powers of the state the best guarantee of respecting the freedoms of people by the state. Voltaire uses for the first time the notion of “human rights”, stating that being free equals to knowing the human rights and their knowledge leads to their defense.

History shows that the concept of human rights was promoted during the French and American revolutions. The preamble to the Declaration of the French Revolution in 1789 proclaimed that "ignorance, forgetfulness and contempt of human rights are the only causes of public misfortunes ... men are born and remain free and equal in rights" .

The Declaration of the State of Virginia on 12 June 1776 stipulates that "all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest

their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

The Preamble to the Declaration of Independence of the United States on 4 July 1776, drawn up by T. Jefferson and revised by B. Franklin and J. Adams, shows that: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

In 1948, The Universal Declaration of Human Rights retains that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind".

The people's concern for protecting and stating the human rights [11] constantly increased after WWII, as an answer to the horrors of the second world conflagration.

Once with the higher and higher requirements for the defense of the values and mutual interests of the international community, the crystallization of the notion of international crime was determined by the entry into the sphere of globalization of some crimes that in the classical age of the international law fell under the exclusive competence of states. [12]

The concern of the human society for this topic is a natural one, so that we can talk today about international human rights law, a vivid proof of the extremely high rank played in our conscience by this eternal human value.

The national and international modern law is influenced, as regards its whole architecture, by the issues of compliance with the fundamental human rights by the authorities of the states. The human dimension of law tends to become international, situation that modifies the economic and political relationships between states. [13] The central ideas on which is based the whole analysis is that the international law has to focus first of all on the protection of the individual and man as a species. It is thus emphasized the correlation individual – state – international relationships, correlation that aims at modelling the role of the individual in its triple dimension: as a direct actor, as an actor within the state and as a physical entity. [14]

The foundation of the international human rights law is represented by the International Bill of Human Rights which includes:

- a. The Universal Declaration of Human Rights,
- b. the two international covenants,
- c. the optional Protocol regarding the International Covenant on Civil and Political Rights and
- d. the optional Protocol regarding the above mentioned covenant, regarding the death penalty abolition.

This fundamental act of humanity establishes civil rights and freedoms, social, economic, political rights etc. The proclaimed rights are not absolute, the exercising of these rights allowing the states to adopt laws meant to stipulate certain limits with the aim of respecting the rights of the third parties so that to ensure in a democratic society the requirements of morality, public order and welfare of all people.

The internationalization of the human rights conferred the respect towards the human being a universal dimension, and the decision-makers – institutions, governments, international organizations have the mission to protect the human lives by promoting human dignity, equality and fundamental freedoms.

As prof. C.L. Popescu shows, the human rights, internationally established and guaranteed, are rights of the human being, namely individual rights. They should not be mistaken for other notions of the international public law, i.e. the rights of peoples and the right of minorities, which are collective rights. [15]The same author shows that the human rights are essential for the human being and they derive directly from the existence of the human being, from man's dignity, independently from their international legal formalization. The international norms establish and guarantee the human rights, are indissolubly connected. [16] As it was shown in the doctrine [17] the elements that make up the cultural diversity seem infinite in combinations; yet, the concept of guaranteeing the human rights has to appear as a unitary whole, especially in some regions of the world, which share mutual values, like in the case of the European Union.

The establishment of the concept of human rights is granted the highest attention at the European level; thus, art. 3 of the statute of the European Council stipulates in essence that there must be accepted the principles of the lawful state and the principle

according to which each person under its jurisdiction should enjoy fundamental human rights and freedoms.

Currently, as a consequence of the Treaty of Lisbon, it was modified the Treaty regarding the European Union in the sense that the fundamental rights, as are guaranteed through the European Convention on Human Rights and as it results from the member states' mutual constitutional traditions, represent general principles of the Union law. [18]

From this perspective it should be followed the effect of ECtHR jurisprudence on the domestic law in relation to ECtHR jurisprudence and the principle of European law supremacy. The principles of the European law begin to be more significant, and crystalize as commandments in the European Union space.

In an extremely recent work [19], The General Principles of the Civil Law of the European Union, the German professor Norbert Reich, former dean of the faculty of law in Hamburg, emeritus professor of University of Bremen, shows that the European law is characterized by a difference between rules and principles, the former being the provisions of positive law of the European Union, and the others representing more general concepts that guide the interpretation and application of law.

At the national level we notice that our country place human rights on a well deserved position. At the highest level of the state administration, through the Ministry of Foreign Affairs, our country states that: "The observance of the human rights represents for Romania, as well as for the European Union, a priority of the foreign affairs.

According to the Romanian Constitution, Romania is a democratic and social lawful state, where human dignity, the rights and the freedoms of the citizens, the free development of the human personality, the justice and the political pluralism represent supreme guaranteed values, in the spirit of the democratic traditions of the Romanian people and of the ideals of the Revolution of December 1989.

Romania ratified most of the universal and European treaties regarding the human rights. According to art. 20 of the Romanian Constitution: "The constitutional provisions regarding the rights and freedoms of the citizens will be interpreted and applied in compliance with The Universal Declaration of Human Rights, with the pacts

and the other treaties to which Romania adhered. If there are discords between the pacts and the treaties concerning the fundamental human rights, to which Romania adhered, and its domestic laws, priority is given to the international regulations, except for the case in which the Constitution or the domestic laws contain more favourable provisions.”

The choice of the legal norm represents an important step of the process of law application. Within this step, the mission of the competent institution is to establish the legal norm applicable to the situation. That operation is carried out with the compliance of the principle of legality. The activities specific to the institution of application consists of: indicating the incident rule of law, noticing the validity of the legal norm, the correlation and possibly the corroboration with other norms of law. In this step the institution has to take into account the legislation regarding the human rights. For instance, art. 4 Civil Code stipulates that in the matters regulated by the current Code, the provisions concerning the freedoms and rights of the citizens will be interpreted and applied in accordance with the Constitution, The Universal Declaration of Human Rights, the covenants and the other treaties to which Romania is part of. In this regard the doctrine [20] shows that according to ECtHR jurisprudence, the EU states have to interpret and apply their own legislation in compliance with ECtHR provisions. It is necessary the specification that in case of legislative conflict, the international acts regarding the human rights have priority, according to the principle of priority of the international regulations and of the common law in the matter. There is also an exception, i.e. the one stipulated in art.4(2) Civil Code, according to which priority is given to the domestic law if this is more favourable.

Prof. Nicolae Culic shows that the contemporary time, starting from the second half of the twentieth century, witnessed the proliferation of the interest for human rights in general, which has become a central topic of the political, juridical and moral debates, and that there were created situations for promoting the human rights. The contemporary declarations of the human rights were more detailed and comprehensive, taking the form of some international agreements. [21]

Talking about new rights to express the idea that all individuals are part of the application field of morality and justice, to protect the human rights, means also taking all the measures so that people receive a decent treatment. [22]

3. Conclusions

Freedom represents a logical aspiration, specific to any human being. Freedom under all its forms is guaranteed by any democratic constitution and in any lawful state, but the individual freedom has certain legal limits and it must be exercised so that the others' freedom should not be harmed.

The legal order in the democratic states places the individual together with his fundamental rights in the centre of the society so that all elements of substantial and procedural law are in strict harmony with this approach and will be created accordingly.

The human beings or the groups of people have rights that must be formulated, promoted and protected, being inconceivably, in the light of the elements of the lawful state and the democratic principles, a society that ignores them and does not place them at the top of the social pyramid.

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