

A Brief Research on Human Rights Aspects from the Legislative Initiatives of the Members of the Romanian Parliament. The right to physical and psychological integrity of persons

Lecturer Marcela Monica STOICA, PhD.

Faculty of Political Sciences, The Christian University, „Dimitrie Cantemir” București,
Romania
mms_stoica@yahoo.com

Abstract

The challenge of consolidated democracies has as a touchstone the ratio between civil law and moral law in order to guarantee and protect the common good.

Beyond electoral interests invoked by parliamentary political elites, socialization and professionalization of political elites is yet not finalized and that's why the quality of elite is not an advantage in the process of democratic consolidation in Romania.

This work is part of a broader research aimed at analyzing the way in which human rights are understood and regulated in the legislative proposals initiated, by the Romanian Parliament elected, in the current 2012-2016 term .

Our hypothesis is that the presence of human rights violations in the legal regulations is the source, on the one hand, of the lack of knowledge on the documents both in national, European and international level and, on the other hand, the invoking of certain considerations of religion and Christian morality that denies, often, the very foundation of human rights.

Keywords: *human rights, the right to physical and mental integrity, Chamber of Deputies, political elites, regulation.*

1. Introductory remarks

However, certain fundamental values, necessary and indispensable to guarantee the common good, must be protected by law and when that the law does not protect a vital right for coexistence and the common good the law must be changed and may be subject to rejection from “conscience reasons”

Thus, individuals' behaviour was guided by those moral precepts that were emphasized by the religious norms from times immemorial. At the same time, it must be noted that the application of legal norms in different areas as economic and socio-cultural development, with as recipients diverse subjects of law, may in some cases be a serious violation of the rights of subjects of law, that is it is therefore necessary to draw up rules to take as its starting point the general principles, rules with a high degree of generality, suitable to various interpretations. [1].

The purpose of this work is circumscribed to the approach, more widely, that analyze some legislative initiatives of the Chamber of Deputies members from 2012-2016 legislature, covering the aspects of human rights violations. [2].

Thus, we are interested in the quality of legislation, deputies being holders of the right of legislative initiative, on how it legislates, on the fact that some proposals put to the test an entire system of values and Christian traditions of their citizens.

We analyze two initiatives that aim, on the one hand, at defending the right to physical and mental integrity of children, and the punishment, on the other hand, of the pedophiles through intervention on their physical and psychological integrity.

The authors of these initiatives are representatives of the entire political spectrum, therefore, precisely for the reasons explained above, in this endeavor, we will not stop on their political affiliation but on the object that regulators have pursued in their proposals and we use the raw data collected on the website of the Chamber of Deputies. [3].

The two parliamentary initiatives that were under discussion in 2014 are:

1. The legislative proposal on combating and preventing acts of pedophile and crimes against sexual freedom and integrity of the persons (PL -X -44/ 2014) ;
2. The legislative proposal to amend the Penal Code Law 286/2009 published in the Official Gazette nr.510 from 24.07.2009 (PL -x- 587/2014) .

2. International legal framework , European and national level regarding the fight against sexual abuse of minors and the right to physical and mental integrity of the persons

An interesting study on the relationship between religious and legal order belongs to Georgeta Cretu and is showing that over time, ensuring order in social relations (social order) were set on the path of custom, tradition (order customary) or on religious precepts (religious order) or by using moral precepts (moral order).

With the creation of a public authority ruling, the development of rules that disciplines human conduct in relation to the protected social values, this order was established using the right (law) [4]. So, the first element of the system time is right. Social order is secured not only by the customary rules, moral, religious and legal norms.

The legal rule is meant a descriptive sentence prescriptive in which these orders, a command of the legislature, that established a kind of behavior, desirable or undesirable, in relation to cultural shaping social values and the requirements of discipline and organization of social life.[5]. If religious precepts had and have an important role in regulating social relations, contributing to compliance with the law, especially those legal norms of religious origin, sometimes they can lead to exacerbation of the legislature .

The two legislative proposals concern the regulatory establishment of safety measures and protection of children against all forms of sexual abuse and as a result, desired chemical castration regulation therefore offender pedophile acts should be punished by nature chemical castration.

So, these proposals were made in order to prevent violence and child abuse, to support good physical and mental development of those children so that, in the opinion of the initiators, the superior interests of the child to prevail as is defined in national and international regulations.

The New York Convention, entitled the International Convention on the Rights of the Child, in Article 32, recognizes “the right of the child to be protected from economic exploitation and not to be compelled to any work that involves any hazardous or is likely to be to compromise his education or harm his health or physical, mental, spiritual, moral or social development” [6] And the article 39 states that States parties “shall take all appropriate measures to facilitate recovery and reintegration as social and psychological say a child victim of: any form of neglect, exploitation or abuse, torture or cruel, inhuman or degrading treatment or victims of an armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self respectful and dignity.” [7].

With regard to Europe, in addition to the European Social Charter of the Council of Europe, there are other documents such as the Convention for the Prevention of Torture and Inhuman or Degrading Punishment (ETS No. 126/1987/1989) and the Convention for the protection of children against exploitation and sexual abuse (CETS no.201 / 2007) [8].

Another document of the Council of Europe is the Lanzarote Convention, signed on 25 October 2007, ratified by over 20 countries of the 47 Council of Europe, which entered into force on 1 July 2010. [9]. Text of the Convention consolidates existing standards in this area and fill some gaps and the emphasis is on prevention, on a wide range of protective measures for children and victims, referring to all children under the age of 18. The document also includes provisions on new forms of violence and exploitation of children through new information technologies and telecommunications. The Convention was ratified by Romania by Law no. 252/2010 on ratifying the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote on 25 October 2007 and signed by Romania in Lanzarote on 25 October 2007.

In Romania, the international and European provisions were regulated by Law 272/2004 on the protection and promotion of children's rights. Initiatives to prevent violence and sexual abuse on minors require that the perpetrator found guilty of violence and sexual abuse of a minor and sentenced for aggravated sexual abuse to receive an additional punishment by "inhibiting sexual impulses by chemical methods" to prevent , thereby, relapse.

Also, according to the draft, the convicted pedophile accused would be still under surveillance by GPS monitoring after serving his sentence. The initiators have shown that in terms of medical, castration, hormonal therapy for diagnosed psychiatric pedophile - is not irreversible and will be made only after obtaining permission if the condemned.

It benefits from reduced sentence if he agreed with chemical castration. Dr. Cristian Andrei supports this measure because "it would be very good treatment in the interest of the community, but also in the interest of pedophile." [10].

According to the recitals initiators came with a historical- legal argument showing that the first case of chemical castration was recorded in 1944 in the US, and in Europe, the first state that applies this treatment Poland.

Thus they will benefit from psychological rehabilitation because they really need help in this regard, but must also be motivated by the fact that the penalties be reduced

by half unless they accept and follow the treatment that will inhibit impulses that threaten the inviolability sex of a person, including minors.

At the debates in committees were present representatives of the Orthodox Church. Through its representative from Putna Monastery, Father Victorin declared: "Well Christian mercy apply if there is discernment. Discernment is the most valuable. My freedom stops when you go over the other's freedom. If we did not have this awareness planted in us, the society must take care of this problem. Can I be sympathetic to that which created further trauma for the child throughout life?"

Senator Tudor Barbu presented his public opinion: "This vote is extremely important because we are a Christian country. It is an extremely important vote because we are in a pagan country in terms of crime rate . (...) . I know very well, we are, most of us parents, most of us have kids at home, which his tormented you safe from fire, drowning his beware of evil, criminals, to childhood and adolescence make as beautiful and push it in as healthy a life." [11].

These legislative proposals have received negative opinions from the commission and from the Legislative Council and negative views of the Government.

3. Who defends the rights to physical and mental integrity of the persons?

These pedophiles action measures should be considered in the light of international and European treaties to which Romania is a party and the provisions of the Constitution, which in Article 22 guarantees the right to physical and mental integrity of persons.

Another important aspect concerns the fact that the initiators of pursuing chemical castration for pedophiles only establishment, made the regulations of this type not compatible with the legal regime established by the Penal Code (under PL- 44-2014) .

If the application of the security measure is refusing to follow treatment or measures referred to in article 218 or 220 of the Penal Code, but this is not covered by criminal law.

As regards the government, the view was negative invoking precisely the Constitution and the international and European law.

The subject still remains controversial and is approached by Christian morality, and lawmakers and legislative initiatives are reportedly defend the interests of the voters, so the common good remains a concept, more theoretical, in the challenging landscape of democracy.

References:

- [1]. Cingaru E., "Elements of continuity and discontinuity in the evolution of European Union law". Journal of Law and Administrative Sciences, No.3/2015, pp.5-13.
- [2] This mini research is only part of a larger study which is ongoing and aims at analyzing the relationship between the electoral system - political elites and the functioning of democracy. In this respect, one could read, the following studies: „A Brief Research on Discrimination Aspects from the Legislative Initiatives of the Members of the Romanian Parliament/ O minicercetare asupra aspectelor de discriminare prezente în propunerile legislative ale membrilor din Parlamentul României” in „The Contexts of Communication. Identity and Interculturality Today” (coordonator Iulian Boldea) , Editura Arhipelag XXI Press, Tirgu-Mures, 2014, pp. 107-114; Between Legality and Legitimacy. How does the principle of non-discrimination function in the provisions of Law 393/2004 on the Statute of the local elected officials, as amended and supplemented?” in Nedes 2014, Ed. Pro-Universitaria, București, 2014, pp. 134-138, www.nedes.ucdc.ro
- [3] www.cdep.ro. On this site it could be found also the debates that took place at the Committees
- [4]. Crețu G., “Normele de drept influențate de precepte religioase” în Simplificarea – imperativ al modernizării și ameliorării calității dreptului, Comunicări prezentate la Sesiunea științifică a Institutului de Cercetări Juridice, Academia Română, Institutul de Cercetări Juridice „Acad. Andrei Rădulescu”, 17 aprilie 2015, București, p.438.
- [5]. Idem
- [6]. A intrat în vigoare la 2 septembrie 1990. România a ratificat această convenție prin Legea nr.18 publicată în Monitorul Oficial al României nr.109, din 28 septembrie 1990.
- [7]. România și Convenția cu privire la drepturile copilului. Recomandările Comitetului ONU pentru drepturile copilului, București:Vanemonde, 2009, p.78.
- [8]. Drepturile copilului, IRDO, București, 2011.
- [9]. www.coe.int/t/dghl/standardsetting/.../LanzaroteConvention_md.doc
- [10]. www.cdep.ro/proceslegislativ
- [11]. www.cdep.ro/declaratiepolitica