

THE CONSTITUTIONAL NATURE OF THE PRINCIPLES OF THE U.N.O. CHARTER³

Lecturer Mihail NIEMESCH, PhD.

“Titu Maiorescu” University, Faculty of Law (ROMANIA)
avocatniemesch@yahoo.com

Abstract

Certainly the principles of law are in relationship with human nature and they reflect the ideal of justice of the communities of people according to the social values that burden each and every society individually, and the thinkers of Ancient Greece thought it appropriate that law and implicitly, the general principles of law, existed since before the state did, being valued above it. The principles expressed by the UNO Charter, have a jus cogens character, meaning man cannot depart from them due to the fact that their juridical value is imperative. The UNO Charter also defends and promotes the rule of law, a fundamental cornerstone of democracy.

Keywords: *principles, the separation of state powers, human rights.*

The general principles of law are true legal postulates which contain the guidelines that must be found in any legal norm, which burden and condition the legal phenomenon in its entirety, in all aspects.

In the specialized literature it is mentioned that the origin of the principles can be found in ideas which developed along a long period of time, ideas which have become widespread, they have a strong effect on the consciousness of the people from a certain area or a certain historical period. Sometimes, the power of dispersion of an idea is so strong that it goes past the boundaries of the area in which it first crystallized, sometimes even garnering an international influence not only in the historical period that generated them, but also throughout centuries.[1]

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Certainly the principles of law are in relationship with human nature and they reflect the ideal of justice of the communities of people according to the social values that burden each and every society individually, and the thinkers of Ancient Greece thought it appropriate that law and implicitly, the general principles of law, existed since before the state did, being valued above it.

The author M.L. Hrestic shows that what explains the formation, functioning and reason of law are the general principles of law.[2]

Trying to emphasize the importance of the principles of law, John Locke asserted that the respect for them "is so great and their authority so sovereign that only the testimony of other people, but even the evidence of our own senses is oftentimes rejected if it brings forth a testimony contrary to these established rules".[3]

Regarding the relationship between the principles of international law, but especially those expressed in the UNO Charter, and the Romanian Constitution, the bond of the type "whole to part" is emphasized and the supremacy of international above internal law.

Romania officially expressed the wish to be a part of the UNO already from 1946, but our country was barred from joining until 1955. On **the 14th of December 1955**, the General Assembly decided, through motion no. 995(X), to welcome Romania in the UNO, along with other 15 states.[4]

In a reference paper of Romanian specialized literature, specifying that: "The United Nations Charter expresses, through its principles and goals, the aspiration to lift the relation between states on the level of rationality requested by safeguarding the most important of values of the human civilization, in order to shield it from the dangers of a conflagration, that would call into question the future of mankind itself. At its core the Charter incorporated the effort of human reason to forge a model that would take the relations between states out from under the sign of force and arbitration, to base them on postulates of law and moral, of respect for existence, equality and the freedom of each nation."[5]

Thus comes into being the idea that **the principles expressed by the UNO Charter are of a universal nature**, since they formed, are developing and are being applied through respecting the agreement of the signatories of the treaty of a global nature. The principles expressed by the UNO Charter, have a *jus cogens* character, meaning man cannot depart from them due to the fact that their juridical value is imperative. The UNO Charter also defends and promotes the rule of law, a fundamental cornerstone of democracy.

State law represents a great victory in the evolution of humankind because it eliminates the oppression and the arbitrariness of public power. The main purpose represents transforming the state into an instrument in the service of people, under the rule of law. The entire outlook of the state law was and remains centered on the individual. From the very beginning it meant that law ceased to be a simple element of legitimizing power, and it became an authority which power had to obey.[6]

As it is known the state of law promotes autonomy of law and the separation of state powers.

In the doctrine it is mentioned that the separation of power guarantees a constitutional democratic regime and the defending of the human rights, the constitutional regime consists of an array of constitutional stratagems, representing measures of precaution destined to complicate the governing process, so that it would not be possible for a single person at a single party to take over the entire power mechanism and use it for private objectives.[7]

And as far as promoting human rights is concerned[8], we notice that in the present respecting them represents a basic requirement of the state of law. The Universal Declaration of Human Rights, the European Convention of Human Rights must be a part of the positive law of any state of law.

Returning to the subject, it is appropriate to mention that, analyzing the UNO Charter it can be noticed that this global treaty represents the first international document that consecrates and codifies the fundamental principles of international law. I mentioned that since 1955 Romania has been a member of

the UNO and in conclusion, the provisions of the UNO Charter have been appropriated as internal law, a positive law, and we can consider that the principles this pact expresses are closely related to promoting and protecting human rights. For instance the principles of universal respect of human rights, of territorial integrity and of the inviolability of frontiers, the principle of not intervening in the internal problems of other states etc., express the profound penchant for promoting the fundamental human rights and liberties.

Prof. Raluca Miga-Beșteliu underlines the fact that in the preface of the UNO Charter, the people express their decision of "reaffirming the faith in the fundamental human rights, in the dignity and value of the human person, of equal rights between men and women and between small and big nations". The formulation "promoting and encouraging respect for human rights and fundamental freedoms" or "supporting the realization of human rights and fundamental liberties" show up with certain variations, in art.1 of the Charter regarding the goals of the United Nations, in art.13 regarding functions and strengths of the General Assembly, and in art.62 regarding the functions and strengths of Economic and Social Council.[9]

The Romanian Constitution[10] regulates the rapport between internal and international law. In the matter of human rights, our fundamental law provides in art. 20 "(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to".

In conclusion, even in the constitutional provisions which provide numerous human rights and liberties, will be interpreted and applied with respect to the international legislation in the respective domain.

Art. 20 par.(2) of the Romanian Constitution also stated that "Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

From the content of the aforementioned texts we must keep in mind that the fundamental law of Romania consecrates the primacy of the international legal regulations of which Romania is a part of and which refer to fundamental human rights and liberties, over internal legislation.

When it comes to applying the law in time, what will be taken into account – in accordance to the Universal Declaration of Human Rights – are only the laws adopted following the coming into force of the Romanian Constitution in 1991.

From a practical point of view, this means that, any Romanian citizen can base their claims and justify their rights, on the basis of international treaties that regulate the human rights and to which Romania is part of. For instance, Romanian courts presently decide, on the basis of the European Convention of Human Rights. As an example, we can show that on the basis of art. 6 regarding the right to a fair trial, the litigant upon request can receive a trial date in order to prepare their defense or hire a lawyer.

In the opinion of author Dumitra Popescu[11], normally, from the moment the state becomes part of a treaty regarding the fundamental rights and liberties, respectively the European Convention or the one regarding the status of refugees and others of the same kind, they become part of the internal law; through the law of ratification, it can be considered that the Parliament exercises at least in the special domain and that of human rights, in fact, the function of lawmaking, of complementary nature, of the existing gaps in the internal law, in the domain.

As such, having the consent of the legislative body, the provisions of a treaty, in special cases, can constitute alongside the internal law and in coordination with and complementary to it, exactly that law in the name of which justice can be applied, and judges being independent and obeying only the law, implicitly, it means that they also obey the provisions of the treaty become internal law.

The bond between international law and internal law is regulated by art. 11 of the Constitution which provides that “(1) The Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is a party to. (2) Treaties ratified by Parliament, according to the law, are part of national law. (3) If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.”

International treaties become part of internal law through their ratification by the Parliament, which, as a legislative body, adopts the law of ratification (of accession), as an ordinary law.

However, the procedure of ratification, including the law of ratification, represents the continuation, on an internal level, of a process much more complex and drawn out, consisting of anterior stages which took place on an international level and led to the constitution, adoption, authentication and signing of the treaty by the authorized representative of the state.[12]

According to the opinion of author Dumitra Popescu[13], in the ratification stage, the lawmaking authority can have very limited powers, in the sense that if the treaty permits – reserves, and/or interpretative declarations, which however have a very limited object and produce effects only in relation to the states which accepted them. The fact that the Parliament has no other alternative is still emphasized, other than to agree with the treaty and adopt the ratification law or refuse the ratification and then, the state does not become part of the respective treaty.

As professor Ion M. Anghel shows, “we can appreciate that the our system of law is built upon the idea that the undertaken commitments, in the shape of regulations, through international treaties are not simply reflected and transposed into the national legislation, but they actually constitute part of it, there being utter compliance between international treaty and national.”[14]

Conclusions

The principles of the UNO Charter have a universal and profoundly democratic nature. This is why these “givens of humanity” must prevail in interstate relations so that through them the progress of civilization is ensured. The principles of the UNO Charter are dynamic and impose upon international accords consecrated by treaties or joint declarations. The Principles of the UNO Charter represent a unified whole and promote sovereign equality of the states.

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