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HUMAN RIGHTS LAW FROM GENERAL THEORY OF LAW PERSPECTIVE

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Abstract

The current study tries to analyse the relationship between the human rights law from the general theory of law perspective. Starting from the multiple meanings of the term 'law', going through the differentiation between "human rights", "public freedoms" and citizens' rights, distinguishing the component of national law and that of international law, we propose to show the readers the perspective of human rights as revealed by the general theory of human rights.

Keywords: *citizen, general theory of law, human rights, law, protection.*

INTRODUCTION

Due to the complexity and diversity of the legal phenomena, the word "law" has several meanings, of which the most commonly used are: law as science, objective law, positive law, subjective law, natural law, law as art and technique. In general, when we use the word 'law', we mean 'the set of rules which organise and coordinate society' (*N. Popa coord., 2017, p. 24*).

Society is governed by many types of rules (e.g. social rules, legal rules, moral rules, religious rules, technical rules), the most important of which are the legal rules. The set of legal rules constitutes the objective law. These legal rules impose obligations on subjects of law, enabling them to pursue certain legally protected interests, organise the general functioning of the state as well as non-state bodies, assign statuses and roles to subjects of law (e.g. parent and child, buyer and seller, beneficiary and provider, donee and donor). From this perspective, it is argued that "law combines necessity and freedom" (*N. Popa, 2014, p. 30*).

Necessity, which is a separate area of law, is the result of the general purposes of social life that are set out in objective law. The essential condition of objective law is the coexistence of freedoms. Freedom is a relative state of man, which can be subjective (internal - the experience of the person and the theoretical

possibility of choosing something) and objective (external - the concrete possibility of acting in accordance with one's inner experience). Freedom is an innate right, which originates in the state of nature, without the need to recognise it through the rules of positive law.

We can thus conclude that "necessity is the starting point in the analysis of freedom, expressed through the state" (*N. Purdă, N. Diaconu, 2016, p. 33*), law expressing necessity as the starting point in the analysis of freedom.

The relationship between "law" and "human rights" is a relationship from the whole to the part, transposing into the legal plane the relationship between the general interests of a society and the personal interests of people. It is thus clear that law gives expression to the general interests of society, while human rights give expression to personal interests.

The internal determination of law is based on the legal quality of will and interest, which is the essential quality of the entire legal system. No matter how many changes the legal system undergoes, this quality will remain unchanged. We thus emphasise, as taught in the general theory of law, that 'the essence of law provides the foundation of the legal system and is expressed by the legal will and the legal interest" (*N. Popa coord., 2017, p. 38*)[*].

It is interesting what happens when the general interest sometimes conflicts with the personal interest. It should not be forgotten that where one person's subjective right ends, the subjective rights of others begin.

The important thing is the legal norms, i.e. the legal will of the legislator, which expresses the general will of a state expressed in official form, based on consideration of the fundamental interests of society.

The aim of the state should be to protect the general interest of citizens, their happiness. We live in a world that is becoming increasingly urban, which is why ensuring the security of citizens is an important role of states, and there is increasing talk of urban security (*F. Dieu, B. Domingo, Méthodologies de la sécurité urbaine, Ed. L'Harmattan, Paris, 2018*). Analysing the history of time, we observe that if citizens have not been happy, if their purpose has not been satisfied and if they have not perceived that the intercession of this satisfaction is the state itself, then the state has stood on weak legs, as Hegel said.

The philosophy of law presupposes a balance between the general interest of the state and the particular interests of individuals.

René Cassin, one of the most outstanding promoters of human rights, who was awarded the Nobel Prize in 1968 alongside Eleanor Roosevelt for drafting the Universal Declaration of Human Rights, believed that the main purpose of the state was to defend the inalienable rights of the state.

I. MEANING OF THE EXPRESSION „ *FUNDAMENTAL HUMAN RIGHTS*”

Human rights have always been a concern for mankind, as people, as human beings, are considered to have certain rights. Although there have been

legislators over the years who have opposed the recognition of human rights (e.g. in totalitarian states), as mankind has evolved, the term 'human rights' has been established.

Since ancient times, in all ages of history, national legislators have determined and sometimes even legally defined the rights and obligations of its members, even imposing limitations to maintain social order. Ideas about human rights have been developed since antiquity or the Middle Ages, but as pointed out in the doctrine, "the actual concept of human rights was born in the run-up to the bourgeois revolutions in Europe" (*N. Purdă, N. Diaconu, 2016, p. 17*)[*], and these rights have also become established in social practice.

The idea of natural rights was intensely promoted during that period, as witnessed by the Declaration of the Rights of Man and of the Citizen of 26 August 1789 and the Bill of Rights of the Constitution of the United States of America of 1791.

The most prolific period for the recognition of human rights, as well as their protection, was the period after the Second World War (i.e. the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 16 December 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up by the Council of Europe and signed on 4 November 1950).

In view of the atrocities of that period, it was increasingly emphasised that these rights were inherent in human nature, and that their denial resulted in man being impoverished by the very attributes of being human, leading to armed conflicts between states and hostilities between peoples.

As can be seen from a diachronic analysis of legal systems, human rights do not have an immutable content, evolving with the dynamics of international relations and the values enshrined therein. Moreover, when analysing the human rights enshrined at each stage of history and in the light of the progress of science, new rights emerge (e.g. the right of access to information, the right to the achievements of technology).

Legal relationships and legal situations create the legal order, which can be domestic or international, depending on the applicable law - domestic law or international law (including European Union law).

Domestic law is the law in force in a particular state, the purpose of which is to regulate the legal relationships that take place on the territory of that state. International law is the body of rules of law governing relations with other states, which are largely derived from international treaties concluded in certain areas (e.g. human rights, international trade, law of the sea, airspace).

Today, the issue of human rights has both a domestic and an international component, which gives people the confidence and power to fight against the state in defence of their fundamental rights and freedoms, believing that beyond their territory, the state or an international forum is watching over their rights.

Human rights that are essential to human beings are called fundamental rights (e.g. the right to life, the right to liberty). These fundamental rights may evolve or differ from one historical stage to another or from one state to another.

Unfortunately, there is no generally valid definition of fundamental human rights in international law, and several definitions of fundamental human rights exist in doctrine. For example, "fundamental human rights are those subjective prerogatives inherent to the human being, of an essential, unitary, indivisible and imprescriptible nature, which define the human personality, are conferred by domestic law and recognised by international law" (*N. Purdă, N. Diaconu, 2016, p. 31*)[*].

Human rights have also evolved as a result of globalisation, which has had a positive and negative impact on them (*see for instance N. Diaconu, 2021, pp. 333-342*). The positive aspect is linked to the notion of legal transplantation, since the development of the internet and trade has improved the knowledge and practice of human rights. The negative aspect, however, relates in particular to economic and social rights, which have failed to evolve with migration, as migrant workers do not enjoy better living and working conditions in the countries where they choose to work and are thus clearly disadvantaged. We can see that the environment is increasingly affected, the underdevelopment of some regions is worsening, creating great economic differences between people.

Over the years, there has been a sustained concern on the part of intergovernmental organisations to adopt a common set of rules in all areas, especially human rights. The subjects of international law are constantly seeking solutions "to establish control over economic and social developments so that the negative effects of globalisation on the exercise of fundamental human rights can be reduced" (*N. Purdă, N. Diaconu, 2016, p. 55*)[*].

II. THE RELATIONSHIP BETWEEN "RIGHTS" AND "FREEDOMS" AND BETWEEN "HUMAN RIGHTS" AND "CITIZENS' RIGHTS"

From the analysis of domestic and international legislation, when talking about human rights, we notice that two nouns are used: 'right' (of the human or citizen) and (public) 'freedom'. Although some authors might consider these two nouns to be synonymous, there are authors who consider that they do not have the same content (*C.A. Colliard, 1982; L. Richter, 1982*).

We are of the opinion that, at present, these two legal concepts are perfect synonyms, having the same content, being subjective rights recognized and protected by national legislators. A subjective right is the right of a subject of law to enforce a legally protected interest, and in the event of another subject of law disregarding the right, he may resort to the coercive force of the State.

For example, according to the Romanian Constitution, the term 'right' is used in the provisions on the right to identity (art. 6), the right to asylum (art. 18), the right to life and physical and mental integrity (art. 22), the right to defence (art.

24), the right to free movement (art. 25), while the term 'freedoms' is used in the provisions on individual freedom (art. 23), freedom of conscience (art. 29), freedom of expression (art. 30), freedom of assembly (art. 39). Please note that from a political point of view, "the Constitution is a social contract between nation and power which determines both the rights that rights (human rights and citizens' rights) and the prerogatives with which the nation which the nation also mandates, in a limited way, the power to exercise it on its behalf and for it, and the manner of exercising them, i.e. the separation of powers in the state" (*M.-C. Cliza, C.-C. Ulariu, 2023, p. 172*).

In our view, there are no legal differences between these two concepts, and it can be said that a right is a freedom and freedom is a right.

But what is the relationship between "human rights" and "citizens' rights"? Could they mean the same thing? We believe that these two notions should not be confused, as they do not overlap perfectly. The relationship is from whole to part, given that three different categories of people can be found on the territory of a state: own citizens, foreign citizens and stateless persons.

While human rights are *universally valid* and *apply regardless of nationality*, the rights of the citizen are specific to a limited group of people (i.e. citizens of that state). Human rights thus include the rights of own citizens, the rights of foreign citizens and the rights of stateless persons.

Thus, by "citizen's rights" we mean the specific rights of a person who is bound by the relation of citizenship to the respective state, while also acquiring a series of correlative obligations. The most important rights of citizenship are recognised and guaranteed by the State through the Constitution.

CONCLUSIONS

Human rights and freedoms are dynamic and sensitive to the dynamics of each state's society. We can therefore conclude that these two concepts, "human rights" and "citizens' rights", do not overlap, but are different in content.

It is interesting to point out that these rights, if violated by other subjects of law, can be enforced by the state of citizenship (e.g. through courts or ombudsmen), but also by a wide range of international actors, on the basis of international conventions (e.g. the European Court of Human Rights).

It is obvious that the legal protection of human rights must include a judicial component, otherwise they would remain on a suspended, arbitrary plane.

It is necessary to distinguish the protection of human rights from other branches of law because of the similarity of legal relationships that are subject to different branches of law. This belonging to a branch of law is important for the correct application of the law as a result of the legal qualification of the legal relationship. Thus, the legal classification of a particular legal relationship within a legal branch determines the applicable legal rule.

It should be borne in mind that in order to qualify the legal relationship properly, the enforcement body, which has fundamental and specialist legal knowledge, will perform a number of preliminary operations (i.e. naming the legal rule, verifying its authenticity and legal force, determining the exact content of the legal rule).

We consider that the legal protection of human rights combines a national law component (thus constituting a branch of national law based on national regulations on this issue) and an international component (thus constituting a branch of international law based on international regulations on this issue).

At present, several issues are raised about the relationship between national and international human rights regulations, but these will be the subject of a separate article. At the same time, we stress that the system of law is unitary, its branches of law interfering.

The separation of international human rights protection from public international law is obvious (there is a relationship from the particular to the general), as this new discipline is based on legal rules of public international law that define and protect fundamental human rights.

Treaties adopted at international level presuppose the harmonization of the requirements of international cooperation with the principle of state sovereignty, since failure to respect these two principles would lead to interference in the internal affairs of states.

For this reason, the treaties imply an obligation on States parties to adopt legislative and administrative measures to ensure the realisation of the fundamental human rights recognised by the treaties, which thus become effective. In this respect, it can be said that the international consensus is that the realisation and guarantee of human rights is based on the adoption of national legislative measures. An example of this is the Convention for the Protection of Human Rights and Fundamental Freedoms itself, which does not replace national systems for monitoring human rights, but represents an additional international guarantee to them, which intervenes only in the event of failure by the national authorities to guarantee those rights. The Convention itself requires the exhaustion of domestic remedies as the main condition of admissibility. Please note also that the dynamic and evolving interpretation of the provisions of the Convention is an important method of interpretation of the Court. The judges create law on the basis of interpretation of the Convention (I. Boghirnea, 2013, p. 108), combining elements of continental law and anglo-saxon law.

Although questions are constantly raised about the fragmentation of international law that would threaten the complex legal system created by the subjects of international law, we nevertheless believe that, at the level of human rights, we are witnessing a process of convergence, characterised by coherence and unity.

Nowadays, the unprecedented proliferation of international human rights organisations and jurisdictions is leading to a trend towards their hyper-specialisation, which should not be seen as having a negative connotation, as a human rights culture is being created... and thus a human rights education, which is essential for every individual. As the promotion of human rights becomes more effective, a real human rights education will be created that will lead to fewer human rights violations.

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