

ASSERTING AND DEVELOPING THE IDEA OF LEGAL OBLIGATION, FOR ENSURING AND PROTECTING THE HUMAN RIGHTS

Empirical
studies

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Abstract

Various studies have been written about human rights and freedoms. Addressing this issue appears to be within everyone's reach and everyone seems to be good at launching discussions about human rights and freedoms. When we are given the opportunity of collecting information about these concepts or of expressing a point of view, we should first refer to the concept itself, as researched by scholars, and then see how these studies can be found in practice, in everyday life. Otherwise, purely theoretical studies and abstract analyzes do not have any sense; do not produce any effect, facts which would render them useless.

In this paper we aim at analyzing the concepts of legal obligation, of ensuring and protecting the human rights, viewed as a whole, as a unit, just as an idea is perceived. Thus, we are going to place human rights and freedoms in relation to legal normativity, to theory and their legal regulation on the one hand, and, on the other hand, we are going to focus on the materialization and implementation of these concepts, particularly within the national borders, but also in the European Union.

Introduction

By addressing this issue, we proceed at analyzing the human rights in a manner which is different from the known studies to date. In this regard, we chose some notions that are closely related to human rights and freedoms such as legal obligation, securing and protecting the rights and we planned their analysis as interdependent concepts. As it is going to be seen, we noticed that they complete one another in a particular manner and, therefore, they can be analyzed in terms of a common idea.

The legal relationship between the state and the individual

In order to capture the meaning of human rights and freedoms granted to human beings, we should subordinate these notions to some societal abstract values. Some authors accredit the idea that humans cannot exercise their rights and freedoms against his fellows, against the general interests of the community to which they belong. In spite of this, one must be taken into consideration by bearing into mind the relationship with the community it belongs to. Through this approach we get to some notions encountered especially in the legal literature, such as public law, private law, subjective law, the legal rapport etc.

Here it can be highlighted the situation in which the human being, as a citizen of a state, is bound by *jus sanguinis* or by *jus loci / jus soli*. When the individual is the citizen of another state or a stateless person, the connection with the state he/she lives in or carries on his/her business or existence leads him/her to meet the current regulations in that country. If we talk about the citizen of another state, (s)he will continue to keep his/her relations with the State of origin, as long as (s)he continues to remain the citizen of that State, just as the citizen of any state.

Following the connection shown above, which is actually a legal relationship, the citizen / individual is bound by the conduct imposed by the state (state of origin and / or state where (s)he lives) and receives, in return, rights and freedoms that are guaranteed and protected.

In this context, within a legal rapport, the right holder may require the counterparty (the state or another person) or all other third party arising as to the legal question, to show a certain conduct to his right. If they overlook one's right, the right holder may resort to the coercive force of the law and of the state to restore the legal situation. Based on these considerations, ensuring and protecting the human rights come to be interrelated with the legal obligation.

When the State does not understand to protect the human rights just as it was bound by the fundamental law and legislation in force at a given time, or when the individual believes that his/her

rights and freedoms have not been complied with by the State of origin or by the State also assumed such obligations, (s)he can claim for the violated rights to be complied with. This claim of the individual can be dealt amicably through petitions to the person who is responsible for violation of the right or in court, when the person, who considers to have been damaged, goes to court for the settlement of litigation.

The concept of civil society, where citizens, state, associations enter relations of interdependence, in which citizens can claim for their rights that have been violated by the state or other political, economic, social, cultural factors, is recognized by international human rights documents. The law should be the basis of state and people action. [Nicolae Purd , *The protection of human rights. Domestic and international mechanisms*, Lumina Lex Publishing House, Bucharest, 2001, p. 33].

The human rights, the primary means of avoiding suffering and humiliation

Richard Rorty believes that in today's world, marked by pluralism and diversity, human rights should be seen as the primary means of avoiding suffering and humiliation. They would provide minimum standards of dignity, tolerance and coexistence in a globalized world. [http://www.cse.uaic.ro/_fisiere/Documentare/Suporturi_curs/III_Protectia_europeana_a_dr_omului.pdf, p. 4].

The regulations in the human rights field place the national law of each country at the foundation of acting in accordance with all human rights. Any violation of human rights and freedoms by one or more individuals shall be prevented and eliminated. Normally the state takes the necessary measures to ensure that the human rights are complied with, it creates institutions and forms in which any person is to shed light on his/her rights in relation to others and even to state bodies as such, it establishes the measures necessary to ensure respect for human rights and fundamental freedoms. Human rights treaties do not limit the states' sovereignty but they stand for their readiness to develop cooperation, recognizing the importance of these fundamental values.

"There is nothing in the rules of public international law on respecting and promoting human rights or substantive or procedural obligations emanating from them, which should affect either state sovereignty or exclusive control of the latter by each of the states," argued Arangio Ruiz.

Although individuals may resort to international organizations, state sovereignty is not affected. Promoting human rights at the international level involves activities circumscribed to state cooperation oriented towards reaching agreements on new measures that should be taken in the human

rights field, passing documents in connection with some new dimensions of these rights or with some new human rights. To the extent that today's society has evolved and new problems arose in people's lives, the views on human rights have suffered major correction.

In contemporary law, human beings are recognized certain rights and freedoms as individuals in their own name until this rights assignment is subject to society's abstract values. A person is not considered in isolation but as part of a human community, of a people. Only in this context his/her personality develops. One cannot exercise one's rights and freedoms against other individuals, against the general interests of the community to which one belongs. Some social theories have emerged that have sought to legitimize the *state's prerogative* to intervene in order to protect the rights and freedoms, to take action to defend their rights based on a presumption that the state acts as an exponent and representative of the whole society. The notion of promoting human rights is relatively recent because it has coexisted with the concepts of progress and development for a long time.

As forms of promoting the human rights one can mention the reports submitted by States under obligations which they have assumed under the international conventions and which provide them with an effective way for a useful exchange of information and experience in this field. Due to the increasing interest in promoting human rights, there were enriched and diversified the means used by the international community to promote human rights, such as: Institution UN Special Rapporteurs mechanism OSCE Human Dimension [Victor Ducelescu, legal protection of human rights, Lumina Lex, Bucharest, p. 25]

Promoting human rights aims to provide an international framework that can facilitate and support the national concerns and efforts of the states to fully ensure human rights and fundamental freedoms. Effective action to protect the human rights is primarily conducted through at the national level.

The social function of the human rights is to become essential components of each state's legal, political and social environment, based on a deliberate selection, including their inclusion in a development program. All state bodies shall contribute to the universal and effective enforcement of all human rights. The state shall be free, democratic, it shall function based on the preeminence of law and legality, the entire activity of the executive shall be under control, all these for the state to be able to perform its commitments stipulated by the international documents on human rights.

Any restriction against the human rights and fundamental freedoms can only be made on the

basis of pre-existing law, which necessarily shall stem from the legislature. The power to legislate shall belong to an elected assembly elected by the people by universal, direct and equal voting in order to personify and represent their will. On the other hand, the courts and the People's Advocate, along with other authorities, ensure the protection of human rights at national level.

In most developed countries, various associations have appeared in order to promote human rights and ensure their compliance. Sometimes, they even assist victims of infringements for free. But the most important thing is that every individual should acquire knowledge necessary in order to understand the concept of "human rights" in their national and international dimension so as to promote tolerance and solidarity among all society members.

The concept protecting the human rights

So far a definition of the concept of human rights hasn't been adopted either by the international documents or by specialist literature.

The protection of the human rights can be thought of as a comprehensive concept, which involves a set of social, economic, political, legal, national and international measures, which have as their purpose recognizing, developing and encouraging the promotion of human rights and fundamental freedoms for everybody, with no distinction of race, sex, language or religion, as well as ensuring the protection of these rights in the national and international jurisdictional courts. [N. Purd , work cited, p. 40]

The legal component brought for the legal protection of human rights makes it possible for this concept not to remain in the field of ethics, i.e. the common sense, and not to leave an open field for arbitrary action.

With the affirmation of human personality which has become a defining condition for the independent development and affirmation of each country and with the disappearance of the totalitarian regimes, the protection of the human rights has become a generally accepted human concept.

The evolution of the protection and the mandatory character of the human rights prove the progress of the international society in terms of the values on which it is based, but also reveals the link between the human rights protection and the proper functioning of any democratic society.

The problem of protecting the human rights also arises internationally, particularly in the circumstances where, by gross and systematic rights violations, the major values of humanity, such as international peace and security are jeopardized. The international aspect of protecting the human rights also appears in the situation when acts of aggression, crimes of genocide or other crimes against humanity, acts of violation of the

principle of peoples' self-determination are committed.

In this context, the intervention of one state is not legitimate, but only international action is required because, in accordance with public law regulations, no state can intervene in any way to enforce the human rights in another state. Not only had the protection of the human rights, but the idea of legal obligation, of ensuring and protecting the human rights itself extended to the level of the community to which the state belongs.

Conclusions

Proceeding from the legal relationship between the state and the individual as the basis of our study, we showed that this is the starting point for the study of human rights protection, especially at the national level or within the boundaries of the European Union.

Identifying the human rights with the primary means of avoiding suffering and humiliation, as taken from specialist literature, we believe to be the most appropriate definition of these rights.

In its turn, the concept of human rights, in agreement with the legal obligation, highlights the dignity which human beings should be treated with by both their peers and by the community which they belong to, at either national, European or international level.

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