

THE EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS ON AN INTERNATIONAL LEVEL

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ABSTRACT

THE ESSENTIAL ELEMENT OF HUMAN RIGHTS IS THAT OF ENSURING THE WELLBEING, PROGRESS, AND CIVILIZATION IN ANY STATE. BEYOND THE HISTORICAL, CULTURAL AND ECONOMICAL DIFFERENCES, AS A CONSEQUENCE OF THE CONFLICTUAL SITUATIONS RECORDED TODAY IN THE WORLD, BEING ABLE TO PUT IN DANGER THE PEACEFUL CLIMATE, STABILITY AND SECURITY, MODIFYING THE STRUCTURE OF THE RELATIONS BETWEEN MAN AND THE SOCIAL ENVIRONMENT WHICH IS CONSTANTLY EVOLVING, THE HUMAN RIGHTS HAVE BECOME ONE OF THE CENTRAL IDEAS OF THE TIME.

KEYWORDS: HUMAN RIGHTS, AGES, PROGRESS, PEACEFUL, EVOLUTION, SECURITY, PEOPLE, WORLD, ROMANIA

The human being represents, without doubt, the supreme creation of the whole world. Throughout history and everywhere on the surface of the Earth, bringing light on the human nature and his condition of existence had always been the central focus of research, concerning both the Arts, Science, Philosophy, Literature, Sculpture and Painting.

We are living in a world of paradox, in which programs about combating violence within the family are being talked about, but the family is on its way to extinction¹, it is talked about the prevention of abuses of all kinds, but there are more and more abused children, it is discussed about the right to life, but it is totally violated.

Being a social problem, whose ways of manifestation and settlement concern both the social control factors and the public opinion, the actions committed through the usage of violence seem to become more frequent and dangerous for the society and for the persons composing it, urging them towards different associations – the criminality of the “white collars”, organized crime,

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¹ The evolution of the contemporary society highlights a terrifying aspect which affects every social segment, namely criminality in general, of the violent one in particular.

terrorism and institutionalized violence, thought as specific features for the violent subcultures and professionalized crime².

Taking a look at the events that led to the disappearance of some of the most powerful empires from the world's map, to the falling of political regimes that had imposed throughout time, we will astonishingly notice that the view of a nation had been modified only after taking up weapons and starting wars, rebellions, crusades, uprisings, revolutions, cups d'etat, terrorist attacks or any other ways of extreme manifestation against the shortcomings that were more or less justified.

Ever since the beginning of World War II, when all humanity was confronting against one of the biggest and serious crises ever known in history, some of the World's states began the procedures for the founding of an new international organization which would oversee peace, justice and freedom all over the world³.

Together with the firm statement of the world organization's promoters about uniting their strength to free the world from the war's nightmares, there were also stated the first four human and peoples' rights:

- The right to the freedom of speech ;
- The right to freedom from fear;
- The right to freedom from want;
- The right to freedom of religion⁴;

This is how the new premises of a new international order were created, that were based on principles of justice and freedom, recognized in June 1945, at San Francisco, in the United Nations Charter⁵. It was stated that the promotion and obedience of the fundamental human rights, without distinction of race, sex, language, religion, represents the fundamental condition of the societies' existence and world cooperation between these, through solutionizing the international problems related to economy, society, culture and humanitarianism.

Human rights represent a philosophical concept, an almost perfect concentration of all the essential ideas that the humanist philosophy had produced starting from the Antiquity up until the present days. These are, or if not they should definitely be placed among the first of the immaterial values, made aware by humanity as universal values. In the general acceptance of this concept, human rights belong to the human nature, undoubtably linked with these and which can not be split without sacrificing freedom, the dignity of human value, descending to a subhuman state of being, vegetative, instinctual.

However, it is impossible to give a complete, just and fair definition of the human rights phenomena, taking into consideration the multifacetedness of the phenomena and its evolution with its collateral implications and interdependences.

Looking at the facts from a historical perspective, crimes against human rights were not punishable by law, fact which lead them to be placed by some humanist visionaries, philosophers and novelists, among the aims that needed to be reached in an unspecified future.

As societies started to recognize them through declarations of principles or aims, human rights moved to a status of moral rights, the corresponding obligations not being formulated yet.

² S. Rădulescu D. Banciu, *Crime and criminality sociology* (Edyting and Press Publishing House Chance SRL, Bucharest, 1996), 186

³ Dr. Radu Demetrescu, *Human rights at third age* (Romanian Institute for Human Rights, Bucharest 1994) 37

⁴ Speech on the state of the Union, *spoken on 26th Januarie 1941* (in Papers and Addresses of Franklin D. Roosevelt: War and Aid to Democracies), 672.

⁵ Written on 25th – 26th April 1945 and came into force on de 24th October 1945 at the San Francisco conference

Later on they were integrated, one by one, in the positive right, taking into consideration the convulsions of the first decades of the XX century. The world had to go through two World Wars, among which the last one was the most devastating and despicable⁶ towards human life⁷ and dignity, so that crimes against the human fundamental rights and liberties to be punished on an international level.

Even a quick research of the evolution and meanings of the political streams of thinking, highlights the fact that freedom aspiration represented a constant feature of the whole historical process and that the preoccupation for defying the human's position in society manifested itself at the same time with the human being emerging as a thinking being. Man, as a rational being, borned free, always considered as a purpose and never as a mean, represents the supreme value on which all that represents the purposes of a politically organized society should focus on. Therefore, the best investment is and it will always be the human investment.

In the great Indian epic stories the human being was presented as having rights - Vedas, Upanisad (around 560 – 480 BC), Sutra, The Mahabharata, Ramayana and Puranas.

Confucius (Kung Fu Tzi - around 551 – 479 BC), old China promoted moderation in everything, rightness and especially humanity, these being or should be the main virtues of the individuals that form a society.

A written statement, dated back from 534 BC, is represented by a little cylinder made of clay, which through its cuneiform signs engraves Cyrus's the Great decree, who after the conquest of the Babilon granted freedom to the jews and the possibility for them to return in their homeland to preach about him.

The buddist way of thinking was looking for spiritual remedies for the evil that was hunting the people, believing that not only humans are equal but also all the living beings, everyone having the right to respect. Sakyamunii Buddha rejected discrimination among people, the existing differences being interchangeable.

In the old Egiptian culture and civilization, the Book of the Dead was a real morad code of human behaviour in life, and Ptah-hotep's teachings were waking reference to the profound realities of the human soul.

It was also stated that violence should not be used against humans, "because they are borned from the Sun's eyes, they are God's herd."⁸

⁶ The consequences of World War II were powerfully felt in between 1945 -1950, but they were also felt in the decades that followed: - Europe was in ruins – millions of refugees no longer had any type of residence, the economy was in a profound crisis, the industrial infrastructure of the continent was mostly destroyed, it was introduced the practice of bombing the targets clearly civil (the raids in 1939 over the cities of Frampol, Warsaw); Central and East Europe and the Balkan states were under communism; Germany loses its borders, millions of Germans and Polish moved from the natal land, between 1 and 2 millions died in deportations in the West, and the bombs left unexploded make the great war's consequences to be felt even at the beginning of the XXI century; Japan was occupied by the USA, and Korea is divided by URSS and USA, two regimes being borned that through the adopted political led to the first conflict of the Cold War - 1951 - 1953; european colonisation ended- bloody battles were carried for the liberation of Vietnam, Netherland Eastern Indies; The Chinese Civil War; border changeings - Germany, Poland, Romania, Sovietic Union – according to what was decided at the Postdam conference were expelled - 15 millions people, among whom 11 millions from the ex-german territories and 3,5 millions from the Sudeten area. In the Esthers Europe 4 millions polish were expelled. North Bassarabia and Bucovina, romanian territory, were taken by URSS, and North Bucovina and Buceag became part of Ukraine. In Germany dismantling and factory imports take place, coal import, and forced work is established for some germans. USA starts a process of scientific and tehnic tefth and the recruitment of specialist in different domains.

⁷ Human losts in World War II are around 72 millions milioane casualties. From them around 47 millions were victims from the civil population including 20 millions deats from starvation and war diseases.

⁸ J. Ke-Zerbo, *Histoire de l'Afrique noire* (Paris, 1978), 75

In the Ancient Greece, Plato (427 – 417 BC), in "Crito" dialogue was stating the idea that “one should not answer through law and neither do something harmful to another person no matter what he/she did to us⁹”. For Plato the idea of justice can be found both in the individual, seen as *ut singuli*, and in the way in which the city is organized, societies in which the individual takes part.

Therefore, Plato brings an important contribution in the development of the conception of necessity of an universal end eternal ensemble of rules related to the human being, making a clear distinction between ideas and culture, tradition, having a powerful character of affirmation, discovery of human rights and liberties.

In “Politics” Aristotle being in favor of democracy, was stating – “In this world everyone has his own part of virtue, of wisdom, and everyone gathered make up, one can say, a single human being with hands, legs, uncountable senses, a proportional moral and intelligence.” The crowd makes assumptions over musical peaces, poetry, one judges one aspect, the other something else, and all together judge the whole work of art¹⁰.

Aristotle was stating that "only through law someone becomes a slave or a free person, through nature people are not differed from eachother¹¹", inserting the first aspect of the idea of natural right.

In the Middle Eve the Christian philosophers develop the idea concerning the equal condition of humans, starting from the Decalogue and culminating with the absolute right of the law that centers on the laic law.

Hugo Groçius, designated as the father of the natural law, in the XVII century, showed that man is a sociable being through his nature, who aspires to live in peace with his fellows, capable to determine by himself what is usefull or harmfull for the society¹².

A significant contribution is brought in the XVIII century by Ch. L. Montesquieu who formulates a law definition in a scientific way – “The laws in the largest sense are necessary relations that derive from the nature of things and in this sense all things have their own laws”¹³ putting the bases for the ideological preparations of the French Revolution in 1789 – “as the people had given up their natural independence to live obeying the laws.”

The essence of the juridical philosophy of J.J. Rousseau is “the idea of the instauration of law’s reign, through it, of the people’s reign that is at the same time both its author and its subject - the same will power that makes the law and obeys them.” Humans are similar in dignity because the law is everyone’s, is no one’s in particular. This is why the law needs to be above people and not a man above other, because equality implies freedom, and obedience of a law that one established himself means freedom”¹⁴.

Pythagoras, the well-known philosopher stated boldly the idea that “the human is the measure of all things”¹⁵, relating all the natural and social phenomena to man.

Apart from these moral aspects, not in the least neglectable, must be highlighted that fact that Antiquity elaborated not only a comprehensive vision about the human being, including recognition of his dignity and the value of the juridical norms of conduct, but also the concept of "homo politicus", by this statemen being understood the unlimited vocation of which all people

⁹ Platon, *Oeuvres completes, Tome Premier, Librairie Garnier Freres* (Paris, 1936), 206

¹⁰ Aristotel, *Politique, tome II, premiere partie, lines III - IV*, (1971), 74

¹¹ Opera sa Politique

¹² Ionel Cloșca Ion Suceava, *Human Rights Treaty*, (Ed. Europa Nova, Bucharest, 1995), 18

¹³ Corneliu Bîrsan, *Human Rights European Conention, Vol. I, Rights and Liberties* (Ed. All Beck, Bucharest, 2005), 20

¹⁴ J.J.Rousseau, *The Social Contract*, 108

¹⁵ *Philosophy Dictionary*, (Bucharest, 1978), 565

had to enjoy in order to participate in conditions of full equality in leading the city, society, state¹⁶. But same as today, few understood then that the idea of human dignity and equality should refer in an indiscriminating way to the total number of people¹⁷.

A beneficial influence over the affirmation of humanist conceptions was that of Christian religion which raised the concept of fraternity to the level of principle, of the equality of all people in front of the divinity, preaching the idea that people, in their reciprocal relationships, must show tolerance, respect for any being's right to live according to his/hers own customs, in a spirit of understanding and respect.

There also needs to be mentioned the fact that the practice of some religions, the fight against hostile faiths transformed into intolerance leading in the end to the sacrificing not only of the "heretics" but also of those accused of different heresies, of violating the norms of human conduct preached by the Church.

Under the heraldry of the great crusades are hiding some of the most horrifying crimes in history and with a cynicism raised to the level of art, they swarmed that it was God's will, forgetting that the Holy Book teaches them through Jesus Christ's parables that "God is the way, the truth and life, no one comes to the Father unless through Me."

In the Renaissance man is put on a new pedestal, rising human's value as an architect of all spiritual life. The great philosophical confrontations looked to untangle man's purpose in society as well as in history, bringing into discussion the problem of emancipating the human being

Emmanuel Kant considered, in *Groundwork of the Metaphysics of Morals*, that man should be considered as a "purpose" and never as a "mean", and that Spinoza revealed "the changed nature of the human being."

Because France had always had a say on things, rightly Jean Jacques Rousseau, a French philosopher, stated that "man was born free, but is chained everywhere else"¹⁸, referring through this to the request of eliminating any structures or political mechanisms that could affect human dignity, and the French Revolution critically influenced the affirmation of humanist concepts through the proclamation of documents, which withstood all the time's hardships, of human fundamental rights, which ask to be obeyed and guaranteed in any democratic society.

Human rights can not be analyzed unless they are between the petals, on one hand of philosophy, which highlights the parameters of how life is organized, the search for profound answers about things, the exploration of nature's origin and their purpose, and on the other hand, of comprehensive history focusing on the general laws¹⁹ which governate the general movement of evolution.

Looked upon from a social point of view, human rights originated in Antiquity, but looked upon from a juridical point of view, these started in the natural law doctrine.

¹⁶ Prof. Univ. Dr. Victor Duculescu, *The Juridic Protection of the Human Rights*, (Ed. Lumina Lex, Bucharest, 1998) 20

¹⁷ History knew through time slavery, in all its forms, serfdom etc. The Roman jurist stated the concept of *jus naturale*, making the difference between the natural law and the civil right, believing that the civil right applies only to the members with equal rights of the city, and the natural ones apply to everyone, no matter if they are free or slaves.

¹⁸ Jean Jacques Rousseau, *The Social Contract*, (Ed. Științifică, Bucharest, 1957) 82-83

¹⁹ General economic, juridic, socio-logical, political laws

FEATURES AND PARTICULARITIES OF THE HUMAN RIGHTS CONCEPT

Beyond the historical, cultural and economical differences, as a consequence of the conflictual situations recorded today in the world, being able to put in danger²⁰ the peaceful climate, stability and security, modifying the structure of the relations between man and the social environment which is constantly evolving, the human rights have become one of the central ideas of the time.

Yet the essential element of human rights is that of ensuring the wellbeing, progress, and civilization in any state.

Even though it is placed in many portfolios on many organisations' portfolios to consider and act according to the instructions that they set for themselves, there are poor countries in Asia, Africa and on other continents²¹, where a great part of the population lives in the most terrible poverty, without being able to hope for a better life. Education, culture, health are abstract notions for them, taking into consideration the contemporary forms of slavery (the usage of children between six and eleven years old for industrial work endangering their physical and psychological development, organs processing, the use of thousand of children in armed conflicts), unemployment, pimping, prostitution etc.²²

According to the report related to human development of the year 1997:

- around 1,3 billions of people were living with an income of less than a dollar per month,
- around 1 billion were illiterate,
- over 1 billion did not have water supply,
- over 800 millions suffered from hunger or were not provided with the necessary nourishment;²³

The General Gathering of UN decreed the period 1997 – 2006 the decade of poverty eradication, and 17th October became the day of poverty eradication. Ever since The Report on Human Development offers new perspectives on some of the most urgent challenges with which humanity is confronting with – life, education, health and civil and community wellbeing are still the main problems both on a European level and on a world level.

Therefore, according to the *Global Report on Human Development - 2010*²⁴ there is no autonomous connexion between the economical growth and human progress, reported to the HDI domains indeterminate by incomes – namely education and health, like it is measured by HDI (Human Development Index).

The countries from “Top most dynamic countries” highlighted in the 2010 report, which recorded the most improvements throughout the years 1970-2010, in what concerns the HDI – they are led by Oman, which invested throughout decades its gains from energy in the education and public health system²⁵.

The other nine countries from “Top most dynamic countries” are China, Nepal, Indonesia, Saudi Arabia, Laos, Tunisia, South Korea, Algeria and Morocco. In a remarkable way China was the only country that made the “Top most dynamic countries” exclusively because its

²⁰ Armed conflicts, globalization, technological development, poverty, illiteracy, terrorism, organised crime, corruption, tax evasion, professional crime

²¹ In our country too, a part of the population lives in a terrifying poverty;

²² Armed conflicts make millions of victims, degrade the environment, lead to the loss of great quantities of financial resources, being able to start disasters which defy human rights on a large scale.

²³ Dr. Ion Diaconu, *Human Rights in the Contemporary International Law*, (2001), 444

²⁴ www.undp.ro/publications/human-development-report/2010/ro/

²⁵ www.undp.ro/publications/human-development-report/2010/ro/

performances related to incomes.²⁶ Romania together with Bulgaria, Serbia and Hungary are part of a quarter of the countries with a “degree of human development”.

Inequality - adjusted Human Development Index – taking into account disappearances related to health, education and incomes²⁷, Polonia, Romania, Bulgaria and Croatia recorded losses of 10.8, 12.1, 11.3, respectively 15.3. In what it concerns life's standards and incomes of different disadvantaged groups, HDI for people from an ethnic group in Romania they are below the national average number. The Roma people's incomes represent one third of the national average number, and their rate of child death is one third higher²⁸.

In Romania the low participation of women in politics, only 9,8 %, is the promoter of sex inequality (The Gender Inequality Index - GII), being caught gender related discrepancies in what concerns the reproductive health, empowering women and their participation to the work force, even though women are almost equal in number with men relating reaching a certain level of education²⁹.

The new measurement of poverty on the year 2010, based on incomes, taking into account multiple factors at a domestic level, up to the educational access, clean water and medical care estimate that approximately:

- 1,7 billions people live in poverty³⁰
- 1,3 billions live with 1,25 dollars per day or even less.

Referring to the civic wellbeing of the countries from the European Union, Romania together with Lithuania, Latvia, and Slovakia have the lowest perception on citizens' safety.

What is the direction towards which Romania is heading if in more than two decades, Romanian's education system has remained the same?

In what concerns education:

- ✓ in 1990 – the expectations relating the tuition years were 12,5, while the effective studying period was of only 9;
- ✓ in 2010 – the tuition years were 14, 8, while the effective studying period was of only 10, 6.

Could it be enough only 1,6 years of study for an eventual evolution in twenty years for a nation?

Relating to the material wellbeing of Romania's population the situation is as it follows:

- 1990 – the national tax free income was 8.929 dollars /years
- 2000 - the national tax free income was 7.746 dollars /years
- 2010 - the national tax free income was 12.884 dollars /years

Taking into consideration the components of the Human Development Index (HDI) Romania has an index of 0.767 and is situated on the 50th place out of 169 countries. The HDI evolution in the last 25 years shows an annual growth of 0.5 % from 0,688 in 1990 to 0,767 in 2010³¹.

Human rights differ from the rest of the rights due to the five characteristics they are made of:

- universal

²⁶ But the countries from the HDI top are - Norway, Australia, New Zealand, United States, Ireland, Lichtenstein, Netherlands, Canada, Sweden and Germany.

²⁷ Having as base a study for 139 states for which there were comparative data, set on statistics principles

²⁸ *Human Development Global Report 2010*

²⁹ *Human Development Global Report 2010*

³⁰ A third of the population of the 104 countries in MPI –The Multidimensional Poverty Index - MPI- report 2010

³¹ arhiva. euractiv.ro/uniunea-europeana/articles/displayArticle?articleID_21377/Raport-ONU-asupra-dezvoltarii-umane-Romania-se-afla-in-prima-treime-socio-economic-cetatean-ue/

- moreal
- fundamental
- priority
- abstract³²

Universal Rights

The universal character of carrier consists in the fact that they are rights which are for everyone. The carrier of these rights which have as object and purpose the individual connentions with the community from which the person belongs, remains the individual man. In these cases one can talk about the extension of the existence rights and personality development in the community dimension, without denying the possibility that the carrier of some rights to be the group, the community or the state.

Moral Rights

For the valability or existence of a moral right it is enough that the fundamental norme to be available from a moral poine of view, and a norme is available from a moral point of view if it can be justified by anyone or if it has a rational justification³³.

The moral component needs to be reflected on the positive right, through released papers – contract, constitution, laws, cour or social practice- depending in their existence on achieving and keeping a minimum of social efficiency.

Priortary Rights

This feature develops from the first two, in the sense that, if there is a justification of a right against something, then there needs to be a right imposing that right. For exenple, the existence of the right to life, justifiable towards anyone, then there is a state's right to take the necessary measures to protect the life of each individual and of identifying the punishment possibilities, settlement and prevention of the conflict, born as a consequence of disobeying the initial right.

Fundamental Rights

The fundamental character brings into discussion the content of the right reported to two things:

- the possibility of ensuring the interest, necessity towards the right
- the justification of ensuting the interest, necessity toward the right.

The fundamental feature combined with the possibility of ensuring rights sets the priority on all the law system's steps, including towards the legislator. An interest or a need is fundamental if their disobeyance or injury means either death, or great sufferance, or reaching the anatomical core, entering under it inclusively the social rights that target ensuring the necessary minimum³⁴.

If a study were to be made concerning the people' need for love, one could notice that for many it is important to be loved, but there is no possibility to ensure love by law, because love can not be obtained through means of law, through the regulation of a love law, which would correspond the obligation to love, to not bring the touch of love to every individual.

³² John Rüsen, Mans-Klaus Kein, Adrian Paul Iliescu, *Human Rights at the meeting between Cultures, Socio-Human Studies* (Ed. Paralela 45, Pitești-Bucharest, 2004), 34.

³³ R. Alexy, *Dis Kurtstheorie und Menschenrechte; Recht Vernunft, Diskours. Studien zur Rechtsphilsofpfie*, (Frankfurt pe Main, 1995), 127

³⁴ *Human Rights at the meeting between Cultures*, 39

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Without staying too much on this topic, there needs to be highlighted only the fact that there need to be set up instances that are to be capable to make decisions with a juridical character, compulsory knowledgeable.

Therefore, the state needs to be both the court of decision and court of imposition for the achievement of human rights.

One can say without fail, that the decisive factor of social stability development , in an institution, is represented by the obedience of human rights, without forgetting that the social movements contributed to the redistribution of some rights- material, political or symbolical - in a conflict more or less opened with the political power or with the social elite, in which there are regularly used extreme conventional political tactics.

Therefore, the needs of building a social dimension appeared throughout the deepening of urgent wellbeing need, in the shape of socio-economical organization at the level of each state.

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