

CERTAIN ASSESSMENTS RELATED TO THE IMPORTANCE OF EUROPEAN COURT OF HUMAN RIGHTS IN THE EUROPEAN LAW SYSTEM

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Abstract:

Being so intensely debated in the contemporary world, the human rights issues is acquiring a well defined contour through the human rights protection systems. The role of these systems is to establish a series of fundamental rights and freedoms, so that they can no longer be violated. The main systems of promotion and protection of human rights are: the Inter-American system of human rights protection, the African system and the European system.

Two years before the European Convention on Human Rights on 10 December 1948 the Universal Declaration of Human Rights was elaborated by the Constituent Assembly of the UN. It is not an international treaty. In the 30 articles the nobility of the human being was highlighted and man was praised. The text of the Declaration sets out a series of fundamental rights, "a common ideal to be fulfilled" for all people, regardless of race, sex, language, religion, political opinion, national or social origin, property, birth or material status.

The provisions of the Declaration caused a worldwide explosion in international law. Thanks to its generous provisions, it has spread rapidly throughout the world and began to be observed as a treaty. Today, the Declaration is cited in the preamble of international treaties, even in some judicial reasons or in the preamble of Constitutions, for instance in the Romanian Constitution from 1991 under Title II, fundamental rights, freedoms and duties, article 20 reference is made to the Universal Declaration of Human Rights.

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Introduction

Being so intensely debated in the contemporary world, the human rights issues is acquiring a well defined contour through the human rights protection systems. The role of these systems is to establish a series of fundamental rights and freedoms, so that they can no longer be violated. The main systems of promotion and protection of human rights are: the Inter-American system of human rights protection, the African system and the European system.

I. The European system of human rights protection

Human rights in Europe have become more and more known, also influencing the states beyond the European borders. This process has also been strengthened by the trauma caused by two world wars, determining the need of the emergence of some international bodies and organizations to support the protection of these rights. The emergence of the international documents – starting from the Universal Declaration of Human Rights and the Pacts on human rights – were meant to mark in their provisions the fact that people are equal in rights and that they are born free and equal in dignity and rights regardless of race, language, sex, religion, national or ethnic origin or any other features. The first important step towards what did not bear the name of human rights protection was made at the end of World War I, but the strengthening of this protection was made after the Second World War (Gherghina, 2010).

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The emergence of the Council of Europe was a milestone in developing the protection of human rights. Within the Council of Europe the fundamental text is represented by the European Convention on Human Rights and Fundamental Freedoms protection. Romania ratified through Law no.30/1994 Law (Official Gazette of Romania, Part I, no. 135 of May 31, 1994) the Convention for the defense of Human Rights and Fundamental Freedoms and of the additional protocols to this Convention, and through Law no.79/1995 (Official Gazette of Romania, Part I, no. 147 of July 13, 1995) it also ratified Protocol no. 11 at the Convention for the defense of Human Rights and Fundamental Freedoms on restructuring the control mechanism established through Convention.

This is reinforced by a number of additional texts, such as: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (November 26, 1987) which very well completes article 3 of the European Convention on Human Rights, the Framework-Convention for the national minorities' protection (Convention November 10, 1994), the European Convention on cross border television (Convention April 5, 1989), the European Convention on the child's rights, adopted on January 25, 1986.

The European Social Charter, Signed at Turin on November 18, 1961, entered into force on February 25, 1965, and was amended by several additional protocols, also complements the European Convention on Human Rights, establishing the civil and political rights. The Charter stipulates a number of social rights, such as the right to work, the right to organize unions, the right to collective bargaining which includes the right to strike, and not least the right to social security, the right to social and medical assistance, the rights of the migrant workers and of their families to protection and assistance. The original text of the European Social Charter was completed with a revised European Charter, signed at Strasbourg on May 3, 1996 and entered into force on July 1, 1999, which brings together the rights established by the Charter of 1961 and the Protocol of 1988.

The European Union is a community of law having democratic vocation, a fact reflected in the principle according to which the observance of fundamental human rights is one of the essential elements of a state's belonging to the Union (Renucci, 2009).

The totality of initiatives of the EU bodies on human rights observance were first represented by the Single European Act (1986), in whose preamble references are made to the fundamental rights recognized in the constitutions and laws of the Member States, in the European Convention on Human Rights and the European Social Charter, which thus becomes the first EU treaty in which the principle of respect for human rights is mentioned.

On December 7, 2000, the Nice European Council adopted the EU Charter of Fundamental Rights. Being considered a modern document, the renewal of the fundamental rights protection was launched "around six core values: dignity, liberty, equality, solidarity, citizenship, justice" (Sudre, 2006).

The content of the EU Charter of Fundamental Rights provides a series of rights, such as: the right to life, to human dignity, the right to bodily physical and mental integrity, being mentioned the banning of using the human body as a source of income, as well as of human cloning for reproduction purposes, the banning of torture and inhumane and inhuman treatments, of forced or compulsory labor, the prohibition of human trafficking, the right to liberty and security, etc.

In human rights there was a series of important documents adopted by the Organization for Security and Cooperation in Europe during the Budapest summit in December 1994: the Helsinki Final Act of August 1, 1975, the Vienna Document from 1986, the Charter of Paris for a New Europe of November 21, 1990, the Copenhagen Declaration of 1992, and so forth.

Through the Maastricht Treaty, signed on February 7, 1992 and entered into force on November 1, 1993 and the Amsterdam one, signed on October 2, 1997 and entered into

force on May 1, 1999 as well as the Nice Treaty and the Charter of Fundamental Rights, the Union got involved more in the sense of community protection of the human rights.

In the treaty establishing the European Union its preamble reiterates the importance of observing the human rights in the Community judicial order. Thus, article F explains the Union's commitment in this matter and this issue is inserted in the Treaty: "The Union shall observe the human rights as guaranteed by the European Convention of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, and as resulting from the joint constitutional traditions of the Member States, as general principles of Community law." Thus, the privileged position of the European Convention of Human Rights is emphasized, taking into account the constitutional provisions of the Member States. By article J.1 paragraph (2) final line, found in Title V – "Provisions on joint foreign and security policy", it is provided as objective of joint foreign and security policy the development and consolidation of democracy and of the rule of law, as well as the observance of human rights and fundamental freedoms.

The treaty amending the Treaty on the European Union, the treaties establishing the European Communities add a new paragraph to the preamble of the Treaty on the European Union, according to which the party States confirm their attachment to the fundamental social rights as defined in the European Social Charter signed at Turin October 18, 1961, and in the Community Charter of the fundamental social rights of workers from 1989. It also provides the expansion of powers of the European Communities Court of Justice in respect of protecting the fundamental rights and extending that power to the third pillar of the European Union.

The Amsterdam Treaty, reviewing the Treaty establishing the European Union, includes important provisions regarding the protection of human rights. The contents of the treaty establishes a general provision dealing with the non-discrimination based on sex, race or ethnic origin, religion or beliefs, disability, age or sexual orientation.

The Treaty of Nice (February 26, 2001) strengthens the protection of fundamental rights, intensifying the fight against discrimination.

The jurisprudence of the European Communities Court of Justice was an important factor in the development of the Community protection of human rights. The European Union has a lower activity in establishing the human rights and more extensive in defending them, through the work of the European Communities Court of Justice. Although there have been many initiatives, there are not yet law texts to specifically protect the human rights within the EU legal order.

In order to avoid conflicting interpretations and in order to unify the sources of inspiration of the European Communities Court of Justice the idea of drawing up a Charter of Fundamental Rights in the European Union (1999) was reached. The Charter represents a restatement of the general principles of Community law, including both the civil and political rights and the economic and social rights. At the same time, the Charter brings the issues of fundamental rights into the focus of the community's concerns, making them become essential. From an accessory of the construction of the Common Market, the protection of fundamental rights becomes the main interest of the whole legal document prepared under the Community law. This document could be regarded as fundamental European Act, a fact which results from its wording manner, which indicates that in the future the Charter will get such a value.

Although it was mentioned above, it should be stressed that one of the important documents on the protection of human rights in the European area is the European Convention of Human Rights and Fundamental Freedoms, being the first treaty concerning human rights (Gherghina, 2010).

The Convention has a special significance for international law of human rights and for the entire human rights movement, developed after the Second World War (Steiner, Alston, 2000; Leach, 2001; Pettiti, Decaux, Imbert, 1999):

- it was the world's first treaty on human rights;
- it established the first proceedings and international court where complaints can be made in the field of human rights (in article 33 of the Convention an interstate case is regulated, and in article 34 the individual claims procedure);
- it is the most developed of all human rights systems;
- jurisprudence is more extensive and richer compared to any other international system.

The legal literature lists three reasons that led to the development of such a European human rights treaty (Keon, 1999):

- it was a regional response to the atrocities committed during the Second World War and the hope that by respecting the human rights, governments will no longer trigger as easily wars against their neighbors;
- both the Council of Europe (founded in 1949) and the European Union (formerly the European Communities) were based on the idea that the best way for Germany to become one of peace forces, along with Great Britain, France and other Western countries, was that of the regional integration and the adherence to a set of common values;
- another reason was to bring together the non-communist European countries in a common framework that is based on the same fundamental values and their consolidation when facing the communist threat.

The European Convention on Human Rights was signed on November 4, 1950 at the Palazzo Barberini in Rome. Then nobody could have predicted how successful would the Convention be in the next 50 years. Today, the Convention includes more than 40 signatory states and a growing number of citizens resort to the Court; at the same time the importance of the Convention for the national legal order from the States of the High Contracting Parties is growing. Few are those who have foreseen the legal impact the Convention was to have on the traditions of their internal law.

But we also have to say that it was not immediately noticed what would be the legal relevance of the Convention in terms of the future development of the national law from the various countries involved. Over the first 25 years of existence the importance of the Convention was primarily theoretical. As a result of the direct confrontation with the systematic violation, on a large scale, of the most basic human rights by the Nazi regime, the European states were convinced that the effective protection of human rights could not only be entrusted to national authorities. It required the establishment of an international control mechanism. This political conviction strongly facilitated the introduction of a document, revolutionary at the time, a legally binding document concerning the human rights. For the first time in history an international monitoring mechanism was introduced, and the citizens could address complaints to an international tribunal concerning the human rights violations directed against their own states. It was an important step in the evolution of public international law, substantially altering the role assigned to the natural person in the classical international law.

Many states continued to consider the human rights issues as a matter of internal law, being one of the most delicate areas of political strategy. The atrocities committed in the Second World War emphasized the need for an international mechanism such as the European Convention on Human Rights, although the states continued to have concerns about the possible violations of such a treaty on human rights by certain elements even from within their societies. The Strasbourg institutions were aware of this ambivalent attitude, so that they acted with restraint and care in the first years of their existence. The fact that the states became accustomed in time with the existence of an international supervision mechanism (including the individual right of petition) proved to be a

reasonable approach. Only when both the necessary confidence in the cautious approach of the Commission and of the Court and the cooperation of the High Contracting Parties were provided, the emphasis moved on ensuring a more effective protection of the complainants.

Just as in the first 25 years of existence the importance of the Convention is primarily theoretical, in the next 25 years it becomes more practical. The Court is becoming increasingly a legislative body with impact on the national policy of law in the Member States. The emphasis of the jurisprudence of the European Court of Human Rights moves towards the idea of offering as much as possible an *effective* protection of the rights protected by the Convention.

The European Court offers a dynamic, teleological and extensive interpretation of the Convention. The legal protection provided by the Court thus attracts more applicants. But, at the same time, we can notice an interesting change in the national mentality. Lawyers have begun to understand the significance of the Convention for their clients, so they began to resort more often to the Convention (justified or not) and the national judges must therefore submit their views on the compatibility of the legal stipulations with the Convention requirements, while the legislative bodies systematically check if the legislative proposals are made “according to Strasbourg.”

II. The Inter-American system of human rights protection.

Two years before the European Convention on Human Rights on 10 December 1948 the Universal Declaration of Human Rights was elaborated by the Constituent Assembly of the UN. It is not an international treaty. In the 30 articles the nobility of the human being was highlighted and man was praised. The text of the Declaration sets out a series of fundamental rights, “a common ideal to be fulfilled” for all people, regardless of race, sex, language, religion, political opinion, national or social origin, property, birth or material status (December, 10, 1948).

The Declaration stipulates numerous civil, political, economic, social and cultural rights.

From the category of civil and political rights the Declaration establishes among others: article 3 – the right to life, to liberty and the security of the person; article 4 - prohibition of slavery and of slave trafficking in all its forms; article 5 - prohibition of torture, of cruel, inhuman or degrading punishments or treatments; article 8 - the right of any person to effectively address a court to protect his/her rights; article 9 - prohibition of arrest, detention or arbitrary exile; article 10 - the right of any person to be equitably and publicly heard by an independent and impartial tribunal; article 13 section 1 - the right to move freely and to choose their residence within the borders of the state; article 15 – the right to citizenship, as well as the right of the person to change his/her nationality; article 17 section 1 – the right to property; article 21 – the right to elect and to be elected, etc.

The Declaration also sets out a series of economic, social and cultural rights, such as: article 23 – the right to work and to equal remuneration for equal work; article 27 – the right to education and to participate freely in the cultural life of the community, and so forth.

The provisions of the Declaration have caused a worldwide explosion in international law. Thanks to its generous provisions, it has spread rapidly throughout the world and began to be observed as a treaty. Today, the Declaration is cited in the preamble of international treaties, even in some judicial reasons or in the preamble of Constitutions, for instance in the Romanian Constitution from 1991 under Title II, fundamental rights, freedoms and duties, article 20 reference is made to the Universal Declaration of Human Rights. The Romanian Constitution was revised by Law no. 429/2003, approved by the national referendum of 18-19 October 2003, confirmed by the Constitutional Court Decision no. 3 of 22 October 2003. The revised text of the Constitution of Romania was published in the Official Gazette no. 767 of October 31, 2003.

By indicating the Declaration in the Romanian Constitution, its nature changes from a purely political document into a legal one, making it a moral rule in a rule of law (

Predescu, 2006). However, the elaboration a regional human rights treaty and some monitoring bodies was established only in 1969. The American Human Rights Convention was adopted in 1969 and entered into force in 1978.

III. The African human rights system.

In 1981 the Heads of the State and Government Assembly of the African Unity Organization adopted the African Charter of Human and peoples Rights. It entered into force in 1986. In 2000, 53 African states have acceded to this Charter. Specific to this Charter is the fact that from its content certain fundamental rights are missing, such as: the right to citizenship (the lack of this right is justified by the fact that this quality of being a member of the African Community is based on the affiliation to the tribe, clan, family and nation); the right to free choice of marriage partner (explained by the existence of certain traditions of the African state concerning marriage), the right to rest, the right to leisure, the right to an adequate standard of living.

Another specific element of the African Charter of Human Rights is that it also includes the rights of peoples, such as the right to full sovereignty, the right to self-determination, the right to peace, the right to development, the right to dispose of wealth and natural resources.

In addition, next to the rights and freedoms, the Charter also stipulates the duties, both of individuals and of states.

It is considered one of the least developed systems in promoting and supporting human rights protection.

Conclusions

Analyzing the evolution of the last 60 years one can only reach the conclusion that this Convention became one of the most important international documents relevant to the internal order of law in over 40 countries, providing legal protection to over 800 million people.

In the first 25 years of existence the European Court did not have a busy schedule. But since 1980 the number of cases has doubled, resulting in permanent confrontation with the increased workload.

The European Convention protects a series of fundamental rights and freedoms which do not lack the right to life – article 2, the prohibition of torture – article 3, prohibition of slavery and forced labor – article 4, the right to liberty and security - article 5, the right to a fair trial – article 6, the right to respect for private and family life – article 8, the freedom of thought, conscience and religion – article 9, freedom of speech – article 10, the right to an effective appeal – article 13, and so forth.

According to the European Convention stipulations much of these rights are not unlimited in a democratic society, sometimes their restriction being justified. According to article 15 paragraph 1 of this document, the states are allowed to derogate from their obligations in case of war or public emergency threatening the life of the nation. Even in these situations, the State must respect the right to life, except for death resulting from unlawful acts of war, as well as the obligation to ban torture, slavery and of the non-retroactivity of criminal law (article 15 paragraph 2).

In time the European Convention on Human Rights has undergone several modifications, but the most important of these was brought by the Protocol no. 11, which established a unique and compulsory jurisdiction (Bîrsan, 2006) in this field, represented by the European Court of Human Rights. This is the first time in the history of international judicial institutions when the jurisdiction competence of such a Court, created by a treaty signed by sovereign states, became mandatory.

Regarding the European Convention rank in relation to the Romanian legislation, linking the stipulations of article 11 and article 20 with those of article 1 paragraph (5) of

the Constitution of Romania, the supremacy of the Constitution is emphasized over other laws, this having a higher legal force to the European Convention.

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