CONSIDERATIONS ON THE PRINCIPLE OF EQUALITY IN EUROPEAN LEGISLATION

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Abstract

Among the numerous issues and wishes that mankind faces in general, the fundamental rights and duties of an individual hold a major place. The inclusion of citizens' rights and liberties among the most important issues represents not only the result of their great importance but also of their tight connection with the cardinal problems of the world.

The concern with the promotion and guarding of citizens' rights and liberties have gone beyond the traditional limits and borders, as a result of the historical evolution of humanity, especially after WWII, in the attempt to put an end to exploitation, violence, racism, national discrimination and inequality between people.

As far legislation is concerned, there are both international and national laws regarding the fundamental rights, liberties and duties. The achievement of the best correlation between these two categories involve the guarantee of citizens' rights at the levels required by the international laws, which proves to be difficult to put in practice if we take into account the great economic, social and cultural diversity of the world states.

The progressive evolution of the constitutional principle and of that of equality depend on the very social reality to which it is supposedly applied; its efficiency will provide the best results only to the extent to which equality becomes the criterion for perfection.

Keywords: *principle of equality, rights, liberties, nondiscrimination, European perspective*.

1. Introduction

Recognition and respect for the rights of the human being have been embodied since ancient times when, with the formation of new empires, mankind began to strive for the most enlightened legal ideals of equality, justice, dignity and truth.

Throughout the time, the legal system has undergone numerous transformations due to social and political changes that have existed since the emergence of the state when, in order to preserve a social balance, mankind learned how to defend its rights but also how to respect the rules and values as well as the legal traditions imposed under the rule of law.

The protection of the human being was first scientifically explained in English doctrine through the legal act, the Great Charter of Liberties, in 1215 when, during the reign of John Lackland, the aim was to eliminate abuses committed by the monarch and to guarantee a number of rights for all his citizens.

Globally, the development of legal regulations on the protection of human rights has accelerated with the implementation of fundamental laws in democratic countries such as the Netherlands, France and Spain, which have proclaimed both fundamental human rights and the means of guaranteeing them.

An eloquent example of this is the guarantee of the inviolability of each individual, which is still known today in the constitutions of the aforementioned states.

Human rights began to be addressed at institutional level in the mid-19th century with the signing of the Geneva Convention, which established the standards of international law on humanitarian issues arising in times of war.

The development of this institution entered quite deeply into the content of public international law as well as into a number of legal doctrines of humanitarian, criminal, and diplomatic law that became quite necessary for the protection of human personality.

In order for a society to function as efficiently as possible, freedom in its essence implies the responsibility that each individual assumes according to his or her upbringing and respect for the rules of social coexistence, which are the essential values that provide the mechanism for protecting and safeguarding each society.

2. Paper content

The French constitutional thinking and practice have had a major influence on the development of Constitutional Law. The historical principles comprised in The Declaration of Human and Citizenship Rights[1] ("People are born and live free and equal as regards their rights. Social distinctions can

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[1] Ch. Debbasch, *Constitution Ve Republique-textes, jurisprudence, pratique*, 3rd ed., Dalloz, Paris, 2003, p. 3.

only be based on common usefulness.") have also been included in the texts of the constitutions of some states which have gained their independence. The moral, political and juridical value of the great principles offered by the French Revolution has gone beyond that age, projecting itself as real commandments of democracies in a world ruled by the tribute paid to laws. Although, The Declaration of Human and Citizenship Rights inevitably bears the seal of the historic age in which it was designed, having some flaws, its structure with he big principles that it offered has got into the common juridical thinking concerning human rights and becoming an important part of peoples' lives with regard to constitutional law thinking[2].

It is in the light of this Declaration that one considers today personal rights individuals must enjoy, such as: liberty, equality, property ownership (considered to be sacred and inviolable), safety and resistance to oppression of any kind. These rights have been considered to represent, as regards their social contents, the conditions inherent to the elimination of privileges, to the instauration of a new type of society characterized by private property, the freedom to be part of contracts and take part in competitions under the principles of equality. The principles mentioned above have been allegedly considered to signify fundamental citizens' rights, since people should have equal opportunities to accede to public positions and jobs and society is obliged to consider all these rights and duties. Any citizen has the right to talk, write, express their ideas, have materials published freely and consequently, respond to abuses of this liberty.

The common contribution needed to maintain the public force has to be rightly divided among citizens commensurate with their possibilities. At the same time, citizens have the right to claim, whether directly or indirectly, the necessity of public contribution, to agree to it freely, to watch its use, fix its amount, the manner of imposing and collecting it and its length[3].

The fact that the ideas expressed in The Declaration of Human and Citizenship Rights in 1789 have been included in the current Constitution of France is illustrative of the profound attachment of the people to this document, the French being aware of the this is part of their political thinking and actions to end absolutism. The Constitution of the Fifth French Republic has been due since October 4, 1958, the 2nd paragraph of its Preamble being devoted to the common ideal of liberty, equality and fraternity, which is resumed in the 1st title, 2nd article, as a creed of the French Republic. As a law principle, the right to equality is clearly focused on in the first article of the Constitution, the allegation being that "all citizens, irrespective of nationality, race and religion, are equal as regards laws"[4], women having similar access as men to run for and hold leading positions. The Belgian Constitution in 1831 has been regarded as one of the "classical" constitutions, being one of the most advanced ones at the time it was devised. It served, as a matter of fact, in many ways, as a source of inspiration for other constitutions, including the Romanian one in 1866.

As an expression of the democratic principles, which were becoming more powerful in Europe, the Belgian Constitution states that all individuals are equal as regards laws with a guarantee of their individual freedom. According to it, no form of punishment can be established or applied outside law; the document also states the inviolable status of one's dwelling, the impossibility to one's property or belongings confiscated, the freedom of religions, of education and teaching, of mass-media and meetings. Moreover, any Belgian citizen has the right to address the political authorities though petitions but only associations acknowledged as such have the right to address petitions on behalf of certain groups[5].

The legislative power is assumed by the Houses – the House of the Representatives and the Senate. Since the Constitution in 1831, the former has been made up of members elected exclusively by adults over 18, whereas the latter has been formed both through elections and through designations made by the provincial councils and the Senate itself. Regarding the legislative bodies, there are certain aspects worth mentioning. Thus, according to the laws passed in February 7 and July 28, 1981, deputies have to be elected through direct voting by people over 18, who have lived for at least 6 months in that area, the vote being compulsory and secret. The House is formed of 212 members, according to the laws of July 28, 1971. In order for someone to be chosen in the House of Representatives, they have to be Belgian by birth or benefit of full naturalization and they have to live in Belgium; as far as the Senate is concerned, the requirements are similar[6].

The political evolution of Great Britain offers a classical example of the passage from absolute monarchy to constitutional monarchy (the limited or constitutional monarchy is characterized by a limitation of the monarch's powers through the fundamental law

[2] V. Duculescu, C. Călinoiu, G. Duculescu, *Drept constituțional comparat / Constitutional Law – A Comparative Approach*, vol. I, Lumina Lex Publishing House, Bucharest, 1996, p. 190.
[3] *Idem*, pp. 190-191.
[4] Ch. Debbasch, *op. cit.*, p. 117.
[5] V. Duculescu, C. Călinoiu, G. Duculescu, *op. cit.*, p. 274.
[6] *Idem*, p. 275.

of the state). The role of the monarch in Great Britain nowadays is more symbolical, yet he/she has preserved certain prerogatives, such as, the right to dissolve the Parliament, to make appointments for superior positions, to refuse to sign certain laws; however, Great Britain is considered as one of the typical example of the parliamentary political system. Although one of the few states without a written constitution, the democratic tradition in Great Britain has deep roots; the first documents regarding human rights were issues in this country, thus ensuring a high status for Great Britain in Europe and worldwide. *Magna Charta Libertatum* was perceived at the time as a real constitution given by King John Lackland, as a sequel to the agreement he concluded with his nobles and the representatives of the church, who were dissatisfied with royal abuses of power. Article 29, for instance, states the following: "No man will be arrested or sent to jail or deprived of his property or declared as outside law or exiled or offended in any other way; there will be no action against him/her without a loyal trail form the part of his fellows, according to the laws of the country." Later, the ideal comprised in *Magna Charta* have been resumed and materialized in important documents, such as, "The Petition of Rights" (June 7, 1628), *"Habeas Corpus Act"* (May 26, 1679) and "The Bill of Rights" (February 13, 1683)[7].

At present, the legislation against racial discrimination contains both references to national origin (*i.e.* the group in which a person is born) and to nationality (*i.e.* the state which has given one its citizenship)[8].

Through the Constitution of May 29, 1874, made up of a preamble and 123 articles, to which one can add a series of provisional statements with limited validity, all citizens are equal as regards law in Switzerland. There are no local, birth, personal or family privileges. Men and women have the same rights, especially concerning family, education and work issues, the wages for the same amount of work being equal, according to law, for the two[9].

The Constitution of Finland of July 1919 - still valid - constitutes the fundamental law which establishes the organization and functioning of the Finish state, of all state organisms and citizens' rights. Art. 5 states the principle of equality as regards law and art. 9 is concerned with the full equality of people irrespective of the religious cult they belong to. The right of Finish citizens to practice their religious rituals publicly or privately is stipulated in article 8 of the Constitution. Law no. 518 of December 1, 1967, states that Finish nationality is automatically granted to any person born of Finish parents. To install equality, titles of nobility or hereditary dignities are abolished through article 15. The equal use of Finish and Swedish as national languages of Finland, including in courtrooms and to address authorities – through article 14 – matches the national policy of the Finish state, which supports the principle of equality between the Finish and the Swedish, as stated in article 14, paragraph 2; also, "the state will satisfy the cultural and economic needs of Finish-speaking community and Swedish-speaking population on equal principles"[10].

The principle of equal treatment is acknowledged in article 1 of the Dutch Constitution, which alleges that "people will be similarly treated in similar circumstances"[11].

In Portugal, the Constitution of April 1976 (the Constitution of the Portuguese Republic was adopted by the Constitutive Assembly in April 2, 1976 and has been due since April 25, 1976, with its 298 articles), represents a balanced position between a parliamentary democracy and a semi-presidential system of government. According to the system of proportional representation, an Assembly is voted through universal suffrage.

In the preamble of this Constitution, the Constitutive Assembly states the determination of the Portuguese people to defend their national independence, to ensure the fundamental rights of the citizens, to settle the basic principles of democracy, to enhance the status of the democratic state and to set the path to a socialist society, obeying the will of the Portuguese people with the purpose to achieve a free, just and brotherly country[12]. The fundamental principles are mentioned in a distinct chapter, right after the preamble but before its first part dedicated to the fundamental rights and duties. In art. 1, there is a statement according to which Portugal is a sovereign republic, based on the dignity of its people and on the popular will, with a view to build a free, just and solid society. The pluralism of political organization and expression, together with the guarantee of the practice of fundamental rights and liberties, are stated in art. 2. Similar through the enumeration of rights and duties to chapters in other modern constitutions, the first part of the Portuguese Constitution includes some new features, such as, the possibility to grant foreigners on the Portuguese territory, on mutual grounds, the right to vote in local elections (art. 15, para. 4); the freedom

[7] I. Doltu, V. Drăghici, *Protecția juridică a drepturilor omului / Juridical Protection of Human Rights*, Fundația "Andrei Șaguna", Constanța, 1999, p. 13.
[8] M. Banton, *Discriminarea / Discrimination*, Du Style, Bucharest, 1998, p. 69.
[9] *Idem*, p. 282.
[10] V. Duculescu, C. Călinoiu, G. Duculescu, *op. cit.*, pp. 200-201.
[11] M. Banton, *op. cit.*, p. 112.
[12] *Idem*, p. 213.

to choose their profession or job "with the exceptions of legal restrictions required by the common interest or inherent to self capacity" (art. 47, para. 1); the right to the security of the workplace, "firing without a just cause or out of political or ideological reasons being banned"[13].

At present, the main constitutional documents regulating laws in Austria are: the Federal Constitutional Law of October 26, 1955, comprising the main rights guaranteed by the Constitution, to which we can add the Law of 1955, with the value of a constitutional text, regarding Austria's neutrality. Among the general statements of the Constitutional Law of 1955, there is one according to which there is only one nationality in Austria (article 6, paragraph 1); in article 7, paragraph 1, the constitutional principle of equality is restated, since "all the citizens of the federation are equal as regards law", this allegation representing one more means of protecting the linguistic minorities, with German as the official language, yet, without interference with the rights granted to the linguistic minorities through the laws of the federation[14].

In Italy, the Constitution adopted in December 22, 1947 acknowledges the rights of all citizens to be endowed with the same social dignity, to be equal as regards law, irrespective of sex, race, religion, political opinion, social and personal circumstances. The Republic is the one that "eliminates the social and economic obstacles, which by limiting the citizens' freedom and the equality, hinders the complete manifestation of human personality and the full participation of the adults working in the political, economic and social organization of the country[15]. As far as the ethical and social rapports are concerned, the Constitution admits to the importance of the family, the equality between spouses, the parents' duty to provide for and educate their children; regarding everyone's vocation to study, the statement stresses that all intelligent and promising people, even if deprived of the necessary financial means, have the right to pursue their studies up to the highest degree. As far as the political rights are concerned, there is a general admission of the right to vote, which cannot be limited but as a sequel to a civil incapacity, to definite penal sentence or civil moral degradation. All citizens of both sexes can have equal access to public positions.

The Constitution of May 23, 1949 of the Federal Republic of Germany (at present, the Republic of Germany; after the defeat of Nazi Germany and the temporary occupation of the country by the Allied Powers, the territory was divided into two parts: The Federal Republic of Germany, in the formerly American, French and English-dominated areas and the Democrat German Republic, in the formerly Soviet-dominated areas. On the German territory the two states functioned side by side, the German nation getting together again in 1989, as a consequence of the fall of Erick Honecker's communist regime and of the integration of the Democrat German Republic as the eleventh land of the Federal Republic of Germany) is valid today, representing a minutely detailed document, remarkable through the precision of its regulations and the democratic framework which it offers to the German people with a view to its independence. Unlike in the constitutions of the other countries, in which the principle of equality is mentioned in connection to the citizens, the German one states that "All human beings are equal as regards law. Men and women have the same rights"[16]. As far as marriage and family are concerned, according to an important stipulation, the legislation has to ensure natural children the same rights as to the legitimate ones with a view to their physical and moral development and their social situation.

The Constitution of the Bulgarian Republic adopted in July 12, 1991 features all the characteristics of modern constitution, emphasizing its attachment to the universal values of liberty, peace, humanism, equality, equity and tolerance. Concerning foreigners, the Constitution states that both these ones and juridical associations can only become owners of land through succession, but for certain cases in which they may be granted the right to build and other legal rights[17].

The Constitution of the Republic of Hungary (the current modified version of the Constitution in 1972) was published again in the Official Bulletin of the Republic of Hungary in no. 84 in August 24, 1990. Chapter I contains the general principles, whereas chapter V mentions a body that is "The Parliamentary Guardian of citizenship rights and the Parliamentary Guardian of the rights of national and ethnic minorities". This body, similar to the ombudsman in the Scandinavian countries (the representative of the Government who analyzes complaints coming from the citizens against the government or other authorities) has the task to check and initiate investigations regarding citizens' rights abuses that have been made known to him/her, so that the appropriate measure could be taken. Law permitting, anyone can resort to

[13] *Idem*, p. 214.
[14] *Idem*, p. 225.
[15] *Idem*, pp. 291-297.
[16] E.-S. Tănăsescu, *Principiul egalității în dreptul românesc / The Principle of Equality in Romanian Laws*, All Beck Publishing House, Bucharest, 1999, p. 108.
[17] V. Duculescu, C. Călinoiu, G. Duculescu, *op. cit.*, p. 457.

the use of the Parliamentary Guardian. This is an MP voted by at least two thirds of the MPs after being proposed by the President of the Republic. The role of the Parliamentary Guardian concerning the rights of the national and ethnic minorities are put into practice by a body made up of one representative for each national or ethnic minority, voted by the Parliament as well[18].

As a European state, Romania, through Law no. 30/1994, ratified *The Convention of Human Rights and Fundamental Liberties* or *The European Convention of Human Rights.* Considering that in a democratic society, in which human rights are protected through certain institutions and the process of raising people's awareness, in the sense of teaching respect for the rights of the others, we consider vital the existence of clear regulations, at all levels, to be applied to deal with discrimination. The need of the Romanian society to provide just and prompt solutions to discrimination issues is much to important be offered partial answers. Thus, in order to raise to the European requirements, the Romanian legislation has had to be adapted to the former, this process being largely a successful one.

The progressive evolution of the constitutional and principle and of that of equality depend on the social development to which it must apply; its efficiency will fully manifest itself as long as equality becomes the criterion for perfection.

3. Conclusions

In the context of the expansion of political, economic and legal affairs at an international level, the protection of the human being has become an essential principle, considered by ancient philosophers of justice to be fundamental, eternal and immutable, which every society must possess and at the same time respect.

The human being is the highest value of society and the bearer of his personality, expressing the possibility of fulfilling all his natural aspirations by using his capacities in legal life to achieve legitimate interests and desires based on the respect he owes to his fellow human beings.

The international justice system, in the process of its prefiguration, has undergone numerous transformations due to political and legal mutations that have overturned previous social orders and have introduced new stages of legislative construction and unification that have played a positive role in the spiritual constitution of each society.

Under the auspices of the struggle for the development of fundamental rights and freedoms, a number of legal thinkers argued for the implementation of a new legal institution that would have systematised the general legality and the particular requirements of each nation.

The legislative transformations that followed over the years have brought about a homogeneity of social values and beliefs that have adopted significant regulations that clearly reflect the organisational forms of the human community.

The essence of the legislative act has a fundamental international value and an universal character, since it ensures protection of the rights and freedoms that men and women can enjoy everywhere.

The application of these legislative principles in the sphere of the aforementioned legal act has been a source of inspiration for the domestic law of States, ensuring the consolidation of an international political and legal environment characterised by peace, collective security and social prosperity.

The legislative mechanisms for guaranteeing and implementing human rights have been diversified at national, regional and universal level according to the legal traditions of each State. The dignity and value of the human being has been upheld by states with a fairly advanced modern democracy such as France, Great Britain, Italy, Germany, and Spain.

The institution of fundamental rights and freedoms has undergone many changes over time, due both to the internal social conditions that each state has sought to regulate and to the external conditions that have arisen with the formation of the European family, marking the intervention of each state in the newly established legal framework.

Western doctrine has always been concerned with the development of a legislative infrastructure designed to temper and establish the protection of rights and the satisfaction of interests in order to ensure that everyone has an equal opportunity to assert themselves in society.

In applying constitutional provisions, every state that has become a member of the European Union and has adhered to the new legal principles and values established in international law conventions has established legislative measures to ensure that all the rights that every citizen, regardless of ethnicity, political orientation, sex, religion, has in a modern society are maintained and respected.

References

- Debbasch, Charles, *Constitution Ve Republique-textes, jurisprudence, practique*, 3rd ed., Dalloz, Paris, 2003;

[18] V. Duculescu, C. Călinoiu, G. Duculescu. *op. cit.*, p. 562.

- Duculescu, Victor, Constanța Călinoiu, Georgeta Duculescu, *Drept constituțional comparat / Constitutional Law – A Comparative Approach*, vol. I, Lumina Lex Publishing House, Bucharest, 1996;
- Doltu, Ioan, Vasile Drăghici, *Protecția juridică a drepturilor omului / Juridical Protection of Human Rights*, Fundația "Andrei Saguna", Constanța, 1999;
- Banton, Michael, *Discriminarea / Discrimination*, Du Style, Bucharest, 1998;
- Tănăsescu, Elena Simina, *Principiul egalității în dreptul românesc / The Principle of Equality in Romanian Laws*, All Beck Publishing House, Bucharest, 1999;
- Muraru Ioan, Tănăsescu, Elena Simina, *Constituția României. Comentariu pe articole*, 3rd ed., C.H. Beck Publishing House, Bucharest, 2022.