

Evolution of the Human Rights Issue

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To Link this Article: <http://dx.doi.org/10.6007/IJAREMS/v2-i6/475> DOI:10.6007/IJAREMS/v2-i6/475

Published Online: November, 2013

Abstract

The issue of human rights raised the interest since ancient times and to understand it is necessary to understand its evolution over time. The idea of human rights has been a major concern for many prestigious philosophers and jurists, their ideas and concepts being found in many constitutional documents. Human rights are for all human beings regardless of nationality, sex, race or other traits that distinguish them, and deriving from human dignity, which require that all states of the world to promote and took specific means to ensure their compliance. A first legal recognition of human rights was made internationally being adopted by the countries a number of documents in this regard. But secure and effective protection of human rights, are mainly made at national level, a major role in this field having some specialized institutions such as: the courts, the ombudsman. Also, both internationally and at regional or national level have been established a number of organizations that promote and guarantee human rights and the adoption of legal instruments for the protection of human rights.

Keywords: Human Rights, Guarantee Legal Protection, International Documents

Introduction

A reflection on the idea of human rights requires, as Hegel said, an effort to understand its evolution throughout history.

Freedom and equality of people have always represented aspirations throughout the history and knowledge of concepts that formed the basis of these trends means understanding the idea of human rights.

The man, to live in the society, had to undergo some rules which direct his behavior towards his fellow men. A society cannot exist in the absence of principles of conduct, of morality principles. The great Chinese thinker Confucius said that a harmonious society cannot be possible unless the people who compose it are guided by high moral principles, because it must not only be an ongoing effort to better.

In ancient Greece, high moral principles were reflected in the works of Plato. In the dialogue "Crito", it stressed that "should not be answered by injustice nor harm to any man, no matter what we did it. "Noted philosopher Protagoras of Abdera said that "man is the measure of all things, of those that are, as they are, and those which are not, as they are"¹

¹ Dictionary of Philosophy, Political Publishing House, Bucharest, 1978, p. 565.

Natural equality of humans

Later, the Stoics thinkers formulating a doctrine of natural rights, argued that of this doctrine should enjoy all people, regardless of their social condition or where they are rights belonging to everyone, by the mere fact that they were all being endowed with human reason.

Philosophers and Roman jurists have focused on natural equality of men. In their conception, natural law was connected with the right of people. The justice, in the "Institutes" Justinian, was defined as "constant and perpetual desire to give every man what is his due" and the science of law has been defined as "the knowledge of things divine and human, and the ability to discern exactly what is right from what is unjust."

Ulpian Roman legal adviser stressed that, in essence, the principles of law were: to lead a honest life, see not to hurt what belongs to another, and to give to each what is his. (*Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*²).

The Christian religion has played a key role in affirming the humanistic concepts, in the sense that raised the concept of human brotherhood at the status of the principle, equality of all men before the Deity. It recognized the influence of religion to affirm the concept of human rights.

Thomas Aquinas (thirteenth century) states that the State found its reason for its existence in serving the people, all political authority derives from the people and laws should be made by the people directly or through their representatives.

Renaissance humanism, underline in original and new terms the worship toward man, his value as direct creator of the whole spiritual life.

Sixteenth and seventeenth centuries were marked by the presence of large legal and political thinkers such as Jean Bodin (France), Hugo Grotius (Netherlands), Thomas Hobbes and John Locke (England) who contributed to the development of ideas about the state and man, about sovereignty and freedom, natural law, positive law. Hugo Grotius argued that the law is not based on the will of the deity but on the human nature and the principles of reason. After Thomas Hobbes "man is a wolf to another man" and therefore the "natural state (earlier of the state) of humans is the" war of all against all. "State says Hobbes, was created by people on the way of an agreement, a social contract, in order to put an end to this situation and maintain peace in society.

Another known philosopher Spinoza (Netherlands) said that freedom consists in understanding the need. After Spinoza, supreme happiness of man is the result of the elevation of the highest stage of freedom, which gives him a sense of communion with nature and with eternity³.

Since the eighteenth century, the idea of human rights as subjective rights enters European thought with the social contract theory of the great French philosopher JJ Rousseau.

Criticizing contemporary society and idealizing the "natural state" in which people were free and equal, Rousseau argues that "man is naturally good" but that society corrupts and shows that social inequality is the origin of private property, which led to the formation of the state and later to despotism. Since inequality violates the so-called social contract between people during the transition from the natural state to the "civil" it should be removed.

² E. Molcuț, Private Roman Law - lecture notes, Dimitrie Cantemir Christian University, Bucharest, 1992, p 23.

³ Romanian Encyclopedic Dictionary, vol IV, Political Publishing House, Bucharest, 1966, p 473.

Also, Rousseau says that "man is born free but everywhere he is in chains"⁴ showing that any political structure might affect human dignity must be eliminated.

Immanuel Kant states that the dignity of each creates also duties, such as the unconditional respect towards other people. And its correlative idea of dignity, respect, human rights underpins theory or, more precisely, the idea of ethical and legal human rights⁵.

French Revolution of 1789, had a decisive influence in affirming humanist concepts, in the sense that has proclaimed in adopted documents fundamental human rights, which should be respected and guaranteed in any democratic society.

For Montesquieu, liberty is the right to do whatever the laws permit, and if a citizen could do what they forbid, he would not have the freedom that others could do the same."⁶

The First Constitutional Documents Guaranteeing Human Rights

These ideas and concepts, to which we referred above, expressed in the works of prestigious philosophers and jurists, were found in many constitutional documents.

Constitutional documents first appeared in England. "Magna Charta Libertatum" - Great Charter of Freedoms - given by John without Country, on 15 June 1215, the barons and high English priests is not only a privileges disposal of the English aristocracy, but also a "constitution" guaranteeing rights and freedoms.

The experts agreed that "Magna Charta Libertatum" is the first legal document outlining the elements of legal protection of the human person.

For example, this document stipulated in paragraph 39, that "No free man shall be arrested or imprisoned, or stripped of his possessions, or outlawed, or exiled, or injured by any maneuver would be and we will not go against him and we will not send anyone against him without a fair judgment of his peers, according to the law of the country".

Other important documents on human rights published in England - before any other country - were: June 7, 1628 Petition of Rights, "Habeas Corpus Act" of May 26, 1679 - that no one could be arrested or deprived of his property without a fair trial of its peers, according to the law and the arrest should have been made aware of the allegation within 24 hours - and the "Bill of Rights" of February 13, 1689.

"Bill of Rights", act occurred under the reign of William of Orange, adopted by Parliament on February 13, 1689 did not allow of King exercise of rights without the consent of parliament such as the right to suspend the application of laws or establish exceptions to their execution the right to levy taxes and to form and maintain a standing army in peacetime.

The Act proclaims the freedom of parliamentary debates and parliamentary elections - elections to which participate only a limited number of people from the ranks of the aristocracy and the big bourgeoisie.

"Declaration of Independence of the United States", adopted on July 4, 1776 in Philadelphia, proclaims "All humans are created equal, they are endowed by their Creator with certain inalienable rights, among these rights are life, liberty and the pursuit of happiness" Governments are establishing the consent of the governed, to ensure these rights, "Whenever a form of government becomes contrary to this purpose, people have the right to alter or abolish it and establish a new government." The Declaration also provided judicial

⁴ J.J. Rousseau, *The Social Contract*, Scientific Publishing House, Bucharest, 1957, pp. 82-83.

⁵ I. Moroianu Zlătescu, *Legal protection of human rights*, IRDO, Bucharest, 1995, p. 13.

⁶ Montesquieu, *Spirit of the Laws*, Volume I, Scientific Publishing House, Bucharest, 1964, p. 193.

independence, military subordination civil powers, freedom of trade to taxes imposed without the consent of elected bodies, the right to be tried by a jury court.

In France, "Declaration of the Rights of Man and Citizen" adopted by the Constituent Assembly of the French revolution, to August 26, 1789, enroll in its first article the idea that "men are born and remain free and equal in rights. Social distinctions may be founded only on the common equality". This principle of equality in the law of all people is seated at the basis of all other rights and freedoms as a general condition of their existence.

According to article 4 of the Declaration, freedom is to do whatever does not harm others, "thus, the exercise of the natural rights of each could be limited only to what exercising the same right provide to other members of society. These limitations can only be determined by law. "State must refrain from any action against individual rights and not intervene only to prevent harmful conduct of others.

By the Declaration are also proclaimed property rights, security, the right to resistance against oppression, freedom of thought, freedom of speech and expression, freedom of arrest contrary to law, the presumption of innocence and protection against retroactivity law.

From the beginning there is a distinction between human and citizen rights, some rights are only addressed to citizen, as a member of that society: the right to participate in the adoption of laws, dignity and equal access to political office, the right to participate in the tax assessment. "Declaration of the Rights of Man and Citizen" is considered document devotes most successful classical concept of human rights and fundamental freedoms.

Considered the first modern legal consecration, the Declaration was a preamble to the Constitution of France from 1791. According to article 16 "any society where human rights are not guaranteed, and the separation of powers is not established, that country does not have constitution".

Middle of the nineteenth century recorded a new phenomenon in human rights and international legal regulations, namely, the first rules to humanize the war (the Declaration of St. Petersburg on 11 December 1868, the signatories of this document pledged to give in case of war, to use of projectiles weighing less than 400 gr., missiles loaded with high explosives or flammable substances.

Later, the Hague Conferences of 1899 and 1907 produced a codification of laws and customs of the war), fighting against the slave trade in general, human beings (eg General Act of the Berlin Conference 1885 stipulated the suppression of slavery and particularly black trade in territories Congo Basin and Niger. antislavery general Act of the Brussels Conference 1889-1890 stipulated suppressing the slave trade throughout Africa and Indian Ocean sea area. hardly by Convention on the slavery of Geneva September 25, 1925, concluded the League of Nations, it stipulated complete suppression of slavery and the slave trade, the obligation that cover all regions of the world), regulation of charities and the late appear first international agreement social, concerning the "right to work".

After the Second World War, the creation of the United Nations (UN) marks both the growing interest of the world community to promote human condition, the human rights and recognition of human dignity and the creation of specialized guarantee by law norms international respect for the fundamental human rights of states and citizens, representing then a number of regional bodies, including the Council of Europe.

UNO adopted important documents such as: the Universal Declaration of Human Rights (December 10, 1948), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted on 16 December 1966, etc.

Conclusions

Human rights institution has experienced a process of crystallization in time, currently appearing as an institution rather complex, related both to domestic law and the international legal order. It defines and summarizes a set of rights, freedoms and obligations of people towards each other, the states to protect and promote these rights, the entire international community in ensuring that the rights and freedoms in each country, intervening in situations where human rights are violated in a particular state⁷. Because of their importance, human rights have been enshrined in constitutional provisions, thus making the effective guarantee and protection.

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⁷ V. Duculescu, Legal protection of human rights, Lumina Lex Publishing House, Bucharest, 1994, p. 19.