

The Appearance and Implementation of Human Rights

Mini Review

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Abstract

The European Convention for the Protection of Human Rights and Fundamental Freedoms has created an international monitoring mechanism in addition to national mechanisms, with all Member States accepting the jurisdiction of the European Court of Human Rights as a Community institution. This body for the protection of human rights at international and regional level has the role of a court of international jurisdiction subsidiary to domestic remedies.

One of the first initiatives to respect the social, economic, and political rights of mankind belonged to Cyrus the Great, the first king of Persia, who, after conquering Babylon, gave some important laws: he freed slaves, declared that all people had the right to—chooses his own religion and has established racial equality. All this was written on a cylinder which is today known as the Cylinder of Cyrus and which is considered to be the first charter of human rights. This first initiative was so important that it was translated into the official languages of the United Nations, and four articles in this document can be found in the provisions of the Universal Declaration of Human Rights.

Keywords: Rights; Declarations; History; Fundamental Freedoms; Jurisdictions.

Introduction

One of the first initiatives belonged to Cyrus the Great, the first king of Persia, who, after conquering Babylon, gave some important laws: he freed slaves, declared that all people have the right to choose their own religion, and established equality racial. All this was written on a cylinder which is today known as the Cylinder of Cyrus and which is considered to be the first charter of human rights. This first initiative was so important that it was translated into the official languages of the United Nations, and four articles in this document can be found in the provisions of the Universal Declaration of Human Rights. Other ideas or concepts that would fall under the umbrella of human rights in antiquity today are the Golden Rule [1]—"Treat others the way you would like to be treated" and Asoka's Edicts [2] that emphasized tolerance and put forward the first ideas of international humanitarian law. Until the appearance of the first documents more oriented towards the rights of the population, not necessarily human, it was the Early Islamic Caliphate [3] where Muhammad preached and led reforms in terms of social security, family structure, slavery, women, and ethnic minority rights.

Contents

A document of this period was the Constitution of Medina. This document proposed, among other things, women's safety, freedom of religion, a judicial system for resolving disputes, responsibility for prisoners, important and positive changes regarding slavery. The Middle Ages were marked primarily by the Magna Carta [4]. The Magna Carta is a document published in 1215 that influenced British common law and documents such as the United States Constitution. Among the rights listed in this document is the right of the church to be free the involvement of the government, the right of all free citizens to own and inherit property, the principles of justice and equality before the law.

Another important document for the evolution of human rights in the same period was the Law Petition of 1628 [5], which focused more on economic measures, arbitrary arrest and offered four principles: taxes cannot be changed without the consent of Parliament, no one can be imprisoned without cause, no soldier can be held based on nationality and martial law cannot be used in peacetime. In the modern stage of human rights history, we have a faster development of notions. We have philosophers like John

Locke and the concept of natural rights—people are naturally free and equal, the English Bill of Rights of 1689 [6], the revolutions in the United States and France, the Virginia Bill of Rights, the United States Declaration of Independence and the Bill of Rights Man and Citizen of France. The United States Declaration of Independence of July 4, 1776, focused on two main themes: individual rights and the right to revolution. The 1787 Constitution of the United States and the 1791 Bill of Rights are new additions to the map of human rights developments. The Constitution of the United States of America is the oldest constitution in the world that is still in force and that ensures the fundamental rights of citizens. The Law on Rights is made up of the first 10 amendments to the Constitution and includes rights and freedoms such as freedom of expression, freedom of religion, freedom of assembly, and the right to petition. The Declaration of the Rights of Man and of the Citizen of 1789 abolished the monarchy and established the first French republic. Among other things, the Declaration supports citizens in having “freedom, property, security and resistance to oppression”. The issue of human rights remains with that of peace, whose promising outlines so far offer us only a distant picture of a world with fewer weapons and more security, one of the dominant themes of political life and public debate.

Multiple and complex problems related to human existence, human rights are being tried to be answered, both domestically and internationally, but also in the field of direct state political action, in international organizations and meetings and in the media. These multiple and complex problems internally are, as Ion Diaconu states, “an integral part of the phenomena and evolutions of the political, economic, social and cultural life of each country, and the problem of their realization can only be posed in a historical, national, social context. and political. The situation is different from country to country and is constantly evolving, depending on the national historical circumstances and the direction of the development process in each country [7].

Ion Diaconu also stated that “at the international level, the issue of human rights is closely linked to the evolution of the global problems of humanity—security, peace, development.

The many problems that exist and appear in each country can only be solved in the context of a positive evolution in areas such as resolving existing conflicts and preventing others, ensuring the development of all countries in the world, maintaining international peace and security.

At the same time, we must try to identify the directions for action on cooperation between states in this field, as they result from the international commitments adopted and as practiced in UN bodies and other organizations.

As a social phenomenon, human rights have their origins in antiquity. Instead, as a legal phenomenon, human rights have their origins in the doctrine of natural law, which starts from the idea that man, by his very nature, has in any place and at any time rights that are prior and primary to those granted by society and recognized of natural law. In other words, it is a higher right in relation to the expression of the will of the state in various forms of its existence and unconditionally by the interests that the state may have at some point in its historical evolution. In this regard, we consider that we can take into account the assessment made by Giorgio del Vecchio, who stated that: “The idea that the human being possesses by its nature certain rights, valid even the human mind, since ancient times and has been rendered in brilliant

words, thanks to ancient philosophy, Roman jurisprudence as in later times, sometimes inspired by the dogmas of the Christian religion, and sometimes only by the light of reason [8].

In ancient Greece, Platon (427–447 BC) made an important contribution to the development of the concept of the need for a universal and eternal set of rules regarding the human being, who made a clear distinction between ideas and culture or tradition. His works have a pronounced character of affirmation, discovery of human rights and freedoms. To Aristotle belongs the first germ of the idea of natural law, which in his political work stated that: “only by law does one become a slave or free, by their nature people are no different [9].

In the Middle Ages, analyzing the historical development of human society, Christian philosophers tried to develop ideas about the equal condition of people, starting from the Decalogue with the Ten Commandments, thus announcing the fundamental individual rights, characteristic of any human being. The individual, in this context, according to the theory of Thomas Aquinas, is at the center of a just social and legal order, but the divine law has absolute preeminence over secular law, as defined by the king. “The Christian Church has even established a hierarchy of various sources of law in the matter, giving priority to divine law, with natural law in second place and only in third place—positive law as a right derived from the primary (divine) and secondary (natural), being nothing but the usual norms of relations in society [10].

In the seventeenth century, exponents of the school of natural law, especially Hugo Grotius, nicknamed the father of the science of natural law, showed that “man is a sociable being by nature, who aspires to live in peace with his fellows, which is useful or harmful to society [11].

In the eighteenth century these issues were addressed by many thinkers, a significant contribution having J.J. Rousseau and Ch.L. de Montesquieu.

From the very first sentence of his work *On the Spirit of Laws*, Montesquieu formulates a scientific definition of law, namely: “Laws, in the broadest sense, are necessary relations which derive from the nature of things, and in this sense all things have their laws.”

The merit of Montesquieu is to understand in context the relationship between law and freedom but also the contribution to the ideological preparation of the French Revolution of 1789. This philosophy has a progressive character, because, referring to the essential components of society they gave up their natural independence in order to live under obedience to civil law”, maintaining, in conclusion, that the former laws represent freedom, and the latter—property [12].

Essential [13] to his legal philosophy is the idea of establishing the rule of law and, through it, the rule of the people who are at the same time its author and subject: for the same will that makes the laws, obeys them. The equality of men consists in the fact that they are alike in dignity, because, since the law belongs to all, it does not belong to anyone. Therefore, the law must be placed above the people and not a man above others, because equality implies freedom, because obedience to a law that you have established for yourself means freedom [14].

Of course, and unquestionably, the issue of fundamental human rights and freedoms remains a constant concern of great philosophers for decades to come. We believe, however, that

since the end of the eighteenth century, the issue of human rights has entered a new phase of development—the enshrinement of rights, even much later, in international documents and has become what we all recognize today—the contemporary system of human rights. International Law of Fundamental Rights and Freedoms of Man.

The emergence and evolution of the first legal instruments for the protection of human rights.

Rights and freedoms, from the point of view of positive law, which would later form the content of the notion of human rights, emerged in the struggle of various social categories against feudal absolutism.

The first known text in history is the *Magna Carta Libertatum* proclaimed in England by John the Landless in 1215, by which English barons and bishops obtain several privileges and procedural guarantees from the king. This act of antiquity had an absolute priority over all the other acts that have been elaborated in the world over time in this field so important for the entire population of the globe. The contents of this document stated that: "No free man shall be arrested or imprisoned, or deprived of his possessions, or outlawed, or exiled, or injured in any manner whatsoever, and we shall not prosecute him or her. We will not send anyone against him without a fair trial or in accordance with the law of the land [15].

In European culture, in the seventeenth and nineteenth centuries, the first legal instruments for transposing these fundamental rights and freedoms into legal provisions appeared. In England, there are some important documents on human rights entitled: Petition of Rights of June 7, 1628, Habeas Corpus Act of May 26, 1679, Bill of Rights of February 13, 1689, "which formed the British parliamentary system, the right to free election, freedom of speech, the right to bail, the prohibition of cruel punishment, the right to be tried by an independent tribunal [16]. In America, in the state of Virginia, on June 12, 1776, the Bill of Rights was adopted in the state of Virginia, which stated that "all human beings are born equal, free and independent; they have inherent rights which they cannot, when entering into social relations, be deprived of or deprived of by any contract, namely the right to enjoy life and liberty, with the possibility of acquiring and owning property and seeking and to achieve personal happiness and security". On June 14, 1776, the Declaration of Independence of the United States of America was adopted in Philadelphia.

On December 10, 1948, the Universal Declaration of Human Rights was adopted, a day that is celebrated around the world as International Human Rights Day. This text enshrines a number of fundamental rights—a common ideal that must be fulfilled, as stated in the very terms of the Declaration—for all people, regardless of race, sex, language, religion, political opinion, national or social origin, property, birth or material situation. This document was adopted without any opposition from the UN member states, except for eight abstentions (South Africa, Saudi Arabia, the USSR and five People's Democracies).

As the declaration has no binding legal force and is not a *de jure* international treaty, it does not create obligations for states. However, its provisions have been included in the constitutions and internal laws of the states, for which reason it has acquired a special importance.

Since states considered it necessary to adopt a document containing provisions of legal force, during the years 1948–1966

negotiations were held for the adoption of a document in this regard, culminating in the International Charter of Human Rights, which inspired directly develop and subsequently conclude a range of complementary instruments on human rights regulation in some special and concrete areas:

- Self-determination and the right of independence of colonized peoples
- Fight against discrimination based on race, sex, occupation, profession, religion, faith, education.
- Fight against war crimes and crimes against humanity
- Protection of persons subject to detention or imprisonment
- Prohibition of torture and other inhuman analogue treatment
- The rights of people with mental disabilities and disabilities
- Progress and development in the social field
- Using the advances of science and technology in the interests of peace and for the benefit of mankind
- International cooperation and cultural development
- Women's political rights
- Fight against racism, incitement to war and apartheid
- Fight against terrorism
- Promoting human rights

To minimize the violation of human rights, considerable efforts are being made at national and international level by issuing the most effective tools possible in order to respect fundamental rights and freedoms and monitoring the observance of human rights by states. However, the gaps in the literature are that: "The development of human rights in international law and national law has culminated in the creation of a system of rights that globally governs the harmonious existence of the personality [17].

At European level, in the field of legal instruments of protection and guarantee in the field of human rights we find the Community institution—the European Court of Human Rights.

Conclusion

The European Convention for the Protection of Human Rights and Fundamental Freedoms has created an international monitoring mechanism in addition to national mechanisms, with all Member States accepting the jurisdiction of the European Court of Human Rights as a Community institution. This body for the protection of human rights at international and regional level has the role of a court of international jurisdiction subsidiary to domestic remedies. The European Court of Justice is not a statutory body of the Council of Europe, but a conventional one established under the European Convention on Human Rights. However, it cannot be separated from the system of bodies of the Council of Europe, being created within it, taking on the same principles and having the same budget. The European Court of Human Rights, established in Strasbourg on 21 January 1959, with the acceptance of its jurisdiction by eight states, is the main element of the supranational control mechanism of the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Human Rights or the ECHR logo.

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Conflict of interest

Authors declare that there is no conflict of interest.

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