Human Rights and Liberties - The Need to Protect and Guarantee Them in the Context of Globalisation

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Abstract

The paper aims at an interdisciplinary approach to a controversial aspect of globalization, i.e. the role of the state in respecting, protecting and guaranteeing the subjective rights of its own citizens in this context. The traditional duties of the state have changed under the impact of political-legislative, economic and social transformations. Questions arise as to whether the state can still fulfil its classical duties effectively and whether it will somehow disappear. This study examines the specifics of these rights and the prospects for their future protection, both nationally and internationally, highlighting the issues and challenges brought about by such protection in the globalization context. The research, through the methods used (comparative, logical, historical, teleological method, etc.) attempts at a critical assessment of the phenomenon, of the main theories in the field and questions the effectiveness of the current protection mechanisms.

The problem came to the attention of specialists only at the beginning of this millennium and continues to arise their interest.

Key words: fundamental rights, globalization, universalisation of rights, protection and guarantee
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1. Introduction

Human rights, their specificity and the prospects of protecting them in the future, both at national and international level, are a complex issue, constantly generating more and more challenges. They can always be new research topics, equally generous and interesting. However, this entire problem of protection and its issue requires careful attention and research, as the importance of guaranteeing the related rights and further on the consequences impact the existence of all people, depending on the regulation and legal treatment given to them in a given society. And what about their situation in a global society?

It is easy to see, by merely perusing the literature, that there have always been attempts in the field of these rights - domestically and internationally - to establish regulations, but also theoretical constructions, all likely to try to define and characterize these right. However, the results in this respect have never been and will not be satisfactory. The complexity of human rights protection scope, in general, their evolutionary character, in particular, even the regressions of the rights in question are the causes thereof; more precisely, the very historicity of rights.

The different doctrinal approaches, even if valuable, contributing and clarifying specific aspects have also highlighted the growing need for a holistic interdisciplinary approach, in terms of their protection and guarantee. In this respect we can mention even that the phenomenon of globalisation and the digital age, the use of new information technologies, is placing the issue of guaranteeing and protecting the freedom of expression and the right to privacy, apparently in a hopeless

situation. We may add here the context of domestic and international security strategies, the phenomenon of terrorism and cultural differences in a multipolar world, and the legislative difficulties in this area, etc.

2. Theoretical context, terminology and research methods

The main tools of analysis were those specific to the theory of law (on some basic notions and concepts - subjective rights, rights and freedoms, legal norm, legal order, public order etc.).

Concepts, methods and principles specific to constitutional law were also used (especially in defining and classifying the rights mentioned as fundamental rights, etc. It was necessary to analyse from a scientific perspective the following law branches: international law, human rights international law, European law, legal protection of human rights, a comparative analysis was needed in several respects, including the comparison of different relevant regulations, the highlighting of similarities and differences, constant elements and variables between certain rights and even to other rights and freedoms.

The research methods used in examining the problems subject to scientific analysis were the following: based on the logical method (induction, deduction, etc.) we reached the following conclusions: the character of fundamental rights, character resulted from the general principles applicable to fundamental rights. Another method used in research was the comparative method - mainly to detect important similarities and differences between the matter.

Besides the legal method, the historical, teleological, sociological method, etc. were also used, as regards the historical evolution and the historicity of the analysed rights, the analysis of causes and effects, the interests of legal regulation, the effects of an effective protection of the liberties in question, the analysis of human goals as a finalist (order of finalities superior of man) etc.

The originality of the research carried out in the project also consists, in our opinion, in an approach to the topic through the prism of philosophical knowledge – that is the philosophy of law (with the natural law theory) and from a perspective of political philosophy - even tangentially. An approach to the geopolitical dimension and theories in the domain of security strategies is totally needed because they have major implications for the human rights protection, especially in our global and conflicting world.

3. The evolution of human rights in the broader phenomenon comprised in the generic name of globalisation

A subjective right does not have its ultimate foundation in the law, but in its reason (…). The right also exists outside the law… There may even be cases when the law is unjust; this does not mean that law does not exist… If we want to make science of law - said Mircea Djuvara - we must release the idea of law and outside the law (Djuvara, 1995, p. 231).

The whole course of human rights is identified with the history of struggles for the observance of human dignity by state authorities - confrontations that have taken various forms, from nonviolent, ideologically carried, to violent, brutal, generated by the denial of the most basic freedoms human beings in totalitarian regimes; they then moved on to another plane - that of parliamentary confrontations in democratic countries. Recently, some phenomena that obviously mark the evolution of these rights, also fall, naturally, into the broader phenomenon known today as the generic name of *globalisation*. This context of international factors implies an increase in both risks and opportunities for individuals and communities.

As for the opportunities - increasing interdependencies in the modern world: shaping new rights, the rapid movement of goods and services, capital, information, and the mobility of people. As for the risks, it can be seen, on the one hand, that the evolution of the world economy in the last decades under the sign of globalisation, has inevitably led to disorganizing effects, as political crises at national and international level: the need for security, social upheavals, migration and urbanization, social inequalities of all kinds - becoming more numerous and more expressive - all the latter affecting the human rights defence and guarantee.

New claims of disadvantaged social segments without a protectionist framework at national and international level from an institutional or organizational point of view have led to the inefficiency

of a legal order confronted with the urgency of new aggressive, undesirable, illegal behaviours. They endanger the right to life, liberty and dignity, including freedom of expression or the right to privacy and family life, etc. thus, in this context, insurmountable conflicts between certain rights arise. Today there is an entire debate around the balancing of a person's right to freedom of expression with the right to preserve honour or reputation of the person, with the protection of national security and the maintenance of public order. It should be noted here the need to regulate the media, even assuming some restrictions on its content.

There are justified opinions that the state is currently redefining its responsibilities, which determine country-specific actions, depending on the specific degree of connection to the global world - an issue that came to the attention of specialists only at the beginning of this millennium. Such an indicator - called the globalisation index, (is a composite indicator, which includes in its composition four dimensions: the political, technological, personal and integrationist dimension. In a ranking made for 62 nations, this index ranks first, as the most globalized nation, Ireland, in the same ranking, Romania was on the 38th place) (Djuvara, 1995, p. 231).

Another question that can be asked is what determines - in these contexts - states to observe the right, to defence and guarantee the subjective rights of their own citizens? States observe the law as they think this behaviour is in their advantage, as Alexe puts it (Alexe, 2009, p. 24).

4. The respect of international law is not optional; human rights between the Strasbourg Court and the Luxembourg Court

The observance of international law is not optional (Marian, 2007, p. 8). The observance of international law is necessary and is the rational solution, advantageous for each state, because not all actors on the international stage always find rational solutions to the problems they are called to solve. There are many examples, even recent ones, in which neither this logic, nor national laws, nor rights protection systems are taken into account in substantiating some of the internal or foreign policy decisions (Alexe, 2009, p. 25).

Highlighting the conflict between the right to expression liberty and other rights and interests, increasingly accentuated, offers not only a clearer picture of this area, but also a useful way to understand these conflicts (all the more so as it can be seen that there are a very large number of decisions of various courts in such cases).

Recent events have stated that both the state's executive authorities and the courts need training to learn to truly adhere to basic human rights principles. Here are some negative examples of recent actions by state authorities that have affected the right to free speech in our country: the finding as unconstitutional of the law decriminalizing insult and slander (Constitutional Court, January 2007), ill-treatment of several people and temporary detention of over 50 young people who protested against NATO during the summit of this organization in Bucharest (involved the Ministry of Interior, Police and Gendarmerie, Romanian Intelligence Service; April 2008), the adoption in the plenary of the Senate of a law proposing that radios and televisions present 50 percent negative news and 50 percent positive news (June 2008) (Ganea, 2008).

On the issue of the conflict between the privacy right and the expression liberty, the Court, in its decisions, not seeking to substitute itself for domestic jurisdictions, sets out a number of guidelines which national courts must attempt to solve such a dispute, but to leave a margin of appreciation at their discretion. ECHR judgments can be systematized on the problem related to the conflict mentioned in judgments concerning the conflict between the expression freedom and the right to private life of the persons engaged in political activities, other persons known to the public, ordinary persons, criticism of civil servants and restrictions imposed on medical secrecy (Chirilă, 2007, p. 660).

However, what we can deduct from the analysis of the evolution of the European Court jurisprudence as regards art. 8 of the Convention is the obvious tendency to extend the positive obligations of states as per this article and the independent items of the content of the right to privacy and family life, which are not expressly enshrined at formal level.

As regards the relationship between liberty of expression and the right to privacy and family life, in the case law of the European Court of Human Rights, from the analysis of the limits of the two rights and the points at which they meet, we can conclude that the European court has given

pre-eminence to one or the other of the two rights, depending on the particular situation of each case and the interests at hand. We believe that there is an obvious tendency in the Court's jurisprudence to maintain a balance between the two rights, which should ensure adequate protection of the values protected by both, although these values are almost irreconcilable (Iancu, 2013, p. 383).

However, it should be emphasized that, given the maintenance of two separate jurisdictions in the domain of fundamental rights, there is a risk of jurisdictional conflicts, which may lead to divergences concerning the content of rights rather than their existence, given that the Strasbourg Court and the Strasbourg Court Luxembourg, do not have identical aims, although their concerns are common. For example, it cannot be said with certainty that the Luxembourg Court will adopt the autonomous concepts developed by the European Court or that in accordance with Article 8 of the Charter of the European Union Fundamental Rights enshrines a distinct right to data protection, it will not be tempted to apply this article in the cases brought before it, to the detriment of art.8 of the European Convention on Human Rights (Iancu, 2013, p. 379). The constant caseload of the European Court treats honour and reputation more as limits of liberty of expression and, tangentially, within the right to personal image, a right that has been included in the content of the right to private and family life, protected by art. 8 of the Convention.

An analysis of the regulation of freedom of expression and the right to privacy and family life on the new Civil Code and the new Criminal Code, now in force, can show that if civil law can be criticized for these rights, the new Criminal Code, based on the principles established by the jurisprudence of the European Court, included among the holders of the right to domicile protected by art. 8 of the Convention and legal persons, as well as the crime of violation of professional headquarters. Art. 226 para. 4 provides for the causes of impunity, taking over the principle of "existence of the victim's consent" constantly established in the jurisprudence of the European Court.

It can be seen even from a brief analysis of the regulations regarding the liberty of expression and the right to privacy and family life - contained in the new Civil Code and the new Criminal Code - the existence of an obvious tendency, in legislative terms, to give pre-eminence to the right to privacy and family life, to the detriment of freedom of expression - especially in the media.

There are also issues regarding the right to information. A Member State may authorize libraries to digitize, without the consent of the rightsholders, certain books in their collection in order to make them available to electronic reading. EU member states may also allow users, within certain limits and under certain conditions, including the payment of fair compensation to rightsholders, to print digitized library books on paper or to store on a USB stick (Moceanu, M., 2014). The Directive 2001/29 / EC – mentioned in the CJEU judgment - aims to harmonize certain aspects of copyright and related rights in the information society, giving priority to the right to information.

The European Court of Justice brings another novelty in the matter, rejecting the European Union directive that allowed telecom operators to store data on private communications for up to two years. The measure came into force after the London and Madrid bombings of 2006, but is currently considered by the European Court of Justice to violate fundamental human rights. In justifying its recent decision, the Court considered that regaining these data and giving access to the national authorities to interfere (as per this directive) is against the defence of personal data. According to Bratu, such a retention and ulterior use without informing the user make data subjects feel their private life is under permanent scrutiny, according to Bratu the subject of a continuous surveillance (Bratu, 2014).

5. Attempts to define globalisation. Can subjective rights and natural human rights, still be protected and guaranteed in this context?

It is considered that within the **attempts to define globalisation**, the fact of considering it would be synonymous only with a trade between nations would be a huge mistake, because it would not represent its entire reality. Globalisation represents much more - a quantitative and qualitative leap of an entire international economic and legal order. Globalisation is „*a new era in which the old paradigms no longer apply. It is ... a process of expanding transactions beyond the borders of each country*" (Zaharia et. al., pp. 4-5) and, obviously, with all the consequences that

follow from this: the important aspect of the regulation of human rights (assertion of new rights, emergence of conflicts of rights, mitigation, conditioning or inefficiency of others). This process of globalisation, led and managed by economic and political forces, it also generates phenomena that lead governments to take new measures, even retaliatory ones, in the conditions in which the old national security systems prove more and more outdated or ineffective in the face of the inherent dangers that threaten everyone more recently (see the current global pandemic and new ones episodes of terrorism).

Can subjective rights and natural human rights, still be protected and guaranteed in this context? How can the existence of humans be considered from the viewpoint of law within such a globalized society? These questions must be asked more and more strongly because there is still, in contemporary reality, the risk of failure, if states do not have a clear role and an increased responsibility in respecting domestic and international rights and legal order. This risk of failure to protect human rights, as fundamental and universal values, can be repeated if states do not choose the right solution to strengthen the legal order by creating protection mechanisms, including sanctions and strengthening the founding principles to ensure respect for these rights, domestic as well as international law.

As Pop remarked, the lessons of such a past, usually forgotten, the failure feeling should not block our reason because there is a political and diplomatic solution, namely, to act in persuasion that the values shared are the same (Pop, p. 2).

A cause of the ineffectiveness of subjective rights is also considered to be the contrast between the anachronistic idea of the state as a military-strategic, independent unit and the existence of great powers and power blocs - for example NATO which qualifies each state differently according to compromises and the trans governmental characteristics involved in its operations and decisions (Held et. al., 2000).

Khan thinks that the prospects are not very promising. Besides the social or economic rights, along with the natural rights and freedoms are being threatened and in danger of being infringed. In his own words, "human rights are not just a luxury for good times" (Khan, 2008a).

Pop also thinks that the termination of the Cold War constituted a global reason of hope. Globalisation, internationalization expanded in terms of similarities. He adds: "Both European integration and globalisation have called for a common sharing of values, the latter being related to the Western model of civilization: the rule of law, human rights, inalienable private property, guaranteeing private initiative, market economy" (Pop, p.1).

Thus, the internal social environment, current of some countries, but also the international one, is paradoxical and conflictual; this demonstrates the generation of a serious and consistent global social crisis. In Khan's opinion, we need a worldwide solution to this general crisis, as for some people "this crisis is simply a matter of life and death" (Khan, 2008b). For example, new taxes have emerged, taxes - sometimes in the form of uncertain legalizations - other times social policies are inadequate, in principle to reduce social conflicts between extremes of inequality. It is, in short, a discriminatory and unfair regime, to which must be added that these facts, just briefly mentioned, do not only devastate society in one country or another, but that these quantitative and qualitative differences are present throughout the entire society.

There are also authors who speak of the demise of human liberties and rights (Douzinas, 2009) or of their necessary limitation after September 2001 (Balahur, 2014, p. 4), after repeated terrorist attacks brought about by the freedom of expression (Charlie Hebdo) or the current pandemic. And that's because humanity is not one and the same. How can we understand this paradox - that not all people have humanity in a world of human rights? It discusses the metaphysical status of rights, their universal or regional substantiation, as well as their political, ideological import. It is more or less argued that human rights provisions, in particular, are general and abstract, that the classic example of the „right to life" - which opens most human rights bills and human rights treaties - along with his statements - do not answer questions about abortion, the death penalty, euthanasia or even whether this right protects the prerequisites for survival, such as food, shelter or health care. It is also considered that in most cases a human rights claim is the beginning rather than the end of a dispute over the meaning of the right or its status with respect to the conflicting rights and any moral, political or ideological considerations inevitably conflict with legal arguments, influenced by the ideological, political or moral position of decision makers (Douzinas, 2014).

6. Conclusions

Along with the process of human rights *universalisation*, of their becoming international, global standards, a process of contextualization can also be observed - in the sense of regulating an ever-widening list of concrete rights, but also of concrete categories of persons and groups (Balahur, 2014, p. 8). Nowadays, in the context of the current pandemic, seen as a world crisis we can even speak of people or so-called quarantined or infected groups of people, etc. But it also obvious that more or less optimistic human rights scenarios, such as the right to health, the right to life, including privacy, the right to free movement, the right to work, etc., are still based on the idea of sovereign states, but endowed with minimal autonomy. In this way, the facts are retained and sometimes solutions are proposed - even the construction of a new democratic order that is necessarily appropriate to these new conditions and requirements. All in all, a meditation is needed on the fundamental problems of political life, represented by the classic debate on globalisation, namely: who regulates or governs, in whose interest, for what purpose and by what means?

Famous authors try to end the issue by proposing a new policy and world order for the century. XXI - a global pact for a cosmopolitan social democracy, for all those who feel intrigued, confused or simply without a protection of rights, distracted by globalisation and its consequences (Held, 2000).

The rights and liberties described in the Convention are fundamental and, on the other hand, organised in a systemic manner. Violation or limitation of one often produces and affects the others, and if the violations and limitations become systematic they can have effects even on the constitutional legal order and the democratic character of the state in question (Held, 2000).

The issue of debates on the confrontations related to the relationship between universalism versus cultural relativism in the implementation of human rights remains open and is not at all foreign to the context of globalisation. On the contrary, it can be exacerbated or resolved; or however, the movement towards a new ideal must and is likely to continue.

Indeed, following the attacks at *Charlie Hebdo*, with recent reverberations (Radio Europa Liberă, 2020), public opinion wants more security. States have an obligation to protect their citizens, but not at the cost of abuse. However, mass surveillance as well as exaggerated limitations are inherently an abuse of privacy. The global trends in the protection of all human rights thus need an objective analysis of conflicts and crises all over the world and their devastating impact on human freedoms and rights (e.g. the conflicts in The Ukraine and in Syria, and the so-called Islamic State, the pandemic crisis, etc.), along with the causes, motivations or interests in question, etc. These issues certainly require the consideration of the opinions according to which the defence of the *freedom of expression, freedom of movement, the right to privacy, personal data, the right to life, health, the right to education, etc., versus propaganda and misinformation,* it is more necessary than ever in the context of the current pandemic. The triumph of these rights and freedoms is all the more necessary because, as has been noted in the doctrine *World War II was unleashed and fought under the auspices of misinformation and manipulation - fertile ground for conflict* which serves certain interests and not human rights.

What is certain is that the world is changing and its perspectives are trying to focus on two dimensions that are essential to people's lives: democracy and security. In an attempt to look to the future, the idea is that the next few years will be the first real test of globalisation.

It follows that the main idea to be taken into account in the protection of these rights is that the system of guarantees is a consequence of the binding nature of the right. The right is ordered to effectiveness – „given" which does not belong to its essence. Thus, certain conclusions are unequivocally imposed: the non-application of the guarantee system does not destroy the right, although sometimes it can leave it inoperative. More precisely, if a norm or a natural right is not assumed by the right guarantee system, the norm continues to be valid and the right continues to be due, but outside the existing legal framework (due to unfair behaviour, that right does not will find support. It will be valid, but not effective - in case of non-compliance or violation of it).

The inoperative nature of the guarantee system (inefficiency) can make the norm ineffective, but it does not invalidate it - e.g. it may leave the person whose right is attacked or neglected unaided (and we are thinking here of all the negative consequences of mass surveillance on personal data and privacy, etc.); as a rule, no legal guarantee system can be claimed and can never be fully and,

above all, fully implemented; however, a legal guarantee system can be clearly ineffective, but such a lack of reason, intentional or not, does not suppress the cause of injustice, moreover, it can qualify as guilty those who are in charge of such a guarantee system.

There are as many legal guarantee systems, more or less efficient, as there are organized societies: for instance in the field of international, European and national law, we are witnessing a progressive establishment of these systems: the Convention and the European Court of Human Rights; the Charter and the European Court of Justice etc.).

It is often argued that the effective defence and guarantee of human rights are possible only in a democratic society that allows their transposition into positive law. Our opinion is that actually defending and guaranteeing these rights lies at the foundation of a democratic society, as democracy is impossible without them, and of the institutional guarantee of society members' knowledge and education in the spirit of their observance.

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