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Citizens' Rights and Freedoms in the European Union

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Abstract: This paper combines elements of general theory of law, elements of comparative law and European Union law. Currently, we are seeing some fascinating challenges for the rights and freedoms in the European Union. Creating a united Europe raises a delicate problem - compatibility of national values and those of the European Union. Unfortunately, the twenty-eight national identities are threatened by this process so that we wonder, on the other hand, if the peoples of Europe are prepared to give up elements of their specificity and embrace unity in diversity. Perhaps European Union law, which is characterized by multilingualism and multi-juridism be considered a new type of law, appeared in view the laws of the world? Only to the extent that the European Union is based on a legal will self and the principles and values that are within the eternal law, both the rationale individual and national identity of the Member States, it is possible unity in diversity and hence there is a new family law. The importance of theoretical and applicative value of this study presents practical relevance for specialists in the field, who work in the judiciary or in the national public administration, and more.

Keywords: European identity; Community policies; European law; rights, freedoms, the European Union

1. General Consideration

Being a pillar of the legality of the European Union, the general principles of law impose to the European institutions, being on a higher place of the law in the hierarchy of EU norms.

It should be emphasized that these principles also apply to Member States, when and to the extent that they act in the domain of European law. We also note that in order to speak of a new legal typology, it is needed first of an autonomous will that leads the legal decision-making process of the EU, the will which represents not only a simple arithmetic sum of individual wills of the Member States; thus the States undertake to submit to a separate legal will distinct of their own.

Besides the autonomous will that orders the legal creation, the new typology implies also the existence of general principles that would command the essential directions of constructing and developing the European legal order.

Regarding the consecration of the dimension of rights and fundamental freedoms, at international level in that period it was drafted the Universal Declaration of Human Rights adopted on 10 December 1948, which, however, is a statement of principle, without clear sanctioning provisions that "it is not an international treaty, generating legal rights and obligations"; later, after nearly a decade there were

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developed two Pacts: the International Covenant on Economic, Social and Cultural Rights (adopted and opened for signature by the Resolution of the General Assembly of the United Nations no. 2200 A (XXII) of 16 December 1966 entered into force on 3 January 1976), the international Covenant on civil and politice2 (adopted and opened for signature by resolution of the General Assembly of the United Nations no. 2200 a (XXII) of 16 December 1966, entered into force on March 23, 1976).

The pacts were open to ratification and the European countries which had signed the European Convention on Human Rights, mentioned above. On the European continent, it adopted the Convention (European) for the Protection of Human Rights and Fundamental Freedoms (the "Convention" or "European Convention on Human Rights"), developed by the Council of Europe opened for signature in Rome on November 4, 1950 and entered into force in September 1953 comprising binding rules that strengthen the protection granted to human rights and providing for also institutions with a clear role in this regard.

The Convention also had as objective of taking the first steps meant to insure the collective enforcement of certain rights enumerated in the Universal Declaration of Human Rights of 1948, and thus constitutes the first instrument of international law that has organized the defense of the individual against their own state, guaranteeing its rights and fundamental freedoms.

The Convention enshrines, on the one hand, a number of civil and political rights and freedoms and it establishes, on the other hand, a system aimed at ensuring the compliance of the assumed obligations of the Contracting States. Three institutions shared the responsibility of this control: the European Commission of Human Rights (established in 1954), the European Court of Human Rights (established in 1959) and the Committee of Ministers of Europe's Council (established in 1949).

Thus, we agree with the doctrine according to which, at least, until the entry into force of the Treaty of Maastricht in 1993, the human rights protection in the European Community and in the European Union has developed judicially, the human rights being protected by Community judge as general principles of Community law. The Maastricht Treaty, establishing the European Union, represents an important step in the legal consecration, through a primary source of Community law, of the concept of fundamental rights, a consecration yet to be accomplished, gradually, by the Treaty of Amsterdam, Treaty of Nice, Charter of fundamental rights of the European Union and the Treaty of Lisbon.

The Charter of Fundamental Rights of the European Union has removed definitively, this gap, representing the normative act specifically the European Union, as a subject of international law, to promote and respect human rights, complementing, as we will analyze later the provisions of the Treaty which guarantees, expressly or nuanced other fundamental rights and freedoms and making that at the level of the European continent, to coexist two legally binding instruments in the matter, the Charter of fundamental rights of the European Union and The (European) Convention for the Protection of human fundamental rights and freedoms developed within the Council of Europe.

The adoption of the Charter of Fundamental Rights of the European Union establishes unequivocally a direct reporting to the Convention of the rights which it guarantees, which it does not exclude, however, the identification of a direct relationship between the fundamental rights enshrined in other laws and legal norms of the Union and human rights from the Convention. The decision to draw up a Charter of Fundamental Rights of the European Union was taken at the European Council in Cologne, on 3 to 4 June 1999 in which it was considered that the state of EU development of that period allowed reunion, in a Charter, of the fundamental rights enshrined until then in the EU area, in order to give them greater visibility, in the context of extending the Union's competences by the Maastricht Treaty and the Treaty of Amsterdam and enlargement of the EU and also in order to compensate EU's

democratic deficit; in this respect, it was elaborated the decision in Annex IV of the Council Conclusions, which had to be implemented until the meeting of the European Council at Tampere of 15-16 October 1999.

The seven titles of the Charter, which represent an element of "modernity" by renouncing at the classical distinction in civil, political, economic and social rights, guarantee the protection of fundamental rights.

Moreover, the Preamble was regarded in the doctrine, as a combination of sources, reserves and considerations extremely complex, where the Court of Justice, the Court of First Instance and the special courts referred generically as the Treaty, as the national courts will have to find the grounds for interpreting the Charter and their decision making.

As it was drafted, the content of the Charter reflects the will of the legal order of the Union's autonomy in this matter. The Fundamental Charter's autonomy is highlighted by its content, by its rights recognized and guaranteed, and also by the European Court of Human Rights that invoked it before acquiring, at EU level, a compulsory feature, moreover, it was placed among the international legal sources for establishing the human rights; however, as we will continue to analyze, the same European specialized court, and also part of the doctrine positions the Charter in a place in which it produces an attenuation of its autonomy.

The adoption of the Charter aimed to establish the exceptional importance of the fundamental rights of EU citizens and consolidating its legitimacy and the establishment of a system more transparent and to be a guarantor of legal certainty for EU citizens; moreover, the content of the Charter has been described as part of the acquis communautaire, its adoption was the culmination of Court's contribution (Court of Luxembourg) and its influence on the protection of fundamental rights in the EU.

Article 6, par. (1) of the Treaty on European Union states that "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union on 7 December 2000, as adapted on 12 December 2007 in Strasbourg, which has the same legal value as the 14 Treaties, receiving compulsory legal value, as law source of EU for all 28 Member States, with certain exceptions, which would not lead by virtue of this judicial force to the change the Union's competences or acquiring new skills in relation to those established by the Treaties.

The Charter is an essential element in European construction not only in relation to the judicial system of the Union, but also in the attributions of the other institutions of the Union. Thus, the European Commission, which holds the virtual quasi-monopoly of the legislative initiative, will have to propose legal acts to come into the application and development of the Charter norms, and the European Council and the Parliament will have to adopt these measures in the ordinary legislative procedure. In terms of respecting the fundamental rights at national level, the Romanian Constitution in 2003, as the supreme rule of the rule of law, guarantees the human rights, as enshrined by the judicial instruments of the international public law.

Thus, first, starting from the general to the particular, the Constitution provides in art. 1176, compliance with the international norms ratified by Parliament, for subsequently to enshrine in art. 20, the human rights protection, ruling that the constitutional rights and liberties shall be interpreted and applied in accordance with the Universal Declaration of Human Rights (it "is not an international treaty generator of legal rights and obligations, as any resolution of the General Assembly of United Nations organizations, it does not have compulsory feature) with the covenants and other treaties to which Romania is a party.

Thus, by the virtue of Supreme Rule, the Law 287/2009 on the Civil Code, republished, has in art. 4 as in the matters governed by Civil Code, "the provisions on human rights and freedoms shall be interpreted and applied in accordance with the Constitution, Universal Declaration of Human Rights, the covenants and other treaties to which Romania is a party, and if there is a conflict between the covenants and treaties on fundamental human rights to which Romania is a party and the present code, the international regulations shall prevail, unless the present code contains more favorable provisions.

In addition, the Romanian Constitution guarantees the compliance of the fundamental rights and the provisions introduced by the accession to the European Union, using monistic theory of public international law, with its primacy over the national law, thereby art. 148, line (2) provides that, under accession, the provisions of the constituent treaties of the European Union and other mandatory community regulations have precedence over the provisions of the national laws, in compliance with the provisions of the Act of Accession.

In the specialized literature (Diaconu, 2011, p. 11; Selejean-Guţan, 2004, p. 5; Bogdan & Selegean, 2005) it is assessed correctly, that the philosophy of human rights, of individual, civil, political, economic, social and cultural rights defeated the collectivist thesis of the primacy of general interest, but also those of extreme liberalism.

In the favor of the individual there are enshrined by international regulations, since the 19th century, numerous rights and freedoms without the individual becoming a subject of international law.

There are considered fundamental human rights, belonging to the first generation the following civil and political rights: the right to life, the right to liberty, the right to safety, with all their valences.

2. Rights and Freedoms for Individuals Established in the International Documents

One of the problems is the philosophy of the law it also the nature of human rights. Iusnaturalism conceives the existence of previous rights of any legal consecration, springing from human nature, which is unique and immutable. The human rights have been recognized gradually, in a long time.

The human rights have a political, social, emotional charge, which particularizes them. They were the subject of fighting, the claims were not easily recognized in all cases. The Human rights have thus made the object of the claims to some broad movements. A number of progressive forces, who understood the direction of human progress, assumed the role of fighter for asserting human rights.

Human rights are enshrined in the constitutions of the states. There are world countries that claim to have democratic constitution, but they do not have a chapter dedicated to fundamental rights and freedoms. Their existence, their number and guarantees ensuring their implementation contribute decisively to assessing the degree of democracy of a constitution and the rule of law.

Human civil and political rights are rights set out in numerous international acts, and they result indirectly in most covenants, international treaties and conventions that relate to people. We will mention some documents, whether national or international, that guaranteed the most important human rights. Although it appears that the human rights history coincides with the history of mankind, following the vicissitudes of the latter, the first documents which outlined some of the elements of legal protection of individual were Libertatum Magna Cana[1]; in 1719 the US Constitution, which enshrined "the people's right of being ensured personal defense, of housing, documents and goods

[1] The document was issued in England in 1215 and devoted mainly privileges for the aristocracy, and in 1776 it was adopted the Bill of Rights.

against unreasonable searches and seizures", freedom of religion, speech, press, the right to peaceful assembly, and in 1776, the Bill of Rights[1] proclaims that "all men are by nature free and independent and have some inherent rights" of which no one can be deprived.

The Declaration of the Rights of Man and of the Citizen, of 1789, is the document which has inscribed the principle according to which "men are born and remain free and equal in rights."

In the 19th century there have been concluded bilateral and multilateral conventions by world states, which have been incited, tangentially, the human rights issues. All these documents using the concept of "human rights", as known today, include especially items of sectorial type, unstructured yet, creator of mentalities and that will be acknowledged over time. Only the documents adopted in the 20th century use this concept, in the proper sense. The 1945 UN Charter affirms the ruling of peoples of the world to proclaim the belief in "human fundamental rights", in the dignity and value of the human person, in the equal rights of men and women and of large and small nations". The principle of the UN Charter enshrines the principle of equality in rights for all, without distinction as to race, gender, language or religion and the obligation of UN member states to execute, in an effective manner, the rights it enshrined.[2]

The corollary of these documents, with direct incidence on human rights, is the International Bill of Human Rights, which includes a set of documents: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and political rights and The Optional Protocol on the international Covenant on civil and political rights.

The Universal Declaration of Human Rights was the first document adopted in this area, by an organized community of nations and it states the main economic, social, cultural, civil and political rights, which they can claim, without any discrimination, the human beings, as they are endowed with reason and conscience and the principles of non-discrimination and equal rights[3]. The United Nations Charter was focused on human rights and fundamental freedoms for all persons, wherever they may be. But the rules of the UN Charter were considered insufficient as it does not specify the nature of the obligations undertaken by the states. Therefore, it has imposed the adoption of another international document, the Universal Declaration of Human Rights, which is a unique mix of civil and political rights and economic, social and cultural rights under the constant symbol of equality and non-discrimination. The International Covenant was adopted by UN General Assembly Resolution no. 2200 A (XXI) of 16 December 1966; the International Convention on the Elimination of All Forms of racial Discrimination was adopted by the UN General Assembly in 1965. Other acts are the 1950 European Convention, the American Convention of 1969, the African Convention of 1981 and many other documents.

3. The Beneficiaries of Civil and Political Rights

According to the International Covenant on Civil and Political Rights, its provisions shall apply to all persons within a State Party and subject to its jurisdiction. It means that there are considered only

[1] This right has been adopted in Virginia.

[2] As for the responsibility of States for violations of human rights enshrined in this document, see Alvarez, L.F.; London, S.J., *Răspunderea pentru violarea drepturilor omului în Carta Națiunilor Unite/*The *Responsibility for human rights violations in the United Nations Charter*, in (Honorem & Dogara, 2005, pp. 537-547)

[3] Severin, A., *Identitate europeană - identitate național statală/European identity – national-state identity*, http://www.mdlp.to/jio-cumente/info_integrare/romania, accessed on 02 March 2015.

individuals, not corporations or other legal entities. The Optional Protocol grants the right to complain only to the victims of violations of established rights. It is the consistent practice of the Human Rights Committee, in the same sense, the American Convention on Human Rights refers to people, adding that this means every human being.

Unlike the Covenant, the European Convention of 1950 refers to "anyone" as the beneficiary of the guaranteed rights and article 25 in its original form and in article 34 as amended by the Protocol no. 11, adopted in 1994, gives the right to petition to "any individual, NGO or group of persons" who claim to be victims of a violation by a State party of rights enunciated in the Convention or its protocols. A similar provision is stated in article 44 of the American Convention.

4. Rights and Freedoms in the European Union

Within the European Union, human rights and fundamental freedoms have currently a particular significance, the European Union currently comprises 28 countries, which has enabled the accomplishment of the wishes of peace, freedom and plenary affirmation of human rights in the European space.

The fundamental human rights are also recognized by the European Union, many documents emanating from the European institutions directly referring to their existence and protection.

Since the establishment of the Council of Europe, the principle of respecting human rights (Rideau, 2012) was one of the cornerstones of the organization, during a meeting in The Hague in 1948, the Hague Congress was a catalyst for the creation of the Council of Europe, by adopting a resolution which has the following content: "The Congress believes that Union or Federation that will arise should remain open to all European nations with a democratic government, which will undertake to respect a Charter of Human Rights. It decides to create a commission to immediately achieve the double task of drafting this Charter and to lay down rules to which a state must comply in order to deserve the name of democracy."

Article 3 of the Statute of the Council of Europe states: "Any member of the Council of Europe recognizes the supremacy process of the rule of law and the principle according to which any person within its jurisdiction must enjoy human rights and fundamental freedoms".

Council of Europe Statute, article 8, states: "Serious violations of human rights and fundamental freedoms justify the suspension or expulsion of a member state of the Council of Europe". The Statute was signed on 5 May 1949, just 18 months after its adoption; the 10 member states signed on 4 November 1950 the European Convention on human rights and fundamental freedoms. The Convention entered into force on September 3, 1953.

Article 1 of the European Convention stipulates that "the High Contracting Parties shall ensure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention." The States that ratify this Convention automatically accept the double obligation arising from Article 1. Firstly they must ensure that their internal law is compatible with the Convention, and secondly, the states that decide to ratify the Convention must remove any non-recognition of the rights and freedoms protected by it.

The Rights and freedoms protected by the Convention are: the right to life; prohibition of torture and inhuman treatment or degrading treatment; prohibition of slavery and forced labor; liberty and security of person; the right to a fair trial; non-retroactivity of the criminal law; the right to privacy, to family

life, of residence and correspondence; right to get married, to form a family and to equality between spouses; freedom of thought, conscience and religion; freedom of expression and information; freedom of assembly and association and the right to form trade unions; property rights; the right to education; right to free elections; recognized rights of foreigners; prohibition of discrimination; right of individual appeal on judgments. (Azoulai, 2015) In case of war or other public emergency, art. 15 of the Convention provides for situations in which exceptions may be made to the rights mentioned above. In the Convention there are mentioned other rights as well.

5. Conclusion

In the light of the above analysis, we believe that it would be impossible to have a process of integration in Europe through which it could reach a European identity replacing the national identities of Member States. It is neither possible nor desirable - it is stated in a study somewhat fair - to level the national identities of the member nations or their melting into a "nation of Europe" or synthesize the current national identities in some areas, a solution which is not free of obstacles.

The attempts to develop a unified Europe of nations, an identity kind based on a common European cultural tradition, are meant to produce a fierce national opposition. However, ultimately, the advanced integration process will lead undoubtedly to a reassessment of national identity or a transformation, a reshaping of national identities, in the sense of narrowing their content and the emergence of a post-national identity that would face the new realities and future training of a European identity; in the process of developing and strengthening the European Union and deepening the gradual integration process, stretching to new areas which occurs in the states, also other changes intervene such as, for example, readapting the State to the new challenges which inevitably entails also the renewal of sovereignty that by attributing a wider and diversified range of core competencies of the European Union, which is also subjected to an intensive rehabilitation process, and such an environment will attract as a magnet in national identity in the transformation crucible. But these are not univocal processes, but they are rather parallel. So, in the interaction of processes occurring in the flow of attributing competences of the Member States of the Union or of their sharing or action to support, coordinate or supplement the actions of states, the Union strengthens its structures, clarifies and acquires new goals and skills, which means progress on the line of identity formation.

In this respect, art. 2 pt. 3 TEU states that the Union shall respect the cultural diversity and linguistic wealth and it ensures the protection and development of European cultural heritage and art. 10, point 2 that the Union defends its values, fundamental interests, security, independence and its integrity.

According to point 3 of article 3, "under the principle of loyal cooperation, the Union and the Member States shall respect, assist each other in carrying out tasks which flow from the Treaties".

It follows that the relations between the European Union and the Member States demonstrate the presence of a continuous connection between the size and scope of development and consolidation of the Union and the peculiarities of the transformation process and rehabilitation or remodeling that States pass as members of the Union in terms of recognition of the right to diversity; it is obvious that the elements of identity, primarily cultural, such as language, historical traditions, personalities, as well as the specifics of artistic creation and others alike should not fall under the European institutional control, although in an tangent area such European policies in education rely on the requirement that other nations (especially neighbors) in the history books it should not appear as enemies.

As for the traditions, the Treaty provides, for example, that the Union shall constitute an area of freedom, security and justice, respecting the fundamental rights and the different legal systems and traditions of the Member States [Art. 61, par. (1)].

In the context of the emergence of an international society that are in a continuous process of globalization and forced to identify solid means of protection of the individual against new forms of prejudice to its rights, the European Union has developed evolutionary its own system for ensuring the compliance of the fundamental rights applicable to both national and international law. In conclusion, we consider that respecting the fundamental rights in the European Union is provided through a range of tools and specific mechanisms that make up a solid structure, which, together with the one specific to the Council of Europe helps to ensure, on the European continent, each human fundamental right separately, which facilitates creating the possibility of promoting human rights globally.

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