

Interaction of the State and the Individual in the Context of the Development of Generations of Human Rights

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Abstract: The purpose of this study is to provide the reader with an answer to a question what type of interactions between individuals and states there are when it comes to evolution of human rights. First of all, authors defined the term “human rights” with its historical background. The study describes not only legal meaning of above-mentioned definition but also it is connoted with philosophical approach. It is worth saying that the views of Hobbes, Locke, Hegel, Mencken and Montesquieu are reviewed which are additional value to the background of the research. While describing the role of states within the protection of human rights it was essential to present the Vasak’s 3 generation model. The researcher approached this issue with great care. It deals with cultural and history differences of states and their impact on the ability to protect human rights, pointing out that the development of the individuals is guaranteed by a democratic system.

Key words: Human rights, countries, Europe, society, civil rights, individual conception, Russia, cultural and history differences, types of rights

INTRODUCTION

The interaction between the state and the individual cuts across the entire history of man’s existence. For instance, the ancient Greek philosophers first and foremost highlighted the correlation between the state, the society and the individual when creating conceptions on the ideal state and society. Indeed, it is by virtue of the state and the society that a human being becomes ‘an individual’. Upon coming into existence a person first develops some basic knowledge, professional skills and then attains certain statuses in the economic, cultural and political spheres. Besides, the individual is characterized by a set of societal ties through the extent of their knowledge, experience, professional training, personality, ideological potential, etc. Therefore, if the term “human being” is biological, then “the individual” is undoubtedly a societal phenomenon.

Together with the formation of the term “individual” the term “human rights” which reflects the development of the rights of the individual in the society and the state has been introduced in scientific research. It is as a result of the classification of rights from the historical perspective that the 3 generations of human rights theory emerged. Some researchers have also highlighted a 4th generation of human rights in the beginning of the 21st century (Skakun, 2006).

The term “human rights” is relatively new. It was first used after the Second World War, thus, when the United Nations was formed in 1945. Also introduced at this same time was the term “natural rights”. However, this was replaced later with the expression “rights of man” as it does not take into account the rights of women (Watson *et al.*, 2003).

Human rights specialists can trace the historical origins of this concept to ancient Greece and Rome. At that time it was closely linked with natural rights doctrines of Greek stoicism. This was a philosophical school founded by Zeno of Kition, who believed that the universe is pervaded by a universal creative force. Therefore, human behavior must not only be studied in accordance with the laws of nature but should also be in harmony with them (Streich, 2008). Hellenistic Stoicism greatly influenced the formation and spread of Roman law. It can also be claimed that it provided for the existence of natural law and took the form of *jus gentium* (“rights of peoples”). A universal law which went beyond the boundaries of rights of citizens. For example, the Roman lawyer Ulpian believed that natural rights emanate from nature and not from the state and are conferred on all human beings, regardless of whether or not they were Roman citizens (Tomsinov, 1999).

However, natural rights doctrines became closely linked with liberal politics theories on natural rights in the

late periods of the middle ages. In order for the idea of human rights that is natural rights as a general social need and reality to constantly dominate there was the need for fundamental changes in the beliefs and practices of society. This change occurred during the period of Renaissance and in the time of the decline of feudalism the period from the 13th century to the period of the peace of Westphalia. It was only when the resistance of religious dogmatism and political and economic slavish dependence was gradually transformed into a liberal concept of freedom and equality, especially regarding ownership and use of property that foundations to what we call human rights today were truly laid. During that period, a transition took place from the responsibilities of natural law to the rights of natural law (Watson *et al.*, 2003).

However, the modernist concept of natural law which dictated the conferment of natural rights on all people was developed only in the 17 and 18th centuries. Notable philosophers and educators who took part in its development were John Locke, Charles de Montesquieu, Voltaire and Jean Jacques Rousseau, the greatest impact of which in our opinion was made by the works of J. Locke in this process. In his works associated with the "glorious revolution" in 1688, he consistently argued that each individual is entitled to certain rights (since as a human being the individual existed in their "natural state" even before the emergence of civil society) that the most basic among these rights are the right to life liberty and property that with the emergence of civil society (Based on "public agreement") humanity did not relinquish to the state its rights but only entrusted the realization of these natural rights to the state and that failure of the state to ensure the realization of these reserved rights triggers the right to an appropriate popular revolution. Together with Montesquieu, John Locke developed the concept of separation of powers: the legislature, executive and judiciary. Regarding human rights the French philosopher was of the opinion that "freedom is the right to do whatever is permitted by the laws". This definition has not lost its relevance even today.

Philosophers, based on the teachings of Locke and other scholars, covering many different directions of thoughts and having a big believe in common sense, strongly criticized religious and scientific dogmatism, impatience, censorship and social-economic limitations. They tried to act on the basis of universally just and accepted principles which harmoniously and concurrently rule nature, humanity and society and the theory of the inalienable (human rights) became their main, ethical and social strategy.

It is not surprising that these entire liberal-intellectual searches had a big influence on the western world from the end of the 18th century to the beginning of the 19th century. Together with practical examples of the English revolution of 1688 and the bill of rights which became its result, they contributed to the logical rationale of the revolutionary wave which at that time captured the west and especially the northern America and France. Thomas Jefferson who taught John Locke and Montesquieu confirmed that his compatriots are (free people, who claim rights which are derived from natural laws and not a gift of human high courts) (Watson *et al.*, 2003). This same idea was enshrined in the declaration of independence, declared to the thirteen American colonies on the 4th of July, 1776. In it, it was stressed that (we believe in the obvious truth that all people were created equal that they were endowed by God with certain inalienable rights which includes life, freedom and the pursuit of happiness.

Marquis de Lafayette, a close friend of George Washington, who shared with him the difficulties of the American war of independence, repeated the motto of the English and American revolutions in the French declaration of human rights of the 26th of August 1789 stressing that all people are born and remain free and equal in their rights), it is enshrined in that declaration that: (the aim of every political association is the preservation of natural and inalienable human rights The declaration defined these rights as (freedom, properties, safety and resistance to oppression). In the definition of (freedom) the declaration includes freedom of speech, freedom of association, religious freedom and freedom against arbitrary arrest and imprisonment concluded as an addition to the constitution of the United States of America.

MATERIALS AND METHODS

As scientific methods were used: the study of the facts, compilation of the evidence, their analysis and synthesis, interdisciplinary and sociological methods and historical and comparative analysis methods.

RESULTS AND DISCUSSION

It can be summarized that the tradition of human rights is a product of its own time. They reflect the processes of historical continuity and change and as a subject of a cumulative experience, they help to provide them with content and form. Thus, in order to better understand the forms and the legal scope of human rights, it is advisable to analyze the main schools of thought which defined human rights, starting since the revival period.

Particularly helpful in this regard is the definition of the (three generations of human rights) This term was introduced in the 1970 years by Carel Vasak, a Czech lawyer and the first general secretary of the international institute of human rights in Strasburg (France) (Vasak, 1977). The three generations of human rights according to him are related to the three ideals of the French revolution: freedom, equality and brotherhood (Vasak, 1977). Vasak's model was of course only a simplified representation of a highly complex historical period but does not give the possibility to create a system of the development of human rights in the context of the development of government and the society (Vasak and Swinarski, 1984).

Therefore, at different stages of modern history, after the "bourgeois" revolution of the 17 and 18th century centuries, socialist revolution of the first half of the 20th century and the anti-colonization revolution which started almost immediately after the end of second world war the content of human rights, was defined in general terms. A new content of human rights developed by expansion and addition. Reflecting the development of the awareness of exactly which values in different historical periods required the most stimulation and protection, the history of the content of human rights also show periodical requirement of humanity on continuity and stability.

The first generation of political and civil rights takes its roots from the aforementioned reformist theories of the 12th and 13th centuries relating to the English, American and French revolutions. The first generation includes individual rights, stemming from natural rights and created on the basis of positive laws of political rights. They are found in the legislation of democratic governments. We are talking about individual (civil) and political rights: right to freedom of religion, participation in government affairs, equality before the law and court, right to life, right to individual safety, right to freedom against arbitrary arrest, imprisonment. These rights expressed the so-called "negative freedom" that is, they required the state to refrain from interference in the sphere of individual rights. For example, it is well reflected by a short saying of (Menkeny (1949), 1949) that-"any government of course opposes freedom" (Menchen, 1949). Therefore, until then, the first generation consisted of rights enshrined in article 2-21 of the universal declarations of human rights (Universal declaration of human rights) (Chernilovskovo, 1984). The first generational rights also include the right to properties and any attempt to deprive any individual his right to property was against the law. Each of these rights defended the interests for which the struggle was waged in the time of the American and French revolutions and those interests that are important for the development

of capitalism. However, in the concept of first generational rights the most important and underlying factor is freedom the shield that protects individuals or group of peoples from abuse and misuse of political power. This basic legal value in present times is written in the constitutions of over 180 countries of the world (Watson *et al.*, 2003). It dominates in most international declarations, agreements and treaties that concern human rights concluded after the Second World War. It is the western liberal concept of human rights which is sometimes presented in a romantic light as a triumph of the individualism of Gobes and Locke over the statism of Gegel.

The second generation of economic, social and cultural rights find its roots from the socialist tradition which emerged among the sensimonists in France in the beginning of the 19th century. These rights were formed in the process of the struggle of the peoples of the world to better their economic status. They were also initially found in the constitutions of socialist countries. These rights includes: the right to work, right to education, right to rest, right to the protection of motherhood and childhood.

Historically, this tradition opposes the first generation civil and political rights. The second generational rights are perceived on a more positive ("rights to") rather than negative ("rights to freedom from") plan. These rights require governmental interference in ensuring equal participation in the production and distribution of relevant values. Indicative for the characteristics of this model are human rights stated in the articles 22-27 of the UN declarations concluded on 12.12.1948, rights such as the right to social safety, they right to work and be protected from unemployment, the right to rest and leisure, including periodical and paid holidays, the right to a decent and adequate standard of living, appropriate health and wellbeing of an individual and his family, the right to education and the right to the protection of scientific literature and art of human activities and others.

However, like all civil and political rights of the first generations it is misleading to characterize them as "negative rights". It can be attributed to fact that all the rights that belong the second generation of economical, social and cultural rights, in fact cannot have the definition "positive rights". For example, the right to free choice of employment, the right to create pressure groups and participate in them the right of free participation in the cultural life of the society basically doesn't require positive actions of the government to ensure the satisfaction of these rights. However, most of the second generational rights, according to some criteria of equitable wealth distribution, require compulsory governmental

interference about the allocation of necessary resources. After all, these rights are more related to the category of material values more than immaterial. Therefore, the second generational rights are basically the requirements of social equality. The Inter-rationalization of these rights happened with a certain type of delay partly because of the socialist influence in the field of international relations. But with the access of third world countries into the global arena which acted under the motto of "the revolution of big expectations" these rights began to intensively develop.

Lastly, the third generation rights of solidarity rights are based on the other two generations of human rights links them together and contemporarily conceptualizes them. However, this generation of right is best considered as a product of the stages of reformation-the result of a once upon a time movement and the decline of nation states in the second half of the 20th century. The third generational rights found expression in Article 28 of the UN declaration of human rights which states "everybody has a right to social and international order in which the rights stated in this declaration can be completely realized. The third generational rights cover the six aforementioned rights. Three of them reflect the appearance of nationalism of the third world countries and their requirements of relative redistribution of power, wealth and other important values: the right to political, economic, social and cultural self determination the right to participate in receiving profit from "the general inheritance of humanity" (General near-earth space; scientific technical and other information and progress; cultural traditions, monuments and memorials). The following third generational rights-the right to peace, right to health and a balanced environment and the right to humanitarian help and intervention in times of different catastrophes-give us the possibility to understand that nation states cant effectively solve very difficult problems independently without the participation of the international society in the new world.

All the aforementioned six rights-are collective rights that require the general effort of all social powers in the world. However, each of them express both an individual and a collective side. For example, ensuring the new international economical order which removes the obstacle on the way to economical and social development of these rights, can be regarded as the collective rights of all countries and all peoples. (Especially developing countries). We can also confirm that receiving benefits from the politics of development which is based on the satisfaction of material and immaterial needs, is an individual right of all people.

When for example the right to self-determination and the right to humanitarian intervention found their

reflection both on the legislative and moral level, most of these solidarity rights are by their nature rather more desirable than those ensured by judicial powers and have only an ambiguous legal status of international laws of human rights.

Between the first two generational rights and the third, there is a correlation, implemented by this principle: the realization of collective rights must not constrain individual human rights.

In the 21st century, the process of the emergence and fixation of new individual human rights continue to take place, some researchers have come up with a "fourth generational rights" (Skakun, 2006). This is because together with the development and the intensification of rights in the informational space of our planet in the offering of different services, based on intellectual informational technologies (different new technological researches).

In communication technology, the use of global network (internet), ensuring informational relations domestically and internationally, have widened the collective human rights. Now, there is an active formation of human rights related to scientific recoveries in the field of microbiology, medicine, genetics and so on and so forth. These rights are as a result of interference in the psychophysiological sphere of human life (for example, the right of an individual to artificial death (mercy killing), the right of women to artificial insemination and surrogacy and others). These rights also have their own limitations. For example in many countries, human cloning is not allowed and the establishment of new legal barriers.

CONCLUSION

As empirical evidence used by the results of sociological research and law data in the field of regulation of the rights and freedoms in Russia and leading European countries.

We cannot however, confirm that each of these fourth generational rights are equally acceptable for all or that they or their distinct elements have equal positive relationships, always and everywhere. For examples some of the advocates of the first generational rights tend to exclude the second and third generational rights from their definition of human rights totally (or in other words, refer to them as secondary). At the same time, many scholars do not recognize the fourth generational rights. Partly, it is because of the difficulty that is encountered in the process of realizing these rights. Followers of the first generational rights who support natural rights and the traditions of non interference are indifferent to the fact that human rights are independent from the civil society and are individualistic that is they constitute classical

human rights. On the other hand, the advocates of the second, third and fourth generational rights believe that the first generational rights at least on the level of general practice, pay insufficient attention to the material needs of people and are used as legitimate instruments by unfair national, transnational and international societal institutions and that is “bourgeois illusion”.

Similarly, without excluding the first generational rights from their definition of human rights, they give them a low status and consequently treat them like a chronological distant target, achievable only after gradual realization of fundamental economic and social transformation which would be completely realized only the future.

Ultimately, none of the mechanisms of human rights active today talk about legitimacy or streamlined rules that they deal with, apart from those rights, that are defined as inalienable and therefore more fundamental than others, according to international agreements (for example, freedom from arbitrary and unlawful deprivation of life, freedom from torture and inhuman and degrading treatment or punishment, freedom from slavery, freedom from imprisonment for a debt).

Apparently, when the question is about the problem of realizing these rights, lawyers, philosophers and politicians do not have the same point of views concerning their legitimacy and also their hierarchy.

In this way, the legitimacy of human rights and their priorities are defined by the context of a specific era. In as much as people from different parts of the planet maintain and respect those human rights in conformity with different procedures and practices, these questions as a whole depend on time, place, situation, the level of crisis and other reasons or factors. Wherein the relationship of the government and the individual in the historical genesis through the generations of human rights, show,

that as human rights developed in quantity and became more wide spread in different spheres of societal life, in our own view, they just continue to increase. The third and fourth generational rights testify to that fact. On the other hand, harmonious development of a person is possible only in a legal democratic government and a developed civil society.

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