REGULATIONS OF FREEDOM OF CONSCIENCE AND RELIGION IN INTERNATIONAL DOCUMENTS

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Abstract

In this study we aimed at analyzing the way the Freedom of conscience and religion are regulated in international documents. To achieve the objectives of this study we examined international declarations, treaties and conventions adopted by several international organizations by means of the empirical, interpretive and comparative methods.

Keywords: freedom, religion, conscience, convention, declaration.

1. Introduction

Freedom of conscience and religion was the object of international regulations as frequent conflicts arising from intolerance, the heated controversy between states, institutions, groups or individuals for reasons concerning religion or beliefs needed the states to have the same position to resolve them. The right to the freedom of conscience and religion appears to us as one of the fundamental human rights, it being the center of international concerns and recognized by documents of emblematic value in the field of human rights. This right is universal and takes on special meanings especially with regard to national minorities.

2. Human rights - concept and prerogatives

In K. Vasak’s conception, human rights involve in their juridical regulation, the following legal imperatives: observance by each of human rights for others, take into account the life of a social group considered as an entity, and the life of humanity as a whole. Developing the concept of “human right” was “a synthesis operation, consisting of generalization of some well-known ideas (...), in legal documents with a rich moral and political” content. Fundamental human rights are those “prerogatives conferred by internal law and recognized by the international law to each individual, which express fundamental social values and aim at meeting basic human needs and legitimate aspirations in the socio-economic, political, cultural and historical context of a particular society.” Their constitution in fundamental human rights is due to the fact that, being essential for physical existence, for its material and intellectual development, they are guaranteed by very important documents.

3. International documents establishing freedom of religion and conscience

Regarding the human rights, doctrine held that “... it has known a long crystallization process, at present portraying itself as an extremely complex institution belonging both to internal and international legal order.” The matter of equal rights for all people, including the religious orientation of the person and freedom of conscience, even if they were not expressly mentioned, they can be found in international documents on human rights.

Historical development of human rights institution was marked by documents such as Magna Charta Libertatum - 1215, the Bill of rights - in 1689 and Habeas Corpus - 1679. U.S. Declaration of Independence July 4, 1776 provides that people have been created equal, endowed by their Creator with certain inalienable rights; among these rights life, liberty and pursuit of happiness can be found; this act establishes the idea that all governments have been established by people just to guarantee these rights; whenever a form of government becomes contrary to this purpose, people has the right to alter or abolish it and establish a new government. But the document establishing the concept of “human rights and fundamental liberties” was the French Declaration of 1789, entitled Declaration of Citizen and Human Rights, which, in its very first article stipulates that “people are born and remain free and equal in rights”. In art. 10 of the Declaration it is expressly stated that “no one can be held accountable for his opinions, even religious, if their behavior does not disturb public order events established by law”, according to the prescriptions of art. 4 that “freedom is to be able to do everything that does not disturb others”.

Human rights institution has seen a continuous and strong development, and after the Second World War human rights issues went beyond the borders of the national state, it led to the formation of a distinct branch of

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3 Năstase, Adrian, Drepturile omului, religie a sfârșirului de secol, Institutul Român pentru Drepturile Omului, Bucharest, 1992, p. 18.
5 Rials, Stéphane, Declarația drepturilor omului și cetățenilor, Polirom Publishing House, Bucharest, 2002.
law, to what is called “international law of human rights”. During this time inter-state cooperation has resulted in the adoption of some fundamental texts on human rights, having a universality character, under the care of the United Nations. It can be said that these documents are the basis of the entire international legal construction concerning human rights, as the provisions of these documents are real international human rights standards. Thus, in 1945 the United Nations Charter is adopted following the Conference in San Francisco. In its preamble, the Charter proclaims “the faith in fundamental human rights, in dignity and value of human person, in equal right of men to women, as well as of large and small nations”. The U.N. Charter has the great merit of having introduced human rights in the international order

Article 1 ¶ (3) of the United Nations Charter states the following fundamental purpose of the UN: “achieving international cooperation in resolving international economic, social, cultural or humanitarian problems, and promoting and encouraging respect for human rights and fundamental liberties for all without distinction as to race, sex, language or religion”. According to the UN Charter, the UN member states are obliged to promote "higher living standards, full usage of manpower and conditions for progress and economic and social development; the solution of international problems in the economic, social and public health fields as well as other related problems and international cooperation in the fields of culture and education; universal and effective observance of human rights and fundamental liberties for all without distinction as to race, sex, language, religion.

1948 remains in the history of human rights as an important milestone for this matter, as on December 10th, the Universal Declaration of Human Rights was proclaimed and adopted by the UN General Assembly designed as the framework document that enshrines human rights and fundamental liberties at a global level. The Universal Declaration of Human Rights is the first comprehensive document on human rights adopted by an international organization. The declaration is the first important overall international document, with vocation of universality in this area and it is based on the need for a minimum standard to be observed internationally, for a shared understanding about human rights and liberties. It takes into account the human condition as a whole, including both freedom of speech and beliefs and the relief from fear and misery.

This document proposes in its Preamble a common standard that all peoples and all nations should go towards "so that all the people and all society bodies, taking into account this declaration, to strive, by teaching and education, to promote observance of these rights and liberties and by progressive national and international measures, to assure their universal and effective recognition and application both by the Member States themselves and within the territories under their jurisdiction”. A list of civil, political, economic and social rights recognized to each person is mentioned in its content, but not as a national of a state, but of that of human being: “all human beings are born free and equal in rights” (art. 1) “Any human being has the right to life, freedom and personal security” (art. 3).

It can be said that the Universal Declaration of Human Rights marked the transition from the “citizen rights” to “human rights”, the beginning of establishing a set of international instruments concerning regional and national human rights and fundamental liberties, of a system of principles mandatory for the entire international community.

In the category of civil and political rights the Universal Declaration of Human Rights includes also the right of man to freedom of thinking, conscience and religion: “Everyone has the right to freedom of thinking, conscience and religion: this right includes freedom to change religion or belief and freedom to manifest religion or belief, alone or with others, both in public and in private, by teaching, religious practices, worship and rituals” (art. 18).

This document is not a treaty, therefore has no binding power. The recommendation character that the Universal Declaration of Human Rights has for the Member states of the organization, as stated by the UN Charter (art. 13, ¶ 1), imposed the need for its provisions to be included in international treaties, making it mandatory for the States participating to them. In this respect, in 1951, at the sixth session, UN General Assembly adopted a resolution asking the Commission on Human Rights “to draw...two International Pacts on Human Rights, one on Civil and Political Rights, the other on Economic, Social and Cultural Rights” (Resolution 543/VI). In 1966, the UN General Assembly adopted two pacts on human rights: International Pact on Economic, social and cultural human rights and the International Pact on Civil and Political Rights, which turned the provisions of the Universal Declaration of Human Rights into the legal obligations for states that accept them. Both the International Pacts adopted by the UN General Assembly session by Resolution XXI 220A/XXI and open for signature in December 1966 have a status of international treaties legally binding the States Parties. In their preamble, the general principle according to which “recognition of inherent dignity of all

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6 Seelejan-Gut, Bianca; Crăciunean, Laura-Maria, Drept international public, Hamangiu Publishing House, Bucharest, 2008, p. 100; Vasak, K. op.cit. p. 77; Năstase, Adrian, op.cit. p. 38.
7 Seelejan-Gut, Bianca; Crăciunean, Laura-Maria, op.cit. p. 101.
human family members and their equal and inalienable rights represents the foundation of freedom, justice and peace in the world” is stated; therefore, these rights are considered to derive from the inherent dignity of the human person.

The Pacts establish the obligation of States Parties to ensure equal rights of men and women and also prohibit discrimination based on race, culture, sex, language, religion, political or other opinion, national or social origin, property or birth.

In art 18, the Pact on Civil and Political Rights states that: “1. Everyone has the right to freedom of thinking, conscience and religion, this right includes the freedom to have or adopt a religion or belief of his choice as well as freedom to manifest religion or belief, either individually or jointly, both in public and in private by worship and rituals, by practice and education.

2. No one shall be subject to any constraint that might impair his freedom to have or adopt a religion or belief of his choice.

3. Freedom to manifest religion or beliefs may be subject only to restrictions provided by law and necessary to protect safety, order, and public health or morals or the fundamental rights and liberties of others.

4. States Parties to the present Pact undertake to observe the liberty of parents and, when applicable, of legal guardians, to ensure religious and moral education of their children according to their own convictions”.

Article 27, provides, on the states in which ethnic, religious or linguistic minorities exist that "persons belonging to such minorities shall not be deprived of the right to have, in common with other members of their group, their own cultural life, to practice their own religion or to use their own language."

The obligations undertaken by States Parties by ratifying the International Pact on Civil and Political Rights are set out in art. 2, ¶ 1: “each State Party to the present Pact undertakes to respect and guarantee the rights recognized in the present Pact to all persons within its territory and subject to its jurisdiction, without any distinction such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status”. Paragraph 2 of art. 2 requires states parties “to adopt those legal measures or any other measures necessary to carry out the exertion of the rights” guaranteed by the Pact.

The pact strictly prohibits “any incitement to national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence” (art. 20).

On November 25th, 1981 the UN General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and Discrimination based upon religion or beliefs, which enshrines the right of everyone to the freedom of thinking, conscience and religion. From art 1 results that this right involves on one hand the freedom to have a religion or other belief of his choice, and on the other hand the freedom to manifest religion or belief, individually or jointly, both in public, and in private, by worship or rituals, practices and education. Any other form of coercion that may affect the freedom to have a religion or belief of his choice is also forbidden. The only limitation of the freedom to manifest religion or belief must consist only in the restrictions set by law, which are necessary for public protection and security, for public order, health or morals or the fundamental rights and liberties of the other. Under this reservation, art 6 lists the liberties implied by the right to freedom of thinking, conscience, religion or belief: the freedom to practice a cult and to hold meetings on religion or belief and to establish and maintain temples for these purposes; the freedom to establish and maintain appropriate charitable or humanitarian institutions; freedom to manufacture, to acquire and use, in appropriate quantities, the objects and the material required by rituals or usage of a religion or belief; freedom to write, print and distribute publications on these topics, the freedom to teach a religion or belief in places suitable for this purpose; freedom to seek and receive voluntary, financial contributions or otherwise, from individuals and institutions; freedom to form, to appoint, to elect or designate by succession corresponding leaders, according to the needs and standards of any religion or belief; freedom to observe days of rest and to celebrate holidays and ceremonies according to his/her religion or belief; freedom to establish and maintain national and international communications with individuals and communities in terms of religion or belief.

By the terms used in the declaration, after the express mentioning of the prohibition of discrimination on grounds of religion or belief, by intolerance and discrimination, we must understand “any distinction, exclusion, restriction or preference based on religion or belief and having as their object or effect the suppression or limitation of the recognition, enjoyment or exertion of human rights and fundamental freedoms on equal basis”. Regardless of whom this should occur, a state or an institution, a group or an individual, art 3 of the declaration qualifies discrimination between human beings on grounds of religion or belief as “an offense against human dignity and a violation of the UN Charter principles”.

The Universal Declaration of Human Rights was actually the inspiration of all instruments in the field, which today make up all the legal rules in the field of human rights. Also the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based upon religion or belief refers to its provisions when it states that discrimination on grounds of religion or belief “must be condemned as a violation of human rights and fundamental liberties proclaimed in the Universal Declaration of Human Rights, and as an obstacle to friendly and peaceful relations between nations”.

In 1992 and again in the United Nations General Assembly, the Declaration on the Rights of persons
belonging to national or ethnic, linguistic and religious minorities was adopted, in which the Member States, considering that promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to their political and social stability and stressing that constant promotion and realization of the rights of persons belonging to national or ethnic minorities, to religious and linguistic minorities as an integral part of society's development and within the democratic framework based on the supremacy of law, would contribute to strengthening the friendship and cooperation between peoples and states, is committed to protecting the existence and identity of national or ethnic, cultural, religious or linguistic minorities within their territories and to encourage the creation of conditions for the promotion of that identity, including by adopting legislative measures. For this purpose, art. 4-9 establish the responsibility of states, specialized institutions and other organizations in United Nations system a series of obligations such as: to ensure minorities full and effective exertion of all rights and fundamental liberties without any discrimination and in full equality to the law; to create favorable conditions for persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except for those specific practices that contravene national law or that are contrary to the international standards.

The Council of Europe, an international organization that has set to protect human rights and representing the cooperation framework to find viable solutions to problems the European society faces, has the merit of adopting the European Convention for the protection of man and citizen on the 4th of November 1950. Through the European Convention on Human Rights an effective system of efficient international legal guarantees of human rights and fundamental liberties was created. Article 9, entitled Freedom of thinking, conscience and religion establishes the right of everyone to freedom of thought, conscience and religion, right that implies “freedom to change religion or belief” and also “freedom to manifest religion or belief individually or jointly, in public or in private, by worship, teaching, practice and rituals”. The same article considers that in a democratic society the freedom to manifest one's religion or beliefs cannot be subject to other restrictions than those provisioned by law. By the Framework Convention for the Protection of National Minorities from Strasbourg on the 1st of February 1995, the Council of Europe member states have committed to recognize “the right to manifest religion or belief and the right to establish institutions, organizations and religious associations” to every person belonging to national minorities.

The European Union, by the actions taken and by adopted documents, has shown its ongoing concern for human rights in general and for assuring the freedom of conscience and religion in particular. Considering that human dignity would be impaired in the absence of this freedom, the European Union Charter of Fundamental Rights, solemnly proclaimed by the Council, Parliament and Commission, signed on the 7th of December 2000, adopted on the 12th of December 2007, and which has become legally binding at the same time with the entry into force of the Treaty of Lisbon on the 1st of December 2009, recognizes in art 10 the right to freedom of thought, conscience and religion as belonging to any person and, similarly to the regulations of European Convention on Human Rights, it settles that “this right includes the freedom to change religion or belief as well as the freedom to manifest religion or belief individually or jointly, in public or in private, through worship, teaching, practice and rituals”. The right of parents to ensure education and teaching of their children according to their religious beliefs enshrined in art 14 ¶ 3, and the text of art. 22 stipulates respect for cultural, religious and linguistic diversity within the Union.

Conclusions

The religious component of human society, together with the freedom of conscience, the historical tradition of a community located in a certain area, contributes to social cohesion through the settlement of a common behavior rules and provides identity to the group. Although the joint activity of the states within the international organizations has resulted in the adoption of several documents designed to enshrine and guarantee freedom of conscience and religion and their forms of expression, yet today religious intolerance and persecution in many parts of the world and it often appears to us in its most hideous form: religious terrorism. The famous phrase “the XXI century will be religious or it shall not be at all”, sometimes attributed to Malraux, but which the mentioned author himself denied, has the merit of “Restoring God in history”. Freedom of religion is able to provide peace of mankind.

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