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THE ISSUE OF CORRELATION BETWEEN ABSOLUTE AND RELATIVE HUMAN RIGHTS: LOGICAL-GNOSIOLOGICAL ANALYSIS

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Abstract

Due to applying the newest methodological techniques in performing a profound scientific logical-gnoseological analysis, the article under discussion reveals certain axiological factors, which might be regarded as ontological “markers” of such indispensable human rights as the right to life and the right to personal inviolability. In order to achieve the goal, set by the authors of the article, they have carried out a profound juridical-philological analysis of the contents of the articles of the II and III European Conventions on of Human Rights of 1950 [1].

While analyzing the juridical contents of numerous cases, heard by the European Court of Human Rights on the protection of the right to life and the right to personal inviolability, the authors of the article have reached somewhat ambiguous conclusions. The latter may serve as an efficient ground for further research in the field of logical-gnoseological analysis of the human rights protection, ensured by the European Convention on Human Rights of 1950. In particular, the article under studies reasonably questions the unambiguous perception of the individual’s right to personal inviolability as something absolute and indisputable. This critique has been stipulated by a profound logical-ontological analysis of the court file of the lawsuit “Gäjgen v. Germany” [2], which was heard by the European Court of Human Rights. In addition, the authors of the article have certain doubts concerning the fact that the individual’s right to life has been referred to as a relative one. The above doubts have resulted from a profound logical juridical-philological analysis of the lawsuit court file “McCann and Others v. United Kingdom”

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[3]. *Another thing that causes the whole range of questions, is the correlation between the axiological components of the protection of the individual's right to life and his/her personal inviolability. In other words, why is the right to life is referred to the list of relative human rights, whereas individual's personal inviolability – to that of absolute ones?*

The authors of the article do not expect that their investigation will somehow mitigate the importance of the issue of correlation between the right to individual's personal inviolability and his/her right to life. Consequently, they are open for further scientific discussions on the subject both during the conference and on the pages of various scholastic journal.

Keywords:

human rights, the European Convention on Human Rights, the right to life, the right to personal inviolability, the European Court of Human Rights, the prohibition of tortures.

1. Introduction

After the Second World War, there arose significant necessity for the protection of human rights, which would prevent their further violation and, consequently, the emergence of extraordinary situations in any society in the nearest future. To ensure this, there began the process of reforming the European Convention on Human Rights, as well as the elaboration of some basic technical-methodological conditions and procedures of its ratification by various states. Eventually, the European Convention on Human Rights came into force on November 4, 1950 [1]. The latter date has started not only the operation of the Convention, but also marked the transition of the European community onto a brand-new and very functional level of the human rights protection. It served as a basis for elaborating modern methodology and philosophy of protecting human freedoms, as well as promoted the formation of new ideological guides and determined the universal ontological-axiological priorities of humanity's evolution.

From then on and till today, there have been added 16 protocols to the Convention [1]. Moreover, it was ratified by numerous new states, situated not only on the territory of Europe, but also beyond it.

The very fact of adopting 16 protocols proves that the Convention [1] is of an extremely dynamic nature. Since it is not static at all (like society), it has to respond rather quickly to all the challenges occurring in the

paradigm of social being. Sometimes, the above features may be of a very profound, even tectonic, character. It is due to them that social ideology and world perception might often be reformatted. A good example of these peculiarities is the way society perceives death penalty. In the initial version of Article 2 of the Convention on Human Rights [1], death penalty was allowed only in cases, envisaged by its parties' court sentences. However, protocols 6 to this article gave the states-parties the opportunity to include death sentences into their legislatures, differentiating the crimes, committed during the war time or in case of inevitability of war. In other words, deprivation of life was allowed exclusively under some extraordinary circumstances. According to the requirements of Article 2 of the Convention (protocols 13) [1], death penalty was completely abolished, as no citizens of the countries-parties to the Convention shall be sentenced to death and executed in any circumstances.

Yet, we suppose that in this case, there is some specific ambiguity, which requires immediate consideration or even correction. The thing is that both scholars and practicing lawyers agree to the fact that all human rights, determined by the Convention, may be divided (according to their legitimate restrictions) into two groups – absolute and relative. Absolute rights are never subject to any restrictions (the right to not being kept in slavery, the right to not being tortured and cruelly treated or punished, the right to not being liable for the actions that were not regarded as a crime at the time they were taken). On the contrary, relative rights may be restricted, particularly if these limitations are envisaged by law and are indispensable for a democratic society, pursuing thereby some legitimate goals (enforcement of state security, public order, health care, population's morality, rights and freedoms of other individuals). In fact, we should not forget about the proportionality of right restrictions [4: 59]. Speaking of the above division of human rights, it is quite fascinating that the range of those, belonging to absolute ones, includes, as a matter of fact, the prohibition of torture (Article 3 of the Convention) [3]. At the same time, the right to life belongs to the group of relative rights (Article 2 of the Convention) [1]. So, what were the qualitative features and methodologies that have defined the right to life as a relative, but not an absolute one? What is more, how do the right to life and the prohibition of tortures correlate with each other? These are rather essential questions from the point of view of both practicing lawyers and scientists, who are engaged in studying the axiological dominants of human being. This is why the authors of the article under discussion have made an attempt of

analyzing the situation, as well as got involved in the process of dealing with the issue under studies.

2. Theoretical Background

The investigation of the issue of human rights has been carried out by numerous scholars, beginning with ancient times till nowadays. There are lots of scientific works, both of philosophical and legal orientation, dedicated to the issue [5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15]. Nevertheless, we believe that their authors have touched upon the problems of relativity and absoluteness of the right to life and the prohibition of tortures only superficially, without going into the details. Therefore, the above issue is getting more and more topical with the advance of both theoretical and practical aspects of its constituents in the field of law enforcement in any society. The axiological essence of this research lies in determining the relativity and absoluteness of human rights, whereas its novelty consists in a modern analytical approach to the ontological aspects of the issue under studies, as well as in determining and investigating its axiological components.

3. Argument of the paper

It seems natural that every individual strives to protect his/her own rights. However, determining the significance or importance of various categories of human rights is a very crucial problem, which, unfortunately, has not been sufficiently studied by both practitioners and theoretical researchers in the field of law. Really, is it possible to “measure” the importance of certain groups of human rights? What are the axiological “markers” of this kind of differentiation? To tell the truth, these questions remain without answers till today, since there exist different theoretically substantiated views on the issue that are thoroughly proved by their authors and supporters. Nevertheless, when the issue moves from the field of scientific-theoretical discussion into the sphere of its practical application, there arise rather complicated problems, related to the decisions of the European Court of Human Rights regarding the circumstances of a specific lawsuit. Such decisions, in accordance with the procedure, acquire the status of precedents and become a direct source of law for numerous court and law enforcement systems in the member states of the Council of Europe.

As to the object of our investigation – determining the scale for “measuring” the significance of such human rights as the right to life and the

prohibition of tortures, we suppose the following. Despite the fact that individual's right to life (Article 2 of the Convention) [1] relates to the range of fundamental human rights, as well as is protected and ensured not only by the Convention [1], but also by the constitutions of the member states of the Council of Europe, it does not belong to the group of absolute rights (in compliance with the normative essence of the content of Article 2 of the Convention), [1] but is referred to as a relative category. Taking into consideration the content of Article 2 of the Convention [1], every state is ensured the right to deprive its citizens of lives in certain, exceptional, clearly envisaged cases. In other words, being a fundamental right in its essence, the right to life remains a relative category because of its axiological "fillings". It results from the fact that the Convention on Human Rights [1] permits its violation, though only under extraordinary circumstances. To put it differently, the state can deprive any of its citizens of his/her life, and the circumstances of the case, with a rare exception, will not violate the Convention provisions.

A good example of the above arguments is the case "McCann and others v. United Kingdom" [3]. The European Court of Human Rights (further on the Court) has acknowledged that the state had violated Article 2 of the Convention [1], but did not assign a respective satisfaction, claimed by the plaintiff from United Kingdom. In other words, even though the Court has acknowledged the facts of violation of Article 2 of the Convention [3], taking into account certain specific circumstances of the case, no considerable penalties have been imposed on the state. In this way, the Court has indirectly admitted that this violation was, so to say, "forced" and therefore, the state could not stand responsible for it.

In its turn, the prohibition of tortures, ensured by Article 3 of the Convention [1], is also individual's fundamental right, but is referred to as an absolute category. Article 3 of the Convention [1], as well as Article 2 (regarding death penalty) [1] does not contain any exceptions. It prohibits tortures and death penalty during military state, military actions and other extraordinary situations (P.2, Article 15 of the Convention) [1]. What is more, in accordance with this provision, no social interest shall justify tortures or inhuman treatment of an individual. This assumption has been efficiently proved by the content of the case "Tomasi v. France" [16], heard by the European Court of Human Rights in 1922.

The European Court of Human Rights defines tortures as deliberate inhuman treatment that leads to serious and cruel sufferings regardless of its purpose (the case "Ireland v. UK", 1978) [17]. The Court may acknowledge

some actions as torture or inhuman treatment humiliating personal dignity, depending on the case circumstances: duration and intensity of the actions, physical and psychological effect these actions have caused, even victim's age, sex, health, etc.

Without going deep into the details of the issue we have been considering, it is worth mentioning the case "Gäfgen v. Germany" [2]. The Court has regarded the psychological, but not physical, peculiarities of the suspect's (as it appeared later, the murder's) actions as a violation of Article 3 of the Convention [1], though he intended to save the child's life.

The Court did not take into account the fact that the suspect was affected only in a psychological way and that in such a manner, the German police officers wanted to rescue a child, who, as they believed, was still alive but in threatening conditions. To put it differently, in this case, the Court was guided by the principle of absoluteness of torture prohibition (Article 3 of the Convention) [1] and actually ignored the threats to juvenile's life. The Court has "ranked" victim's life socially lower than the psychological inviolability of the suspect.

From the point of view of common sense, the Court's decision in this case, and particularly its justification, causes some misunderstanding. However, from the point of view of the letter and the spirit of the Convention, the Court has made a rather logical and legitimate decision.

The authors of the article are not completely sure in the appropriateness and axiological-ontological expediency of dividing human rights into absolute and relative. We just offer scientists and practitioners in the field of law to participate in fruitful discussion on the matter. Therefore, we would like to express another assumption: would it be possible to consider deprivation of individual's life by the state, in cases envisaged by the Convention [1], as tortures?

After all, causing death cannot be painless and, consequently, inflicts strong physical sufferings to an individual due to the fact that the state representatives use special means in such cases, which is allowed by legislation. Can we claim hereby that the moment of state's causing death is a direct violation of Article 3 of the Convention [1]? In other words, is it not possible that the principle of "relativity" of some rights may directly or indirectly lead to the violation of other human rights, ensured by the Convention [1], which, in their turn, are marked with the notion of "absoluteness"?

From the axiological and ontological points of view, the issues, we are raising in the article, are quite disputable and, hence, rather important.

This is why we invite our colleagues, both theoreticians and practitioners, to participate in a discussion on the matter.

4. Arguments to support the thesis

Human rights, as the highest social value, will never lose their importance as long as human society exists. They are not static, but marked with dynamics, which, in its turn, explains constant monitoring, analysis and learning of this social phenomenon.

This article is one of numerous attempts to study the axiological and ontological essence of human rights. It calls for scientific-practical discussion of the issue, which might result in elaborating some new approaches in the field of understanding absoluteness and relativity of human rights. Thorough consideration and analysis of the issue under studies might also stipulate a better understanding of the very essence of human rights, which will not only lead to modern scientific outcomes, but will also considerably facilitate law enforcement in the process of protecting human rights.

5. Arguments to argue the thesis

On the other hand, the European Court of Human Rights has elaborated some extremely important precedents throughout the years of its work. These precedents have not only stipulated the growth of source basis in the field of human rights protection, but have also become a significant stimulus for improving the contents of the Convention articles [1], which is proved by the adoption of 16 special protocols. This is why there arises a quite natural question concerning the expediency of “acting ahead of time”. Would it not be more reasonable to wait for the “natural development” of events and start acting (relying on the contents of the respective precedents of the Court) in case there occurs some urgent necessity?

6. Conclusions

The issue of absoluteness and relativity of human rights is of a direct axiological-ontological nature. The very understanding of the essence of “absoluteness” or “relativity” of one or another individual’s indispensable right contains a considerable social value, as the latter may play an important role in the course of its protection. However, it should be emphasized that despite the appropriate predicate of constancy, this differentiation possesses,

the above system of division is not a stable, fundamentally constant phenomenon. On the one hand, the fact that certain human rights are of absolute nature is not to be questioned. On the other, there are certain doubts regarding the belonging of other human rights to the category of relative ones. These doubts, in their turn, might generate some ambiguity concerning the axiological-ontological bases and methodology of such differentiation. At first sight, any relative right, if it is legitimately violated, may serve as a direct or indirect prerequisite for violating absolute rights. To be more specific, if an authorized official uses some specialized means, envisaged by the normative-regulatory acts of the state's legislation and the Convention [1], it may provoke the violation of other absolute human rights. For instance, using weapons for executing a criminal, it should be born in mind that the very process of inflicting a physical damage (that has led to criminal's death) may be perceived as tortures. Since it is impossible to cause individual's death without inflicting him/her hard physical and psychological sufferings, it may be regarded as a direct violation of Article 3 of the Convention [1].

Today, the above-mentioned problems are not sufficiently investigated. Therefore, the authors of the article invite all their colleagues, both theoreticians and practitioners, to conduct a respective discussion on the matter, with the purpose of determining all the problematic peculiarities of the issue.

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