

General Considerations on International Human Rights Law in the Context of New Technologies

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Abstract: Throughout history, man has been presented to us, on the one hand, as a barbarian, and on the other hand, a being endowed with reason, capable of carrying out actions for the benefit of his fellows etc. Man is the only moral being, the only rational being, therefore is often the subject of the most controversial situations that history could register over time. In this paper we will analyze the situation of the natural person in international law (Barbu, 2015a, 2015b), emphasizing a series of relevant aspects for contemporary times, aspects that, in the context of new human bioenhancement technologies, invite us to reflection, to critical thinking and establishing a moral/ethical/legal attitude.

Keywords: *human rights; international law; natural person; new technologies; moral attitude.*

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1. Introduction

Talking about an exact date when the emergence of international law took place can be a rather difficult and cumbersome undertaking. However, in the legal literature, it is stated that international law appeared during the development of states, but also of the relations between them, the content evolving and "bearing the imprint of the socio-political systems that came and went throughout history" (Popescu & Nastase, 1997). The transition from the primitive commune to a society with antagonistic classes, with specific needs related to the activity of waging wars, acquiring slaves, conquering new territories, concluding military alliances etc. have determined the development of rules and institutions specific to these situations. In this context, we can say that the sources of international law can be found in China, Egypt, India etc. (Balan & Buruian, 2009, p. 34).

During the Middle Ages, international law was influenced by "the specific conditions and requirements of relations between feudal states at different stages of their development", so it is necessary to take into account certain events such as: the breaking of the Roman Empire, the formation of the Byzantine Empire, of the Slavic states etc. (Balan & Buruian, 2009, p. 35). During this period, the conclusion of treaties is also of great importance, especially when it comes to the conduct of wars. After this period, an important role in the science of international law will be played by Hugo Grotius, who, in his works "Mare Liberum" and "De Jure Belli ac Pacis" makes the first expositions on international law (Balan & Buruian, 2009, p. 37).

Nowadays, when we talk about international law, we refer primarily to the Paris Peace Treaty of 1919, which "marked the appearance of new independent states on the map of Europe, such as Austria, Hungary, Yugoslavia, Poland and Czechoslovakia" (Balan & Buruian, 2009, p. 39). Along with this treaty, we bring to the forefront the League of Nations, whose purpose was to maintain peace; later, we highlight the founding of the United Nations. The Second World War, which culminated in crimes against humanity, war crimes, crimes against peace, etc., later marked the processes of the international law gaining momentum (Balan & Buruian, 2009, p. 40).

2. International human rights law

Talking about human rights nowadays seems normal; but things were not the same more than half a century ago, when a large part of the population of this earth was engaged in an absurd war (Kitchen, 2021), a war

of the supremacy of the human races (Lifton, 2019), a war whose idea was the slave-master relationship evident in Nietzschean philosophy (Nietzsche, 2003). We can say that, over time, man has tried by various means to regulate the relationships that were established between oneself and the Other, whether it was a legal person or a deity. Philosophical and legal writings are witnesses to these attempts. which have been preserved over time and without which today we could not talk about rights, freedoms (Rousseau, 2006), obligations, responsibility etc.

The rights and freedoms of each of us are subjects that have concerned us since ancient times, which is why, when we talk about human rights, we must keep in mind a series of documents such as:

- Magna Carta (June 19, 1215);
- Petition of rights (June 7, 1628);
- Habeas Corpus Act (1679);
- Bill of Rights (February 13, 1689).

In terms of international human rights documents, we are talking about:

- The UN Charter;
- International Charter of Human Rights;
- international conventions adopted in the field of human rights etc.

So, throughout time, man has been the main subject of analyzes regarding his role in society, in the community, in relation to other people, whether they are citizens or not. What arouses our special interest is the fact that there were human beings who were not considered subjects of rights, like people of different races, women etc. This happened after the Second World War, but also taking into account the social movements that appeared along with globalization, the emergence of the Internet etc., when branch of international law developed, namely that of international human rights law.

Therefore, it is considered that international human rights law constitutes "a set of norms and principles of a conventional and/or customary nature, that regulate the conduct of states to ensure the respect and protection of fundamental rights and freedoms without discrimination, both in peacetime and in times of war, as well as establishing liability for their violation" (Balan & Buruian, 2009, p. 234). Respect for the rights and liberties of the individual is essential in a democratic society (Bîrsan, 2005, p. 5), and forgetting and ignoring such contempt are "the only causes of man's misfortunes" - as it appears from the Preamble of the Declaration of the French Revolution of the rights of man and citizen, of 1789.

From a legal perspective, the phrase "human rights" has two meanings, on the one hand we are talking about what makes up the objective

law of human rights, respectively: "all the international instruments that enshrine and protect these rights, as well as the possible institutional mechanisms to guarantee their respect ", and on the other hand, we are talking about "subjective rights" (Bîrsan, 2005, pp. 7-8).

3. Human rights in the context of the development of new technologies

Ideas regarding the implementation of new technologies in human life are a subject of debate not only in the sphere of human rights, but also in medicine, philosophy or neuroscience. Transhumanism, through its proposals for human bioimprovement, invites us to debate about human rights, the possibility of increasing certain physical or moral capacities, but also others, that concern not only the private life of humans, but also the public one, of rights, and social and political freedoms. However, when we talk about human rights and new technologies, we cannot ignore important topics such as human trafficking, organ trafficking, surrogacy etc.

A topic of interest these days is related to medically assisted human reproduction technologies (Huidu, 2018); since "the protection of the human species is paramount", in vitro fertilization is a new triumph of new technologies. However, any technological success brings with it bioethical and legal controversies related to the genetic material used, parentage, the internal legislation of countries etc. The ECtHR jurisprudence is proof of the legal dilemmas related to surrogate motherhood and medically assisted human reproduction techniques. Legislation regarding surrogacy, in states where this action is not legal, targets parents who have contracted such services in countries such as Ukraine. In this sense, there have been cases when the state had to intervene in the private sphere of the family (Apostu, 2020) in order to analyze the parentage of the embryo resulting from the contracting of services in third countries. An example is the case of *Paradiso and Campanelli v. Italy*, a decision from January 24, 2017 of the ECHR, which concerns an Italian couple who contacted a surrogacy clinic in Russia (Puppink, 2017).

The clinic provided the clients with gamete donors and a surrogate mother, as well as the child's birth certificate, in exchange for the sum of 50,000 euros (Puppink, 2017). The applicants took the child to Italy, where they requested the registration of the birth certificate. However, the DNA test confirmed that the applicant is not the child's biological father. The Italian authorities noted that the applicants not only violated the Italian legislation regarding medically assisted human reproduction and surrogacy, but at the same time they also violated the rules regarding international

adoption (Puppink, 2017). Under these conditions, it was ordered that the child be removed from their custody. It was considered that the biological parents were not known, which is why the child was considered abandoned, that is, without any support from his biological parents or family members, which is why he was placed in a special center, then placed to a family for adoption (Puppink, 2017).

The plaintiffs invoked art. 8 of the Convention. However, the court declared that the plaintiffs' request is inadmissible, given that they do not represent the child because there is no blood relation. However, the Court admitted that there was a *de facto* family life (Puppink, 2017). Within the framework of article 8 of the European Convention on Human Rights, the following is emphasized: "the interference of a public authority in the exercise of this right is not allowed except to the extent that it is provided for by the law and constitutes a necessary measure in a democratic society, for national security, public safety, the economic well-being of the country, the defense of order and prevention of criminal acts, protection of health, morals, rights and freedom of others" (ECHR, 1987). Respect for privacy is a complex right, including "privacy", "personal identity", "physical and moral integrity" and the right to a "healthy environment" (Ciucă, 2017).

The right to the privacy of one's life implies the respect for one's home for the purpose of "protecting privacy where one's private life is carried out" (Ciucă, 2017). In the aforementioned case, it is considered that "private life" incorporates the right for the individual to decide whether or not to become a parent, but also the right to conceive a child through medically assisted reproductive technologies or legal procreation techniques (Puppink, 2017). At the same time, it is considered that respecting private life also implies the applicant's right to develop a relationship with the child. It was found that the father led a family life within the meaning of art. 8 of the Convention, as the applicants acted as parents for the child, despite the absence of biological ties (Puppink, 2017). However, it was decided to remove the child from the family environment, an unjustified aspect in this case, as the plaintiffs had a positive evaluation from the social services (Puppink, 2017). The court ultimately ruled that the plaintiffs could continue to have a family connection with the child.

4. Conclusions

The subject of international law and especially that of human rights is a subject that can be approached from a multitude of directions, whether ethical/axiological, or legal. In the present article, we made a foray into this

subject, in order to point out the evolution over time of international law and human rights. We believe that this topic is an inexhaustible one, but important and current for each of us.

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