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Human Rights Guarantees in Criminal Proceedings

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Abstract: *The infallible evolution of human society attracted the emergence of the ideas of freedom and equality, a fact that caused a revolution in the thinking of citizens. Thus, starting in 1215, when the document Magna Carta Libertatum was promulgated, some natural rights of the individual, especially those regarding the legal protection of a person, began to be recorded "as the letter of the law" in documents with a legal value essential. As a result, the "Social Contract" of Jean Jacques Rousseau, the "Fourth Amendment" of the USA Constitution and later, the constitutions adopted between the 18th and the 19th centuries appear on political scene . All these transformations determined the transition of these rights of the individual, from natural rights, to inherent rights, protected by the legal frameworks in force at that time, aspects that were carried out only on the internal level of each individual state. Externally, the existence of victims resulting from the wars fought and the interest that the Great Powers gave to their own citizens who lived their daily lives outside their borders, determined the creation of legal norms regarding the protection of humanitarian rights. Thus, the Geneva Convention, from 1864, the Hague Convention, from 1898, the one from 1907, and later, the Geneva Convention from 1929, were concluded. The protection of minorities was addressed after the First World War, while the World War II marked history with gross violations of some essential human abilities, through the committed war crimes against humanity. This fact was later marked by the creation of a strong regulatory system regarding the international protection of human rights, with reference to the UN Charter and the Human Rights Universal Declaration. All these transformations produced on the external political level determined Romania to resort to some internal changes, on the legislative level. One of these changes is marked by the adoption in 2009 of the New Penal Code, which entered into force in 2014.*

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Introduction

In everyday life, are committed acts that, to some extent, affect the interests of citizens from different social classes or communities. All these classified antisocial acts disturb public peace and social order, but to be officially called crimes, they must be criminalized by the criminal law and assigned a specific punishment.

Legally, it is established that human beings must behave in a certain way, which is not in contrast with the established regulations, and when these rules of behaviour are broken, the guilty ones will pay for their actions. To be able to apply the punishment provided by the law, for the offence charged, respectively to carry out the liability of the people who have committed offenses, it must be proven that the action committed is an illegal act, that it was made with guilt, and that by committing the act certain social relations were damaged.

William Brînza stated that "an act committed with guilt, however dangerous it may be for society, does not constitute a crime unless it is provided for by the criminal law" (Brinza, 2021). Through this statement, we observe the mandatory nature of a crime, to be mentioned in the normative act. At the same time, we can also find this finding in the contents of paragraph 15 of the Criminal Statute, which provides a definition of the term crime: "the offense is the action defined by criminal legislation, carried out with intent, unwarranted and attributed to the individual who carried it out" (The Parliament of Romania, 2009).

In order to establish these aspects, a criminal trial must be carried out, i.e. a lawfull process needs to be carried out, that is governed by the laws of criminal procedure which must determine whether the behavior qualifies as criminal and whether the punishment is appropriate.

A state has the obligation but also the right to protect its own citizens, by respecting and ensuring their fundamental rights and freedoms (Dănisor, 2011), both nationally and internationally. Titus Corlățean mentioned that "the state not only establishes and guarantees internally, through Constitutions, laws and specific institutional mechanisms, the fundamental rights and freedoms of people, but also acts, on a higher level, in international relations, for the conclusion of international treaties in this matter.

The person's investigation stage. The rights of the suspect/accused

The object of the criminal investigation is found in the content of article 285 of the Code of Criminal Procedure, from where we learn that „the first step in the criminal process is the criminal investigation, which seeks to gather the information required to prove the existence of crimes, identify the perpetrators, and establish their criminal liability in order to decide whether or not to order a referral to court" (The Parliament of Romania, 2010).

Three steps make up the criminal prosecution process: the investigation of the act, which begins with the criminal investigation; the investigation of the person, which begins with the granting of suspect status; and the prosecutor's case-solving phase. The entire process is primarily non-public, written, and non-contradictory.

Within this stage, the prosecutors, judicial police criminal investigation bodies, and special criminal investigation bodies are the criminal investigation bodies that carry out their duties. In the course of the criminal investigation, if there is evidence that supports the commission of a crime by one or more individuals, the prosecutor must take criminal action, either ex officio or at the criminal investigation bodies' suggestion (Dănisor, 2011). In some circumstances, the judge of rights and liberties also intervenes in the criminal investigation phase (for example: to order the preventive arrest of the defendant) or the judge of the preliminary chamber (for example: to resolve complaints against the non-prosecution or non-prosecution solutions ordered by the prosecutor).

The following rights are granted to the defendant during the criminal trial: "the right not to give any statement during the criminal trial, drawing his attention to the fact that if he refuses to give a statement, he will not suffer any unfavorable consequences, and if he gives a statement, they will be able to be used as evidence against him; the right to be informed about the deed for which he is being investigated and its legal framework; the right to consult the file, under the law; the right to have an elected lawyer, and if he does not appoint one, in cases of mandatory assistance, the right to have a lawyer appointed ex officio; the right to propose the administration of evidence under the conditions provided by law, to raise exceptions and to conclude; the right to make any other requests related to the settlement of the criminal and civil side of the case; the right to benefit from an interpreter free of charge when he does not understand, does not express himself well or cannot communicate in Romanian; the right to appeal to a mediator, in

cases permitted by law; the right to be informed about his rights; other rights provided by law" (The Parliament of Romania 2010).

Although we have so far only discussed the criminal process at national level, the scope of human rights guarantees in a fair trial is also expanding internationally. The greatest impact on society and directly on citizens, as individuals, was the Human Rights Universal Convention, which was among the first political documents to address the issue of the universal character of people's rights. Titus Corlatean said that „The Human Rights Universal Convention is entirely concentrated on the individual. Individual rights are primarily personal rights, and this Convention is addressed to individuals and not to states" (Corlatean, 2012). It is important to note that although the Convention is not an international treaty, its provisions have been taken over by many State Constitutions, being respected as human rights standards.

Later, we remember the establishment of the ECHR, a Council of Europe organization, founded on the Human Rights European Convention, as a tool to make sure that individual abilities are protected internationally.This Convention both protects the interests of the contracting states' members and also requires governments to honor their duties to their own populations.

Until the ECHR, a citizen whose right was infringed by a final domestic court decision, must comply with a series of mandatory conditions that condition the possibility of appealing to this right (Danisor, 2011). The innitial essential requirement is that the individual making the request to the ECHR is citizen of a member country. The second requirement is the exhaustion of all internal remedies. If these main conditions are met, together with the secondary ones, the injured citizen can address the ECHR in order to repair the damage created by the state, by means of a court decision. However, in order not to get to this situation, it is recommended that the criminal trial be carried out in a legal, transparent and fair framework.

Right to freedom and safety

According to art. 9 Criminal procedure code, an individual's right to liberty and security is assured throughout a criminal trial. This right is also provided for in the European Convention, in the content of Article 5, but also by the EU Book, in the content of art. 6. We can thus draw the idea that, during a criminal trial, the suspect/defendant is, as a rule, free (Dongoroz, 2000). There are also some exceptions, generated mainly by the behavior of the person being investigated, at which point the legislation in

force allows the taking of some privative or restrictive measures of freedom against the suspect/defendant, to be taken, to ensure the proper conduct of the criminal proceedings. But these measures are taken only in special cases, provided by law, so as not to prejudice the rights of the individual who is being held.

A suspect /a defendant against whom a measure involving deprivation of liberty has been taken has the right to challenge the action taken against him and the right to be notified as quickly as feasible of the grounds for his detention. The Code of Criminal Procedure governs the circumstances and instances in which preventative measures are applied under articles 202, 209, 211, 216, 218 and 223.

The right of defence

One of the core tenets of the criminal trial is the idea that guaranteeing the right of defence, being not only a manifestation of the rule of law, but also a necessary condition for the effective achievement of justice (Popoviciu, 2014). One of the definitions of the right of defense is given by George Antoniu, in his work entitled Criminal procedure and criminal law dictionary, in which right of defense is defined as „all of the prerogatives, the faculty and the possibilities that a party in the criminal process has, according to the law, to support their position, to make the evidence you think necessary and participate in the trial (Antoniu, 2011). Like the rest of the rights granted to parties or subjects in criminal proceedings, the right of defence is also provided for in the Convention of Europe, the European Union Charter and the Romanian Constitution. Throughout the trial, judicial agencies must guarantee that the parties and primary procedural subjects fully and effectively exercise their right to defend themselves (The Parliament of Romania, 2010).

Being one of the fundamental rights of citizens, the right of defence is described in a series of international acts, representing them all. In accordance with Human Rights European Convention Article 6 paragraph 3 c, the right to defence extends on three sides. Consequently, the injured person has the right to defend himself, to benefit in situations provided by law from free legal assistance or to appeal to an elected defender.

From paragraph 2 of Article 10 of the Criminal Procedure Code we learn that "the suspect has the entitlement to information regarding the act under investigation and its legal classification prior to hearing. The defendant has the right to know right away what the criminal action against him was for and what the legal classification of that action was" (The Parliament of Romania, 2010). Although legislators have fully provided the

opportunity for the parties to a criminal trial to prepare their defence, either themselves or through lawyers, this right must be used in good faith, in compliance with its legal purpose. Also, the accused is entitled to ask for a free interpretation of the language used throughout the trial.

The right to privacy and respect for human dignity

The framework of the criminal procedure is also governed by the principle of privacy and respect for human dignity, regulated by Criminal Procedure Code, under Article 11 of the Code of, according to which „every individual who is being investigated or tried for a crime must be treated with decency", this means that the parties and the trial subjects cannot be subjected to ill-treatment for the purpose of obtaining evidence.

Regardless of the seriousness of the act for which a person is being investigated, during the course of the research, his human dignity and the right to privacy will be respected. Also, the submission of a person who is under criminal investigation, to torture or cruel treatment is punished according to the laws of the country. Respect for privacy, the confidentiality of correspondence and the inviolability of the domicile will be ensured." Limiting the use of these rights is only permitted by law and when required in a democracy" (Antoniu, 2011).

The right to privacy is considered by some authors to be relative. Under Art. 8, paragraph 1, of the Human Rights European Convention, this privilege may be restricted only in specific circumstances specified by law. Public authorities may prejudice the exercise of the rights provided for in the above article by what we call „ingeence". However, the legislator sets out certain conditions under which public authorities may intervene in the exercise of these rights. The main feature of an interference is that it must be attributable to a public authority (administrative or executive authority, or, judicial or legislative) and presupposes an individual decision or measure of self-worth in respect of the person complaining of its existence (Morozan, 2015).

The stage of solving the case by the prosecutor

The criminal investigation bodies—prosecutors, judicial police criminal investigation bodies and special criminal investigation bodies—are active at this point. Under the prosecutor's guidance and oversight, "special criminal investigation bodies and judicial police criminal investigation bodies conduct their criminal investigation activities" (The Parliament of Romania, 2010). Ex officio or on the recommendation of the criminal investigation bodies, the prosecutor must initiate and carry out the criminal action during

the criminal investigation if there is proof of proven grounds for a crime committed by one or more people.

In the prosecution stage, the prosecutor is the one who personally oversees the execution of criminal investigation actions in accordance with the law, as well as directly manages the criminal investigation activities of the judicial police and special criminal investigation agencies Thus, he is a guarantor of the observance of the procedural rights during the criminal investigation phase, under the terms of the Criminal Procedure Code's Article 56, paragraph 1.

The prosecution has some limits: „**initial**, materialized in the ordinance of the criminal investigation body, according to art. 305 par. 2 Criminal Procedure Code , and **final**, when the classification is mandated by the prosecutor by an ordinance or renunciation of the criminal investigation, according to Article 327 letter b Criminal Procedure Code, or by indictment, indictment, in accordance with the Code of Criminal Procedure's Article 327a." (The Parliament of Romania, 2010). Initiating the criminal investigation as the initial phase of the criminal trial allows us to recognize that the criminal trial begins independently. A valid goal must be pursued, the authorities' intervention must be authorized by law, and it must be commensurate with the gravity of the offense.

Situations where the judge of rights and liberties must step in

So as to grant respect for individual rights and liberties, the „ judge of rights and liberties is, in accordance with the Criminal Procedure Code's Article 53, the one who decides on, within the court's jurisdiction, during the criminal investigation, demands, proposals, complaints, appeals, other complaints pertaining: preventive measures, precautionary measures, provisional safety measures, the acts of the prosecutor in the cases expressly provided by law, approval of searches, use of special methods and techniques of surveillance or research or other evidence according to the law, the procedure of early hearing, and other situations expressly provided by law" (Morozan, 2015).

In certain situations, the judge of rights and freedoms intervenes in the criminal investigation phase, exemplifying situations where the defendant is ordered to be remanded. In the criminal investigation phase, the preliminary chamber judge may also intervene to resolve complaints against non-delivery or non-sending solutions ordered by the prosecutor.

Although these internal tools exist to verify and control the respect of human rights, violations of the rights and liberties granted by the Protection of Human Rights and Fundamental Freedoms European

Convention are found, violations that have been or are the subject of cases against Romania. Some of these cases concerned violations of rights and freedoms during the prosecution phase.

Conclusions

Human rights are fundamental rights that all individuals must enjoy, irrespective of their language, sexual orientation, nationality, gender, race, religion, ethnic origin, or other traits. Human rights encompass civil and political rights like the freedom of expression and the right to life, as well as economic, social, and cultural rights like the right to employment, the right to education, and the right to engage in cultural activities. Human rights are protected and guaranteed by national and international laws and treaties.

The fundamental rights and freedoms of citizens are subject to a restriction exercised by the State. This state intervention is necessary to be carried out under the law. The state must allow the individual to retain a number of rights that provide protection both in relation to others, as well as in the relationship it has with the public authority. Even before the emergence of the state, the individual gave in to his own freedom in order to obtain protection and safety. We thus deduce that man, as a being, has benefited from some rights prior to social organization.

The right is indispensable because it ensures respect for social morality and the phenomenon of modernizing relations between people and the state. As long as the relationships between people and society are just, individuals feel safe and protected. In a society, the individual obeys a set of rules that oblige him to respect moral norms that also imply the existence of other people with whom the citizen lives, but also the existence of society itself as a public institution.

However, can „justice" as equity be achieved effectively towards all people at the same time? From this perspective, modern human rights are focused only on one individual or more people from a criminal or civil case, but never on all parties in a trial. In modern times, so that the right can make „justice" for one person, inevitably will act at the expense of another.

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