Abstract
The human rights are inherent and unassignable rights of each person, that define the human condition in a civilised society. The institution of the human rights has gone through a laborious but also prolonged proceeding of crystallisation in the present showing itself as a complex institution that belongs to the domestic law order and also to the international one. Knowing and regarding the others rights and freedoms mean, first of all, respecting ourselves and our society, because only by a proper knowledge of human rights, individual can ask for and preserve one’s rights and freedoms.

The ideal of equality was born as a requirement of natural law. One has searched for the justification of this ideal with religious, psychological and philosophical arguments, but they all have proved to be impossible to sustain. It’s a fact that people are differently endowed from nature; consequently, the requirements that all people be treated equally cannot be based on any theory stating that all people may be alike. The insufficiency of the argument of natural law appears with extreme clarity when it deals with the principle of equality. The doctrine of natural law monitored with different intensity all the systems of law and established in the history of law relations with the elaborated theories and doctrines.

In contemporary law the doctrine of natural law fundamentally settles the human rights and liberties. In order to illustrate this we may quote the first paragraph of the preamble of the Universal Declaration of Human Rights stating: “Considering that the recognition of the dignity inherent to all members of the human family and of their equal and inalienable rights constitutes the fundament of liberty, justice and peace in the world...” and Article 1 of the Declaration adopted by the General Assembly of the UNO on December 10th 1948: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must conduct with one another in the spirit of fraternity.”

One of the most known and influential political and juridical theories is the Theory of the Social Contract, whose important representatives were the English thinkers J.Locke and T. Hobbes and the French Ch. Montesquieu and J.J. Rousseau. The basic idea resulting from this theory is that by means of the contract one has found a form of association able to protect and guarantee both the persons and the goods of each partner allowing each citizen to keep his / her liberty and to affirm equality towards the others.

The Romanian doctrine did not deal in detail with the definition of this standard, the delimitation of the matter being done only tangentially and rather formally, the essence of the debate being provided by jurisprudence, which had to remedy to this doctrinal absence through a true avalanche of specific

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1 The Ideal of Equality, www.misesromani.org
2 Mihail Constantin Eremia, Fundaments of Law, lecture notes, Bucharest 2003, p.33
applications of the general principle of equality; this led to the tremendous enrichment of the normative
content of this legal norm.

The general principles of law represent a constant preoccupation of doctrine-setters, expressing the
highest aspirations of man: liberty, equality, justice, unity, triggering at the same time the existence of
the material legal reality in their capacity of premises of positive legal order. Through these guiding
principles of law the entire internal and international legal life is developed, as it represents a matter of
maximum importance on the juridical thinking.

The polymorphism of the constitutional principle of equality makes it extremely difficult to
try to define a definition of this concept. Irrespective of its interpretation as an objective principle of law or
a fundamental subjective right, the above principle is expressed through a series of pair values such as:
strict equality / relative equality, formal equality / material equality, equality before the law / equality
through the law, etc.³

Although its character is difficult to define or perhaps for the very reason that it can have
diverse forms rendering it much easier to use than other constitutional norms, the constitutional
principle of equality has often been invoked by its beneficiaries, creating thus an abundant
jurisprudence of the constitutional judge in the matter of equality.

The establishment in the constitutional text of the general formulation of the principle is not
incompatible with the existence of other articles of the Constitution also imposing the observance of
equality in clearly detailed domains.

This polymorphism of the principle conferred it the surname of “puppeteer principle” which did
not reduce its unitary character, proved by the fact that in the great majority of legal systems the largest
part of fundamental rights are mentioned in the text of the Constitution only once, whereas the
constitutional principle of equality constitutes an exception from this rule, as it may be found in several
texts of the fundamental law. This plurality of sources is specific not only to the Roman law, in the
French constitutional law the constitutional principle of equality is decomposed into a multitude of
particular applications so that it was compared to a “cathedra pillar”.⁴

The equality imperatively postulated by any society implies also negative consequences as
regards the private sphere of individuals. Moderation may often end in mediocrity and equality in
egalitarianism. Certain ideas that have proved to be salutary in the public space are transformed many a
time in an acute mediocrity imposed to the majority in a subversive and ungraspable manner.⁵

Equality does not refer to a Robin-Hoodish disposition of redistribution of capital, which in fact
is specific to another political regime. We are nor in the sphere of the European social model, but of the
principle of non-discrimination, which ensure for the persons incapacitated for physical reasons or
personal prejudices a correct start in life. Once more the most evident conquests dissimulate the hardest
battles.⁶ « The democratic institutions arise and flatter the passion for equality without being ever able
to satisfy it.”⁷

Returning in time to the history of the Romanian constitutional dispositions we may remark that in
our law, traditionally, equality as considered rather a fundamental right whose definition necessarily
imposes the enumeration of certain criteria against which any discrimination is forbidden, tradition

³ Simina Elena Tănăsescu, Principle of equality in Romanian law, All Beck Publishing House, Bucharest , 1999,
p.3
⁴ Elena Simina Tănăsescu, op.cit. p.44-45.
⁵ Victor-Iulian Tucă, Democracy, equality and egalitarianism, article published in the magazine The Sphere of
Politics, section International Politics, no.116-117.
⁶ Corina Daniela Popa, European conversations on the meaning of values consecrated by the community law,
within the Contest of essays organised by the Delegation of the European Commission in Romania, March 2005,
p.31
⁷ «Les institutions de la démocratie revéillent et flattent la passion de l’égalité sans pouvoir jamais la satisfaire
entièremet », Alexis de Toqueville, De la démocratie en Amérique.
fully valued by the present constitutional text settling the so-called criteria of non-discrimination in a distinct article, different from the article mentioning the principle of equality.

The horizon of principles founds the standardised life of society, from it deriving the justice, the good, the useful, the beauty when they impose what would be done both to individuals and to communities so that the balance of the parties as a purpose express the human spirituality.\(^8\)

The concept of equality has a hybrid polysemic nature, underlying the democratic regimes. From the perspective of natural law, liberty and equality are symmetrical or engage interpretations, which privilege them alternatively, in a deductive order.

The contractual equality of a society’s citizens is considered to be the condition derived so that all can exercise a liberty inscribed in the individual nature, existing thus the objection of the formalism of this partial equality. The distinction between the metaphysical equality and the natural equality (metahistorical, prior to its entry into a society) is followed by the fundamental acknowledgement of this right through the syncretic conceptions: *rights of man* (equality proper to a certain society, empirical functional) and *human rights* (generic equality of mankind, with dogmatic stakes in an absolute definition of man).\(^9\)

It is certain that the idea of human liberty, equality and dignity is materialised in fundamental principles governing the entire legislative process. In this context, J.J. Rousseau stimulates that the process of governing must be founded on norms of law stipulated in a *Social contract*, which should contain both rights and obligations for the governing bodies and the governs, so that the principles of justice and equity should be done according to the following commandments: “Nobody must be so rich so that he can buy another” and “Nobody so poor so that he be forced to sell himself”\(^10\).

This aspect refers to both the equality in rights and to dignity. It does not signify in any case uniformity. This principle of “equality in dignity and rights” constitutes a fundamental support of the edifice of law.

The opportunity of people’s inequality according to capacities and aptitudes is just, as these are the result of a millenary evolution and individual efforts. Inequality in this respect cannot be considered as such and is subordinated to the principle of hierarchy.

The issue of inequality could be solved if the principle of cyclicality, of reincarnation would be accessible and accepted by human conscience.

We may affirm the fact that the principle of equality has in the Romanian law the legal nature of a subjective right, although the jurisprudence of the Constitutional Court offers sufficient examples in which equality is conceived also under the form of an objective legal principle. Equality is addressed to all public authorities and all private persons, but it may be efficiently invoked also by the collective subjects and not only by the individual ones, under the form of an equality of treatment, this being possible to the extent in which any subject of law has at least the vocation to be treated without discrimination.

John Rawls considers that social inequalities reside in the differences between benefits and obligations attached to them. He traces a distinction between *equity* (a social practice is equitable if the involved actors know and accept the norms regulating the respective practice) and *justice* (the legitimacy of a practice in relation with the system of values of the respective society). It would be right that through the inequalities we understand not any differences between social positions, but the differences between benefits and the obligations attached to them indirectly or indirectly, such as prestige and wealth or responsibility regarding obligatory taxes and services. Those participating in a

\(^8\) Gheorghe Mihai, *Fundaments of law*, All Beck Publishing House, Bucharest 2003, p.183


game do not protest against the fact that there are different roles, such as goalkeeper, defender or attacker in the soccer game or against different privileges and powers specified through rules. Normally, it is not this type of differences that one regards as inequality; one considers as inequalities rather the differences resulted from the distribution established or made possible by a certain practice, differences among the things people strive to reach or attempt to avoid.

The constitutional edifice of any country is certainly doomed to collapse if the main supporting column – the rights and liberties of inhabitants – is not real and sustainable. No doubt, thy dynamics of the history of mankind suggests the movement shape of a boomerang: everything starts from man and comes back to man, in his benefice or against him. Consequently we may affirm the fact that man represents the axiological cardinal reference point of any legal system. So it is not at all by mere hazard that after a first title in the Constitution, synthesising some of the principles the entire constitutional matter, there comes the title having as substance fundamental rights, liberties and obligations, considered to be “a title with tutelary ambitions”.

Title I of the Constitution called “General principles” was appreciated as an introduction to the Constitution or as a preamble to it, and this represents in fact only the first part of the constitutional matter, and the rules it contained under the denomination of “general principles” represent only norms of greater generality, similar with the other norms from the body of the Constitution.

The equality of all citizens before the law; the equality of legal treatment; the equality of opportunities; non-discrimination: “equal wages for equal work” and other achievements of the progress of human thinking found their representation in the national and international regulations. Special merits in this respects go to the French revolutionaries, who asserted the principles of liberty, equality and justice as fundamentals of statality.

The principle of equality is found also in the European community legislation, mentioning the obligation of its observance by the member states, the community institutions being unable to adopt, within their legislation, criteria, which may harm this principle. Moreover a wide applicability within the procedures instituted by the European Court of Justice is given to the principle of non-discrimination, even in cases of arbitrary and unjustified treatment between two persons within the personnel policy of community institutions.

The principle of equality of treatment is fundamental not only because it is at the foundation of contemporary legal systems, but also for special reasons: the Community legislation regards mainly similar economic activities and situations. If in this domain different rules are elaborated for similar situations, the result is represented not only by inequality before the law, but inevitably also by the distortion of competition, which breaks the fundamental philosophy of the Common Market.

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12 idem
13 Even if this title had had the meaning of a preamble, its prescriptions would have been compulsory, endowed with legal force, as the preamble itself comprises fundamental norms. I. Deleanu, *Preamble and exposition of motives*, in „Studia Universitatis Babeş-Bolyai”, 1976, p.6-7.
The Treaty of Amsterdam transformed the equality of treatment between men and women in a goal of the Community (art. 2) by the prevision of the need to eliminate inequity and promote equality between men and women. (art. 3 par. 2 TCE).\footnote{Before adopting the Treaty of Amsterdam, the competence of the Community to act directly against discrimination was contested and that’s why one introduced art. 13 TCE, introduced through this treaty, represented an important development in the domain of non-discrimination: “Within the limits of stipulated competencies, the Council, in unanimity, acting at the proposal of the Commission and after having consulted the European Parliament, may make the necessary decisions for the fight against discrimination based on sex, racial or ethnic origin, religion or faith, disability, age or sexual orientation” - Tudorel Ștefan, \textit{The principle of non-discrimination in community law – the impact on the national legal order}, INM site.}

In the Treaty regarding the Institution of a Constitution for Europe, the principle of equality was presented as being one of the “values” of the Union, and among the EU’s goals we find the fight against discrimination and the promotion of equality between men and women (art. I-2 and I-3 (3)). A new form of expressing the principle of equality may be identified in the obligation of the Union to \textit{observe the equality of member states before the Constitution} - art. I-5 (1).

By condemning the inequalities existing in the feudal society and promoting equality of opportunities, of affirmation and development of the human being, the French Revolution of 1789 inscribed among its major commandments Liberty, Equality and Fraternity.

Consequently, without making classifications that are not adequate for the content of a court order, the Constitutional Court has gradually sketched an increasingly precise jurisprudential definition of the constitutional principle of equality, offering through its decisions more and more elements, necessary for the identification of this reference norm – from equity considered as a synonym of non-discrimination, passing through forbidding only the arbitrary discrimination and attaining the relative equity justified by the objective difference between situations.\footnote{Simina Elena Țănasescu, \textit{op.cit.} p.4}

The sufficiently high degree of abstractisation of equality explains why the constitutional principle of equality is not a mere fundamental right, but aspires to more, being considered rather a right of principle than a principle of law.

\section*{BIBLIOGRAPHY}


