

The influence of reason of state (national interest) on the observance of human rights

Abstract

The subject of this study is a discussion about the influence of the state reason or national interest on the content and respect of human rights. Each state is guided by its own national interest. The very notion of “reason of state” is an expression of the specific interest of the ruling group. The aim of the study is to show the dependence of human rights from the politicized concept of “reason of state”. In fact, the reason of state (national interest) is the ideology of the ruling group, whose aim is to gain the public support and maintain power. The work uses such methods as: analysis of legal provisions, functional method, descriptive method and legal-comparative methods. Contemporary dominant ideologies are: the rule of law, a democratic state, a social state, a secular state or a democratic state of law. Europe, totally, departed from Christian ideology, which even in the 1960s was widely present in the constitutions and programs of many political parties. Human rights are a system of values to which various ideologies now quite commonly refer to. The subject of this study is to show the influence of various state interests on the shaping of the content of selected human rights, in particular the right to live, the right to freedom of speech and expression or the right for participation in scientific research or the use of scientific achievements.

Keywords: human rights, reason of state (national interest), political programs, constitution, ideology of the modern state.

1. Introduction

The term “reason of state” (French: *raison d'état*, Latin: *ratio status*) is relatively new and dates back to the 16th century. It is assumed that for the first time this term was used by the archbishop, inquisitor and diplomat in one person – Giovanni

della Casa in the work entitled *Oratio to Carlo V* in 1549. Thanks to this term, he could distinguish between civil and moral obligations. Those first obligations are proper, according to him, to the state¹. The notion reason of state (*raison d'état*) was a reflection of the thoughts of the modern era about the state. The era of medieval universalism ended: the world based properly on two pillars, it means – on the German Empire and on the papacy. The order of that world did not create space for the independence of rulers and states, that is: the kingdoms and principalities which they were ruling.

Undoubtedly, the concept of *raison d'état* was therefore unknown in the ancient world or in the era of the Middle Ages. However, the concept of the state or social order influenced the position of human being. The subject of this work is to present the concept of the state and its relation to a person and to her or his rights through the prism of the history of various authorities in the context of the *raison d'être*, sovereignty, and national interest. As a research hypothesis, one should assume that human rights, their content and the respect for them are strictly dependent on the forms of political power. However, this political power always wants to realize its vision of social or political order through the prism of its experience, historical context or political program.

2. Human rights in the Roman Empire

In my opinion, human rights should be viewed through the prism of the political system in the first place and, secondly, from the economic and social, including religious, point of view. It is a methodological error to submit the evaluation criteria from one age to another. In this way, the actual picture becomes dark. Hence, it is difficult to speak about human rights in Roman law in their modern sense. This does not mean that the Romans did not see these problems².

The history of the ancient Roman system essentially includes four types of political regimes. From the point of view of the purpose of this study, it

¹ See: M. Misztal, *Giovanni Della Casa's Galateo: A Serious Treatise on Manners or "Only a Joke"*, in: K. Kujawińska Courtney, G. Zinkiewicz G., (ed.), *Some Renaissance/Early Modern Topoi in the Twenty First Century*, Łódź University Press, Łódź 2015. p. 119.

² In Romanist literature there are quite numerous studies devoted to human rights in ancient Rome. See: Ch. de Visscher, *Human Rights in Roman Law Countries*, The Annals of the American Academy of Political and Social Science, Vol. 243, Essential Human Rights (Jan., 1946), pp. 53-59.

is important to distinguish the republican and imperial regimes. In the latter case, two sub-periods: principate and dominate, were combined. Although they are differed from each other, they showed some similarities, which will be discussed below.

A characteristic feature of the republican period was that the concept of the state was identified with the nation. *Populus Romanus* was a real subject of power. The possibility of deciding on important matters during popular gatherings (*comita*), including making laws (*lex*) and choosing the most important state officials (*consuls and praetors*) was an expression of such situation.

This quite positive and quite modern sounding constitution of the Roman Republic, however, had its negative sides. *Populus Romanus* was created only by men and only if they were full-fledged Roman citizens. Therefore, the women and the people who do not have Roman citizenship (*peregrines*) were omitted. In addition, until the 4th century BC, only the patricians had exclusive access to public offices. Only two-century struggle of the plebeians for equal rights caused that first the plebeian offices were established with the plebeian tribune at the head, and then they gained access to the office of the consul or praetor³.

As a result of leveling this social differences, a new group of rulers developed, that is aristocracy (*nobilitas*), including rich old patrician families as well as new plebeian ones. Such a political system was later replaced by new rich and influential families. Such people were referred to as *homines novi*. The first consul of this newly-formed group was elected already in 223 BC⁴.

In the last century of the republic, the conflict between two groups within the nobility: the optimates and the populares, has become more acute. The first of them sought to maintain the republican system, while others were aiming for the introduction of the autocracy. Julius Caesar was undoubtedly a symbolic figure for the populares⁵.

It can be said that although the republic was a period of people's rule (*populus*), the political system was constructed in such a way that only privileged classes had access to public offices, mainly due to the economic reasons. At that time, the elites

³ J. Bleicken, *Die Verfassung der Römischen Republik*, Schöningh, Paderborn 1995, p. 44 and the following. ISBN 3-8252-0460-X.

⁴ *Ibidem*, p. 47.

⁵ See: R. Sajkowski: A. Jurewicz i inni, *Rzymskie prawo publiczne. Wybrane zagadnienia*, UWM, Olsztyn 2011, p. 55 and the following. A. Petrucci, *Corso di diritto pubblico romano*, G. Giappichelli, Torino 2012, p. 92 and the following. ISBN 978-88-348-3602-6.

were transformed over time, but the mechanism of access to the public offices remained the same. The other *cives Romanorum* formed a kind of system of political clientele supporting one or another candidate for the office of a praetor or consul⁶.

Res publica, originally, was identified with the narrow elites in power. But at the end of this system the term *res publica* was used interchangeably with such terms as: *populus*, *plebs*, but also *senatus*, *equites*⁷.

The situation changed with the principate time. Beginning with Octavian Augusta, the center of political power began to focus around the emperor. The plebeian and people's congregations disappeared, the Roman senate and republican officials lost their significance and basically they had their functions only in nominal terms. The citizens lost their right to apply for public offices. These were occupied according to the criteria adopted by the emperor and his surroundings. It can be concluded that during the abstract concept of a state which owns its citizens, was born. The ruler, *princeps or imperator*, provided only the aristocracy with the possession of material goods and with the position in the social hierarchy. The concept of *populus Romanus* was only a background to the policy of the principate and dominate periods⁸. The very important moment was to give citizenship to almost all inhabitants of the Roman Empire in 21, 2 on the basis of *Constitutio Antoniana*⁹.

While talking about human rights in ancient Rome, one should also look at them through the prism of the rules typical for private law. The division of people into two groups – free and slaves was the most important issue there. The Romans, however, realized that this division was not compatible with the nature of things. Hence, Florentinus wrote that all people are born free. Only the human law, *ius gentium*, causes that some are born as free people, others as slaves¹⁰.

⁶ Such a system also created the opportunity for an equal type of electoral crimes referred to as *crimen ambitus*. See: W. Wołodkiewicz, „Okręcanie” wyborców – czyli *crimen ambitus* w sprawie rzymskim, in: *Europa i prawo rzymskie. Szkice z historii europejskiej kultury prawnej*, Wolters Kluwer, Warszawa 2009, pp. 334-339. ISBN 978-83-7601-824-9; Th. Mommsen, *Romisches Strafrecht*, Duehrkohp&Radicke, dodruk Leipzig 1899, Gottingen 1999, p. 873; B. Sitek, *Convivium, cena i donum munus w antycznym Rzymie a współczesne dylematy korupcji wyborczej (crimen ambitus)*, *Studia Prawnoustrojowe* no 11/2010, pp 5-15.

⁷ Cic. Phil. 5.49, Cat. 1.32; Sest. 38. See: Ch. Meier, *Res publica amissa. Eine Studie zu Verfassung und Geschichte der späten römischen Republik*, Suhrkamp, Wiesbaden 1997, pp. 64-65. ISBN 3-518-57506-6.

⁸ See: J. Bleicken, *Verfassungs- und Sozialgeschichte des Römischen Kaiserreiches*, Bd. 1, p. 20. Schoningh, Paderborn 1981, p. 44 and the following. ISBN 3-506-99256-2.

⁹ From this right, *peregrines dedetici* were taken out.

¹⁰ D. 1.5.4 pr.-1 (Florent. 9 *inst.*): pr. *Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur*. 1. *Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur*.

The respect for human rights was also evident in the legal institution called *favor libertatis* (presumption of freedom). It means that all doubts about human freedom were settled in favour of freedom¹¹. The elements of human rights can be found in the care of the poor and the sick – the disadvantaged groups. In order to protect their rights, quite a number of foundations were formed in the post-classical period¹². One can also mention the system of nutrition of people with low incomes through the system of free distribution of grain – *frumentatio*. At the peak period, in Rome, there were even about 300,000 people entitled to free assistance and help¹³.

3. Human rights in the Middle Ages

The period of the Middle Ages, lasting from the fifth to the fifteenth century, was very diverse, both from the political and social point of view. In the literature you can find different divisions of this era. The most common systematic are its division into: the early Middle Ages, the rise of the Middle Ages and the end of the Middle Ages. However, without going into methodological issues, its characteristics are the most important.

As a rule, it was a time in which there were two competing power centres: the Papacy and the German Empire, attributing themselves as the continuation of the Roman Empire. Both secular and ecclesiastical power created the concept of power and its origin for the defence of one's own interests and reasons¹⁴. The most famous was the theory of two swords, according to which all authority, both secular and religious power, was given by Christ to Saint Peter and his successors. Successors of St. Peter may decide whether the two authorities are to perform alone, or whether the secular sword is given to a lay person. Both authorities, therefore, come from God¹⁵.

¹¹ D. 29.2.71; 31.1.14 pr.; 35.2.32.5. See: K. Bradley, *Slavery and Society at Rome*, Cambridge University Press, Cambridge 1994, p. 162. ISBN 0521 37287 9.

¹² See: M. Wójcik, *Fundacje dobroczynne w rzymskim prawie poklasycznym*, KUL, Lublin 2003, p. 17 n. ISBN 83-7363-069-4; H.-R. Hagemann, *Die Stellung der Piae Causae nach justinianischem Rechte*, Helbing&Lichtenhahn, Basel 1953, p. 5 and the following.

¹³ See: B. Sitek, *Tabula Heraclensis (lex Iulia municipalis). Tekst, tłumaczenie, komentarz*, UWM, Olsztyn 2006, p. 29. ISBN 83-7299-451-X.

¹⁴ Przykładem takiej walki o dominację w Europie był konflikt między Henrykiem IV (1056-1106), cesarzem Niemiec a papieżem Grzegorzem IV (1073-1085). The conflict between Henry IV (1056-1106), Emperor of Germany and Pope Gregory IV (1073-1085) was an example of such struggles for domination in Europe, see: J. Umiński, *Historia Kościoła. vo I: Chrześcijańska starożytność i wieki średnie*, ed. św. Krzyża w Opolu, Opole 1949, p. 331.

¹⁵ See: B. Zientara, *Historia powszechna średniowiecza*, TRIO, Warszawa 1994, p. 130 n. ISBN 8385660100. Online text <http://www.strony.toya.net.pl/~vidm0/BZHS.pdf> [access: 25.05.2018].

The ordered world was also based on the social hierarchy, headed by the aristocracy and the clergy. Regardless of doctrinal conflicts, the created concepts primarily served to maintain the status quo of the social system. This hierarchy also applied to the rulers who ultimately had to be subordinated to the Emperor of Germany or the Pope.

Such an ordered world, despite conflicts in views that sometimes transformed into religious wars, was based on Christian doctrine and its systems of values. In this doctrine, human being played a huge role. The salvation was given to every person, regardless of gender, financial status, age or social position. In fact, the situation of a particular person was difficult – especially people of lower social status, such as peasants and burghers, lived in very difficult conditions. In spite of quite large actions and activities undertaken by the Church in the field of care, especially for children and the poor, this care was insufficient. Unfortunately, there was definitely no support from the secular authorities who were rather interested in maintaining their position. There was no social welfare system as it was in ancient Rome. As a consequence, the descriptions from that period sometimes show the drastic examples of human position, despite the evangelical command to care for another human being. It should be explained rather by weak political or state power, which was not organized, and maybe even it was not interested in taking actions to defend people and their rights.

4. Human rights in the modern age

The new order of the European world, which was born on the ruins of the order of medieval universalism, began to be based on the concept of sovereign states, or rather on the rulers of kingdoms or principalities seeking to become independent. These rulers sought to ensure that their power was sovereign or independent of other rulers, mainly from the German emperor and the Pope. Nomen omen, it was during these changes in Europe that one more event, completely contrary to the new spirit, took place. We are talking here about the Prussian homage (1525), which made Prussia dependent from the Kingdom of Poland.

The spirit of transformation and the ideal of the ruler of the new period were quite well described in the work from that period named the Prince from 1513 (*Il principe*), which author was Niccolo Machiavelli (1496-1527). This author is probably the first person, since the antiquity time, to reveal the true face of power. The power, according to him, is not given by God, but it is acquired as a result

of intrigue, rape, deceit, and especially as the result of the various social factions struggling with each other. For the literary prince, whose prototype was Caesar Borgia, the most important thing was to become independent of someone's fate and weapons. It was obvious, however, that the ruler depends on those who elected him. The ruler should strive for their favours. Basically, the ruler can be supported by people or by magnates. The interests of both groups are contradictory. The people see in the ruler a defender of those who are oppressed by the actions of the magnates. If the prince is supported by the nobles, they demand that he would satisfy the interests of this group. According to Machiavelli, one cannot speak of any created ideal of a king or prince. The ruler is as it is¹⁶.

In the further development of the modern era, there were several political powers in Europe, such as: France, Germany, Austria, England and Russia, which made other smaller states dependent on each other or led to the liquidation of their sovereignty, just as it happened with the Republic of Poland.

However, the industrial revolution that began in England was the most important event of this period. In some way, it was inspired by the French Revolution and colonial achievements. As a result, so-called the workers' issue and the process of cultural diversity in Europe were initiated by the fact of bringing people from the colonies¹⁷.

The emerging capitalism has created social diversity on an unprecedented scale. Huge crowds of poor people were created. The solutions to these problems, in fact – the issue of taking care of human rights, appeared in the writings of great thinkers of this period, as well as in the individual legal acts or enunciations of the Catholic Church¹⁸. The need to protect human rights, although it was noticed, was not the main goal of the reasons of state or national interest of the individual states.

¹⁶ The ideal of the ruler was described, in principle, by N. Machiavellegao in item IX of his work. See: N. Machiavelli, *Książę*, <http://www.knhd.law.uj.edu.pl/documents/3035628/ba8cc9a5-998c-41e4-9dd9-499141898f61>

¹⁷ See: M. Żejmo, *Istota przemian industrialnych w XIX wieku*, *Studia Gdańskie. Wizje i rzeczywistość*, 2015, p. XII, pp. 169-178. ISSN 1731-8440.

¹⁸ DThe encyclical letter of Pope Leo XIII entitled *Laborem exercens* (1891), in which fundamental human rights have been clearly defined was a quite important document from that time. See: G. Molinari, *La „Rerum Novarum” e i problemi sociali oggi*, in: A. Luciani (ed.), *La „Rerum Novarum” e i problemi sociali oggi*, Massimo, Milano 1991, pp. 11-22.

5. Human rights after World War II

The Second World War, and, to a large extent, the First World War, played a significant role in the process of defining and protecting human rights. In both wars, the weapons of mass destruction were used on a previously unheard scale. During the Second World War, German extermination camps and Soviet gulags of extermination were created, in which millions of innocent and helpless people were killed. Due to the state interest of both countries, there was no place for human rights, quite clearly defined and postulated in the international arena of that time period. The Nazi doctrine was based on such values as: the superiority of the Aryan race, the necessity of defining the enemy (mainly Jews and Slavs), creating of the living space for the master race (*Lebensraum*) or the domination of one nation over the world¹⁹.

In turn, the state of the communist ideology, in accordance with the doctrine proclaimed by K. Marx, the put in the first place the struggle of classes, which should lead to the abolition of class system and the rule of the working class. The bourgeoisie and kulaks should be resocialized or physically suppressed. Socialism, therefore, essentially aimed at building a world communist state based on the working class. As a result of this ideology, physical exterminations or forced emigration of social classes in Russia, and later in other countries of the former socialist bloc, including Poland, took place.

The very traumatic experiences of the Second World War caused that one of the first activities of the created United Nation (1945) was the adoption of the Universal Declaration of Human Rights (1948). As the consequence of the Declaration, the subsequent acts of international law declaring human rights were issued. Among them, the European Convention on Human Rights (1950) should be mentioned, on the basis of which the European Court of Human Rights in Strasbourg was created. Also there are: the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the Charter of Fundamental Rights (2000). There were also numerous international law acts concerning specific social groups, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979).

¹⁹ See: R. Wojtyszyn, *Wolnorynkowy porządek społeczno-gospodarczy a faszyzm i nazizm w myśli Ludwiga von Misesa oraz Friedricha von Hayka*, p. 1-32. Online Text: http://mises.pl/wp-content/uploads/2007/12/radoslaw-wojtyszyn_mises-i-hayek-o-faszyzmie-i-nazizmie.pdf [access: 25.05.2018].

An important stage in the process of shaping human rights was their constitutionalisation. After the Second World War, the majority of the Constitutions were enacted by the declarations of respecting the specific set of human rights by state authorities. Such provisions even existed in the constitutions of totalitarian or communist states, such as in the constitution of the Polish People's Republic of 1952. Human rights thus became a fairly important element, at least declarative, of the *raison d'état* or national interest in a particular state. The creation of new concepts of the state and their declaration in the constitutions was the undoubted strengthening for respect for human rights. It includes the concept of a state of law, a welfare state, or, as the Polish constitutional lawmaker wants – the democratic state of law.

However, it must be noticed and said that the mechanism of the declaration of human rights and the systems of their protection, in practice, depends on the political programs of particular political groups in power. Their implementation becomes the temporary *raison d'être* of a given state, also in relation to human rights. The interest of the ruling group determines which human rights are more strongly respected and which are limited or even neglected. The basic criterion for the selection of these rights is the political will, usually subordinated to maintaining the party's listings or winning the upcoming elections.

In practice, in most European countries, for a long time, a very strong emphasis is placed on respect for, and even promotion of, social rights. This is undoubtedly a typically populist action aimed at obtaining political support that translates into electoral votes. At the same time, the political or civic rights, which are typical for a democratic system, are overlooked and limited. The rulers, using the apparatus of power, are increasingly restricting the rights of the opposition to express their views, by monopolizing the media market or controlling the network.

The similar actions can also be seen in the area of fundamental rights, in particular the right to live. The extremely liberal environments are forcing the legalization of unrestricted abortion and euthanasia. They call for freedom of choice and self-determination. The right-wing environments, in turn, promote the protection of life from the moment of conception to the natural death. Both sides refer to scientific research. In this discourse, however, a priori ideological settings of specific social groups are clearly visible without taking into account the actual content of the right to live. In this case, the *raison d'état* is replaced with the *raison d'être* of certain social groups, most often of an international nature.

6. Conclusion

Human rights and the national and international systems of their protection has surely been the great achievement of humankind since the time of ancient Rome. The experience of totalitarian systems of the twentieth century undoubtedly contributed to their listing in various acts of international law, and then to their constitutionalisation. The existing legal regulations, their elaborations and national and international advocacy indicate what these rights should be and how should they be guaranteed by public authorities, private institutions (for example: companies, universities, natural persons conducting economic activity) and finally by people themselves in contacts between them.

Meanwhile, the respect for human rights in practice or human rights in action looks different, even in countries with high legal culture²⁰. The United Nation or the Council of Europe, but first and foremost, the international organizations, including the Red Cross, the International Helsinki Federation for Human Rights, the Amnesty International or the Helsinki Foundation for Human Rights register and make public numerous violations of human rights. Many of them are related to the implementation of the *raison d'état* identified with the current policy of the ruling option. The question that must be posed in this circumstance concerns the way in which human rights are independent and implemented from the current policy. Another issue is whether this purely theoretical procedure is possible to be implemented in practice?

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²⁰ See: A. Danek, *Racja stanu jako suwerenność państwa in actu*, Przegląd Geopolityczny no 13/2015, p. 7 and the following. Online Text: http://przeglad.org/wp-content/uploads/2016/01/Danek_Adam_PG_tom_13.pdf [access: 30.05.2018].

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