

Anna Badalyan *

The Internal Development of the European Union and its impact in National Human Rights

"The moral claims of today are often the legal rights of tomorrow".

Respect for the law is one of the selected groups of principles that we have come to regard as essential to the effective and equitable operation of popular government.

No review of the developments which have taken place in recent years would be complete without reference to a third element which has contributed to the growth of the law and which seems likely to be even more important in the future. Human rights law is more than the substantive and procedural obligations to be found in treaties; it is the process where the procedures are used to interpret and apply the substantive principles, the process, where the law on paper becomes law in actions.

In this article I will explain the role of European Union and the ways to collaborate European laws with National laws and the impact they can have. Then, I will present the situation in Armenia as a Post-Soviet country and after independence, the collaboration of Republic of Armenia with other democratic countries and European laws the RA signed.

The term “ human rights standards “ refers especially to the European Convention on Human Rights and to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment . The basic principle is practice operation. A modern and democratic police service which is close to the public requires officers who can think for themselves and act on their own initiative. It is particularly important that training is geared towards action and helps to develop an officer’s personal qualities.

* Jurisprudent at the Police Department of Erebuni of the Republic of Armenia

*“ There will be a day when you – Germany , France , Russia , Italy , Anglia , the whole population of the continent without losing your differences and your characteristics, will be reunited in a greater unity and gain European fraternity. ”*¹

The European Convention on Human Rights is an international treaty for the protection of fundamental civil and political liberties in European democracies committed to the rule of law. It was created in 1949 by ten Council of Europe states – as a part of process of reconstructing Western Europe in the aftermath of the Second World War. It represented both a principal commitment of its member to democracy, the rule of law and greater unity and an ideological stance against Communism. The Council of Europe has grown to embrace forty-six states from Iceland to Vladivostok and combined population about 800 millions. In 1950, the Council of Europe adopted the Convention on the Protection of Human Rights and Basic Freedoms. According to the Convention, many rights stipulated by law can be restricted in time to war or emergency.

The entire concept of human rights stems from one unquestionable value – human dignity. It is the root of human rights and freedoms. *“The inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...”* In the Universal Declaration of Human Rights imposed upon as a legal obligation to respect the human rights and fundamental freedoms: *“All human beings are born freely and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*² In the Preamble of the Universal Declaration of Human Rights it is said that Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedom, and a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.³

More strictly speaking, fundamental human rights are rights superior to the law of the sovereign State. The hope, expressed by Emerson, that “man shall treat with man as a sovereign state with a sovereign state “may be brought nearer to fruition by sovereign

¹ Viktor Hyugo

² Universal Declaration of HR (article 1)

³ International Human Rights in Context , Universal Declaration of Human Rights Preamble, P. 1376

States recognizing the duty to treat man with the respect.⁴ Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity. It is based on the principles of democracy and the rule of law. The European Union Charter of Fundamental Rights sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights not only for European citizens but also for all people resident in the EU. And these rights are divided into six sections “

- Dignity
- Freedoms
- Equality
- Solidarity
- Citizens' rights
- Justice

The reason for the limited scope of the Convention was explained as follows by Teitgen, the rapporteur of the Legal Committee of the Consultative Assembly of the Council of Europe, which prepared the first draft of the Convention: *The Committee considered that, for the moment, it is preferable to limit the collective guarantee to those rights and essential freedoms which are practiced, after long usage and experience, in all the democratic countries. While they are the first triumph of democratic regimes, they are also the necessary condition under which they operate. Certainly, professional freedoms and social rights, which have themselves an intrinsic value, must also, in the future, be defined and protected. Everyone will understand that it is necessary to begin at the beginning and to guarantee political democracy in the European Union and then co-ordinate our economies, before undertaking the generalization of social democracy.*⁵

Summing up these rights, every country in the EU family or which wants to become a member of this family stipulates them in its own laws.

The Republic of Armenia is one of those countries which wants to become a member of the EU family and does everything to reach the goal. Armenia became a full member of the Council of Europe in 25 of January 2001. In accordance with Article 13 of the

⁴ See “ International Human Rights in Context “ Henry J. Steiner and Philip Alston , publishing 2000 .

⁵ Council of Europe, Cons. Ass., First Session, Reports (1949), p 1144

Parliamentary Assembly Opinion, the Republic of Armenia has undertaken the commitments upon its accession to the Council of Europe.⁶ For this purpose Armenia completed the fulfillment of the implementation of all the commitments such as the introduction of amendments in Armenian constitution for which a referendum was done.⁷

It was year of 1991, September 21st, when independence of Armenia was declared and the Third Republic was established. As every new born country my homeland passed years of difficult struggle, presented braveness and patience to form the country's socio-economic, legal and political system. The first article of Constitution declares that *the Republic of Armenia is a sovereign, democratic, state, based on social justice and the rule of law*. It is fixing many similar democratic provisions but we need time and democratic maturity to achieve our goals. Nevertheless, there are still not solved various issues that require quick reactions; global understanding of geopolitical situation in our region and the main example is our relationships with our neighbor and other foreign countries. We should recognize their achievements realistically and find the ways to reach them.

Living in transitional period and belonging to the developing countries, nowadays, there are issues that need to be changed and improved. The main of such problems are human rights and freedoms, fair justice and actions against the abundant of corruption, also public health provision, ensuring women rights, increasing the role of women in society, etc. The transition from socialism to democracy requires a dramatic change in legal and judicial institutions: heightened independence from the executive; new roles and skills for judges, lawyers and other personnel; and a rapid increase in institutional capacity to handle legal cases efficiently and effectively. The transition from socialism to market economies during the past 15 years has a complete rebuilding – or often building from scratch – of core institutions.

As almost in all post-Soviet countries, there are reasons of less formal character, consisting of non-readiness of the society to the protection of the rights as an instrument of solving the conflicts on the basis of the internationally acknowledged standards, but not from the viewpoint of the political expediency either from the satisfaction of the

⁶ See http://www.coe.am/index.php?cat_id=35&out_lang=eng

⁷ See CERA Council of Europe information office in Armenia newsletter , p.9 publishing 2005

interests of separate groups of people. As a result of weak capacity, rapid and nontransparent lawmaking processes, existing institutions- including courts, lawyers, regulatory bodies, and other charged with implementation – often had difficulty understanding, applying and enforcing the new laws being passed by Parliaments. This led to significant “implementation gaps“ – that is, gaps between what legislation required and what happened in practice, which in turn led to growing public mistrust in courts.⁸

By gaining independence the Republic of Armenia obtained unprecedented opportunities to accede to international agreements related to the protection of human rights, to join international organizations and to participate as sovereign entity in international summits and conferences. During the last two decades Armenia has accede to those fundamental documents that were signed at global as well as regional levels. Armenia’s accession to the Council of Europe is a serious testimony of its advancement, which should be accompanied by signing the European Convention for the Protection of Human Rights and Fundamental Freedoms and its ratification within a one-year period. The conditions for the admission of a state to the Council of Europe are laid down in Article 3 of its Statute. The State must be a genuine democracy that respects the rule of Law and human rights and must “collaborate sincerely and effectively” with the Council in these domains. The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in 1950 and entered into force in 1953 is of particular importance within the context of international human rights for several reasons: it has the first comprehensive treaty in the world in this field, it established the first international complaints procedure and the first international court for the determination of human rights matters, it remains the most judicially developed of all the human rights system and it has generated a more extensive jurisprudence than any other part of the international system. Armenia ratified the European Convention on Human Rights in 2002. In 2010, 197 applications were registered the Court and 5 judgments were delivered in violation of at least one human right guaranteed by the European Convention on Human Rights. Armenia’s initial report was submitted in 1998 to the International

⁸ See “ Judicial system in transition Countries” James H. Anderson, David S. Bernstein and Cheryl W. Gray ,publishing 2005

Covenant on Civil and Political Rights, in March 1998 to the International Convention on the Elimination of All Forms of Racial Discrimination, and so on.⁹

Legislative activities are necessary but not sufficient condition for the enforcement of human rights. The other important side of implementation of international commitments in human rights is the actual execution of provisions set forth by international agreements and domestic legislation. The implementation or failures are conditioned by the existing situation and realities in a given country. Therefore, in addition to the legal factor there are many others like historical, political, psychological–mentality related, geopolitical; socio-economic which play a decisive role. According to the provision 1 of the Article 2 of the European Convention for Human Rights and Fundamental Freedoms “*Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*” The very right of the convention is fixed in part 1 of the Article 17 of the Constitution of RA, which declares that “*Everyone has the right of life*”. Also, the Article 3 of the Convention prescribes that “*No one shall be subjected torture or to inhuman or degrading treatment or penalty.*” The Article 19 of the Constitution of the RA contains this provision.

A hallmark of independent and impartial legal system is the ability of people to use it, especially Police to challenge others or government actions and decisions. During the socialist times the Police colonel was geared toward defending the rights of state. At the beginning of independent, after a decade of reforms, the role of Police begin to rise and many people in turn want to be a police officer. A key lesson from these reforms is the need to put resources and emphasis on the implementation and enforcement of legal reforms, whether through the Police or through other enforcement bodies (including courts, prosecutor’s office, notaries and land cadastres). And as noted, these legal reforms have a real impact on the further country’s development.

Today the Police of the RA are a unified system of state administration. The tasks of Police officers are to ensure human security, as prescribed by law, provide administrative and criminal prevention and failure, ensure the detection of crime, preliminary investigation of criminal cases, protection of public order and public safety,

⁹ See Human Rights and Human Development Report, Armenia 2000. page 141

to ensure equal protection of all forms property and prescribed by law to show an aim to physical and legal person for protecting their rights and legitimate interests¹⁰.

In Armenia the Police have a wide range of functions: crime prevention, law enforcement, and order maintenance and community services. In the democratic society citizens have a role of forming judgments about the police, and those judgments have a strong impact on the way of the police function. In a free society the police are required to maintain order. In performing this task, police officers are not given a great deal of authority. In this aspect we can note that courts and prosecutors have great roles which sometimes do more difficult for solving tasks and working operative. As a unique state which has a right to use law enforcement, Police should be freer in using its rights as courts do they rights and duties. Because nowadays as a police officer is a better-qualified person, the penalties for official misconduct more stiffened, creating a civilian board of control. And when they are excessive in the use of such powers, they can threaten the basic values of a stable, democratic society. Using their powers to arrest, search, detain, and use force, they can interfere with the freedom of any citizen.

For doing its duties in a democratic Republic, the Police need to have a program which will associate with Police activities and human rights in daily life and will treat:

- Enhancing the professional competencies of police officer in the Human Rights field
- Strengthening local human rights training capacities
- Supporting the development of human rights based organizational culture.

It does not mean that these remedies don't include in the Police's legislation. Moreover, according to the European Bank for Reconstruction and Development, the legal effectiveness from 1999 to 2002 in Armenia is raised by 15 %. And these temps of rise are continuing. For instance, according to the agreement between Police Colonel and Council of Europe, now we are in process of doing changes as in Police Department and as in specific laws which associated with the rights and duties of Police officers. In the end of these changes it is important to keep police officer's salaries reasonable in light of the salaries of related professions, and to permit ready entry into the legal profession to

¹⁰ See "The Law of the Police of the RA", Armenia 2001

allow competitive forces to operate to maintain quality without exorbitant increases in cost.

I shall note that it is important to collaborate with other countries and use their experience and professional skills in every daily work. The purpose is to evolve officers' background for protecting human rights and dignity, for safety of society and country. There are several agreements between the Republic of Armenia and other countries which treat to protection human rights, respecting the principle of sovereignty and equality of States and wishing to further consolidate the friendly relations existing between both countries. For instance, the Agreement between the Government of the RA and the Government of the Italian Republic of Police Cooperation about the need to strengthen international cooperation between police authorities in combining crime and terrorism.¹¹ Or Air Services Agreement between the Government of RA and the Government of the Republic of Latvia against terrorism, illegal circulation of drugs, psychotropic substances and precursors and other violations which has entered into force on 29 October 2010 .¹²

By promoting and requiring the approximation of local laws to its *acquis communautaire* (that is, the laws, rules, and regulations governing the EU), the EU has served as a standard setter. It has also been an important donor, providing technical assistance, material, and grants to support the adoption of the *acquis* (and later its implementation). Lastly, the EU has acted as an assessor or auditor, “grading” the accession progress of candidate countries in its annual reports and setting targets for further reforms.¹³

To sum up, I would like to say that donor preferences and pressures to reform have had a significant impact on the shape and operation of legal systems in transition countries. Recognizing this impact, the RA needs to work collaboratively with EU and the World Bank. In addition, an emphasis on the process of reform (including the process of legislative and regulatory drafting and review and the process of policy formulation)

¹¹ See Bilateral International Treaties, RA official bulletin of international treaties , publishing 2010

¹² The same Bulletin of international treaties, page 315

¹³ See appendix 2 for a summary of recent World Bank activities in support of judicial reform in transition countries, publishing 2007

should be a focus of future reform efforts to improve the sustainability of Armenia's development.

Conclusion

Any theoretical study values depends on how the results applicable and necessary for existing social relations and historical development of that period.

Rights are a vital concept, but even when supplemented by the concept of duties are not suitable vehicles for handling every issue. If we have insisted on translating all issues into the language of human rights, we will not only trivialize this language, but also fail to use the resources of the law to their full potential. While there is therefore no reason to regard the scope of human rights law as fixed for all time in its present configuration, before adding new rights we should be clear about what we are doing because the price of failure to do so – of failure , that is, to think clearly about theoretical issues – is likely to be high.¹⁴

In this set of materials I introduced how the European Convention of Human Rights was created and what the role it has in the independent world. Then I introduced the situation in the Third Republic of Armenia and the transition from socialism to capitalism, where more obvious introduced what role has European Union on the development of the RA, and how implemented European laws in Armenia. In the end of material I talked about the Police Colonel of the RA and what role it has on the development of Human Rights and Fundamental Freedoms, and what we should do for evolving the legal effectiveness and how Police collaborate with European Union.

In conclusion I would like to say that the law will be respected as long as it is interpreted and applied within the structures of justice as accepted by the majority of society – in the long run, if not always in the short. Law is, after all, the expressed will of those who rule society. The Universal Declaration called on every individual and every organ of society to “strive by teaching and education to promote respect for these rights and freedom and ... to secure their universal and effective recognition and observance.”

¹⁴ See “Human rights in the world .” A. H. Robertson and J. G. Merrills , page 342

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