

## BOOK REVIEW

# *Human rights & constitutionalism* \_\_\_\_\_ *Global phenomenon and its impact on the Albanian* *Constitutional Acts-DR. DENAR BIBA*

\_\_\_\_\_ *Dr. Sofiana Veliu* \_\_\_\_\_

In November last year (2021) Dr. Denar Biba promoted at premises of the European University of Tirana his book “human rights & CONSTITUTIONALISM”, a philosophical and legal analysis on human rights in general and their outline in Albanian constitutional law - under the logo of publishing house- UET Press.

This book is introduced in a field of special interest such as human rights, when these rights from the global historical perspective, are becoming increasingly indispensable to be protected and guaranteed. An ambitious, multifaceted and interdisciplinary work is intended through this book which, although generally appears like a structure divided into two parts, (on one hand human rights and, on the other hand, their constitutionalisation,) all its chapters have a linking bridge between the two which in every respect complements each other’s meaning.

In the words of the author himself, “this book aspires modestly to shed light on the *concept* of human rights, its *genesis* and *philosophical basis* on which they rely, as well as to reflect the *capacity* of international human rights law and Albanian constitutional law to create a synergy, focusing on the standards achieved, in recognition and acknowledgment of the fact that human rights, beyond any reasonable question, enable us to live a life with more dignity, a life that only so deserves to be lived”.<sup>1</sup>

The book is introduced on the cover as a provocation to the reader: the title is clearly grammatically incorrect, but it is no coincidence if one learns that the author’s goal is the humanization of human rights, their descent from the pedestal where we naively placed them, not to trivialize and demystify them, but

---

<sup>1</sup> Denar Biba, *Human Rights and CONSTITUTIONALISM*, Publishing House UETPRESS, Tirana, September 2021.

to deconstruct, recognize and understand them correctly, so that we can use them wisely, when it is prerequisite and not when we need them.

Quite interesting is the way how in the *Introduction* the author begins with a painful story from the Albanian context of human rights violation during the communist dictatorship, extracted from the story of Father Zef Pllumi in his memoir book “Rrno për me tregue” (“Live to tell”), part of the investigative process after his first arrest in 1946. Rather than a human experience in difficult situations, the author seeks to strongly emphasize respect for human dignity, as a human being, stemming from the philosophical concept of human rights according to natural law, but which cannot be guaranteed without international acts and national constitutions, in order to build a moral order for their protection. In my opinion, the author intentionally begins with such a story, to start with the idea that human dignity should be considered as the supreme human right. The concept and historical development of human rights is a clear presentation for the reader, who is introduced to the main theories of philosophical thought of human rights put into a certain historical and political context, which also reflects the most influential thinkers in the field of law, but also in a way the reader does not find it hard to understand the position held by the author himself, embracing the theory that protects and guarantees human rights in the most effective and practical manner.

The emergence and promotion of human rights in international law is an interesting chapter of the book, where the author analyses the most important acts on human rights giving us a clear overview of the Universal Declaration of Human Rights and Conventions on these rights. They are also sparingly addressed, nevertheless to the proper extent, as well as constitutional legislations and relevant acts of Europe, America, Arab world and Asia. Quite interesting is the overview regarding geography, politics and culture in terms of protection of human rights in the Arab world and in Africa and the comparison with countries of the region and the American continent. The reader finds ample information and a well-argued legal analysis regarding the specifics each region has determined for the protection of freedoms and rights.

An interesting presentation in the book by the author is also the notion of generations of human rights, which according to him, appear not as ultimately defined concepts and categories, but which vary depending on historical and political conditions and depend directly on the demands of particular population groups. The author refers to the idea of dividing the “3 generations” of human rights, according to the Czech-French lawyer Karel Vasak and finds his proposal valid, inspired by the 3 motives of French Revolution:



- first generation consisted of civil and political rights (*Liberté*)
- second generation on economic, social and cultural rights (*Égalité*);
- third generation of collective rights or solidarity (*Fraternité*).

The peculiarity of this notion is that it does not see these generations as exclusive to each other but all three generations should be treated as cumulative, intertwined and interdependent. In the context of the frequent dynamics of freedoms and human rights, the author brings to our attention a “*fourth generation*”, which have recently been perceived as “rights” for the protection from risk posed by the rapid development of the technological-scientific revolution, and above all, from bio-technology, informatics where the situation created by the global pandemic itself proved this, as a sensitivity to these rights.

For the first time - to my knowledge - an Albanian author through this book (Chapter V) offers to the Albanian reader a full presentation of the *philosophical debate on human rights*. Through this work and within author’s skills, human rights are traced and analysed as they are materialised from one social, economic and political environment to another, and are not commonly accepted as prefabricated structures; questions of an existential nature, raised over years by human society are highlighted, and attempts are made to give answers, according to the brightest minds, authorities in the field. The reader will face dilemmas such as: are human rights *derived* from a superhuman power, or are they simply conventions, human inventions, in an attempt to make his life better? Do they have a certain specific *weight*; are they equal to each other; do they *change* with the change of other political, social and economic circumstances? Who do human rights belong to, or in other words: who is the *subject* that can claim them? Where are human rights based, what is their philosophical *basis*? Do they exist *universally*, or do different *cultures* also enforce different human rights? What about *Albanian constitutional law*, how was their presentation? Which *school* of human rights did our constitutional fathers follow, from one constitutional act to another? Was this a conscious choice or not? What can be said about *dimensions, efficiency* over years?

The second part, which is the central object of the book, analyses in an original and critical manner the human rights in the constitutional acts of Albania, focusing on the Constitution of 1998. This part of the book makes a clear reflection of the development of constitutionalism and constitutions, the way they are conceived in some countries, regionally and internationally, where a special part, in view of the relationship between law and the notion of state, is dedicated to constitutionalism and human rights in Albania. The historical overview in the Albanian context undergoes several important historical stages

through acts issued from 1913 to 1993, introducing us at the same time to the development of constitutional law that, in a way, follows on a step by step basis the development of the Albanian state itself to the present day.

The following analysis focuses on the elements of the Albanian Constitution of 1998, influenced by the connotations of natural law on human rights, without underestimating the definitions of fundamental principles according to the *guiding principles* of the catalogue of fundamental rights and freedoms. Ambitiously, the author does not suffice only with the normative analysis of human rights in the Constitution, but through the questions that arise, such as freedom or equality, cost of human rights etc., he attempts to promote the legal debate on the concept of constitutional principles, going further with the idea that, in the future, the concept of human dignity, from a constitutional principle, will be conceived as a constitutional *right*. As an argument in relation to this part, the author brings to attention some of the Constitutional Court decisions (decision, no. 65, dated 10.12.1999, decision no. 34, dated 20.12.2015 etc), which are memorable in the multitude of decisions it has rendered, valuing the principle of human dignity, as a principle from which other rights can be enjoyed. It further analyses the concepts on principles that are in fact directly related to the provision of fundamental rights and freedoms in the Constitution. Although the questions raised in this chapter are elaborated and argued within the space allowed by the scope of this paper, the author is aware that ideas and problems related to the issues he raises, require a broader approach, thus probably designing a separate study in the future.

Based on his experiences as a legal advisor at the Supreme Court and Constitutional Court, as well as in public positions such as that of the Chairman of Central Election Commission, the author "*avails himself*" of the experience in these institutions to analyse the concept of *constitutional procedural guarantees*. These guarantees are analysed in both doctrinal and jurisprudential terms, highlighting the essential elements, such as the rigidity of the Constitution, self-enforcement of its provisions, as well as the limitation of human rights only by law.

The focus in the context of *constitutional jurisdictional guarantees* is shifted more to the role of ordinary judges (*a quo*), who, as the author states, share their role as guarantors of constitutional rights and freedoms in full subsidiarity with the Constitutional Court. This means that without proper philosophical interpretation, without highlighting the meaning and purpose of the norm/rule in judicial proceedings, those rights that are declaratively enshrined in the Constitution cannot be protected and obviously we cannot speak of an independent judiciary.

Special attention regarding the constitutional jurisdictional guarantees for the protection of freedoms and human rights, is paid to the constitutional

bodies, such as the People's Advocate (Ombudsman), Constitutional Court etc, explaining and stressing their constitutional role and function, but also the constitutional responsibility these bodies have, for the protection of individual freedoms and rights.

The People's Advocate (Ombudsman) appears from a very interesting and controversial point of view, in terms of his function and competencies that the Constitution recognizes as such, such as his role of informing, explaining, recommending etc. The author emphasizes the lack of an instrument with legally binding effect in his hands, which "fades" the role of the People's Advocate as an independent constitutional body for the protection of human rights and freedoms, thus calling into question the effectiveness of the Ombudsman as a protective instrument for the purpose of Articles 13 and 15 of the ECHR. However, with an objective attitude, the author deems that the institution of the People's Advocate, within the constitutional and legal framework, notwithstanding its recommendatory function, has adequate capacity to contribute to the guarantee of fundamental rights and freedoms, because its presentation as such institution, less conflicting and cost-free over time, has enabled to increase the confidence of complaining individuals.

The role of Constitutional Court remains equally important and in the focus of this publication, where the author, with a high level of professionalism, in addition to clarifying the constitutional position of this body, properly analyses the situation with the latest constitutional amendments of 2016, where special attention has also been paid to the Individual Constitutional Appeal (ICA), as a fresh component in view of expanding constitutional jurisdiction. On the other hand, he mentions the negative consequences that may lead to the overload of the Constitutional Court and not infrequently to potential disputes between it and ordinary courts. Regarding the protection of individual rights, although in some of its decisions against Albania ECHR has mentioned ICA as an ineffective remedy for some rights (as long as the Constitutional Court decisions have a purely declaratory effect and there is no compensation in favour of the party), this element is viewed optimistically by the author, because the interpretation of the concept of due process principle is seen not only in procedural terms but also in the substantive one. Further, ICA prevents unconstitutional actions of public authorities. However, the author does not hesitate to be critical regarding the changes of 2016, where according to him, Law no.7561, dated 29.04.1992 "*On some amendments and additions to Law 7491, dated 29.04.1991, "On the Main Constitutional Provisions"* more specifically regulates the "*correction of consequences and compensation of damage caused*". Following the new changes, there is no longer the correction of consequences but only the compensation of damage caused.

## **A few words as book reader**

The publication in question, as I have stated in the presentation held at the premises of UET, comes at a key moment, as a delayed and missing book for the audience. Although there are similar publications in the field by other scholars, the author brings this publication as a philosophical approach to human rights and constitutionalism, producing both a bold and qualitative work. This book, although not the first from the author, reflects his maturity in the professional field and the valuable experience over years, and in my view, also the sensitivity as a human being, which has rights and should enjoy them.

It is worth noting that this book is also the product of a very rich bibliography and accurate scientific reference, which serves as a valuable contribution not only for students of Law Faculties, but also for us as lecturers in the field of law that, in cases when we would like to conduct our studies in this field, we will undoubtedly refer to such a paper of scientific value.

I cordially congratulate the author for the publication of this serious study and wish him further success!

