Bioethical Values and the Constitution of Albania

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Abstrakt

The ability to intervene of biological processes, for some time ago treated as fixed and immutable, precisely due to the development of medical science, which integrates more and more with other sciences, but also (and, in certain cases, especially) the way in which the progress of the medical sciences are considered in the light of different beliefs (faith or ideological) make it the subject of bio-law is constantly evolving. The social context, which presents changing and "liquid" (from the perspective of Zygmunt Bauman, among the works see. Liquid Modernity, ed. Laterza, Bari, 2011) because it characterizes the contradictions of an individualistic society, uncertain and vulnerable, offers spaces for changing the function of law, which must first of all find a new legal categories most suitable to define the interpersonal relationships in the light of a hierarchy of values. The Albanian Constitution, when it detects the legal principles protecting broadly the human person, establish the limits of human behavior and the actions of state institutions and the state, shows the character of its modernity and its consistency with the content of international instruments which, subject to criticism on the effectiveness of the protection limits ,establish as a legal principle the protection of the dignity of the human person, the principle from which all other fundamental rights of the person.

Keywords: *Bioethical, Albania Constitution, fundamental rights, dignity, legal framework.*

Bioethics and bio-law in a multicultural society

In 1970, facing the rapid progress of biomedical and biotechnology, to the discoveries in the field of genetic engineering and the growing ability to manipulate human life and the ecosystem, it came a new subject and a new way of putting

together < <biological knowledge (bio) with knowledge of the system of human values (ethics) >> (VR Potter (Bioethics. the science/ "> Science of survival, In Perspectives in Biology and Medicine, 1970, 14, 1, pp. 127-153; ID, Bioethics. Bridge to the future, Englewood Cliffs, New Jersey, 1971). The purpose was to unify the knowledge to protect the human person and the environment, understood as its habitat, because the indiscriminate testing of biomedicine humans began to be perceived as dangerous and not as a factor of progress. So, the ethical problems that stemmed from scientific progress without rules poses the need to find moments of connection between scientific knowledge and humanistic knowledge in order to use the new knowledge to improve the quality of life.

In this perspective, even biolaw acquires its own scientific importance, since it supports the ethical choices and help social actors to take decisions, which should be beneficial to the welfare of the human person. In fact, thanks to the progress of science change the customs and ways of looking at the individual situations of social phenomena, changing the mindset of people and changes the relationship with the heritage of values and beliefs that underpin social cohesion. The dynamism that presents the company puts into play the fundamental and sometimes dramatic aspects of life of people, who are constantly involved in all the manifestations of human dignity. Inevitably, the positions are controversial, because the answers will also vary dramatically depending on the reference values. This conflict is strongly advised especially for the multi-cultural and multi-religious characterization of our society, in which live community realities often profoundly different. This effect of globalization requires a systematic study of the principles that guide the conduct of individuals and communities within the social and legal systems that are becoming increasingly complex. In terms of the observation of social phenomena, the different visions of life concern concrete problems that affectprotection of physical life, health, organic life of the body, of the generation, development, old age, death, that they are interested more and new problems placed at the borders of life and human dignity.

The ability to intervene of biological processes, for some time ago treated as fixed and immutable, precisely due to the development of medical science, which integrates more and more with other sciences, but also (and, in certain cases, especially) the way in which the progress of the medical sciences are considered in the light of different beliefs (faith or ideological) make it the subject of bio-law is constantly evolving. The social context, which presents changing and "liquid" (from the perspective of Zygmunt Bauman, among the works see. Liquid Modernity, ed. Laterza, Bari, 2011) because it characterizes the contradictions of an individualistic society, uncertain and vulnerable, offers spaces for changing the function of law, which must first of all find a new legal categories most suitable to define the interpersonal relationships in the light of a hierarchy of values.

The new relationship between law and social context characterizes the segment of bio-law, characterized by an interdisciplinary research method. In fact, cases and issues of which the law is concerned must be considered and analyzed using an interdisciplinary approach, both within the legal world (and, therefore, from the point of viewthe constitutionalist, the criminal, the comparatist, the civil lawyer, the right of religion, etc.) and in a broader scientific space that encompasses not only the right also other disciplines, such as medicine, psychology, sociology, history, theology, etc. In essence, the interdisciplinary character is motivated by the need to identify the most adequate to safeguard the dignity of the human person and his fundamental human rights instruments. Moreover, precisely the multicultural character of the society (in which coexist values, moral rules, religiosìni, different legal principles) leads us to argue that the only elements of unity are those that are directly related to the human person, his rights and fundamental freedoms .

The bio-law and the rule of law

Multiculturalism implies somehow the accentuation of a character of mutability in society, to overcome conflicts must find solutions that promote peaceful change of interpersonal relationships. This is evolutionary requirement, which impacts directly on the same concept of law. In fact, the legal concepts are being tested by the changing socio-political situation and the facts, determined by the unstoppable processes, such as globalization and the fall of the borders.

The notion of rule of law is based on some simple premises, that is focused on the action of the State the value of the human person, his fundamental freedoms, the formal equality the value of people, the value of autonomy and ' personal self-determination.

It follows that the recognition of the fundamental rights of citizens and persons assume the function of fundamental principles whose legal content intersect with other principles necessary for the same survival of the modern state (such as legal certainty, the value of the principle of legality, the impartiality of the Public Administration and Judges). The term "State" (Rechtsstaat) law was affirmed in the literature of the early German liberalism in the early nineteenth century, when it was looking for a new model of the state in which redefine the relationship between political power and legal persons physical. But, it is obvious that the characteristics of a state of law are not remained static in time, because they have been modeled by a dynamic principle.

The content of the rule of law (Rule of Law) has known the tragedies of the twentieth century dictatorships (Nazism, fascism, communism, dictatorships of the right and left) and contamination of ideologies: Albania itself has been the

victim of a brutal dictatorship . In these dramatic experiences, the right has lost sight of the centrality of the human person, favoring a technical and formalistic conception, tying the SLLS law "will" of the state free from religious and moral rules. At the end of World War II, however, mankind has had a burst of dignity and began to build in the international community a legal and political unitary system of guarantees of the rights and fundamental freedoms, outside of a rigid conception of the state, giving value to the act and international conventions (in this context it is important to the UN birth) and attributing a fundamental value not only to the fora that were born in the aftermath of the second World war and dictatorships, but also to religions, which however, they have never yielded in the face of dictatorships.

The return to the value of the human person was a first element of dynamism in the concept of law, which has been enriched with multiple meanings and meaningful experiences with regard to the forms that democracy was taking. However, despite the widespread view that the rights and fundamental freedoms were to be constantly defended and defined, the bipolar division of the world power determined a silent war climate that was felt negative influences on the human condition. It can be said that until the fall of the bipolar system, symbolically represented by the fall of the Berlin Wall, while it was growing awareness of the importance of affirming the central value of the system of rights and fundamental freedoms on the other their effective protection He became more and more problematic. the divergence between the statement of rights was becoming increasingly clear (supported by the approval of solemn acts, such as the Universal Declaration of Human Rights of 1948, the European Convention on the Rights and Fundamental Freedoms of 1950 up to the Charter of fundamental rights of the European Union in 2000) and the birth of international fora such as the OSCE, increasingly in defense of peace and cooperation, and the continuing violations, which made problematic their effective protection.

The fall of the bipolar system, which can be considered as an event caused by the reaction of the people to systematic state repression, constitutes another element that has affected the development of the concept of "Rule of Law". The "Iron Curtain" (as it had to define Churchill) was not only the division between governance models, but it was the compression of citizen participation in the political life of countries. It was not just the juxtaposition of models of society, they had different conceptions of democracy, but the common effect of bipolar climate was compression, more or less marked the democratic participation of citizens in the two fronts.

The change in the international scenario has placed a further stone on the road to change the internal political situation in individual countries and the concept of rule of law, which, at least from a formal point of view, considered more broadly the right of the person to participate in social life.

In fact, after the fall of the Wall in 1989, especially in Eastern European countries, we are witnessing a structural earthquake that causes the crisis and the fall of the communist regimes. In this context, changing the conditions of organizational models and to date in 1991 are witnessing a season of the revision of the constitutions, which, in general, are made more consistent with the system of protection of rights and fundamental freedoms and the right the democratic participation of citizens. In this innovative process they were also involved the countries of the southern Mediterranean, which were part of the bipolar division.

Finally, the unification of Germany, conceived in July 1990 in a direct conversation between Chancellor Kohl and Gorbachev, represents a modification element of the concept of law, in recognition of a people, considered in its entirety, of a full sovereignty with effects in international fora, was resulting in the participation of the Federal Republic of Germany to NATO and other alliances (see. in E. Di Nolfo, History of International relations. from 1918 to the present day, Bari, 2008, pp. 1336 -1339).

Social and political events, which have been mentioned previously, are intended to support the idea that the concept of "rule of law" is dynamic and polysemic, it depends on how the constitutional process evolves in individual countries. Therefore, it is appropriate that in the face of the various possible models essential to identify the minimum requirements, which define the "rule of law": they consist in the protection of fundamental freedoms, the principle of equality, the separation of powers, the principle of legality. These elements are necessary for the identification of the concept of "rule of law", they can be combined in different ways in the history and culture of peoples and can give rise to different models of law.

Albania and the rule of law model: the protection of the human person

In this perspective, Albania's political and legal evolution towards a right to "state model", having in the center the protection of the human person, is emblematic. February 20, 1991 officially marks the fall of the Albanian communist regime, which since the end of World War II had systematically tortured the people, justified by the planned construction of a state atheist and communist. The regime's fall was an act of people, who for over a year had freely expressed and protested (hunger strikes, secret meetings, student unrest, demolition of the regime statues, etc.), marked by the revival of religions. Applies to all the memory of the Mass celebrated in the chapel of the cemetery of Scutari by Don Simon Jubani, which urgently requested by the people, 4 November 1990 had the courage to celebrate the Eucharist. On

the other hand, emblematic of an irrepressible desire for freedom was the story of the ship "Vlora" in the port of Bari in August of 1991. The research and the desire for freedom and participation have led the collective reaction to the fifty years of dictatorship, that had the merit of bringing to Europe the country. The need for democracy has manifested itself as the conquest of a status and dignity, although due to the historical lack of experience searching for a democratic experience was initially rated and oriented by the old values in the Albanian tradition, beginning with the "Hanun."

Albania's path towards the "rule of law" after twenty-five years of regained independence and freedom is marked by a legal standpoint by the redefinition of the values at the foundation of the new state, who have been enrolled in the new Constitution of 1998. Respect human rights, in the light of the country and crisis that characterized the period following the fall of the regime (particularly serious one in 1997) was one of the major problems to be solved. The question takes on greater importance especially in view of the Association Pact for EU membership.

Albania, gradually and in great efforts, is passing, after a period of difficult transition, from an imitative phase of democratic models, adopted by the Western democracies, often out of necessity and convenience, in models that take better account of the traditions and values typical of the ancient history of the Albanian people and their self-determination. In this perspective he has adhered to the various international forums (OSCE, NATO, the Council of Europe) and has signed several international agreements (such as in November 1992 agreement with the European Economic Community on trade and commercial and economic cooperation ; in February 1992 ratifying the International Convention on rights of Childhood, in October 1991 joined the International Covenant on civil and political rights of 1966, ..).

Accession to the CSCE (later OSCE) assumes great importance, because Albania has had to fulfill the four conditions of access (free elections, currency convertibility, free market and freedom of religion) and had to produce a series of legislative acts content constitutional break with the past and to move towards a democratic system. In this perspective and with reference to the specific issue of religious freedom, Albania has had to prepare in 1991 a constitutional law (no. 7491, consists of 42 articles) which guaranteed citizens the exercise of fundamental human rights (the rights of freedom of expression of thought, to appeal, the electorate, of organization, etc.).

For Albania the reconstruction of the parameters, which allow detection of the "rule of law", is a target closely linked with its aspiration for EU membership. In June 2006, after a long preparatory phase,Albania has signed the Agreement with the EU Stabilisation and Association Agreement, which aims precisely to guarantee security in the Balkans, which in the nineties place of numerous wars, which have mutual interest

to EU membership and the development of regional cooperation between the countries, as stipulated in Article 1.2. Therefore, for the purposes of fundamental EU accession of Albania is the adaptation to the fulfillment of the Copenhagen criteria (political criteria, economic criteria,adherence to " acquis communautaire).

Among these criteria, consistent with the requirements of Articles 6 and 49 of the Treaty of Maastricht, as subsequently revised in the European Council held in December 1995 in Madrid (which predicted that the candidate countries must adjust their administrative and legal structure to make so that European legislation can be effectively adopted in national legislation), the political criterion refers to the imperative need for the country to be made stable institutions guaranteeing democracy, the rule of law, human rights, respect for minorities and their protection.

The "rule of law", therefore, is one of the pillars on which the European Union because it constitutes the framework in which are protecting the fundamental rights of the human person and the system of freedoms, including freedom of religion, which constitutes a parameter for all other freedoms. For this, recentlythe European Commission adopted a new legal framework that allows to cope with the threats to the "rule of law" in any of the 28 EU Member States. Article. 7the Lisbon Treaty provides for an infringement procedure, which, in the case of "serious and persistent breach" of EU values by a Member State provides for the suspension of voting rights. In this tool, sometimes considered of limited effectiveness, the Commission added a complementary instrument for early warning, aimed engaging in dialogue with the Member State concerned to avoid the escalation of systemic threats to the rule of law. The alert procedure states the strengthening of the link between human rights and the "rule of law", because from this bond depend on stability and democratic participation[1].Barroso, when he was president

[1] **Key features of the new framework Rule of Law**
The new framework is based entirely on the existing EU treaties and integrates existing instruments, ie the procedure of Article 7 of the Treaty on European Union (TEU) and the infringement procedures initiated by the Commission. All this of course does not rule out future changes to the Treaties in this area.
It is focused on rule of law, the foundation of all the values on which the Union is based. Ensuring respect for the rule of law, it also supports the protection of other fundamental values. Inspired by the principles enshrined in the jurisprudence of the European Court of Justice and the European Court of Human Rights, the Commission adopted a broad definition of the rule of law, meaning essentially a system in which the laws are applied and enforced (cfr. Attached 2).
The framework can be activated when there is a systemic disorder that compromises the integrity, stability and proper functioning of the institutions and set up mechanisms at national level to ensure the rule of law. The EU framework is not designed to deal with personal situations or isolated cases of violation of fundamental rights or miscarriages.
Equality between Member States: The framework will apply with same conditions in all Member States and will use the same reference criteria for deciding what to consider systemic threat to the rule of law.
The EU framework establishing a sort of early warning mechanism to deal with threats to the rule of law by allowing the Commission to initiate a dialogue with the Member State concerned to find solutions before having to apply the legal mechanisms provided for in Article 7 TEU.

of the Commission, in his State of the Union in 2012 had stressed the importance of strengthening the rule of law, as an EU founding value required for a step towards political union of Europe . This statement is even more important because it has been ratified by the resolution adopted by the European Parliament July 3, 2013 (in line with the conclusions of the Justice and Home Affairs Council of 6 June 2013[2]).

Until the approval of the Charter of Nice rights, the protection of fundamental rights in theEuropean Communities(afterMaastricht Treaty,European Union) Was almost exclusively the product of case law of theCourt of Justice. With the exception of a general reference in the preamble ("... determined to strengthen the defenses of peace and freedom"), theTreaty of RomeIt contained no reference to

Within this new framework the rule of law, the European Commission plays a role centralenella his capacity as the independent guardian of the Union's values. It can draw on the experience of other European institutions and international organizations (in particular the European Parliament, the Council, the European Union Agency for Fundamental Rights, the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE), etc.).
Process in three phases
The framework is intended to enable the Commission to find a solution with the Member State in question so that you do not experience a systemic threat to the rule of law that can be transformed into a "clear risk of a serious breach" resulting in the potential need to apply Article 7 TEU. If there are clear indications of a systemic threat to the rule of law in a Member State, the Commission may launch a "pre-Article 7 procedure" by undertaking a dialogue with the Member State in question. The procedure of the process involves the following three stages (see. The pattern of Annex 1).
Assessment by the Commission:the Commission will collect and analyze all relevant information and assess whether there are clear indications of a systemic threat to the rule of law. If it concludes that it actually constitutes a situation of systemic threat to the rule of law, initiates a dialogue with the Member State in question by sending it an "opinion on the rule of law" - a kind of warning to the Member State - in which exhibits and motivates his concerns. The Member State concerned will have the opportunity to respond to formulati.Raccomandazione findings of the Commission: in the second stage, unless the matter has already been resolved in a satisfactory manner, the Commission will pay to the Member State concerned a 'recommendation Rule of Law " , inviting him to solve within a certain period the problems identified and to communicate what measures adopted to this end. The Commission will make the recommendation public. Follow-up of the Commission's recommendation in the third phase the Commission shall monitor the action taken by the Member State in question has given the recommendation. If you have not given a satisfactory result within the time limit, the Commission may use one of the mechanisms provided for in Article 7 TEU.
The whole procedure is based on a continuous dialogue between the Commission and the Member State in question. The Commission regularly and fully inform the European Parliament and the Council on the procedure.

[2] cfr. also SPEECH / 13/348. Since 2009, the European Commission has faced several times in critical situations in some Member States, which have highlighted specific problems related to the rule of law The College of Commissioners held an initial policy debate on how best to safeguard the rule of law in the European Union during the seminar organized in August 2013. Subsequently, in his speech delivered in September at the Center for European Policy Studies, Vice-President Viviane Reding explained by what lines could in his view be called a European Union under any rule of law (SPEECH / 13/677). The Assises de la Justice, a high-level conference on the future of justice in the EU which took place in November 2013 and attended by 600 stakeholders and interested parties, have devoted an entire session to the theme "Towards a new mechanism for the rule of law."

fundamental rights. However, even with the Stauder judgment, C-29/69, 1969, the Court of Justice had occasion to remark that the fundamental rights "are part of the general principles of Community law, of which the Court ensures compliance."

Subsequently, the Court made it clear that the protection of fundamental rights under Community law is inspired by "the constitutional traditions common to the member states", and must be assured "the famous Internationale Handelsgesellschaft judgment, C-11/70 of 1970, within the ' context of the structure and objectives of the Community ". In Hauer, C-44/79 of 1979, is the first reference to the European Convention on Human Rights ("the Community legal order, the right to property is protected in the same way the ideas common to the constitutions of the member states, incorporated in the additional Protocol to the European Convention on human rights "), intended to consolidate and become more frequent in the Court's case law on fundamental rights.

Based on these principles, the Court developed in the following years, with no textual basis in the Treaties establishing the European Communities, a catalog of fundamental rights and principles of Community law which includes, for example, the principle of proportionality, the right to property and freedom of economic initiative, the principle of equality, freedom of religion, freedom of association, protection of legitimate expectations, legal certainty, etc.. With this law the Court of Justice reacted to certain judgments of the German and Italian constitutional courts, which had identified the protection of fundamental rights is a limit to the application of Community law in the national legal systems (Bundesverfassungsgericht, judgment of 29 May 1974, called Solange I. Court Italian Constitution, judgment no. 183/1973).

Developing case law on fundamental rights, the Court of Justice intended to subtract the application of Community law to control the respect of fundamental rights exercised by national courts. At the same time, the Court was laying the groundwork for the Charter of Rights signed in Nice, which is largely a compilation and consolidation of its case-law on fundamental rights.

The protection of the human person in the Albanian Constitution and in the perspective of bio-law

The Constitution of the Republic of Albania is the act by which it is solemnized the constitutional process, which began after the fall of the scheme with the Constitutional Law number 7491 of 1991, which abrogates the previous system, and with the Law on Human Rights and Freedom in 1993. After six years of tensions and political conflicts, the text consists of 183 items was definitively approved in the month of October 1998. A legal guiding principle of the Constitution is to guarantee and protect the rights and

freedoms of the human person in absolute discontinuity with the previous dictatorial regime. << The dignity of man, his rights and freedoms, ... pluralism, national identity and inheritance, religious coexistence, as well as understanding of the Albanians against minorities >>, which establishes the art. 3, are the principles at the foundation of the State << >>. The importance of the new legal framework is confirmed in the following art. 9.1, which stipulates the formal and solemn acceptance of international standards of protection of freedom of conscience and religion, as well as have been established either in the Universal Declaration of Human Rights of 1948 and in the European Convention on Human Rights. The new Constitution not only meets the criteria set by the Council of Europe for the countries wishing to be part of this organization, but does not forget to emphasize the importance of the peculiar history of the Albanian people and its "family", a history characterized by centuries of religious pluralism and peaceful coexistence within a framework of self-determination. The constitutional rules and legal principles contained therein are influenced by the history of the country and the particular culture of coexistence, which, despite the long Ottoman rule and the harsh years of communist dictatorship, has been able to build integration processes when it comes to achieving goals common, considered superior, and when it came to defend or assert the albanesità.

The Constitution already in the preamble, where there are points that are at once a programmatic line and the rediscovery of traditional values, recognizes the importance of the "rule of law", which considers to be closely combined with the protection of fundamental freedoms of the human person. A second point is the call to faith in God and the universal values. Finally, the third element is the identity and unity, closely joint values, which are typical of the Albanian people.

The analysis of the individual articles in which the Constitution protects the human person allows you to check the compatibility of the constitutional principles with the categories that govern the bio-law, who, responding toscientific ethicsi problems, is based on freedom and personal dignity ..

For example, Article 21 of the confidential part of the rights and personal freedoms (chapter two) states that << The individual's life is protected by law >>, that is, affirms the principle of legality, which should be the guide for the state, for the institutions and the citizens themselves. Legally speaking, the rule of law expresses a garantista choice and consistent legal system liberty with the "rule of law", which has its own in the rule of law one of the essential characters. This means that, under Article. 21 of the constitution, the issues that concern the various manifestations of human life (consider, for example, the problem of euthanasia) must be based on the law and that law must be based on the intervention of official authority.

Even the precept in the article art. 25, which states that << No one shall be subjected to torture, inhuman or degrading treatment >> responds to the principle of inviolability of the dignity of the human person and requires consequential

negative behavior, in the sense that in no way and no law or other measure it can justify inhumane treatment. Thus, the conduct of the people and institutions of the state structure, as required by the bio-law, are oriented by an ethical and legal principle, which is right in the dignity of the human person its source and its limit.

Biolaw touches all issues concerning the lives of people in all its stages and in its kinds. This perspective is considered in consideration of art. 54 of the Constitution[3]Which protects the condition of the weak subjects with regards to specific circumstances of life, committing the state to bring a special protection. Important is the protection of children's rights, especially when it is in danger his health, his growth and generally his own life. Even the content of Article. 55, recalls the particular content of the bio-law applied to the phenomena of the life of the body, development, maturity, old age, of health, of human disease and death as well as new problems that, in these areas, develop border of life..

The Albanian Constitution, when it detects the legal principles protecting broadly the human person, establish the limits of human behavior and the actions of state institutions and the state, shows the character of its modernity and its consistency with the content of international instruments which, subject to criticism on the effectiveness of the protection limits ,establish as a legal principle the protection of the dignity of the human person, the principle from which all other fundamental rights of the person[4].

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[3] **The text of Art. 54 provides in its three points:**
1. The childhood, youth, pregnant women and young mothers have the right to special protection by the State.
2. Children born out of wedlock have the same rights as children born within marriage.
3. Every child has the right to protection against violence, abuse, exploitation and the use for work, especially under the minimum age of child labor, which can damage the health, morals, or endanger his life and his normal growth.

[4] For example we can mention: the Convention of 1965 against racial discrimination, that of 1984 against tortua, the African Charter on Human and Peoples' Rights of 1981, the Arab Charter on Human Rights of 1994; there Oviedo Conventionof 1997, in particular with regard to the preamble and Art. 1; the Universal Declaration on the Human Genome and Human Rights adopted by UNESCO in 1997;The European Convention for the Protection of Human Rights and Fundamental Freedoms(ECHR) and is based, obviously, on the concept of dignity, used as a foundation on which to build the complex system of human rights and fundamental freedoms; the**Treaty of Lisbon**, Which it gave constitutional status at European level of human dignity and the Charter of Fundamental Rights of the European Union, which in Article 6, paragraph 2, attribute great importance to human dignity.

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