

SECTION IV: NEW TENDENCIES IN PUBLIC ADMINISTRATION DEVELOPMENT

Determination of Human Conduct in the Light of Legal Norms

Ph.D. Ioana Cristina VIDA¹

ABSTRACT

The work aims to start from the premise that the social constraint are the basis of the elaboration of legal norms. A consequence and, at the same time, a goal of legal norms is indeed creating social order. The direct addressee is the human existence and defending it through legal norms. Also, the paper analyzes the ideal human and the contribution of legal norms to its realization. Last but not least, we will show the necessary aspects that are imposed for the sanitation of social life by diurnal imperfections, caused by the breach of law, legislative antinomy, and discriminations and the reinstatement in rights. We will try to reach the conclusion that happiness represents the esplanade of all human desires and that all the people deserve to have the right to be happy.

Keywords: *the right to happiness, rights and freedoms, the elimination of inequities and discrimination, reinstatement in rights*

The State lives through the society, the society „exists“ through its citizens and the citizens „are born“ only due to the fact that their predecessors have acquired rights and freedoms throughout history. Human rights and freedoms, as we know them today, were not always been recognized. In order to be able to discuss nowadays about „generations of rights“, many different types/typologies of wars were led. To discuss in the XXIst century about primordial rights and try to record them as such seems to be redundant given that companies focus on innovation developed by bioethics, green energy or medical engineering. However, on the world stage it emerged a movement that wants to be recognized from the legal point of view the right to happiness. According to the Explanatory Dictionary of the Romanian Language, happiness is a „state of intense and full emotional gratitude“. Therefore, happiness is an aspiration and human fulfillment due to objective factors related to the material conditions of human existence and subjective factors stemmed from the way the human mind perceives accomplishments,

¹ ioana_vida@yahoo.com

degree of realization of its aspirations and determine for each man that state of bliss that generates positive effects of social life on his own being.

In legal terms, happiness is inextricably linked with the realization of the rights, freedoms and fundamental duties, the fulfillment of the aspirations which they advertise on the field of human existence.

The issue of the existence and recognition of the right to happiness itself is not relatively new. If the doctrine discusses the right to happiness, in pre-federal constitutions of the American states there is enshrined the right of everyone to seek their own happiness, while on the Asian continent the happiness is a notorious country brand.

First, in the recent doctrine, represented by William F. Lawhead (2011), it is considered that the pursuit of happiness is part of the typology of *a priori* or obvious rights („the idea of *a priori* or self-evident human rights”). Secondly, in the opinion of Cesare Beccaria (2007), happiness is a premise for the social organization and understanding „(...) laws, which however are or should be pacts concluded between free people, not in general but a instrument of several passions, or arose after a fortuitous and transient needs; not at all dictated by an impartial student of human nature to lean on the actions of a crowd of people and subordinate them, focusing them following terms: happiness maximum divided as much”. We note that the two definitions have an integrator effect in the sense that the man is born free and, from the start, he has the right to be happy; these two interdependent and inalienable rights of human society provides the premises of the functionality of the human society.

According to John Rawls (2012), „a person is happy when it is more or less about to execute a rational plan of life, set conditions (more or less) favorable and safe enough that his intentions may be realized”. Achieving happiness, Rawls says, „depends on the circumstances and luck”. From this point of view, happiness is characterized as being speculative in the sense that it depends on the free will and, once achieved, can positively influence the actions taken. Beyond its fiery nature, the state of happiness can pragmatically influence the individual, in the sense that it foreshadows a long-term plan, designed to meet the targets.

In another approach, John Locke (1999) emphasizes the idea of „property”, which is an individual's personal right and guarantees him not only wealth, but also happiness. Thus, the property in an exhaustive domain, „lies both in the center of things and outside them, marking not only a personal territory but also foreshadowing an identity”. Regarding the idea of identity, John Locke believes that the property is a sum of all interests and rights which man cherishes and wishes to safeguard in an organized political community. On the conceptualization of happiness through the relationship of interdependence between property and human identity created we appreciate that they really are related because the individual identifies with his assets only to the extent of belonging to a community. Therefore, article 59 of the Romanian Civil Code establishes that the individual's identity assumed „the right to have a name, right to have and to own a home, also a residence as well as a civil

status acquired under the law". Thus, we agree with Francesco Viola's (1995) opinion „*acquiring human identity that takes place with our specific life*".

Last, but not least, in Isaiah Berlin's (2010) conception the freedom implies the absence of obstacles to the fulfillment of desires. In other words, as long as man is free from prejudice and discrimination, freed from the tutelage and inequities when the pursuit of happiness is guaranteed to satisfy all needs and assimilated his needs and desires.

At the level of the political discourse it was officially recognized that happiness is the engine that motivates every individual. The right to seek happiness is recognized since 1776 by the adoption of the Declaration of Independence of the United States of America. The Declaration of Independence proclaims the individual's right to seek happiness, along with the right to life and freedom. According to William Pencak (1990), the right to seek happiness as perceived in the Declaration of Independence merely stated to proclaim the truth self-evident *because people are equal from birth*. Therefore, it can be concluded that the right to happiness is inherent in all the other inalienable rights of man and acquires its own existence in the same way that the right to life, right to a name, the right to education, right to work, right to security social etc. They are recognized without discrimination.

Taking inspiration from the Declaration of Independence, several countries in the Americas have included in their constitutions a legal basis for the right to seek happiness. In this regard, the Constitution of the State of Virginia enshrines terminologically the concept of happiness and safety, in an interdependence relationship, which reflects a political purpose.

American Constitutionalist practice took Greek philosophical concepts of goodness, of truth, morals and welfare and placed them in the center of human reality, regulating social relations thereunder.

On the Asian continent, the idea of happiness appeared in 1972 at the initiative of the Fourth King of Bhutan, the Dragon King, Jigme Singye Wangchuck and had as a goal to build a sustainable economy. Bhutan has proposed to raise at the rank of a fundamental principle the Buddhist spiritual values and the country's gross national income to be measured happiness not money. Within this approach, the right to happiness may result in sustainable development, preservation and promotion of cultural values, conservation of the environment and establishment of good governance. We note that these guidelines are not foreign, but part of the guidelines that guide public policy.

The right to happiness had preoccupied the constitutional contentious courts and they interpreted happiness as another face of freedom.

The German Constitution emphasizes the dignity of the person (art. 1 para. (1) of the German Constitution). According to the constitutional text „*any individual should not be turned into an object of interest of his own welfare*". Therefore, the German Federal Constitutional Court in Karlsruhe in Case Elfes (Elfes 6 BVerfGE 1957 - 32) had analyzed the relationship of travel restrictions for reasons of security, freedom

of movement and the concept extended to constitutional order. In this case, the Court rejected the applicant's request of extending the validity of the passport by the relevant authority, without further motivation than the reference to the law on passports. The Court began by specifying that the right to leave the country is not part of the right to free movement. Despite this, he is not without constitutional protection. It is part of the right to free development of personality. And the free development of personality „implies not only the development inside the nucleus of personality that makes a person human being endowed in terms of spiritual and moral. It would be incomprehensible how could infringe development within this zone core morals, rights of others or the constitutional order of a liberal democracy. „According to the Court, it is these latter limitations mentioned denotes the fact that the Basic Law envisages the right of appeal generally. Therefore, the Court inferred from article 2 para. (1) of the German Constitution a general right of freedom with limits set by the basic law. The Court concluded that when vital areas are not protected fundamental rights specific individual affected by interference state can invoke this provision, if it considers it appropriate that he breached freedom. According to the reasoning of the Court, a law can be considered in line with the constitutional order only if they comply with the "principles of the rule of law and the welfare state social". Dignity, the right to personal development, the horizontal effect of fundamental rights and the role of two important concepts – *Rechtstaat* active state (which requires the principle of proportionality) and *Sozialstaat* (which requires the State to adopt measures to ensure the minimum level of material existence, so people be part of a standard personal safety and to be able to go there without being affected dignity) is for the Germans the inherent premises for the pursuit of happiness.

Remembering the historical, political, doctrinal and jurisprudential references, on July 19, 2011, the United Nations unanimously adopted Resolution no. 65/309 „*Happiness: Towards a holistic approach of development*“. Consequently, the right to happiness was included on the agenda of global development. UN Resolution no. 66/281 of June 28, 2012 and therefore March 20 was designated International Day of Happiness.

In response to the UN's Resolution of 2011, France founded the same year, the International Institute of Happiness („l'Observatoire International du Bonheur“) in order to become a true research institute in which collaborating researchers, teachers & students & citizens work together to identify, analyze and promote innovative impact that it has the concept of happiness to the world economy over politics, the humanities and the social sciences. To date, this is the only institute of its kind that promotes dynamic interactions between law and happiness.

Nor the European Union allowed outdone, and adopted the Declaration of Pallini – right to happiness in 2014. The declaration was adopted in the context of the European Union's refugees crisis, in the context of state of conflict smoldering and general unhappiness in Greece. The objective of this political statement is to convince

the European Parliament to adopt policies also from an humanist perspective and to recognize the right to happiness in the EU as a fundamental human right. Not recognizing the right to happiness equals to a breach of this natural right.

Thus, the movement of development through happiness is trying to influence European public policy agenda to amend the legislative framework so happiness „becomes” an index of government work program. Moreover, Tudor Panțiru (2015) analyzed the relationships that can be formed between law and happiness and the consequences that may arise in law.

In the work and debate panels that focused on the „right to happiness” „appeared several questions arise: „All individuals deserve to be happy or deserve to be fulfilled?” „Happiness is a byproduct of success or circumstance inherent free access to all the rights enjoyed by individuals in a given society?” „Can happiness be a fundamental human right?”

As far as we are concerned, we must distinguish between the right to happiness and the right to seek happiness. In our opinion, the right to happiness could be incorporated as such in an act, because happiness is its own, is largely subjective and involves a search and a personal appreciation. In a totally different situation placed the right to seek happiness, human potential capable of legal protection.

This distinction operates through the premises of the general theory of law.

First, social constraint is the foundation of developing legal norms. A consequence and at the same time, an object of juridical norms is even creating social order. The direct addressee is the human existence and its defense by legal standards. Corollary, the human ideal must be surprised, dedicated, accomplished and guaranteed by the legal rules. In this respect, the legislator has a duty to intervene consistently to determine daily social life imperfections caused by violations of legislative antinomy, inequities and discrimination and to reinstate persons not entitled. We conclude that the real possibility of being happy is a providential right. Correlatively, the role of the state is to strive to create a stable regulatory framework, predictable, guaranteeing legal certainty.

Secondly, the stability of the legislative framework of state shows not only a state of certainty for the public and for the private sector, but also a general feeling positively associated with good physical and mental condition. The possibility to be happy is the responsibility of the state, which ensures the basic requirements of a decent life, the right to life, right to education, access to social and health services, access to justice, labor rights, etc. Without social justice or human rights, there can be no happiness. If a state can not guarantee that the individual have a decent living when the state has failed.

Thirdly, the premise of consecration in a fundamental law of the right of the individual to seek happiness lies in making the state to identify and interpret spiritual essence of the individual being totaling trigger all actions and deeds and thoughts that you can have the person carrying rights, freedoms and obligations.

In this context the question arises whether the right to seek happiness can be considered an imperative of society? This right may subsume all social norms? Ioan Vida & Ioana Cristina Vida (2016) considers that social norms are rules of conduct that require a certain behavior of individuals that makes up a given society for the results of their actions to be so effective, desirable and positive. Therefore, the answer to that question is that the right to seek happiness puts together under the same dome all the rights that makes real the physical and psychological welfare of the individual, including the activities and actions in the sphere of civic, political or cultural behavior. Thus, social norms typology focuses on free individual who is present in a society and a community predetermined and that he develops relationships with other individuals and institutions managing public power. About public power, Bertrand Russel (2002) states that it imposes coercive conduct that emanates directly from predetermined legal rules. In this context, the question arises to what extent the right to happiness, which is subjective, personal, atypical, cannot be flagellated in the context of the legal rule expresses a general rule, impersonal, typical and permanent, established or sanctioned by the public power (stately) to ensure social order. With almost the same itinerary as legal, happiness orders and regulates human behavior and human relationships. Happiness is the conduct is an eternal commandment intrinsic human feeling. Happiness does not imply that such liability. Only individuals blocking the possibility of being happy may involve civil, criminal, administrative or disciplinary.

In Romania, citizen's rights and freedoms are guaranteed by the Constitution, which establishes a legal framework within the search for personal happiness is permitted. The question is whether the existing legal framework encourages the pursuit of happiness for the mere perception of the individual that is treated unequally attempt on his feeling of happiness. On the other hand, happiness is personal and can not be weighed or estimated by a state institution, because this would violate constitutional democracy.

Therefore, no great surprise to us that it was born a modern Western-style movement that promotes the right to happiness as a model of socio-economic development. The task falls in the lawyer`s and legislator`s obligation subsequently to develop the concept of social progress, which is the core philosophy of happiness, fundamental human values, cultural diversity and multiligvismul.

Therefore, the „cosmopolitan" character of human rights (Nicoleta Adriana Odină, 2006), requires a high degree of adaptability and flexibility that should belong to the legislature that would remove obstacles in the way of imminent preservation of human dignity and the values that it entails. Therefore this universally right is recognized as the corollary of a whole manifesto of rights and obligations whithin human rights stands for the human existence.

In this democratic context the happiness clashes violent to the big family of Islamic law as a result of migration exodus in recent years. In front of this Islamic block „traditions, customs and beliefs", Western legislature is forced to qualify the

legal norm in exceptional cases on access to refugees and displaced persons to an independent life and reintegrate into a society not only peaceful but also with other social meanings. Legislator challenge is to find a balance between the demands and dangers facing society, since following the granting of asylum or what happens after the primary recognition of the rights of refugees and displaced persons. The rights of this vulnerable persons targeted are those that ensure autonomy and a development perspective and the opportunity to benefit from social and economic rights. Therefore, the legislature must maintain legal security and to establish a legislative framework for both legal and physical protection, food and accommodation, access to jobs and services such as healthcare and education and housing.

Refugees and displaced persons have left their countries of origin because of violence, civil wars, hunger, water shortages, etc. Basically, these shortcomings gave the impulse to seek a better life, a decent life. In a broader interpretation, we can say that playing the autonomy of the individual, namely the capacity of individuals, households or communities to ensure their basic needs and to benefit from social and economic rights in a sustainable and dignified equals right to regain their happiness.

As a conclusion, we can say that our right to seek the happiness is a valid legal option. The pursuit of happiness is a goal difficult to achieve in the postmodern years era in which humanity suffers from insufficient livelihoods, hunger and inhuman aggression. As such, the right to accept the existence of a road to happiness represents a road paved with man`s fundamental rights and obligations, whose scroll requires effort and sacrifice, shaping justice in the spirit of the rule of law to guarantee the defense of the rights, freedoms and obligations of man.

REFERENCES

1. Beccaria, C., *Despre infracțiuni și pedepse*, Humanitas, București, 2007, p. 41 și urm.
2. Berlin, I., *Cinci eseuri despre libertate și alte scrieri*, Humanitas, București, 2010, p. 74.
3. Lawhead, W.F., *Basic Human Rights*, The philosophical journey: An interactive aproach, The McGraw-Hill Companies, 2011. http://mhhe.com/mayfieldpub/lawhead/chapter6/basic_human_rights.htm
4. Odină, N. A., *Despre constituții și drepturile fundamentale ale cetățenilor*, Curentul juridic, Year IX, NR. 3-4 (26-27), 2006.
5. Rawls, J., *O teorie a dreptății*, Editura Universității „Alexandru Ioan Cuza”, Iași, 2012, p. 477.
6. Russel, B., *Idealurile politice*. Puterea, București, 2002, p.61 și urm.
7. Locke, J., *Al doilea tratat despre cărmuire*. Scrisoare despre toleranță, Nemira, București, 1999, p. 68.
8. Panțiru, T., *Dreptul de a căuta fericirea*, în Revista de Drept Public nr. 1/2015, pp. 26-35.

9. Pencak, W., *The Declaration of Independence: Changing Interpretations and a New Hypothesis*, 57 Pa. Hist. 232 (1990), p. 477

10. Vida, I., Vida, I.C, *Teoria Generală a Dreptului*, Universul Juridic, București, 2016, p. 35 și urm.

11. Viola, F., *Personal Identity in the Human Rights Perspective*, p. 108 în Peczenik, A., Karlsson, M. M. (eds.), *Law, Justice and the State: Essays on justice and rights*, Volumul 1, no. 58/1995, Franz Steiner Verlag, Stuttgart.