



## THE PRINCIPLE OF HUMAN LIBERTY AND ITS RELATION WITH BIOETHICS AND BIOLAW

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**Abstract:** *The principle of freedom as fundamental right of the human being is a subject that has constituted a research matter for many authors in the law field and not only. If many times it has been analyzed as regarding its juridical, philosophical, political, social valences, in this paper we study it from the perspective of the effects that the findings of science and technology may have upon the individual's liberty. The foundation of this juridical concept is and will be determined by the great transformations that human society has known, this fact imposing the need of highlighting the role the bioethics and biolaw should have in guaranteeing the respect of human liberty and also in assuring the liberty of research.*

**Key words:** *bioethics, biolaw, human rights*

### 1. INTRODUCTION

A proof of the great political-juridical transformations that take place in the international community, the process of plenary affirmation of the concept of human rights and liberties lies in transposing the positioning of their problematic in the center of the contemporary world. Although freedom exceeds the law field, the most pertinent forms of it usually have juridical aspects. Under the circumstances of accelerated evolutions of research and technical progress, freedom, as guaranteed fundamental right, may be subjected to alterations as a result of conscience conflicts that both history and the present evolution of science are showing to us. Referring to this aspect, Heidegger stated that „...the supremacy of law in front of the multiple manifestations of the social life, including the conquest of science, represents a desideratum of the state of law” At the international level, the matter of fundamental rights and liberties attracts a real interest. The central subject of numerous articles is the recognition and protection of fundamental rights and liberties but especially their violation or limitation by different means. This study represents only one part of a most ample research of the freedom principle, juridically interpreted at international level, matter discussed also in the doctorat thesis.

### 2. THE PRINCIPLE OF FREEDOM

Freedom, as a cardinal benchmark of human condition, represents an element of maximum philosophical, social and political resonance and, at the same time, shows deep implications at juridical level. The violation of human rights, dignity and implicitly of his liberty represents a phenomenon that can be seen in all countries of the world no matter what their development level is (Mihai, 2002, p. 82). Due to their dynamics and to axio-teleo-praxiological valences of the principles of exerting them, the research of any of the rights and liberties of the human being implies the necessity to study the maximum generality ideas from the point of view of the general theory of law, the analysis of terminological arguments, the concrete approaches and nuances in the social-human sciences, but also to compare the knowledge and interpretation of

juridical instruments that consecrate them and to jurisprudence (at internal, European and international level). In the logical-juridical area of the concept acknowledged unanimously as the basis of law, *the principle of freedom* comprises the liberty of the individual, protection and guarantee of fundamental rights and liberties, the interdependency of freedom and democracy, the alteration of own freedom and of the freedom of all the other individuals at the same time (Mazzoni, 2002, pp.6-9). The progressive conceptualization of freedom as a process comprises in a logical-historical manner, an assembly of aspects aiming at the intermission of the philosophical thought with a complex of relationships: man-nature, man-society, individual-collectivity, man-society, society-history, individual-society, and culture-civilisation. Freedom is a synthetical concept referring exclusively to the human being. It does not mean the possibility of unconditional choice as the expression of a will endowed with arbitrary and unlimited powers. In the state of law, it is associated, in an organic way, to the duties of the members of society towards the community they are part of.

The purpose of this demarche is represented by the attempt of determining the limits of „freedom” in some domains in which the scientific progress as well as the evolution of society determine situations that proof the incapacity of the legislator to adapt the legislation continuously. Thus, no matter how fast the legislation would be harmonized with society's evolution, the scientific progress will always be one step ahead, generating situations that will make the legislator face some facts that are not settled juridically, but which have deep implications at social level. We also take into consideration the special dynamics of research in medicine and genetics. From a biological point of view, human rights have a genetic basis that lies in the individuality and originality of each human being and so, the human right to freedom, integrity and intimacy should derive from them. We often see cases when, in the present social context, the new technologies have blurred some of these rights, which generates the real need to have a proper and wide legislation that would guarantee the statement of the principle of unavailability of the human body (to be outside the transactions and not to be touched without the consent of that person), and the non-patrimonial character of the body (which cannot be a property object not even for oneself), from where the impossibility to violate as well as the sovereignty of human rights derive.

### 3. INDIVIDUAL FREEDOM BETWEEN BIOLAW AND BIOETHICS

The human rights, freedom, good-will, responsibility and justice have represented and still represent an ideal for humanity; from here, the obligation to protect, at international and statal level, as long as these rights and liberties are absolute (opozabile erga omnes), indefeasible and personal (involving the consent) (Weisstub et al., 2008). The special progresses that marked the end of the XXth century, especially the genetic science field, have shaken the public opinion and not only that.

The amazing discoveries about the possibilities to identify and cure some diseases for which, not long ago, no cure was known, but also in the field of human genom, fertilization in vitro, and the creation of embryos for using their specific cells to treat congenital deficiencies, have generated great controversies. The different development status of states and the improper legislative framework create the dilemma of human society concerning the attitude towards the human life in its totality, but mainly to establish those limits to which these studies should stop, by comparing the importance of the scientific finding for saving human lives on the one side, and the protection of one person and his/her integrity, on the other side. Considered in this context, the recognition and protection of these rights as well as the principle of exerting them, affirm the necessity within the process of elaboration and completion of positive law, that has to keep the rhythm with the new scientific findings in the medical field and to be according to the measures taken at community level, but with direct effects and on behalf of the individual (Brownsword & Beyleveld, 2001, p. 9). In this purpose, it is enough to remind a recent example that clearly limits the individual freedom, and even at a global level: the measures taken by the World Health Organization for fighting against the pandemic flu type A (H1N1). Recently, the European Council has published a draft of a report in which the World Health Organization, national governments, and EU agencies have been strongly criticised about the way they managed this issue. Rapporteur, Mr. Paul FLYNN (United Kingdom, SOC) even stated that: "this was a pandemic that never really was". Also this time the public interest and individual safety have been used as reasons for imposing constraint measures, through which the individual freedom has been limited although it is considered that the OMS acted without transparency provoking "unjustified fears". We assisted to a new conflict between the medical science and the principles of law. At international level, famous institutions such as U.N.O., The European Council, and UNESCO have shown some attitude by admitting that first, the science may endanger the fundamental human rights, and second, by adopting some declarations, resolutions, conventions whose purpose was, by the actions of the governments of member states, to make science work for the individual by creating an efficient legislative framework, which should ensure the fact that the results of science do not harm the human values. The Nuremberg Code may be considered the ancestor of the present documents in what regards the field of bioethics. The international legislation has been enriched significantly since then. We will remind only some of these, more recent. The Oviedo Convention concerning the protection of human rights and dignity of human being from applications of medicine and biology, from 1997, for example, adopted under the aegis of the European Council, represented the highest point of prior activity carried on by the institutions of the organization: Recommendation of Parliament Gathering no 934 from 1982, regarding the genetic engineering, the right to human dignity and the right to heredity, Recommendation no 1046 from 1986 regarding the usage of embryos and human fetuses for diagnosis, therapeutic, scientific, industrial and commercial purposes, Recommendation no 1100 of Parliament Assembly, from 1989, regarding to the usage of embryos and human fetuses for scientific research, Resolution no 83 of Ministers Committee regarding the confidentiality of the files and records of mentally ill individuals etc. During the World conference regarding the science of the XXIst century, held in Budapest (1996), the fundamental principles of bio-medical research on humans have been decided: the principle of justice, discernment and representation of negative consequences upon humans of the results of researches; the principle of respect of the person, of the preeminence of his interest before any other interests from where the obligation to get the information as well as the clear and free consent derive; the principle of self autonomy

and the decisional partnership, of the right to co-decide; the principle of the risk-benefit relation when applying the results of scientific results on humans. The *Declaration of Inuyama*, Council for International Organizations of Medical Sciences, on the subject of *Genetics, Ethics and Human Values: Human Genome Mapping, Genetic Screening and Therapy*, 1990, *Universal Declaration on Bioethics and Human Rights* (2005) and *International Declaration on Human Genetic* (2003), adopted within UNESCO etc. are also very important for the analyzed field. In the doctrine, is shaping the opinion according to which all these rules coming from different juridical areas (constitutional, penal, commercial etc.) are reunited in a body of juridical standards, and one may even talk about the appearance of a new branch of law: the *biolaw*. If *bioethics* settles principles regarding life, dignity, self-determination of the human being, having ethical, moral, philosophical, theological value and not only that, but being considered as a discipline located at the "crossroad of biomedical sciences, and biotechnologies and the health and human rights" (Johnson et al., 2008, pp. 1-9), the *biolaw* is a completion, providing the juridical settlement, establishing rules with a mandatory character that should stop the excess of science in the detriment of human beings.

#### 4. CONCLUSIONS

The issue of compatibility of law with freedom as well as its juridical "appearance" has attracted the constant interest of all law systems. Freedom is the fundament of law and its limitation determined by the coercive power of the state that grants it and which drives a constraining collective reaction is precisely the „wonder of law“, which consolidates the freedom of each and every of us. Today, when the medical science and biotechnology are showing spectacular results, bioethics and biolaw should adapt continuously both to the scientific findings and to the interest of society and individual, to create equilibrium between the need to know and the protection of human being, as fundamental value. In other words, it is strictly necessary to align the legislative framework to the present juridical order imposed by the context of globalization, by constituting some legislative systems that should guarantee the respect of freedom principle but, at the same time, we have to take into consideration that the status of freedom may be reached only by justice defeating force, by the possibility of all to participate to the creation of collectivity will, this meaning only by democracy. In other words, human freedom, dignity, and integrity should not be sacrificed for the name of science (Engelhardt, 2006, pp.1-50).

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