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THEORETICAL-METHODOLOGICAL FUNDAMENTALS OF ANALYSIS OF HUMAN RIGHTS GOVERNANCE

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This article deals with the essential dimensions in which theoretical approaches are carried out, as well as the methodological ones of government research in relation to the processes of modernization and democratization of societies, with priority given to the protection of human rights. Considered an essential dimension of contemporaneity, democratization cannot be treated outside government. That is why the basic sources used outline the common areas of analysis and circumscription of social and state realities in the direction of facilitating the transition process to the standards of good governance. Thus, through the scientific discourse of the government focused on the protection of human rights, the aim is to identify long-term solutions in order to establish in the conditions of the Republic of Moldova good practices in the person-state-law relationship.

Keywords: *theoretical-methodological approach, interdisciplinarity, governance, human rights, democratization.*

FUNDAMENTE TEORETICE ȘI METODOLOGICE DE ANALIZĂ A GUVERNĂRII BAZATE PE DREPTURILE OMULUI

În conținut se tratează dimensiunile esențiale în care se realizează abordările de natură teoretică, precum și cele metodologice de cercetare a guvernării prin raportare la procesele de modernizare și democratizare a societăților, având ca prioritate protecția drepturilor omului.

Considerată o dimensiune esențială a contemporaneității democratizarea nu poate fi tratată înafara guvernării. De aceea sursele de bază utilizate profilează ariile comune de analiză și circumscriere a realităților social statale în direcția facilitării procesului de tranziție la standardele bunei guvernări. Astfel, prin intermediul discursului științific al guvernării axate pe protecția drepturilor omului se urmărește identificarea soluțiilor pe termen lung în vederea instituirii în condițiile Republica Moldova a bunelor practici în relația persoană-stat-drept.

Cuvinte-cheie: *abordare teoretică și metodologică, interdisciplinaritate, guvernare, drepturile omului, democratizare.*

FONDEMENTS THÉORIQUES ET MÉTHODOLOGIQUES DE L’ANALYSE DE LA GOUVERNANCE FONDÉE SUR LES DROITS DE L’HOMME

Cet article traite des dimensions essentielles dans lesquelles les approches théoriques sont menées, ainsi que des dimensions méthodologiques de la recherche sur la gouvernance en relation avec les processus de modernisation et de démocratisation des sociétés, avec la protection des droits de l'homme comme priorité.

La démocratisation est considérée comme une dimension essentielle de la démocratie contemporaine et ne peut être traitée en dehors du gouvernement. C'est pourquoi les sources de base utilisées décrivent les domaines communs d'analyse et de délimitation des réalités de l'état social afin de faciliter le processus de transition vers les normes de bonne gouvernance. Ainsi, à travers le discours scientifique du gouvernement axé sur la protection des droits de l’homme, l’ objectif est d’ identifier des solutions à long terme afin d’établir de bonnes pratiques dans la relation personne-état-droit en République de Moldova.

Mots-clés*:approche théorique-méthodologique, interdisciplinarité, gouvernance, droits de l'homme, démocratisation.*

ТЕОРЕТИКО-МЕТОДОЛОГИЧЕСКИЕ ОСНОВЫ АНАЛИЗА УПРАВЛЕНИЯ, ОСНОВАННОГО НА ПРАВАХ ЧЕЛОВЕКА

Данная статья посвящена исследованию как в теоретическом, так и в методологическом плане важнейших особенностей управления посредством процессов модернизации и демократизации общества при приоритете защиты прав человека.

Так как демократизация является существенной составляющей современности, она не может трактоваться вне управления. Поэтому основные использованные источники связаны со смежными областями анализа и описания социальных и государственных феноменов на пути продвижения к лучшим стандартам управления. Таким образом, посредством научного изучения управления, основывающегося на защите прав человека, достигается идентификация долгосрочных решений в плане установления в условиях Республики Молдова более совершенной практики в соотношении личность-государство-право.

Ключевые слова: *теоретико-методологический подход, междисциплинарность, управление, права человека, демократизация.*

Introduction. The global order during the last twenty years of the 21st century is a common happening for the entire planet, is an order that connects States, societies, people, and, simultaneously, creates and maintains clashes. In such a global order, the problems of human rights and governance over cross the national borders. In many parts of the world modern societies explore different ways of promotion and consolidation of democratic governance, often following violent conflicts, the disappearance of authoritarian regimes, and political crisis.

At the same time, the current situation where democracy, human rights, and governance exist emphasizes a global consensus on how they are analyzed and perceived. They are legitimated through such values as human individuality, freedom, human rights, equality before the law, the rule of law, etc. As a result, the consolidation of approaches based on rights, the support, and the promotion of democratic governance should be realized in a broad, multilateral, and complex formula.

Moreover, human beings, regardless of their citizenship, want to be well-governed. Thus, modern States are responsible to deliver the essential political goods for their citizens. Particularly in the configuration of the state-person-law relationship the legitimation of the government takes place since the 17th century, being based on such benchmarks as safety and security; rule of law, decisional transparency, and zero corruption; participation and human rights; economic opportunities and sustainable development, all being considered as performance targets of any government.

The **research methodology** combines a synthesis between traditional research methods (such as analysis and synthesis, induction and deduction method, and historical method) and modern research methods (such as interdisciplinary and hermeneutic approach). Because the research represents a theoretical-methodological foundation, which aims to develop and configure interdisciplinary methodological landmarks in the analysis of the government focused on human rights, we aim to understand the methodological research cycle by combining the concepts of *problematization - analysis - argumentation*, in order to identify the practical implementation of the research.

The dimensions of the research methodology and the perspectives of its application. Some scholars that focused on the study of democracy and governance consider that they are among the benefits of the globalization [1], given the fact that democracy in States with democratic traditions have created a favorable environment to disseminate the democratic values and principles in other parts of the world. It is also argued that the process of transition to democracy is not an imposed one, but is realized under the citizens` pressure on authorities, even more, it is indicated that how the transition is realized are not necessarily logical processes. At the same time, the democratization of a society is a long process and it is not sufficient to be declared/proclaimed, but it should be established, created through the involvement of authorities, institutions, and citizens. Therefore, governance refers to institutions and their relationships with the groups and actions, and autonomous networks of actors [2].

In our case, the government is analyzed through the lens of the respect of human rights, referring to the studies that underline the importance of democratic institutions in establishing good governance. Democracy is conceptualized not only as a goal but also as a means to achieve economic, political, and social rights. Thus, to analyze the mechanisms of governance focused on the protection of human rights, the democratization concept should be added. Simultaneously, in a democracy, the participation, dialogue, consensus, transparency, responsibility, and the rule of law contribute to a more representative State and better prepared to answer to the concerns of its citizens. Therefore, human rights, as well as democratic governance involve institutional commitments and mechanisms that facilitate the development of civic culture, the development of human beings, and the awareness of rights and

freedoms. Consequently, addressing the mechanisms of governance focused on human rights, due to their broadness and importance, requires comprehensive approaches that will encompass interdependencies between the institutional dimension and the human one, between civil, cultural, economic, political, and social dimensions, and between reality and what should exist.

In this line of thought, the current analysis on the contemporary governance is framed by the following questions: *How the state-person-law relationship is outlined and established? Which is the area of interference between analysis, regulation, and politics? What is the foundation on which this relation is built and manifests itself in the current formula of materialization of the governance? What tools could be the most appropriate for analyzing and measuring governance? Which are the structural and attitudinal indicators of perceiving governance?* etc.

All the above questions seek to conceptualize the governance from the perspective of existing good practices, framed by theoretical and empirical researches of the processes and structures of the social and political organization in the Republic of Moldova, in order to identify the causes of certain problems of the democratization process and to assess the number of efforts (individual, social, institutional) necessary to ensure efficient governance focused on the protection of human rights, as well as to estimate the premises of the good governance in fragile situations, such as conflicts or crisis of diverse nature, as, for instance, the pandemic crisis starting with the end of 2019.

Since the beginning of the century, the world is facing multiple crises, each of them being a test for societies, States and people, some of them even resisting to efforts made to solve them and seem to be unsolvable. In this line of thought, the environmental crisis caused by climate change gathered central attention in the mid-2000s, altogether with the crisis of armed conflicts and the economic crisis of 2008, etc., and the most recent one in 2020 with a pandemic global crisis. In this context, the multiple influences, as well as vulnerabilities to which human beings are exposed, the reconceptualization of human rights from the perspective of the person-State-law relationship becomes necessary. Therefore, certain directions are outlined, in order to identify the best mechanisms and tools for the current situation in the Republic of Moldova:

- Citizens desire a truly democratic society;
- Citizens expect from government safety, stability, and security (public and private);
- Citizens want to live under the rule of law, which protects their rights and freedoms;
- Citizens desire democratic and incorruptible institutions;
- Citizens need economic safety;
- Citizens consider that the State must create educational opportunities;
- Citizens want their right to self-determination and a healthy living environment to be guaranteed, etc.;

Thus, from the perspective of an integrated, complex, and multidimensional theoretical framework, the needs mentioned above manifest themselves in a particular analysis, as a result of investigations, in order to reflect the society priority interests and to establish a model of governance focused on good practices and the protection of human rights.

Therefore, though the scientific discourse on governance focused on the protection of human rights, the article aims to identify long-term solutions in order to mainstream the good practices of the person-State-law relationship in the conditions of the Republic of Moldova. From an empirical point of view, through opinion polls, which emphasize the public opinion, the research aims to find out the way governance is currently exercised from a dual perspective (of the citizens and of the representatives of State authorities). However, we are aware that the attitudinal indicators obtained as a result of the questionnaire might not necessarily reflect the factors or the causes of certain phenomena and processes within the society, and might not always represent a benchmark for public policies or cannot be the main tool of measuring governing practices. Therefore, the research aims to undergo a multidimensional analysis of governance in relation to human rights. In this context, the scientific research of governing mechanisms focused on human rights, through interdisciplinary methodology, aims to identify explanatory models and to identify tools for appropriate analysis, in order to propose them for application and implementation in the context of the governance activity of the Republic of Moldova, with the goal to increase the efficiency of the governance based on human rights.

Thus, through theoretical and empirical analysis we do not intend to find the model of a perfect government, but to facilitate the understanding of how the government interacts with other perfor-

mance indicators, such as the degree of democratization of the society and the promotion of authentic democracy, as well as the protection of human rights. This could be a benchmark of an innovative paradigm of the 21st century, that at the moment establishes a platform for scientific debates starting with empirical evaluation, interpretation, and analysis, oriented towards the identification of theoretical and methodological benchmarks of conceptualization and instrumentalization of the governance focused on human rights.

Retrospectives and prospects. The rule of law, democratic values, and good governance, etc. continue to be correlative concepts with semantic and even emotional charge, around which explanatory and interpretative theories are built, rights and freedoms are claimed, national normative frameworks are adjusted, State policies are elaborated, mechanisms and tools for implementation are sought, and the governmental link with those governed is strengthened. During the early 21st century J.S. Mill argued that the representative government is framed by the close ties of State with the nation and in his work *Considerations on a representative government* he describes in detail the political model of the social organization called *representative democracy*. In the same work, there are emphasized multiple suggestions on governmental best practices, being mentioned that `when people do not have sufficient self-esteem and do no find themselves linked to a representative constitution, they have almost no chance of maintaining it. In every country, the executive body is the branch of the government which holds the implementing power, and is in direct contact with the public; therefore, many hopes and fears of human beings are directed here, and the government represents publicly the benefits, the terrors, and prestige` [3].

The government, perceived as an authoritarian power, to which citizens connect their expectations regarding stability, wellbeing, personal security, social order, and the improvement of social and legal protection tools, etc. have currently become a key concept of future expectations. Being largely analyzed from a theoretical viewpoint, the concept of the government is relevant and important for social practice, equally for the State institutions and citizens. Especially, good governance, true democracy, and efficient mechanisms of protection of human rights are up-to-date for ex-Soviet States, such as the Republic of Moldova, Ukraine, and Belarus, etc. In this sense, prof. P. Varzari argues that "the problem of democratic development, in general, and of good governance, in particular, is of special significance for the Republic of Moldova, being largely determined by reduced capacity (institutional and administrative) of the State to fulfill with an efficient government, to support a real democracy and a functional market economy [4, p.27].

Therefore, the concept of government might be much more common than that of democratization; it combines the actions of politicians and policy-makers, that represent the citizens' expectations, the quality, as well as the efficiency and the effectiveness of legal provisions. However, to be able to measure the good governance in social practice an analysis of the relations of the dependence of both concepts (that of governance and that of democratization) is necessary. To have a truly democratic society, governed according to principles of good governance, the path to democratization must be taken. An important point of view belongs to J. Grugel, he notices that "democratization has been conceptualized as a discourse, a demand, a set of institutional changes, a form of elite domination, a political system dependent on popular control, an exercise of power politics and a demand for global solidarity" [5, p.18].

The researchers of the Institute of Legal, Political, and Social Researches [6] argue that in the Republic of Moldova, nowadays we witness a distancing from the complex and very difficult process of democratic development. Therefore, a qualitative renewal is necessary to modernize and implement effective measures of democratization in the Republic of Moldova (as well as in other post-soviet countries). These statements are acknowledged after more than two decades of the Declaration of Independence, the declared path of democratization of the society and of the promotion and implementation of the principles of the rule of law, and after the protests of 7th of April, 2009, that have been a reaction of non-acceptance by the society of the announced results of the elections from 5th of April, perceived to be incorrect and partially free. Investigations on these events are still unknown. The biggest problem in relation to these events was the violations of fundamental rights. Moreover, the cases related to the events of April 2009 and brought to ECHR (for example, Taraburca, O.R. and L.R., etc.) have not fostered a turn to the mechanism of protection of human rights. Additionally, during the events of 7th of April, 2009 the citizens hoped that the Republic

of Moldova would come closer to the rule of law and the government of the Republic of Moldova would assume the implementation of several recommendations of international institutions, such as the commitments to reform the Justice sector, to implement the rule of law principles, and to protect fundamental rights, etc.

In this line of thought, the Association Agreement between the Republic of Moldova and the European Union signed on 27 June 2014 (Brussels) was promising for the development of the rule of law and adoption of democratic values. The Association Agreement underlines the need for national reforms to ensure the good governance in the Republic of Moldova through: "-development, consolidation, and increase of the stability and effectiveness of democratic institutions and the rule of law; - respect for human rights and fundamental freedoms; - progress on judicial and legal reforms, - independence of the judiciary system, strengthen their administrative capacity and guarantee impartiality and effectiveness of law enforcement bodies; - pursue the public administration reform and build an accountable, efficient, transparent and professional civil service; -ensure the effective fight against corruption, including international cooperation"[7, p.29]. Additionally, the agreement specifies that the respect of fundamental human rights and freedoms will stay at the basis of the cooperation in the field of freedom, security, and justice.

However, advancement in these matters didn`t take place. Social, economic, and mostly political events and processes have jeopardized the advancement of the Republic of Moldova on the implementation of democratic values and rule of law. As a result, in 2018 the European Parliament expresses concern regarding how events evolve and the governance exercised in the Republic of Moldova. Therefore, in its *Resolution of 5 July 2018 on the political crisis in Moldova* following the invalidation of the Mayer elections in Chisinau, the European Parliament reiterates its high concern over "[…] the decay of the rule of law, of democratic standards, and respect for human rights, the high politicization of state institutions, systemic corruption, insufficient investigation of the 2014 banking fraud, and limited mass media pluralism; the lack of independence of the judiciary system […]" [8]. In the same line of thoughts is the *European Parliament Resolution* of 14th of November, 2018 on the implementation of the EU Association Agreement with Moldova, that expresses high concern on "decline of democratic standards that Moldova had subscribed as part of the Association Agreement, such as democracy […] and the rule of law […], concluding that the Republic of Moldova is a state captured by oligarchic interests […]" [9]. Therefore, through the resolution the authorities of the Republic of Moldova are asked to considerably enhance the efforts in protecting the fundamental human rights and freedoms. Later on, on the 8th of June, 2019, the Parliament of the Republic of Moldova voted the Declaration on recognizing that the Republic of Moldova is a captured state. The Declaration states that the "members of the Parliament of the Republic of Moldova should stop the derailment of the State towards dictatorship, building the rule of law and restoring democracy in the Republic of Moldova as it is stated in the Constitution" [10]. Although the provisions of the art.1, 3rd paragraph of the Constitution specifies that "the Republic of Moldova is a state of law, a democratic state, in which human dignity, human rights, and freedoms, the free development of human personality, justice, and political pluralism are supreme values and are guaranteed", these aspects have not been possible to fulfill under the current conditions in the country. The public statements made by the members of the Parliament, as well as the opinions exposed by leaders of political parties, the decisions adopted by national authorities, etc. have led to a slow but continuous process of increasing the degree of citizens` distrust in the government and of skepticism in relation with their capacity to ensure the protection of their citizens and to govern on behalf of citizens, so that their rights and freedom are not violated.

On the path of the Republic of Moldova from independence to present, even if political actors periodically changed, the establishment of democratic traditions and values that would determine a substantial increase in the degree of protection of citizens, of establishing democratic traditions and the principles of the rule of law failed. Regarding this state of affairs, A. Pop analyzed the researches of the last decades and argues that "there is a correlation that cannot be ignored between the negotiated character of revolutions and the procedural consolidation of democracy in terms of the rule of law, of the responsibility, the participative character and the way of organizing elections. The reasonable assumption that genuine democracy is a result of a `negotiated revolution´ and, so, a product created `originally´, rather indigenous than imported, seems

to be one of the major `lessons´ often ignored. On the other hand, since 1989 the pessimistic assumptions regarding new democracies in Central and Eastern Europe in the early 1990s were forgotten. Considered to be immature, they were considered to be failing in populism, of relapsing in authoritarianism and dictatorship, or lead to praetorianism. The historical experience of the last two decades has shown that far from being prerogatives of the East, the populism manifests itself in different forms and degrees in both the (former) East and the (former) West, especially when the civil society is weak, the democratic societies decline and develop significant democratic deficits" [11]. Therefore, the invoked assumptions have become realities for some States (such as the Republic of Moldova, Ukraine, and Belarus) that have fallen into the trap of the authoritarianism and dictatorship, and are still struggling to embrace democracy and the rule of law.

What could be the cause of this kind of assumed and negotiated democracy, desired but unrealized? The explanation is offered by V. Plesca, who shows that the root cause of this state of affairs is the deviation of the States and societies from fundamental human rights. In the opinion of V. Plesca human rights are an 'a priori' and indispensable condition for the progress to democracy in a society. "What we now consider genuine democratic societies (USA, United Kingdom, Netherlands, etc.) did not set out, 200-300 years ago, to become democracies (to go through this process of democratization), but simply they have promoted individual rights and freedoms. Under this ensured foundation, the institutional development specific to the democracy came naturally into force and not through conscious and deliberate effort. In other words, democratic institutions should not create rights, but rights create democratic institutions. Many of the problems of contemporary democracy arose when its institutions began to claim to be more than they would have naturally been: protector of the rights and careful overseers of the declines of political power" [12, p.21]. Of more concern is the fact that "during in recent decades, we have lost the fundamental trend of the theory of democracy" [12, p.21]. Therefore, "the democratic discourse must return to the first demand of the Liberals, to fundamental rights. In their absence, democracy turns into something else. And, I am not sure anyone wants to know what this something else means" [12, p.21].

Thus, addressing the issue of rights has is framed as a benchmark, in order to achieve them, as the totality of decisions, procedural and systemic means of the institutions aimed at improving the human condition. The basic principle of the social existence, analyzed by J.J. Rousseau [13], of the protection of rights, which with the adoption in 1948 of the Universal Declaration of Human Rights (UDHR) has a universal human character, denotes, on the one hand, the importance of an appropriate legal framework and, on the other hand, the appropriate procedures and practices.

In this line, it has to be mentioned that multiple other correlative concepts are used, based on the foundation of the development policies and concerning human rights. In this sense, we distinguish between mechanisms and policies of ensuring the protection of human rights related to international bodies, as well as mechanisms and policies of ensuring human rights at the national level. In both cases, not just civil and political rights are at stake (for instance, freedom of expression, freedom of assembly, the right to a fair trial, the right not to be tortured, etc.), but also economic, social, and cultural rights (for instance: access to education, health, housing, employment, etc.). The author of the work *Drepturile omului – un sistem în evoluție (Human rights – a system in evolution)* argues that a key role in the protection of human rights "has national, independent and equidistant institutions, created by law […]. These institutions can effectively train and the inform the representatives of public structures and institutions, who have the obligations in the area of protection and promotion of human rights – from legislative, executive, legal, educational institutions, etc., at the national, regional, and local level – about the international system of human rights, to the provisions of conventions on the protection of fundamental rights and freedoms, to the mechanisms of protection and their functioning, as well as regarding the obligations assumed by the State concerning the respect of international norms and standards, abstention from violating rights and freedoms and the adoption of affirmative measures, strategies, programs and projects able to ensure the effectiveness and exercise of rights and freedoms" [14, p.3].

Conclusions

Human rights are connected to the person-State-law relationship, being a logical and generalized consequence of the relations between citizens and authorities that emphasizes the general interest of humanity. Under the formula of human rights meet

both the general interest and the individual interest of every person, these interests do not overlap, but rather identify themselves through their fundamental content. In other words, human rights express the general interest that identifies itself with protected human values. At the same time, although the right presupposes an interest, this fact is not enough for the right to exist, because “the interest can form the object of the right but not the right itself” [15, p. 23]. As a result, apart from underlining the major role of authorities in the realization of specific human rights, there are emphasized the links between rights and responsibilities, tasks, participation, non-discrimination, etc., which claims the active and important role of the citizens. Thus, the contemporary legal problem” is not only represented by an affirmation of human rights, but also as a proclamation of the citizens’ rights. This means that the declaration of human rights is the proclamation of the rights of the citizen, with whom the State has signed a contract. The general will be perceived by this contract is a citizen one and not only a human one” [16, p 42-44]. Consequently, we notice that the experience of humanity in the conditions of declaration of human rights has shown that, without ensuring the human rights and freedoms, the achievement of democracy, of the rule of law, and of an adequate level of social and economic development is not possible. Simultaneously, we should consider the internal logic of the evolution of social spirituality and their stages of evolution, the technical and scientific progress, which has outlined the need to review the current configuration of fundamental rights, as well as the dialectical relationship between traditions of approach, which have highlighted the transition from simple to complex, and from concrete to abstract, giving rise to a certain integrated formula for approaching the person by reference to human rights.

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