

THE RIGHT OF FREE MOVEMENT IN THE MERCOSUR COUNTRIES, CENTRAL AMERICA AND MEXICO

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ABSTRACT: *Freedom of movement, also called freedom of movement, is the right of all people to move freely around the world, within or outside their own country. The right to free movement is closely connected with the rights of personal freedom and security, to the point that many authors have defined it as "a complement to physical freedom", differentiating itself from them due to its more limited meaning, as refers to the places where the citizen can move or reside.*

However, the right to free movement has gradually been emancipated as the right to personal freedom, as a consequence of important factors. First, because of the logical theoretical process of enunciation, which on the basis of personal freedom would necessarily be produced; and secondly, the need to guarantee through them what is considered an essential area for the development of the free personality of citizens, as well as the possibility of protecting them against the actions of political power.

The topic of free movement is broad, and concerns all states. For this reason I would also like to include other states in Central and North America in my theme, such as Costa Rica, El Salvador, Honduras and Mexico.

KEYWORDS: *Free Movement, Central America, Mercosur, Declaration, Human Rights*

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1. INTRODUCTION

As an autonomous right, the freedom of movement of people falls within the group of freedom rights, i.e. those that prevent the conscious exercise of certain actions from being dissuaded, hindered, prohibited or punished.

This freedom is also recognized by the “Universal Declaration of Human Rights”.¹

The Declaration is founded on four fundamental pillars, and largely reflects the matrix of Western liberal democracies:

- 1) First of all, the rights of the person (right to equality; right to life, freedom and security, etc.).
- 2) Then there are the rights that belong to the individual in his relationships with the social groups in which he participates (right to privacy of family life and right to marry; freedom of movement within the national state or outside; right to have a nationality, right to property; right to religious freedom).
- 3) The third group is that of political rights which are exercised to contribute to the formation of state bodies or to participate in their activities (freedom of thought and assembly; freedom of active and passive electorate, right of access to government and public administration).

¹ Art. 13 “Universal Declaration of Human Rights”: “Everyone has the right to freedom of movement and residence within the borders of any country, and has the right to leave and return to any country, including his own.” Often referred to as the UDHR, it is a document on individual rights, signed in Paris on 10 December 1948. Its drafting was promoted by the United Nations so that it could be applied in all member states.

4) The fourth category is that of rights that are exercised in the economic and social field, i.e. in the sphere of work and production relations and in that of education (right to work and fair remuneration, right to rest, right to healthcare, etc).

2. METHODOLOGY

In this study, the methodology of work will be qualitative, so it is based on data recovery from different texts, i.e. secondary sources. We will do an interpretation of the literature, by comparing the research with the theoretical knowledge, creating a picture regarding the selection of the right methodology. To achieve the objectives of the paper, the collection of secondary information was done by dividing the literature into theoretical and empirical, literature which was obtained from the Library of Urbino University "Carlo Bò", in the Faculty of Law. Another important source for collection information has been electronic addresses of various international institutions and scientific journals.

3. DISCUSSION

Although we find a similarity with the French Declaration of 1789, compared to the latter there are some distinctive features in the Declaration of 1948. In the Declaration of 1948 we find an innovation on the subject of human rights in article 13², which states that everyone has the right to freedom of movement and residence within the borders of any state, and has the right to leave any country, including his own, and to return to it.

The freedom of movement affirmed in article 13 of the 1948 Declaration concerns the fundamental right to inhabit "the Earth - the common home of all members of the human family". Freedom of movement is an indispensable condition for the free development of the person, understood both as tourism, for studies, for work and also for settling in a place other than that of origin and for returning there, subject to the rules of public order, safety, health, morality of the host country and respecting the rights and freedoms of others.

The political and bureaucratic barriers and obstructionism that states place in the way of exercising this right are infinite. The Declaration calls for a world in which human beings enjoy freedom of speech and belief, and freedom from fear and want; that is, he hopes for the realization of what is called the Doctrine of the four freedoms.³

In the Constitution of Argentina, article 14 states: "All inhabitants of the Nation enjoy the following rights in compliance with the laws that regulate their exercise, and in particular: the right to work and to exercise any lawful activity; the right to navigate and trade; to submit requests to the authorities; to enter, remain, transit and exit Argentine territory; to make one's ideas public through the press without being subjected to prior censorship; to use and dispose of their assets; to associate for beneficial purposes; to freely profess one's religion; to teach and learn." Although article 14 of the Argentine Constitution refers exclusively to the inhabitants of the nation, the holder of the right of free movement can be either an Argentine citizen or a foreigner; who is already a national inhabitant and wants to re-enter the State after leaving the latter; and finally those who want to enter the country without the intention of residing there. In the drafting of the Argentine law, the essential elements that constitute the right to free movement are collected:

- Entry into the country,
- The permanence in it,
- Freedom to move within the country
- And finally the expulsion of foreigners in the cases provided for by law.

In the case of Brazil, the political legislation introduces a different formulation compared to those previously exposed. Article 5 states: "All are equal before the law, without distinction of any kind, guaranteeing Brazilians and residents of the country the inviolable right to life, liberty, equality, security

² It is part of the rights of the individual and refers to a philosophical debate that goes from Plato to Hannah Arendt

³ Franklin Delano Roosevelt's 1941 State of the Union Address. These freedoms have been indicated as the foundation of world society and as a necessary condition for lasting international peace.

and property as follows: ... First of all, the right to free movement and residence is relativised, a fact which expressly indicates that these freedoms will be fully recognized "in times of peace", just as otherwise they will encounter limitations if there are internal conflicts. Secondly, with greater fidelity to the various International Declarations, the right to free movement is recognized not only for Brazilian citizens but also for foreigners who enter it and decide to reside there.

A restriction indicated in article 37 of the Constitution of Uruguay, which cites the following "The entry of any person into the territory of the Republic, his permanence therein and his exit with his property is free, according to the observance of the law and without prejudice to third parties. Immigration must be regulated by law, but in no case will the immigrant suffer a physical, mental or moral defect that could prejudice society", is also recognized in the Chilean Constitution, which in the article 19⁴ states that "the individual's freedom of movement will be limited in those cases in which there is a concrete danger of prejudice towards third parties."

4. CONCLUSIONS

Despite having a very similar drafting to the two Constitutions mentioned above, the Constitution of Paraguay presents more concrete elements. Article 41 mentions: "All Paraguayan citizens have the right to reside in their own country. The inhabitants can move freely within the national territory, change domicile or residence, leave the Republic and re-enter it, as established by law, and with the observation of these rights incorporate their assets into the country or have them leave. Migrations will be regulated by law, with the observance of these rights. The entry of foreigners without permanent residence will be regulated by law, taking into account the relevant Conventions. Foreigners with perpetual residence in the country will not be forced to abandon it except by virtue of a sentence." The article specifically indicates the right of citizens to be able to incorporate or remove their assets from the country, and furthermore a specific regulation is indicated regarding foreigners, with or without permanent residence in the country.

Article 37 of the Constitution of Uruguay presents many elements similar to the precept previously exposed; it quotes: "The entry of any person into the territory of the Republic, his stay in it and his exit with his property is free, according to the observance of the law and without prejudice to third parties. Immigration must be regulated by law, but in no case will the immigrant suffer a physical, mental or moral defect that could prejudice society." Uruguayan legislation maintains a form of ownership extended to all people, even if it establishes more specific limits than other constitutional bodies.

Article 19 of the Constitution of Costa Rica recognizes equality of rights and obligations for both citizens and foreigners. However, however, the supreme law of the Republic of Costa Rica seems inclined to establish ownership of nationals, when it establishes that "all Costa Ricans can move or reside in any place in the Republic or outside it, whenever be free from any responsibility, and return when deemed necessary. Requirements that may prevent their entry into the country cannot be required of Costa Ricans." When it is stated that the citizen must be in a situation exempt from any responsibility, it means that he must not be subjected to restrictions or limitations on legitimate circulation or possibility of movement.

Along the same lines, and therefore in accordance with the international provisions regarding this topic, we find the wording of article 5 of the Constitution of El Salvador: "Every person is free to enter and remain in the territory of the Republic, and to leave it, provided subject to the limitations established by law. No one can be forced to change his domicile or residence, except by virtue of an order from the judicial authority in the cases and with the requirements established by the special law. No citizen of El Salvador may be expatriated, nor may he be prohibited from entering the territory of the Republic, or denied a passport for his return or other identification documents. He shall not be denied leave from the

⁴Vedi articolo 19, punto 7a: "La Constitución asegura a todas las personas: 7. El derecho a la libertad personal y a la seguridad individual. En consecuencia: ...a. Toda persona tiene derecho de residir y permanecer en cualquier lugar de la República, trasladarse de uno a otro y entrar y salir de su territorio, a condición de que se guarden las normas establecidas en la ley y salvo siempre el perjuicio de terceros"

country except by decision or sentence of a competent authority under law,” and Article 81 of the Constitution of Honduras: “All persons have the right to move freely , exit, enter and reside in the national territory. No one can be forced to change his domicile or residence, except in special cases and with the requirements established by law”.

These two constitutions, in their formulation, recognize freedom of movement and residence for all people. In this statement we find a point of convergence with the Constitution of Colombia, in which article 24 begins with the terms "All people...". Another fixed point in the Constitution of El Salvador concerns the reference to the documents necessary to be able to move freely. From this aspect we can see very clearly the influence that the various International Conventions and Declarations have had on the formulation of the article of the Constitution which deals with the issue of free movement of citizens, whether they are "Salvadorians" or foreigners.

In the case of the Constitution of Mexico, article 11 recognizes all people the right to move and reside throughout the national territory. However, the possession of a passport is not among the requirements necessary to take advantage of this right, as the article states that to be able to circulate in the territory and change residence, an identity card, passport and other requirements will not be necessary. similar. In this respect, the Constitution of Nicaragua appears much more simplified ⁵, since, even if it includes only citizens in its drafting, it does not establish any distribution of the elements of the right to free movement.

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Universal Declaration of Human Rights, 1948

⁵ Art. 31 “Los nicaragüenses tienen derecho a circular y fijar residencia en cualquier parte del territorio nacional; a entrar y salir libremente del país”