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Legal Opinion: Right to Resist

Re: the Right of Resistance to government rules when those rules are a danger to the people

The Right to Resist Oppression in Comparative Constitutional Law

INTRODUCTION by Virginie de Araujo Recchia, Attorney at the Paris Bar

When the institutions of a State, whose primary purpose is to ensure the protection of public order, the safeguarding of fundamental principles, freedom and rights of the people, no longer stand in the way of the drift of totalitarian regimes, as it is the case today with some States around the world, it is the duty of every individual to resist oppression.

It is a sacred right, a right of democratic vigilance, the ultimate remedy against tyranny.

Here are some important observations concerning the right to resist oppression extracted and translated into English from the original French language article by Fragkou Roxani.

International Journal of Comparative Law. Vol. No. 654,2013.pp. 831-857;

http://www.persee.fr/doc/ridc_0035-3337_2013_num_65_4_20282

At the outset, this was research to better understand article 2 of the French Declaration of Human Rights of 1789, which says (in a very discreet way) that the people have a right to resist oppression (the Declaration of Human Rights of 1793 is often cited but it's not part of the French Constitutional corpus).

This article also mentions the German Basic Law (Grundgesetz), the US Declaration of Independence of 1776 and also the Hellenic Constitutional system.

Selected extracts from: The Right to Resist Oppression in Comparative Constitutional Law

- The German Basic Law, the US Declaration of Independence of 1776, the Hellenic Constitutional corpus and precisely the article 2 of the French Declaration of Human Rights of 1789 for example, clearly state that the people have a right to resist oppression.

It is however a principle of natural law proper to human nature that can be applied anywhere in the world.

The right to resist oppression was theorized for the first time by Ciceron (and Antigone myth p.835).

John Locke referred more than three centuries ago: “in the face of oppressive power, resistance is legitimate. Injustice of the sovereign releases the subject from the obedience that he normally owes him” (p.832).

- The article 34 of the French Declaration of 1793 (even it's not part of the Constitutional corpus, explains):

“There is oppression against the social body when only one of its members is oppressed. **There is oppression against each member when the social body is oppressed**”. **Oppression exists, moreover, even when only one individual is a victim, because the whole social body is united by an “intimate and close solidarity”** which creates in them the feeling of being all targeted, even when only one of them is in reality” (p.838).

“For proponents of the natural law thesis, **resistance to oppression is a sacred right**, emanating from man's nature and existing beyond and independently of his “positivization”. **As a natural right, the safeguarding of the Constitution is similar to the right of every individual to resist an oppressive and authoritarian regime. It is based on natural law, from which it derives its legitimacy. It belongs to the unwritten laws of human nature and logically pre-exists the state and its fundamental and supreme norm.**” (p.841)

Indeed,” the right of resistance is a right whose holders are exclusively the citizens. **For the constituents, the mission of vigilance towards the maintenance of the established order and the constitutional safeguard exceeds the narrow framework of the control carried out by the state bodies. It is thus attributed to all the citizens of the country**, governors or governed, in their capacity as members of the community, of citizens”. (p.851)

According to the author of “Traité de Science Politique”, George Burdeau, **“the engine of the resistance it is neither the crowd, nor the tribune, it is the individual who has the political taste and who judges; it is the citizen that does not fascinate “the hypnosis exerted by the Power”; the one that refuses to be dupe”**. Because it is necessary that there is **“at the beginning of the popular movement, a reaction of individual consciences”**, otherwise **“it will be a riot or a revolt, it will not be, in the full sense of the word, this refusal to accept any longer the arbitrariness of the rulers which characterizes the resistance to oppression“**

“Resistance to oppression is not revolutionary. On the contrary, it is conservative in nature, its mission being to defend the established constitutional order and to contribute to the return of the to the status quo ante” (p.855).

Keywords

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