

## 1.2 HUMAN RIGHTS: HOW TO UNDERSTAND THEM?

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In the most general sense human rights are understood as rights which belong to any individual as a consequence of being human, independently of acts of law. Awareness of the existence of this type of rights finds its expression in the output (especially in literature) of various cultures of various times. However the real career of the category of human rights which led to its common use in disputes of practical type, not only in the area of law but also in politics, morality or religion, dates only from the Second World War. The modern concept of human rights is rooted in the experiences of 'legal lawlessness' when crimes were committed with the authorization of law, and some human beings possessing certain characteristics were refused the status of being human. The emergence of international law of human rights was an answer to these experiences. The conception of human rights adopted in the acts which laid foundations for this law determines nowadays the paradigm for the understanding of human rights not only in international law, but also in other areas of culture. International community's appreciation of the unique worth of every human being led to the concern not only to eliminate elements destructive for an individual but also to create the conditions for his or her development and flourishing. In spite of cultural changes which took place during the last half of this century, in spite of the critics, the basic original ideas of human rights have seemed to remain the same. This paper aims at identifying these ideas and at sketching a coherent perspective for consideration of human rights in their full richness. The legal or semi-legal acts of the protection of human rights are considered here not from legalistic point of view but rather as an expression of an experience of the condition of a human being in the modern world.

The first, identical, sections of the Preambles to the Universal Declaration of Human Rights and to the International Covenants of Human Rights read:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The Preambles to the Covenants add also:

These rights derive from the inherent dignity of the human person.

First of all it should be noted that the fundamental rights and freedoms are *universal* that is, belong to each and every human being, no matter what he or she is. Universality is rooted in inherency of dignity and rights. Although universality

and inherency are decisive for specificity of human rights as rights, these characteristics are most often contested by the theoreticians of law. It should be however underlined that both universality and inherence are flatly recognized and emphasized on the level of practical discussion. The Vienna Declaration, a final document of the World Conference of Human Rights (1993), which was adopted by consensus of unprecedented number of 171 representatives of states, contains, partially in answer to the raised doubts, the following unambiguous phrases: "Human rights and fundamental freedoms are the birthright of all human beings" (I.1); "The universal nature of these rights and freedoms is beyond question" (I.1). Objections against universality and against existence of human rights as rights, often stem from overlooking of the distinction between human rights law and human rights themselves. Ignoring the fact that human rights concept was born partially to challenge the positivistic approach to law, human rights are sometimes rejected only because they do not fit these characteristics of rights which were elaborated on the ground of statutory law.

The fundamental rights and freedoms are *neither obtained, nor granted* through any human actions. They may not be recognized or respected in these actions, but they still belong to each individual. The rights which derive from inherent dignity are also *inalienable*. Nobody can deprive anybody of these rights and nobody can renounce these rights by himself. In this approach the fundamental human rights and freedoms are not related to the duly adopted legal norms, but adoption of the appropriate norms is postulated to protect human rights and to determine the ways of their realization. Legal norms (human rights law) do not establish fundamental rights and freedoms but only guarantee them. The fact that certain actions or abandonment of actions are due to an individual has its primary reason in the uniqueness of being a human. This uniqueness is also a ground for assigning *dignity* to each and every human being. Every human being is regarded to be an aim in himself; therefore *non-instrumental treatment* and acknowledgment that an individual is entitled to *personal development* and to the conditions which lead to it are postulated.

Another important feature of the contemporary conception of human rights is the recognition of *indivisibility and interdependence* of different rights.

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. *Vienna Declaration, I.5*

Different aspects of a human being (physical, moral, spiritual, etc.) deserve proportional concern. Individual development requires appropriate social, political, economic, cultural, ecological conditions. Moreover, ensuring a minimum in one respect is usually indispensable for developing or preventing degradation in another; for example, a fulfilment of minimal social standards may be necessary for enjoyment of political rights. Nevertheless, proportions in which means for prevention of degradation or ensuring development should be distributed are difficult to define. The point of departure is a specific person living in unique

circumstances. The aim of the formulated law is the individual and his or her development, not abstract values.

*Equality* is another major element of the conception of human rights. Article 1 of the Universal Declaration of Human Rights declares:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

First the equal dignity is pointed out; there are no human beings which are more human than other human beings. Equal dignity requires equal respect for an individual related to his or her personal development and for his or her rights based on this relation. Respect for equality does not mean an equal treatment in the way of imposing equal aims and equal circumstances of action; differences are even desirable if there are proportional reasons justifying them. That is why equality may be sometimes expressed also in the terms of *non-discrimination*, if discrimination means differentiating without proper reason. The point of departure is again a specific human being, living in unique circumstances and endowed with unique abilities. Therefore, while constructing laws, the postulate of equality combines *equality before the law* and *equal protection of the law*. It is not sufficient that the same judgment is past in the circumstances which in the face of positive law do not differ in a relevant degree, it is also important that there are proper reasons to regard certain differences as relevant in law.

Addressing in Article 1 the *freedom* of a human being the Universal Declaration points to human dignity, *reason and conscience*. The reference to reason and conscience underlines that the human being is not absolutely free in defining the standards. In every free decision which contributes to the personal development the indications of reason and conscience have to be taken into account. In such decisions inherent dignity and rights derived thereof are to be respected.

If we recognize that inherent dignity is a source of human rights and that human rights are inalienable, we have to accept as a consequence that human rights are not related to any concrete property of human being. If recognition of human rights were to be related to any human characteristic, the deprivation of it would have to mean a deprivation of the rights related to it. Therefore possession of human rights is not a consequence of, for example, being able to exercise free choices or to think logically. Every human being is recognized as free and rational, so being free and rational are not properties related to some functional abilities, but are inherent and may be regarded as at least an element of the foundations of uniqueness and dignity of a human being. Here the universality of human rights finds its real roots.

Article 1 of the Universal Declaration of Human Rights speaking about "a spirit of brotherhood" draws attention to the fact that in principle members of society or global community are not competitors who constitute a danger for each other. A human being is a *social being*; relations with others are an indispensable

condition of development, and at the same time concern for the well-being of others is also an obligation and a part of one's own personal development. International Covenants on Human Rights in their preambles stress

the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights.

Recognition of the indispensability of social environment may not lead to assigning priority to the community in the case of conflict between respect for the dignity of an individual and the well-being of the community. A human being is autonomous, he is not a mere part of a society; the society exists for the benefit of the individual.

In the paradigmatic conception of human rights recognition of dignity and of the rights which derive from it is the *basis of justice* and therefore the basis of every legal system which claims to be just. Indicating the extra-legal foundations of positive law and modelling the legal system on the basis of respect of human rights helps to protect it from degenerating into a system which is unjust and allows to eliminate the emerging elements of the legal lawlessness.

Taking into account the basic characteristics of human rights we can attempt to identify definitional elements of the broad philosophical notion of human rights existing independently of legal instruments. Human rights can be described as (1) a real relation between human beings, the relation of duty to act or duty to abandon an action, which rest on (2) an inherent (rooted in being a human, especially in being an aim in himself) relation of every person to certain goods (things, states, circumstances): (a) in which the human being is not treated as a mere means, and (b) which makes his or her personal development possible. This complex of relations exists independently of acts of law, and independently of that whether any individual apprehends it or not.

The requirement, not to be treated instrumentally, makes it possible to determine the *limits* of that which is acceptable. Compromise outside these limits would be contrary to the respect of dignity and would lead to violation of human rights. Recognition of the fact that there are limits which can be crossed neither by an individual, nor by a majority of citizens, nor by a state authority, is one of the basic elements of the contemporary conception of human rights (specific "*fundamentalism*" of human rights). Secondly, the respect for a human being related to his or her development requires ensuring - in the limits of what is acceptable - conditions for free and rational choice of aims of actions and ways of his or her development. If conflicts arise here, there is a space for a *compromise* in the discussions on the means and ways of development of a human person. But such discussions and compromise do not aim at uniformity; in contrary, realization of human rights means realization of *plurality*: postulated because of the specific potentialities of each human being, freedom in choosing his or her own way, relation of an individual to a culture which forms an indispensable environment for his or her development, etc. There is no contradiction between plurality and

universality once we realize that determining what is wrong and unjust does not mean determining a uniform way of realizing the individual.

Human rights law, both international and domestic, aims at grasping the relations constituting human rights in their existential aspect, and at creating instruments of protection of these rights. Catalogues of human rights formulated in positive law, and partially also the conceptions of human rights themselves, are an answer to threats to human being and its development. Various fundamental rights and freedoms point to different aspects of the human being, to his or her different potentialities and different categories of goods. In the world of different cultures and rapidly changing circumstances it is not easy to get to know these threats and concrete ways of realizing of a person. It is not easy to find appropriate remedies and to agree upon the organization of social life. This explains the *historic and dynamic character* of the concepts and standards offered in human rights law. However, this does not deny the existence of human rights and their inherent and universal character, but rather is an affirmation of uniqueness of each human being.

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# **Towards global human rights**

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