WHAT ARE HUMAN RIGHTS

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The knowledge on human rights is a branch situated someplace between philosophy, ethics in particular, many branches of law, and political sciences. It emerged in its modern shape after World War II but its roots can be sought in ancient times, the Middle Ages, and especially in the thought of Enlightenment. Human rights were neither studied nor taught in the communist world: the name itself, however, supplemented with the adjective "socialist", could be heard in the 1970s and 1980s, intentionally obliterating and dimming the forceful ideas coming from the West which were called "bourgeois human rights" within the bloc.

In the 1990s, the conception of human rights spread rapidly in Poland. Yet the nearly half a century of lagging behind can hardly be made up for in several years, all the more so as many misunderstandings arise also in connection with other terms related but indirectly to human rights – such as democracy, the left and right wing etc. - whose meaning was distorted first by the ideology of People's Poland and afterwards by politicians of the period of systemic transformation.

You cannot possibly discuss anything without previously agreeing the meaning of the basic terms. Therefore, without trying to find any generally accepted definitions (which do not exist anyway), let us now make an attempt at specifying the basic notions to be used during our discussion of human rights.

The first issue which is often misunderstood is the term "democracy". Journalist frequently ask about the sense of being engaged in human rights as "we already have democracy after all". They identify democracy with majority rule, evidenced in their opinion by honest free elections. Admittedly, there is majority rule in today's Poland. But this rule is sometimes extremely cruel to individuals and to all kinds of minorities, as is illustrated by the history of mankind. To quote just one example, let us mention Socrates whose death sentence, passed by the majority, hardly added to the glory of Athens. Ask any group of people to compile a list of 10 or 20 traits characterizing them personally and their situation – and most of the traits thus mentioned turn out to be minority ones. The majority, instead, tend to neglect the problems of minorities and sometimes even to be hostile to them. Therefore, unrestricted majority rule poses danger to individuals and groups. For this reason, what we are going to treat as democracy in our discussions is **restricted majority rule,** limited by a set of rights and freedoms that are due to individuals and may not be violated by the majority. This way, individual rights and freedoms limit the majority will.

The principle of limited power is often called that of **constitutionalism.** Today, it is asually reflected in chapters of written constitutions, the chapter in question being those on human rights and freedom. In particular, they place restrictions on the power of the legislature, forbidding parliamentarians to raise their hands and vote that tomorrow all thieves should be hanged, all Gypsies should be expelled, or land should be taken away from its owners. Thus **human rights and freedoms set the limits of majority rule in democratic society.**

A notion of great importance for human rights is **the rule of law** (state ruled by law). "republic of Poland is a democratic state ruled by law", Article 1 of valid constitutional provisions states. A state ruled by law is one where the rules of the game between the individual and authorities are clear, stable and generally know. It is a state where the citizen can anticipate, with a very high degree of probability, the authorities' response to his conduct, this kind of state being governed by clearly stated law and not by arbitrariness of officials of functionaries.

Of course, a state ruled by law is not necessarily a democratic one, and a democratic state is not necessarily ruled by law.

Human rights and freedoms are found exclusively in i**ndividual's relations to state.** This is the so-called vertical operation of those rights. Attempts at describing relations between individuals on the grounds of human rights methodics and terminology (so-called horizontal operation of human rights) have failed: speaking of human rights today, we mean nothing but the individual-state relations. Naturally, a person's family life, love, friendship and neighborhood relations give rise to numerous rights and obligations – these, however, are beyond the sphere of human rights.

Human rights are **individual** and not **collective** rights. Their subject is the individual. Therefore, in the area of human rights we cannot speak of rights of national minorities as this would the language and domain of politics (an example of such collective right being e. g. The right to autonomy), but merely of the rights of persons belonging to national minorities. Similarly, there are no rights of the disabled seen as a group – merely the rights of each disabled person individually. The sole inconsistence in the differentiation between individual and collective rights is the introduction in the 1960s into both UN International Covenant on Human Rights of Article 1 which provides that "nations cannot be deduced from individual rights: they are typical collective rights. The original reasons for introducing those provisions were political: today, at any rate, speaking of human rights we mean the rights of individuals and not of nations, social classes or orders.

There are two basic groups of so-called human rights: **substantive** and **procedural** rights.

Substantive rights are specific freedoms and rights due to the individual : freedom of speech, conscience, religion, and choice of place of

residence, right to education etc.

Procedural rights are means of action on the individual's disposal and the related institutions which make it possible for him to exact the authorities' observance of his freedoms and the enjoyment of his rights.

The division is not always a clear-cut one: for example, the right to court can be treated as substantive in some situations (if the court is used as an arbiter to settle a person's dispute with another individual), or as procedural in some other ones (if a person goes before the court to sue and institution which has violated his rights).

Substantive rights are divided into **rights** and f**reedoms**. A **right** (sometimes called positive right) is the duty of those in power actively to do something for each individual. For example, the right to education lays on authorities the responsibility for providing a network of schools thus making it possible for each and every child to receive education. Matters such as payment for such education – either direct tuition fees or taxation paid to the budget – are of secondary importance here: if, however, a child is banned from education (due, for example, to absence of an effective system of scholarships in the former case, we deal with violation of the right to education. Similarly, the right to court is the authorities ' duty to provide a network of courts for each individual to be able to bring a matter of importance to him before the court for examination and decision.

Freedoms (sometimes called negative rights) are bans, imposed on those in power, on interfering with specific areas of individual life. Freedom of speech, religion, etc. are bans on the state authorities' interference with those areas of human activity. Briefly, if a person has a right, this means that the authorities are obliged to do something for that person: in the case of freedom, the authorities are obliged to abstain from action.

The Polish language tradition sometimes clashes with this classification: literally interpreted, the right to life would mean that state is to make a person immortal, while what is actually concerned here is rather a freedom of life. Similarly, the right of assembly is a ban on interfering with peaceful assemblies of people, whatever their site and slogans – that is, freedom of assembly. Trying to oppose linguistic standards is a difficult and not too advisable task: yet differentiation between positive and negative rights is essential.

Some of the rights are called **inalienable**. They are rights due to the individual which that individual cannot resign. A document signed by a person and stating that he resigns his personal freedom any yields himself another person's slave would have no legal effect whatever: it would be irrelevant from the very start. Effective, instead, is a person's disposal of property: the owner is free to limit his right of ownership as property is not an inalienable right.

The facts considered that human rights and freedoms take place between the individual and authorities, it has to be stated that there are three basically different approaches to the nature of such relations.

The first approach assumes that power comes first: it is those in power who are kind and generous enough to grant specific rights to the people. Thus what people actually enjoy in terms of rights is what those in power chose to grant to them. This approach can be found in all communist constitutions[1], and also in some 19th century European ones.

The second approach bases on the model of social contract: the contract is negotiated by those in power and the people interpreted as a group of individuals (and not as Marxist society which – being a "new quality" - may have its own aims independent of the will and interest of its members). The ruled agree to render specific services to the ruling (as e. g. To pay taxes), and the ruling undertake to do something for the people (that is, to fulfill their rights) and to abstain from interfering with specific areas of their lives (thus recognizing their freedoms). This kind of contract, more or less to each party's advantage and supplemented with a description of the machine of power, is often called the constitution.

The third approach is typical of the American thought. Equipped with natural rights and freedoms which follow from the very essence of their humanity, the people decide to establish a state and to appoint authorities to make their lives better and more comfortable. For the state to be able to operate, they voluntarily curtail some their own rights and hand them over for the state's disposal: for example, they limit their property and agree to pay taxes, or they limit their personal freedom and agree to serve in the army if necessary.

This model differs basically form the first one mentioned. There, the people only enjoyed the extent of rights which was granted to them by the ruling: here, instead, the ruling only have as much power as the people chose to hand over to them. These differences of conception have grave practical consequences. If we select a legal norm and try to apply it to a specific cleverly chosen example, we get different decisions depending on the use of the first vs. the third interpretation of the individual–authorities relation. This means that even identical provisions may shape different social realities. The third approach which states that **those in power may only do what they are permitted by law while the people may do all that is not prohibited by law** is among the foundations of the conception of human rights. One should bear it in mind that the sole issue taken into consideration is that of individual–authorities relation, and that the statement that a person is free to do whatever he is not prohibited by law does but limit the possibility of coercive interference of state with numerous spheres of our lives, by no means diminishing our moral obligations towards our next of kin, neighbors or simply fellow humans.

The basic notion of the conception of human rights is inalienable and inherent **human dignity** of man, or – to use the language of social teaching of the Catholic Church – dignity of the human person. Human dignity is related to the

[1]Republic of poland strengthens and extend the rights and freedoms of citizens (Article 67.1 of preserved Constitutional Provisions of 22 July 1995).

very essence of humanity and follows from the fact of being human: it is due equally to an infant who has never done anything good or bad in his life yet, and to the greatest of criminals. Human dignity is not the same as personal dignity which actually approximates the noting of honor. Personal dignity has to be earned: noble deeds make it higher but a person can lose it altogether through a shameful deed. What matters for human rights, though, is the former dignity – that of the human being. Its grounds can be found in many different religions and philosophies. To a Christian, it follows from the facts that created as the image and likeness of Go, man possesses a particle of dignity of his Creator. However, the actual way in which the existence of human dignity is justified and the specific religion or philosophy from which that dignity is derived appears not to be of greater importance for our further reasoning: discussing the consequences of its existence, we ultimately reach highly approximating catalogs of freedoms and rights due to the individual in his relations with state authority: rights which protect him against humiliations, abasement, and inhuman treatment by powerful state with its means of constraint.

Those very rights and freedoms are the sheath and screen protection the dignity of each individual against an assault by the authorities. Thus what human rights actually do is not to guarantee that a person will be loved, happy, and prosperous: they do not even guarantee justice and the minimum welfare. They merely protect individuals against abasement and assaults against their dignity, and that on part of one of potential violators only but at the same time the most powerful one – state authority which is translated into majority will in a democratic system.

Human rights make it possible for the individual to preserve his individuality, to survive as a unique person: there has never been and there will never be anybody just like any one of us, with our individuality equipment of memories, emotions, and thoughts. The opposite of systems which respect the uniqueness and individualism of each and every person are totalitarianism creating the "new man", standardized and conceived by dictators. Such ideal citizens all say and thinj the same; in the extreme version, they all wear north-Korean or Chinese uniforms and march or form gigantic tableaux vivants on stadiums in praise of their Leader and Father or the idea that organizes their lives.

Deduced from human dignity are two basic notions: **freedom** and **equality.** Even today, the term freedom has a somewhat different meaning in North America than in Europe. This results from the two continents' historical conditions and different situations of their peoples at the close of the 18th century when the modern conception of human rights was shaped. In America, the settlers went west; fertile lands were in abundance, and the state they formed was merely to defend them against internal and external enemies. It was to establish the institution of sheriff and a law enforcement system to protect them from the former, and an army to defend them from the latter. The Indians were treated as an

external enemy. Any further state interference with settlers' lives would be not merely redundant but even undesirable as it would reduce their chances for success. Hence the conception of **freedom from state:** its role reduced to that of a watchman, state was to perform but the function of defense. At the same time, a provision was inserted in the Declaration of Independence which spoke of the right to pursue happiness. It was interpreted as a negative right: Americans are free to pursue happiness, and state is not to interfere with their pursuit.

In that same period, Europe had no land to be taken over; most people worked on someone else's land and were submitted to economic and sometimes also judicial authority of great landowners. Those People hoped to obtain their freedom form state which had powers to curb their immediate oppressors. This is how the conception of **freedom through state** was developed. It was accompanied by expectations that state would make each individual citizen happy; thus formulated, the right to happiness was reflected in the documents of the French Revolution. With time, this claim consciousness of the European conception of freedom found its reflection in the continent's history: it was there that systems appeared which thought they knew what was good for their people and what would make them happy; horribly enough, some even tried to carry their into effect.

Used by politicians, the term **"equality"** can have a variety of meanings. A person with what might be called a communist ideological background (to simplify matters somewhat) means **equality** of services due, that is of the **living conditions.** The embodiment of this conception was the slogan that "we all have the same stomachs" which meant that all people deserve the same.

Used by a socialist, equality means **equal opportunities.** Entering life, all people should be given the same opportunities. Later on, a talented and industrious person will go to the top and his opposite will not; but they should both be equal at the start. This way of thinking appears in conceptions of human rights in the area of the rights of persons belonging to national and social minorities.

To a liberal, finally, equality means **equality of rights and equality before the law.** Equality of rights greatly approximates the ban discriminations, interpreted as any differentiation of rights or qualifications which lack a rational, nay physical or biological justification. Thus a provision banning a blind person from driving would not constitute a discrimination due to its rational grounds: instead, it would no doubt discriminatory if driver's licenses were not issued to blondes or Gypsies. Legal systems free of discriminatory provisions can be created in practice; but attempts have failed so far to create a system which would also fulfill the other liberal requirement: equality before the law. All over the world, the rich and famous receive a better treatment from state functionaries than members of stigmatized and socially despised groups. A variety of systems are conceived to make up for such differences; nowhere, however, have such systems proved fully successful. Perhaps the demand that all be treated equally simply

cannot be satisfied which is not to say that we should cease to pursue this aim. Naturally, elements of irrational differentiation may appear in social or interpersonal relations; this, however, goes beyond our sphere of interest – the relations between individual and state.

The discussion on equality and freedom provide the point of departure for formulation of catalogs of substantive rights and development of institutions and procedures to guarantee the observance of contents of such catalogs by state.

Most substantive rights are **limited rights.** Of those specified in the European Convention of Human Rights, only freedom torture and slavery cannot be restricted under any circumstances. Whatever. As regards the remaining rights, they can be restricted if their exercise clashes with the rights and freedoms of other persons or with interests such as e. g. Security of state. All restrictions, however, are only admissible on account of specifically stated aims and have to be introduced statutorily, the Government not being empowered to imposed them. Admissible is only the smallest possible limitation which is sufficient to protect the interest with which the exercise of a right proves to collide; and finally, the form of such limitation must be one which is admissible in a democratic society of free individuals. The European Court of Human Rights examines cases of limitation of rights for possible violations of the above four requirements. Groundless under European law is therefore the fear characteristic of persons who grew up in the communist system that whenever those in power are permitted a limit a right, they will certainly abolish that right altogether. Limitations are and indeed have to be admissible but their extent and from are submitted to a most restrictive scrutiny. Thus the possibility of limiting human rights by no means acts to abolish their essence. The search for limits to human rights and freedom is often difficult and gives rise to many conflict, scientific and technological progress causing ever new problems.

A mere recognition of human rights and freedom is but of little importance if no **procedures** are provided for each individual effectively to defend himself against violations of those rights. Those in power invariably tend to violate the rights of the ruled as such violations make ruling more effective and may also make the road to noble and commendable aims shorter. This tendency can be found among rulers irrespective of the political system. Hence the fundamental problem of developing procedures to prevent it: that is, to prevent rulers from taking “shortcuts”. This was particularly noticeable in People's Poland: despite the fact that the Constitution did provide for specific human rights, and the ratification in 1976 of the International Covenant on Civil and Political Rights, citizens had no procedural rights. There was no recourse to the law making it possible to sue a commune official, an officer of the Civil Militia, or a minister for violation of a person's rights, and a reference to the Constitution or international law met at best with mild mockery. In developed democracies, agencies and institutions protecting human rights and freedoms include courts, also administrative and constitutional ones, parliamentary ombudsmen,

institutions of legislative initiative of citizens and of referendum, citizens right of complaint to the constitutional court, direct application by state institutions of the Constitution and international human rights treaties, non-governmental organizations operating on the grounds of a proper legislation, the right of petition etc. Some substantive rights, such as freedom of speech, the right to information on the actions of state authorities, freedom of assembly and association, are not only protected interests but also instruments facilitating the protection of other rights. Finally, a good political system with clearly separated and balanced powers – legislative, executive and judicial – which exercise mutual control also facilitates the protection of human rights.

Human rights develop with time, their catalog being extended both in domestic systems of states and in international law (the fact should be borne in mind here that international law provides for the minimum standard of human rights protection common for states with different traditions and cultures; further rights and freedoms are added to such generally recognized catalogs by domestic law of individual states). Beside discussion on further rights, also new problems and threats appear – as e. g. the threat to the right to privacy posed by the progress in computer science, or new problems related to the limits of freedom of scientific research. Therefore, new rights and freedoms are formulated: procedures are sought more effectively to guarantee their observance: and a variety of techniques are employed to prevent those in power from violating the formally recognized human rights. The tendency to limit individual rights being an immanent trait of those in power, the majority included, it seems that society's actions on behalf on human rights will never ceases to be needed. It can be seen today that the more mature a democracy, the stronger and more numerous the organizations protecting individualism and uniqueness of the human person against rulers' attempts.