

HUMAN RIGHTS AND NATIONAL MINORITIES IN EUROPE

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In the struggle for human rights men of different nationalities and colours, different social groups and different faiths in various national, social and other positions have the same stand. There has been no lack of declarations on the political level and hardly any government misses a chance to formally recognize human rights, although on the practical level until now it has not been possible to achieve a breakthrough of world wide impact. Nonetheless, there is cause for hope, because the call for the unconditional realization of human rights is growing stronger everywhere.

In recent years, the theme 'Human Rights' has become ever more urgent in international discussions. Hardly a day goes by in which the media does not point out human rights violations. The Conference on Security and Cooperation in Europe 1973-75 in the middle of cold war made the tussle between States over this question especially visible.

The idea of human rights found its first convincing expression in the American Declaration of Independence and in the Declaration of Human and Civil rights during the French revolution. For a long time a guarantee of these rights on the one hand and the struggle for these rights on the other seemed imaginable only in the relationship of the citizens to their own country. Only from the horrors of the Second World War did the insight grow that human rights, as a common treasure of humanity, must be guaranteed also on the international level. The founding of the United Nations in 1945 is therefore closely connected to its belief in human rights mentioned in its charter. This goal of human rights in the newly founded international organization was firmly strengthened by the solemn proclamation of the 'Universal Declaration of Human Rights' in 1948.¹

There was an especially urgent need for a legal determining of human rights internationally in a Europe which suffered so much during the Second World War. Therefore already in 1950, the West European democracies, who were members of the Council of Europe, formulated the legally binding European Convention for the protection of human rights and fundamental freedoms,² which would give every citizen of member States rights for which he could sue in court. In order to facilitate the implementation of these rights, permanent institutions were created through this convention within the framework of the Council of Europe: namely the European Commission on Human Rights and the European Court of Human Rights.

But also in the larger framework of the United Nations, the limited legal obligation of the Universal Declaration of Human Rights was found to be unsatisfactory. After many years of work, in 1966 covenants of the United Nations were formulated on civil and political rights³ and on economic, social and cultural rights⁴. There are also many other conventions of the United Nations which contain definitions of various aspects of human rights, as for example the Convention on the Elimination of all forms of Racial

Discrimination.⁵ as well as the Convention on the Elimination of all forms of Discrimination against Women.⁶

Human Rights were also the central theme of the first great East-West conference in Europe, the Conference on Security and Cooperation in Europe at Helsinki. In the concluding document of this conference of 1 August 1975,⁷ the East and the West declared that they would respect human rights in their mutual relationships. Human Rights were in the center of discussion of this Conference.

The great currents of ideas, which preceded the first human rights declarations and which were especially important in the 18th and 19th Century, depend upon much older perceptions of the universal nature of man and his rights.

The declarations of human rights were political plans of action both in America as well as in France. Their roots are to be found in earlier times: in order to work against the claims to absolute domination and feudal privileges, they based their early ideas of human rights on those of Natural Law, which in those days had great relevance in the spiritual life of Europe.

The Declarations of human rights have as their starting point, that human rights are rooted in the dignity of man, both are inalienable and irremovable basic rights to which the authority of the State is related for all times and before all men. In the Declarations of human rights there was therefore not just a legal-philosophical claim. We also find fundamental reflections about the nature of man and his dignity and legal consequences which follow from these ideas.

The question about Law and Limits of the use of force, of claims to power and of legislating by the State, i.e. the question about the meaning of the concept 'Right' in relation to State and Law, will always remain important. That is the central problem which men have always considered and have arrived at ever clearer formulations.

The human race has in the course of its history prepared much suffering and unhappiness for itself through violent oppression. At all times mankind has tried to stop violations of Human Rights by attempting to put limits to State power.

One must go back 2000 years to find the roots of this flow of ideas. Many basic scientific and philosophical concepts, including the concept of Natural Law, has European history taken from the Greeks, in particular from the Stoic school.

Already Pythagoras compared the governmental set up to cosmic harmony. He therefore knows already about the double order of norms: State law and cosmic justice. But there was between the two still no contradiction, because Pythagoras saw State law as a precipitation of cosmic order. Through this his teaching contained the germ of the theory of Natural Law, but it came to be completely unfolded after the question was put whether and how far both orders harmonized with each other. This question could only then arise

when State law was no longer seen as something indisputable, but rather was examined critically.

When the teaching of Natural Law would like to reach the essence of Natural Law, then it must have, as its foundation, that philosophical anthropology which studies the essence of Man from every possible angle. But such an investigation shows us that only some characteristics of human nature remain constant, while there are many variable factors. For this reason the working out of an unchanging and complete system of Natural Law is excluded. It is however possible, from the existential goals of human nature to describe certain general basic rules. In this way, through an empirical study of values, a certain set of basic values can be found to exist among every human social order, which over time will not be able to be separated from positive law. Peace and Order in human society are generally guaranteed by Positive Law, which can in the long run remain uncontested only when basic values which are generally recognized by people are not crudely violated.

Because Law controls the relationship of persons in society, it will be possible that it satisfies the inner feeling for justice in every person, only when it suits the corporal-spiritual and moral nature of men.

In the 19th century, the thought gradually developed and grew into the basis of an intervention for humanitarian reasons, according to which the community of nations is justified in intervening into the affairs of a State where basic human rights are being violated. But yet there was no breakthrough in this respect.

Terrible were the immeasurable sufferings of mankind during the Second World War, which the organized community of states inflicted not just on their dealings with one another, but also on the fate of mankind. We therefore read in Art. 1 §3 of the Charter of United Nations:

'The purposes of the United Nations are: To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in protecting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.'

These were aims the statute of the League of Nations which was created after the first world war did not know yet.

From the text of the Charter of the United Nations, it is to be understood that the United Nations cannot take directly effective measures in the areas of Human Rights and Fundamental Freedoms. It depends on the States to take measures which approach these goals. Here one lands at the Sovereignty of the State and is finally dependent on its goodwill.

A further step of great significance was the already mentioned decision of the General Assembly of the United Nations of 10 December 1948 on the Universal Declaration on

Human Rights', which can be compared to the formulation of human rights of the 18th century.

The content of the 'Universal Declaration on Human Rights' from the year 1948 follows the classical presentation and model of western political circles and orients itself on the Declaration of the year 1789 in France, about which I have already spoken. The Universal Declaration from the year 1948 is a compromise between liberal, social and christian thoughts, which culminates in the three classical basic rights: Life, Freedom and Property. Ideas of social rights and certain duties were also included in these rights.

The history of the development of the Universal Declaration of the year 1948 was overshadowed by ideological opposites. The totalitarian-run States believed that this Declaration interfered with the internal affairs of the country and did not sufficiently reflect the duties of the individual towards the State.

It should be explained here that this declaration is not a legal binding item of international law according to its classical understanding and so does not provide a basis for rights and duties in the strict sense. It lacks the characteristics of an international treaty between sovereign States. Still, the Declaration is a resolution of the General Assembly, which is the statutory body of the United Nations, and has the same binding effect that other resolutions of the General Assembly have. And since not only the International Court in its decisions, but also the representatives of States of all shades often quote it, the Declaration can be considered as one of the decisions of the United Nations which has great political and moral impact. Only the future will tell whether it will one day become customary law.

The work on a Contract of international law on Human Rights and Fundamental Freedoms by the Human Rights Commission of the United Nations started in the year 1949 in spite of the difficult situation created by the East-West ideological conflicts. It remained that way until the year 1966 when the General Assembly of the United Nations was able to decide on such a Contract.

The Human Rights Agreements of the United Nations, passed as a resolution by the General Assembly on 16 December 1966, contains the most modern and complete catalogue of human rights, at least for that time:

1. The International Covenant on economic, social and cultural rights
2. The International Covenant on civil and political rights and
3. The optional Protocol to the International Covenant on Civil and Political Rights.⁸

The Convention for the protection of Civil and Political Rights contains the Existence Rights of the Person. The Right to Life, Personal Liberty and Security, Freedom of movement, the Right to Choose one's Place of Abode, Emigration and Immigration, Equal Treatment before the courts, Freedom of Thought, Conscience and Religion,

Freedom of Expression, Freedom of Assembly and of Forming Societies, Protection of the Family, etc.

In the Convention covering Economic, Social and Cultural Rights certain claims are included which make the Individual respectable before the State. The Person should have an existence worthy of a human being. The Right to Work, including adequate and satisfactory working conditions, the Right to Form Unions, Social Security, Protection of the Family, Satisfactory Living Conditions, a Right to Education, etc.

It can be observed that there were two big groups of human rights: on the one hand the civil and political rights, being essential rights which shield one from the State and relate to liberal-free Thought, and the group of economic, cultural and social rights, which especially the 'Social Movements' and Christian Churches have helped to form. This dual pattern reflects also the different views which are based on the ideological differences between East and West. For the West it emphasized the meaning of political and civil rights, and for the East those which are economic, cultural and social.

When today one speaks of human rights, it is quite clear that it is not just about the classical individual human rights but also those that are economic, social and cultural. The Demand for Freedom from Need, Sickness and Illiteracy thus increases in importance. The attempts to realize these rights presumes the satisfying of certain basic needs of the broader segments of the population as a precondition to an existence worthy of a human being.

The effectiveness of the Human Rights depends on their full implementation. For this purpose the following instruments were established:

1) The Human Rights Commission which has been set up by the Economic and Social Council of the United Nations for the promotion of Human rights. This Commission is the most important organ of the United Nations dealing with all questions connected with Human rights, for instance preparing appropriate agreements.⁹

2) The Human Rights Committee to receive and consider communications from individuals claiming to be victims any of the rights set up in the Covenant on Civil and Political Rights.

The Covenant itself does not foresee complaints of individuals. Only a State Party to the Covenant that becomes a Party to the optional Protocol to the International Covenant on Civil and Political Rights recognizes the competence of the Committee to receive and consider the above mentioned communications.¹⁰

3) The process of examining the economic, social and cultural rights according to the International Covenant on economic, social and cultural rights, does not envisage complaints of an individual or States.

The Council of Europe which was founded on 5 May 1949 set for itself as goal the attaining of a greater unity of member States towards the protection and realization of the ideals and basic values of their common heritage, which above all should be achieved through the protection and realization of human rights and fundamental freedoms.

Working out of the European Convention on Human Rights and Fundamental Freedoms belongs therefore to the earliest tasks that the Council of Europe took up.¹¹ 1953 the European Convention came into force.

The system of the Council of Europe contains three means to protect Human Rights:

1. The Complaint of the Individual, i.e. the application made to the European Commission for Human Rights by a natural Person, a non-governmental organization, or a unity of persons.
2. The Complaint by a State, i.e. the application made by one of the signing members of the European Convention on Human Rights to the Commission, and
3. The Explanations that should be provided to the Secretary General of the Council of Europe to queries on how a law that is applicable internally will guarantee the requirements of the European Convention on Human Rights.

The development however did not stop there. Above all I think of the process initiated by the Conference on Security and Cooperation in Europe, in short the CSCE.¹²

It was during this great international Conference that the attempt was made to study the many questions of the East-West relations and to contribute to a solution.

In the foreground of the discussions were Human Rights among other topics from a practical point of view:

In the Final Act of the CSCE, Respect for Human Rights and Fundamental freedoms, including freedom of Thought, Conscience, Religion or Belief, was recognized as a principle. With it the Conference introduced something new on the international level. The texts which are applicable world-wide, like the United Nations Charter, do not describe Human Rights as a principle and so set them on not as high a level as the principles which govern the relations between States in the Final Act of the CSCE. This is very important in that a Member State, which may consider it opportune to intervene out of humanitarian grounds in another State, cannot anymore be considered as interfering in the internal affairs of that State.

But the problem of the principle of Human Rights and Fundamental Freedoms is that it is concerned less with the cooperation between member States, but as an obligation, which is valid towards its own citizens in one's own country.

Peace therefore begins in one's own house. Peace is more than just not being involved in a war. Peace means Freedom from oppression, Freedom from Force, the Right for each State, People and individual Person to go his own way and develop on its own.

We know today that Security and Peace cannot be separated from the political, economic and not lastly humanitarian relations between States, because the States are not abstract entities, but an organized community of human persons, and it is human beings that make politics, and it is for men that the best possible conditions should be created so that they can live and get along with one another in peace.

The Final Act of the CSCE has struck new ground in the framework of the inter-State relations, by which the Human Dimension too has been accepted as an integral component of Security and Cooperation in Europe. The Final Act proceeds from the fact that individuals just as governments have an important role to play in the creating of stability and confidence on the international level and that a free flow of people ideas and information are a necessary element for all aspects of Security and Cooperation in Europe. Our Dialogue can not stop at the point where the rights of individuals begin. That is also why respect for the principle of human rights, in all its appearances makes it an essential constituent of peace. In no way it does become just an abstract principle in relation to human rights, so that it could be interpreted freely by the member States of the Conference. On the contrary, the formulation of the very concrete obligations, like for example, Remification of families, Contacts and regular Meetings on the basis of Family ties, Marriages between citizens of different States, Travel for Personal or Professional reasons. Taking into consideration the situation during the cold war a great progress, so far not contained in any international instrument.

This field of practical even if not completely realized uses of the principle of Human Rights and Fundamental Freedoms, shows very clearly the effect that has emanated from the CSCE. The Final Act has not disappeared into the archives of the Governments. The specifications regarding the humanitarian dimension have made an indelible imprint on the consciousness of the individuals in the member States of the Conference, and so contributed very much to the changes in Eastern Europe and Communism to disappear.

In the Final Act of CSCE one finds the following concrete Statements regarding National Minorities:

The Participating States, on whose territory national minorities exist, will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.¹³

In the latter half of the 3rd main part of the Final Act of the CSCE (also called 'Third Basket') which treats of cooperation and exchange in the areas of culture on the one hand and education on the other, we find the following text:

The Participating States, recognising the contribution that national minorities or regional cultures can make to cooperation among them in various fields of culture or education, intend, when such minorities or cultures exist within their territory, to facilitate this contribution, taking into account the legitimate interests of their members:¹⁴

But the time then was not ripe for further commitments.

The 'Closing Document' of the meeting of the CSCE in Madrid in the year 1983 also did not bring any substantial breakthrough.¹⁵

Only the closing document of the subsequent CSCE Meeting in Vienna held from November 1986 to January 1989 which took place in an especially relaxed political atmosphere between West and East, brought not only notable progress in the context of human rights and fundamental freedoms including religious freedom, but also broad based norms of behaviour in relation to national minorities. It says there:

The participating States will exert sustained efforts to implement the provisions of the Final Act and of the Madrid Concluding Document pertaining to national minorities. They will take all the necessary legislative, administrative, judicial and other measures and apply the relevant international instruments by which they may be bound, to ensure the protection of human rights and fundamental freedoms of persons belonging to national minorities within their territory. They will refrain from any discrimination against such persons and will contribute to the realization of their legitimate interests and aspirations in the field of human rights and fundamental freedoms.

They will ensure that the status of persons belonging to national minorities or regional cultures on their territories is equal to that of other citizens with regard to human contacts under the Final Act and the other aforementioned CSCE documents and that these persons can establish and maintain such contacts through travel and other means of communication, including contacts with citizens of other States with whom they share a common national origin or cultural heritage.¹⁶

The CSCE Conference on the Human Dimension of the CSCE in Copenhagen on the 29th June, 1990, accepted a document on the question of minorities, which gave it a position of greater significance than was previously the case.

Through hard negotiations it was possible to work out a complete catalogue of norms of behaviour which go beyond the requirements of the Closing Document of the CSCE meeting in Vienna, in spite of opposite views from some of member States.¹⁷

Despite of these encouraging steps the discussion in Copenhagen made the limits of this normative work clear. The CSCE Documents until now only deal with the rights of the members of national minorities. There is no definition what is to be understood by a 'national minority' and there are no collective rights. Because of the sensitive nature of the problem the attempt to develop further general rules for the protection of minorities

met with unsurmountable difficulties taking into consideration the great differences in the realities of each country.

On the 21st November 1990 the Presidents and heads of government of member States of the CSCE signed the 'Charter of Paris for a new Europe', in which they affirm that ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law.¹⁸

The heightened interest in the question of minorities was also expressed in the 'Charter of Paris', since, for the first time in the history of the CSCE process, a meeting of experts on national minorities was called, which took place in Geneva from the 1st to the 19th July 1991.

The Geneva Meeting of experts strengthened the consciousness of member States on the complexity of the questions in relation to the protection of national minorities and for the first time in history declared that the rights of persons belonging to national minorities are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State.¹⁹

The Copenhagen Document from 1990 and the Report on the Geneva Meeting of Experts 1991 sets the present protection standard of national minorities in Europe.

The United Nations World Conference on Human Rights (Vienna, June 1993) also dealt with the question of Minorities. The Vienna Declaration and Programme of Action says the following:

Persons belonging to national or ethnic, religious and linguistic minorities.²⁰

1. The World Conference calls on the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic minorities. In this context, the World Conference calls upon the Centre for Human Rights to provide, at the request of Governments concerned and as part of its programme of advisory services and technical assistance, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situations involving minorities.

2. The World Conference urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

3. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.'

In comparison to the large number of political documents which are quoted with their ever increasingly extensive statements, there has not been an equivalent development in the number of instruments with binding effect in international law. There are only very few binding regulations in international law to the advantage of minorities which can be quickly listed:

-Art. 27 of the International Covenant of the United Nations on civil and political rights of 1966

-Art. 1 of the International Agreement on the elimination of all forms of racial discrimination

-Art. 14 of the European Convention on Human Rights and Fundamental freedoms

-The Framework Convention on National Minorities of the Council of Europe, 1.2.1995.

We are confronted by the fact that, despite the many commitments undertaken on the international level, many men lose their lives through violence. Cities and villages are destroyed. Human rights and fundamental freedoms exist there only on paper. Former Yugoslavia and other places have shown very clearly the structural weaknesses of the international instruments which are available.

Newly initiated ethnic and national conflicts, which in some places have arisen because the post-totalitarian society attempted to ensure their keeping together through stressing the national, show us that still no instrument exists which adequately safeguards the protection of Human Rights and Fundamental Freedoms, and including the mandated protection of minorities.

The meaning of all international instruments towards the protection of human rights in the broadest context is not to replace deeds through wordy declarations. It is rather making words credible through an unreserved fulfilling of the obligations which were undertaken.

1) Compilation of International Instruments, United Nations, New York 1988, page 1

2) Menschenrechte, Dokumente und Deklarationen, Bundeszentrale für politische Bildung, Bonn 1991

3) - 4) Compilation of International Instruments, United Nations, New York 1988, page 7-38

- 5) - 6) Compilation of International Instruments, United Nations, New York 1988, page 56-68 and 112-125
- 7) Konferenz über Sicherheit und Zusammenarbeit in Europa, Österr. Bundesministerium für Auswärtige Angelegenheiten, Wien 1986, Seite 20
- 8) Compilation of International Instruments, United Nations, New York 1988, page 38-42
- 9) Charter of the United Nations, Art. 1/3, Art. 13/1b and Art. 68
- 10) Optional Protocol of the International Covenant on Civil and Political Rights
- 11) Fischer/ Köck, Europarecht, page 129 ff
- 12) Helmut Liedermann, Die Konferenz über Sicherheit und Zusammenarbeit in Europa (KSZE) aus Österreichischer Sicht, Kirche und Staat, Fritz Eckert zum 65. Geburtstag, Seite 555, Duncker und Humblot, Berlin 1976
- 13) Conference on Security and Cooperation in Europe, Final Act, Helsinki 1975, page 80/ VII
- 14) Conference on Security and Cooperation in Europe, Final Act, Helsinki 1975, page 126 and 131
- 15) Concluding Document of the Madrid Meeting 1980 of representatives of the Participating States of the Conference on Security and Cooperation in Europe, Helmut Liedermann, Von Helsinki über Belgrad nach Madrid, Völkerrecht und Rechtsphilosophie, Internationale Festschrift für Stephan Verosta, page 427 ff., Duncker und Humblot, Berlin 1980
- 16) Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, Helmut Liedermann, Achtung der Menschenrechte und Grundfreiheiten, einschließlich der Gedanken-, Gewissens- Religions- oder überzeugungsfreiheit. Frieden und Gesellschaftsordnung, Festschrift für Rudolf Weiler, 1988, page 141
- 17) Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE
- 18) Charter of Paris for a New Europe, Paris 1990, p. 14, Helmut Liedermann, Konferenz über Sicherheit und Zusammenarbeit in Europa (KSZE), Der Weg von Helsinki nach Paris, page 297, Glaube und Politik, Festschrift für Robert Prantner, Duncker und Humblot, Berlin 1991
- 19) Report of the CSCE Meeting of Experts on National Minorities, Geneva 1991

20) United Nations World Conference on Human Rights, 1993, Vienna Helmut Liedermann, Weltkonferenz der Vereinten Nationen über Menschenrechte. Weg und Ziel. Für Staat und Recht, Festschrift für Herbert Schambeck, Duncker und Humblot, Berlin 1994, page 837 ff.