# HUMAN RIGHTS - MEANING AND IMPORTANCE

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***Abstract***

The full guarantee of the principles of democracy, the principles of the rule of law and the fundamental rights and freedoms of the individual today constitute today the most important problems and challenges for the states with consolidated democracies. Realistically, this is due to the fact that in democracy as a form of government, the individual, his rights, his interests, his security and well-being are and should be constantly in the center of the attention of all state power as a whole. However, the basis for the implementation of the most advanced international standards is the respect of human rights at the national level. There is the individual, there is the problem, there are the constitutional and legal mechanisms that in their daily activities must respect human rights and fundamental freedoms.

## 1.1. Understanding human rights

Aspirated to protect the human dignity of all human beings, it represents the essence of the concept of human rights. This aspiration puts the human being in the center of interest. This aspiration is based on the common universal value system of the right to life as an intangible right and provides a framework for building a human rights system, protected by internationally accepted norms and standards.

Article 1 of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, refers to the main pillars of the human rights system, which are freedom, equality and solidarity. Freedoms, such as freedom of thought, conscience, belief, as well as that of public opinion and expression, are protected by human rights. Similarly, human rights guarantee equality, such as equal protection against all forms of discrimination to enjoy all human rights, including full equality between women and men, and the like.

Of course, "human rights" are not a recent phenomenon. The concept of human rights is as old as the notion of the state and of the law itself. In other words, human rights as a concept have their origins since the onset of human civilization. Over time, this notion is elaborated, accurately and extensively expanded. However, generally, the term "human rights" generally refers to the fundamental and inalienable rights that are indispensable for life. However, even today, there is no exhaustive definition of the content of human rights.

In fact, attempts to define the term "Human Rights" have been ongoing. One of many such definitions that I think is of interest is that of the well-known author Umozurike, which emphasizes

among other things that human rights are those rights "... that the international community recognizes that they belong to all individuals, simply by the fact of being human. "This concept necessarily brings to the idea that human rights are universal rights. If human rights are right, simply because they belong to a human being, as it is usually thought to be, then universally they belong to all human beings. In other words, human rights are the rights that every individual simply has because he is a human being. Are they just abstract or imaginary values, but they are first and foremost practical and special rights, which each individual must enjoy effectively. It is important to note that this attitude has consistently maintained the jurisprudence of the European Court of Human Rights.

Therefore, in order to better understand human rights, as presented today, it is necessary to look as short as possible from the past, from the specific problems and specifics that present in this direction certain societies or religions, coupled this naturally with views and views of the most prominent thinkers, scholars or philosophers of the time.

In fact, it should be noted at the outset that a large number of scholars have accessed this research at different time periods, while social processes and overall social evolution have essentially affected the progressive development of human rights standards. Therefore, from the foregoing, I think it would be of interest to initially present a short history of human rights development, starting with the first ideas and documents in this area, up to the present day. As noted above, human rights originate with the very birth of the state and the rule of law they arise from the need to protect power as well as the individuals living in this state. The state creates the right and the right is created by the state. On this basis are also defined the rules of functioning of the state as well as the obligations of individuals. But the ratio of state organs with the individual should be controlled, as this report is not always fair. Moreover, first and foremost, the state bodies themselves have to respect and protect human rights. An inevitable but very important dialectical relationship between the state and the individual is thus created. Particularly in past societies, this report was quite unbalanced, in the sense that not only were the tolerable but also violated by the state power the fundamental rights and fundamental freedoms of the individual.

But on the other hand, it should also be noted that especially since the 20th century, in certain states and societies, there has been a positive effort to recognize human rights and fundamental freedoms, despite obstacles or difficulties at different times of time. The first thoughts of human rights we find in ancient times, in the main works of prominent thinkers and philosophers of the ancient period. Then, in the first states, special human rights issues are formalized through the norms of the law. On this basis, the first concepts of human rights theories are either found or ascertained. Specifically, the first notions of human rights encounter in early religious codes, and then, of course, in the city - the states of ancient Greece. Precisely here are the first notions of "natural law", elaborated by prominent Greek philosophers, among whom undoubtedly is distinguished the Aristotle.

It was Aristotle[122] who defined human rights in the political context, emphasizing the important fact that it is precisely the state that should originate from the political system. In this sense, in his masterpiece "Politics" he emphasizes that human rights derive from the relationship existing between people and the state, created because the definition of what is "right" is a

[122] Human Rights Theories Classical Perspectives: Aristotle, available at: http: www. m tholyoke .edu/ gerla/ classweb /Human Right Theories Classic Perspectives. html, accessed on February 13, 2013

fundamental principle in a political society. According to him, the notion of the state originates within the family, from the family is formed a village, from the village is formed the community, and so on to the creation of the state. He believes a system of justice and rights is needed for a government to work for the common interest of all citizens. According to him, a government that does not have such a structure is "defective," because all people are subordinate to the ruler. He therefore considers that the natural rights are created with a government and the state itself is obliged to "Freedom is guaranteed only if it has rights, so it is natural that the rights will be developed from the creation of a state so that every man's freedom is guaranteed." Aristotle's Concepts we find it developed and supplemented significantly later by prominent theologian Thomas Aquinas in his work "*Summa Theologica*"[123]

Among other things, according to him, it is natural that a behavior be right or wrong, because God has defined it in this way. According to him, what is a natural right can be ascertained by people through "fair reason", thinking and acting as it should, based on sound reason.[124]

Then we find the theory of natural law more elaborate in the works of the most prominent thinkers of the Middle Ages, such as Locke, Grotius, Spinoza, Descartes, Voltaire, Montesquieu, Rousseau and others. The theory of natural law is treated and studied with great interest even nowadays.

In fact, the ideas of Jean Jacques Rousseau are often interpreted as laying the foundations of the theory of natural law at a scientific point of view. His masterpiece "On Social Contract" served as a theoretical basis for many of the ideologues of the French Enlightenment.[125]

The essence of his philosophy was the establishment of the institution of the assembly of citizens, within which full freedom of thought should be found. Although criticized for his position on expelling women from political life, he was practically a powerful voice for affirming and guaranteeing some of the fundamental freedoms, with a particular focus on freedom of expression.

According to Hugo Grotius,[126] natural law, being a superior order or rule, is simultaneously immutable, since God himself cannot change it. According to him, the moral authority of natural law is ensured because it has divine origin. God himself has set the boundaries of political human activity.

While Spinoza[127] fle speaks of human rights and fundamental freedoms by focusing in particular on the recognition of freedom of thought and speech, which exalts itself as irreplaceable values in social and political life, and that the free expression of thought and speech should not it was contrary to the democratic system, although it is a direct result of this system. He considered

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[123] *Summa TheologiaeI-IIae*, 91, 1 at http://www.newadvent.org/summa/2091.htm Accessed on February 13 2013.
[124] Anderw Heard (1997), "Human Rights: Chimeras in Sheep's Clothing?" Accessed on February 5, 2013 <http://www.sfu.ca/~aheard/intro.html#N_1_>.
[125] Për një diskutim më të detajuar shih Polly Wizard, "Antecedents of the Idea of Human Rights: A survey of Perspectives", Human Development Report 2000 Background Paper, p. 14-15 . Accessed on Feb. 9, 2013
[126] Cary, J. Nederman, Natural Law, An introduction to Legal Philosophy, (Transaction Publishers, New Brunswick, 2009) p. 71-71 Accessed on February 23, 2013.
[127] Gruda, Zejnullah, *Mbrojta ndërkombëtare e te drejtave te njeriut*, Prishtinë, 2010, f. 5.2.

this right as not dangerous to the social peace of the state, not hostile to those who held the power, rather, very useful because in the free expression of thought and speech the freedom of people and citizens is manifested as the goal of the democratic state.

Many authors emphasize today that a well-known form of interpretation of natural law is a classical approach, an indication that natural law exists in the absolute and unchanging sense. Morally it should be a guide to current legislation so that truth or justice is guaranteed equally for all, regardless of the extent to which they allow the principles of collective reason[128].

So even today, the theory of natural law is the foundation of human rights theories. That theory is central to legal literature when it comes to the doctrines and theories developed to address the philosophical and legal issues of human rights and fundamental freedoms. Many other doctrines, with the aim of advancing human rights, have been referred to this theory, and some definitions that emerge from this theory are also found in many documents of a juridical nature. According to this attitude, even today, legal norms derive from the laws of nature, just as human rights are created at the moment of birth.

This theory foretells an ideal legal system that is based on the nature of man as a reasonable being and asserts that international law also takes its binding force from the application of the "law of nature" on the modes of law making use of states. Therefore, even though natural law may be in contradiction with the real law, since the latter relies on the concrete practice of states, natural law is based on objectively correct moral principles[129].

According to this theory, the political advantage that natural law provides to citizens against the state is the opportunity offered to citizens to sue the offender of natural law, namely that when the state is considered a violator of the objective principles of justice, then citizens can seek to bring justice to its place[130].

When talking about the theory of natural law, we need to keep in mind the distinction between natural law and human rights, the violation of which is inherently legal. This distinction is quite important, both theoretically and practically. According to Donnelly, a state that violates natural law is guilty of "moral crimes," but that does not mean that at the same time it violated the rights of its citizens. The essence of this difference is mainly related to legal effects. This means that even though an action may violate rights, it must be justified and fully fair to be compensated. However, such compensation could not be obtained if this is done in violation of the natural law.[131]

Consequently, it results that in a particular and without a legal basis, and only based on the violation of the natural right, citizens have no right to seek redress. Natural law in itself does not give anyone any right to enforce his orders. So to have the right to compensation against the violator of rights, it must be a strong foundation, so it should be based on the norms and fundamental principles of the law. In so doing, the victim will be accorded considerable additional strength to his

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[128] Jasper Doomen, “The meaning of International Law”, The Open Law Journal, 2011, 4, 21-28, Leiden University, Perkstraat 4 A, 2321 VH Leiden, The Netherlands.

[129] Dixon. Martin, E drejta Ndërkombëtare, Tiranë, f. 55

[130] Jack Donnelly, "1: Introduction," in International Handbook of Human Rights, ed. Jack Donnelly and Rhoda E. Howard (New York: Greenwood Press, 1987), 2, accessed on February 9, 2013.

[131] Ibid

or her claims. This is because a starting point for understanding human rights is the review of resources - or the legitimate legal aspect of the claims. In fact, almost none of the early or classic theorists Cicero, Aquinas and Richard Hooker have made any connection between natural theory, natural rights or human rights. However, it is worth pointing out that there is such (as Jacques Maritain) that has interconnected natural law, natural rights and human rights, although historically such a connection is rare. At the end of this point, it remains that the importance of emphasizing these thoughts, though having different approaches and effects, should not be confused as a field of rights, but should be understood as absolutely different rights.

The definition and the other explanation given to the natural law by Aquinas is intertwined with God's law, natural law is the participation of man in divine law, and therefore, the philosophy of Aquinas is a combined doctrine of Christian teaching with the philosophical ideas of Aristotle.[132]

To sum up this discussion it can be concluded that the correct reasoning on natural theory is, in fact, that it is the norm in itself. The theory of natural law has obviously made a significant contribution to human rights, although this theory has gone through various criticisms, as can be better noted by the treatment of other ongoing human rights theories.

After we have seen and appreciated the meaning of human rights closely related to the dogma of natural law, we think it would be of interest to dwell on the ongoing mainstream theories of human rights.

### 1.2. The main human rights theories

Theoretical roots for the definition of human rights date back thousands of years ago, but the foundations of modern human rights conception have been laid with the creation of the United Nations (UN) and the drafting and adoption of the Universal Declaration of Human Rights Man, right after the Second World War.

Looking at the human rights problems during the historic journey, it was necessary to think about possible solutions. When viewed from the perspective of contemporary developments, it is surely established that everything with human rights has started with the United Nations era and this is in line with today's reality. There are also scholars who argue against the idea that modern human rights theories begin with the Universal Declaration of Human Rights criticizing historians for their failure to fail to understand contemporary human rights theories[133].

Theories that address the issues and problems of human rights still today are an active and ongoing field where scholars continue to discuss and debate from different perspectives. Nonetheless, the UN Declaration on Human Rights and major international treaties advanced human rights at the international level. By coming to this point of discussion, the question that may be asked is: Why should we continue to interest the philosophical foundations of international human rights law?

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[132] Philip G. Kayser, "The Falw of Natural Law", A Brief Historical Survey of Natural Law Theories, Biblical Blueprints Omaha, 2009. p. 9

[133] Samuel Moyn, *The Last Utopia: Human Rights in History* (2010), p.1.

Concerning the question posed, there are some excuses, but the simplest is what Plato says, "to philosophize means finding a way to know yourself". In the case of our discussions, it is a matter of discussing human rights, there is no way to avoid philosophical thoughts and concepts. There are also others who consider that the particular function of philosophy is to deepen understanding of the truth, while some see the philosopher as a judge for the appreciation of varieties from the human experience, who is always looking for knowledge. Also in our view, philosophy is serving as a guiding path in a search for truth and as a need to explore the philosophical and legal concepts of human rights. Understanding the philosophical foundations and the legal principles of human rights helps to understand the diversity of cultures, which in a proper way lead to the universal recognition of the principles of international law.

In the new theories of human rights there is diversity of thoughts, and in the juridical-philosophical literature we have encountered a great number of theories. But the inability to discuss all of them limits us to briefly discuss the existing theories or those that are dealt with and applied at the present time. In this philosophical context, the critical problem faced by the doctrine of natural law is how to determine the norms that are considered as an integral part of the law of nature and inalienable, or at least inalienable, prima facie. If the theory of natural law has the flexibility to satisfy new requirements based on contemporary conditions and modern human understanding? Perhaps it is, but it is precisely the potential flexibility that has formed the main basis for criticism in terms of the theory of natural rights. In short, the main problem with natural law is that rights that are considered natural may vary from one theory to another, depending on their manners and concepts of nature and rights.

Because of this and other difficulties, the theory of natural law became unpopular for legal experts. However, after the Second World War in a revised form, the right to natural philosophy had a rebirth, and as a result new theories emerged, which appeared at the stage of contemporary discussions and controversies, as will be discussed below.

### 1.2.1. Positive theory

Positivism is a philosophy developed by Auguste Comte, a prominent sociologist who in the mid-19th century stated that knowledge is just what is authentic with scientific knowledge. According to him, society is subject to three different phases in his quest for truth: theological, metaphysical and positive phases. Attacks against natural theory intensified during the nineteenth and twentieth century, and most frequent attacks came from John Stuart Mill, who claimed that the rights serve as assets that provide useful assistance to the benefit of the citizen. Karl Von Savigny, Germany, and Sir Henry Maine in England, stated that rights are a function of cultural change, though the most serious arguments against natural law came from a doctrine called legal positivism.

The contribution of positivism is mainly attributed to the state level. According to this theory,[134] the state has a pile of rules for rights, and the state is the sole source of law and as such

[134] Aryeh Neier, *The International Human Rights Movement: A History* (Princeton, NJ: Princeton University Press, 2012), p. 96, http://www.questia.com/read/120908824 accessed on Feb.10, 2013.

it is responsible for enforcing the law. The word falls, UN human rights conventions, are rules developed by sovereign states themselves and as a result of these systems have become part of an international system of international law. While many states may have different attitudes regarding the theoretical aspect of these rules, the normative rules still provide a legal argument for the protection of human rights.

On the other hand, the theory of positivism tends to weaken the international legal aspect of human rights because of the importance positivists attach to the superiority of national sovereignty by not accepting influential constraints on the state in an inherent right. Called on positivist views, the rules of international law are not laws but merely the rules of positive morality. Moreover, emphasizing the role of the nation-state of law, the positivist approach produces the view that the individual does not have the status in international law. But in our opinion, despite the denial that is made to individuals for the recognition of their status in international law, international law gives them the status of individuals, which means that individuals have access to and hold individual responsibility before international law bodies[135].

### 1.2.2. Theory of justice

Human rights, of course, are an end to justice, so the role of justice is essential to understanding human rights. Interest in the theory of justice has been at the center of attention to explore the state's rights and the duties of its subjects. This quest for justice can be clearly seen in Thomas Hobbes's "De Cive" work, and John Rawls, in his work "Theory of Justice", also devoted himself to this theory. We consider that no human rights theory for an internal or international goal can be fruitful in modern society, regardless of the thesis of ideologues: Rawls, Hegel and Mill.

Essential to Rawls' theory of justice[136] are the concepts of justice and equality from the past as he calls it the "veil of ignorance". The principles of the theory of justice, according to Rawls, provide an illustrative way of assessing rights and duties from the institutional structure of a state. In this context he emphasizes:

"Every person possesses an inviolability based on justice and the well-being of society ... therefore, in a society where justice and freedom of citizens are reigned, rights are ensured by justice and are not subject to political negligence or calculations and other social interests".

From this quote we note that justice and the rights and freedoms of citizens are the virtues of the state or as stated in the Constitution of Kosovo, values, and it seems that they express strong conviction that in a state where justice is at the center of attention, man cannot be violated. According to the system promoted by Rawls, that system allows to derive the universal principles of (moral) justice, acceptable to all rational-human beings. In support of his theory of Justice, he has chosen two principles of justice: first, we quote: "Everyone should have equal and equal fundamental rights and freedoms in accordance with similar freedoms" and the principle Second: "Social and economic inequality must be organized so that they are (a) reasonably acceptable to the benefit of all, and (b) fit into positions and duties open to all."

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[135] Për një shpjegim të qarte shih diskutimin në Giorgio Gaja, "The Position of Individuals in International Law*" An ILC Perspective, EJIL* (2010), Vol. 21 No. 1, 11–14

[136] John Rawls, *A Theory of Justice*, (original ed, Harward College, 1971), p. 3-4.

Primary for these principles are the assignment of rights and duties, in order to influence the regulation and dissemination of social and economic advantages.

## Summary

Regarding the concept and importance of human rights, we can undoubtedly point out that they are inviolable, inseparable, inalienable, thus related to human nature itself. Consequently, when it comes to the conceptualization and definition of human rights, we have addressed theoretical approaches from various angles in an effort to discuss them from ancient times to the present. The common denominator of all views from different periods is that fundamental rights and freedoms are very precious. They are discussed in the dimension of their evolution, from the philosophical, but also to the normative and legal approach. Chronological evolution of human rights, reflecting the natural rights developed by Aristotle; natural theory which served as a platform for discussions about human rights as well as positivism and justice theory. The institutionalization of human rights and normative documents, which also had the first elements of the protection of human rights, and treaties - international conventions, as well as customary rights, which are the fundamental human rights sources.

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