

# Introduction to human rights

Human Rights in Criminal Justice Context 2020/2021

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# What are human rights?

- **HUMAN RIGHTS** → set of norms governing the treatment of individuals and groups by a state and non-state actors on the basis of ethical principles regarding what society considers fundamental to a decent life.
- **HUMAN RIGHTS** → rights and freedoms to which every human being is entitled. Protection against breaches of these rights committed by a state (including the state of which the victim is a national) may in some cases be enforced in international law. It is sometimes suggested that human rights are so fundamental that they form part of natural law, but most of them are best regarded as forming part of treaty law.
- **HUMAN RIGHTS** → moral principles or norms that describe certain standards of human behaviour and are regularly protected in national and international law. They are applicable everywhere and at every time in the sense of being universal.

# What are human rights?

## HUMAN RIGHTS are:

- **universal** → they belong to all people equally regardless of status and they are the same for all human beings everywhere in the world
- **inalienable** → they may not be taken away or transferred; people still have human rights even when their governments violate those rights
- **interconnected/interdependent** → fulfilment or violation of one right affects the fulfilment of all other rights; together human rights form a complementary framework
- **indivisible** → no right can be treated in isolation; no right is more important than another
- **non-discriminatory** → human rights should be respected without distinction, exclusion, restriction or preference based on race, colour, age, sex, national or ethnic origin, language or any other status

# Who is responsible for upholding human rights?

Under human rights treaties, governments have primary responsibility for protecting and promoting human rights. What is important, governments are not solely responsible for ensuring human rights. The Universal Declaration of Human Rights states:

*„Every individual and every organ of society ... shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance”*



This provision means that not only the government, but also civil society organizations, business and individuals are responsible for promoting and respecting human rights.

Government parties to a treaty must:

### **RESPECT**

Governments must not curtail the scope of a right or interfere with people exercising their rights.

#### **GOVERNMENTS CAN RESPECT HUMAN RIGHTS BY:**

- creating constitutional guarantees of human rights;
- refraining from limiting individual freedom unless absolutely necessary for the well-being of society;
- providing ways for people who have suffered human rights abuses by the government to seek legal remedies from domestic and international courts; and
- ratifying and implementing human rights treaties.

### **PROTECT**

Governments must prevent private actors from violating the rights of others.

#### **GOVERNMENTS CAN PROTECT HUMAN RIGHTS BY:**

- passing laws that prohibit individuals from committing human rights violations;
- prosecuting or pursuing civil actions for crimes and other violations, such as domestic violence, hazardous work conditions, and discrimination;
- educating people about human rights and the importance of respecting the human rights of others; and
- cooperating with the international community in preventing and prosecuting crimes against humanity and other violations.

### **FULFILL**

Governments must take positive action to facilitate the enjoyment of basic human rights.

#### **GOVERNMENTS CAN FULFILL HUMAN RIGHTS BY:**

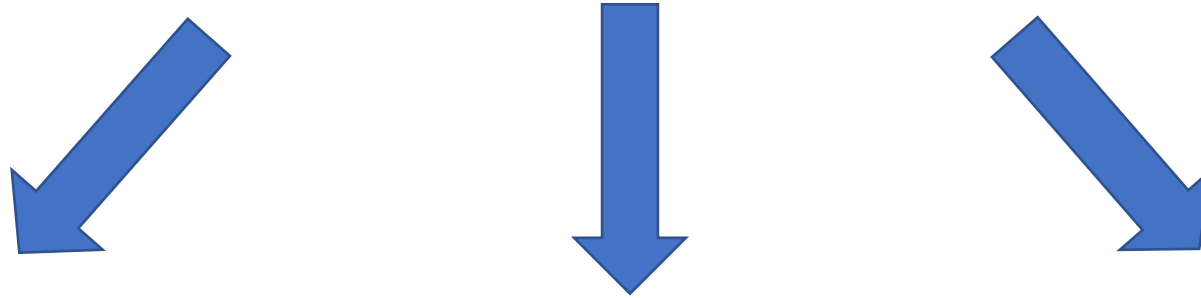
- providing free, high-quality public education;
- creating a public defender service to provide indigent people access to lawyers;
- supporting civil society organizations and public participation in order to encourage freedom of expression and association;
- assisting those people in need by through funding of social service programs; and
- funding public education campaigns on the right to vote.<sup>9</sup>

# Evolution of human rights

- **IDEALISATION OF HUMAN RIGHTS** → creating an idea of human rights as a standard necessary for people to live with dignity and equality
- **CONCEPTUALISATION OF HUMAN RIGHTS** → creation of complete human rights concept concerning e.g. basis and rules of this conception
- **NORMATIVISATION OF HUMAN RIGHTS** → creating legal provisions concerning human rights protection
- **CONSTITUTIONALISATION OF HUMAN RIGHTS** → creating constitutional guarantees of human rights
- **INTERNATIONALISATION OF HUMAN RIGHTS** → creating international treaties concerning human rights protection; creating an international organizations concerning human rights protection

# Generations of human rights

(concept of Karel Vašák)



## I GENERATION

### Civil and political rights



right to life  
freedom from torture  
right to privacy  
freedom of thought, conscience  
and religious belief  
freedom of assembly  
right to fair trial

## II GENERATION

### Social, economic and cultural rights



right to strike  
right to work  
right to social security  
right to education  
right to participation in cultural life

## III GENERATION

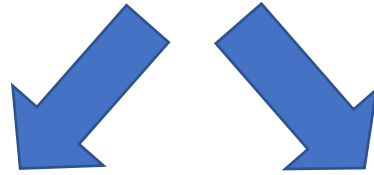
### Solidarity rights



right to peace  
right to development  
right to healthy environment  
right humanitarian assistance



# Positive vs. negative rights



## RIGHT TO

- A positive right is a right to be subjected to an action of another person or group.
- The kind of rights which impose on others a positive duty, a duty to provide or act in a certain way.
- Positive rights are also sometimes called **entitlements**



right to fair trial



**CONCEPT OF POSITIVE OBLIGATIONS OF A STATE**

## FREEDOM OF/FROM

- A negative right is a right not to be subjected to an action of another person or a group.
- The kind of rights which impose on others a negative duty, a duty not to do anything, a duty of non-inference.
- Negative rights are sometimes called **liberties**



freedom of thought, conscience  
and religious belief



# Legal sources of human rights in Poland

- **The Universal Declaration of Human Rights (UDHR)**
- **The International Covenant on Civil and Political Rights (ICCPR)**
- **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**
- **The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**
- **The Constitution of the Republic of Poland**
- **The Charter of Fundamental Rights of the European Union**

# Systems of human rights protection

## Universal system

The international human rights system (called also universal human right system) is created by **the United Nations** as a global organization which promotes and protects human rights.

- **United Nation Human Rights Council** → inter-governmental body, which is responsible for strengthening the promotion and protection of human rights worldwide. The Human Rights Council consists of 47 UN member countries elected for 3-year term on a regional group basis. The Human Rights Council meets regularly to conduct a Universal Periodic Review of human rights in all around the world, to address situations of human rights violations, to receive complaints and to make recommendations on how to improve the fulfillment of human rights. The Human Rights Council investigates allegations of breach of human rights issues such as freedom of assembly, freedom of belief and religion, women's rights, LGBT rights or rights of racial and ethnic minorities.

# Systems of human rights protection

## Universal system

- **The Human Rights Committee** → a body of 18 independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. Article 41 of the Covenant provides for Committee to consider inter-state complaints. Furthermore, the First Optional Protocol to the Covenant gives the Committee competence to examine also individual complaints with regard to violations of Covenants by State parties to the Protocol.
- **Office of the United Nations High Commissioner for Human Rights** → department of the Secretariat of the United Nations that works to promote and protect the human rights that are guaranteed under international law. The office was established by the UN General Assembly on 20 December 1993. The Office of the High Commissioner for Human Rights coordinates UN action to protect human rights and includes country and regional offices that work with local partners to ensure implementation of and education about human rights standards.

# Systems of human rights protection

## Regional systems

### REGIONALS SYSTEMS FOR THE PROTECTION OF HUMAN RIGHTS:

- **EUROPE** → The **European Court of Human Rights** enforces the **Council of Europe's European Convention on Human Rights**. Individuals, groups and governments can bring allegations of human rights violation to the court. The judgments of the court are binding and typically involve compensation for the victim of the violation.
- **THE AMERICAS** → The **Inter-American Commission on Human Rights** and the **Inter-American Court of Human Rights** together interpret and enforce the **American Convention on Human Rights** and the **Declaration on the Rights and Duties of Man**.
- **AFRICA** → The **African Commission on Human and Peoples' Rights** acts as the primary human rights monitoring mechanism for the **African Charter on Human and Peoples' Rights**. The **African Court on Human and Peoples' Rights** is the main judicial body in the African system.