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## Human Rights and Science

**Johannes Eckert and Hans-Peter Zenner (Eds.)**



**Deutsche Akademie der Naturforscher Leopoldina –  
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Wissenschaftliche Verlagsgesellschaft Stuttgart







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## Human Rights and Science

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October 6 to 7, 2010

Editors:

Johannes ECKERT (Zürich)  
Member of the Academy

Hans-Peter ZENNER (Tübingen)  
Member of the Academy

With 3 Figures



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Nationale Akademie der Wissenschaften, Halle (Saale) 2011  
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## Preface

The importance of human rights for science and scientists is often underestimated or even ignored. We have to recognize, however, that in some countries of the world freedom of research is endangered, and scientists and other academics are exposed to governmental repression, just because they *non-violently* exercised their basic and universal human rights, such as the right to freedom of expression. Moreover, human rights play an increasing role in many fields of science as indicated by recent discussions on stem cell research, predictive genetic diagnostics, scientific studies involving humans, self-determined death and similar issues. The recognition of human rights should be an integral component of international cooperation in science and development aid envisaging the aim that more people can “enjoy the arts and ... share in scientific advancements and its benefits” (Article 27 of the United Nations Universal Declaration of Human Rights, 1948). According to Article 26 of the UN Declaration, “education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall support (‘further’) the activities of the United Nations for the maintenance of peace”. In our global world science has an increasing responsibility for realising such goals, and it has the potential for supporting a peaceful development of civil societies through international scientific cooperation and by a deep commitment to human rights.

The German National Academy of Sciences Leopoldina has organized a symposium in Berlin to provide an opportunity for discussing human rights issues with the aim to promote human rights-related cooperation between European academies as well as with the “International Human Rights Network of Academies and Scholarly Societies” which is an association of approximately 70 academic institutions around the world. Participants of the symposium included representatives from 12 European countries, including Austria, the Czech Republic, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Poland, Slovenia, Switzerland and Turkey.

This publication contains summaries of lectures and short statements presented by representatives of various European countries. All documents reflect personal views of their authors, not necessarily the official view of the institutions which they represent.

*Johannes Eckert and Hans-Peter Zenner*

All support provided for the symposium and the publication of the documents is gratefully acknowledged (see also page 9).

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## **Human Rights and Science**



## Welcome and Introduction on behalf of *Leopoldina*, the German National Academy of Science

Gereon WOLTERS ML (Konstanz)

Dear colleagues and friends,

It is a great pleasure and honour for me to welcome you on behalf of *Leopoldina*, the German National Academy of Science. The *Leopoldina*, named after LEOPOLD I, emperor of the Holy Roman Empire, was founded almost 360 year ago, on New Years Day 1652, in the town of Schweinfurt, now part of the state of Bavaria. The founders were four gentlemen who had dedicated themselves to the study of medicine, and had either studied in Italy or had made their *grand tour* in that country. In Italy, where already several academies were flourishing, above all the *Accademia dei Lincei*, the four gentlemen were motivated to found such an academy in their hometown. They started out under the Latin name *Academia Naturae Curiosorum*, which might be rendered in English as “Academy of the Curious as to Nature”. Twenty five years later, in 1677, the Academy received an Imperial privilege from Emperor LEOPOLD I, which ten years later was extended to the honour to even carry the emperor’s name.

For more than two centuries the *Leopoldina* was located where its respective presidents lived. Only in 1878 did it get a permanent home in Halle in the state of Saxony-Anhalt, which after World War II became part of East Germany. Halle has continued to host the *Leopoldina* after the unification of the two German states in 1990.

The early imperial political interest and protection was certainly not only caused by the “curiosity”, to which the members of the *Academia Naturae Curiosorum* were committed by the very name of their academy. Rather, the “Curious as to Nature” in those days were equally committed to the *utility* deriving from the application of their knowledge. Certainly “utility” did not only mean private profit but was related to the common good that was furthered by conducting science. In the Age of Enlightenment “Neugier und Nutzen” – “curiosity and benefit” soon became the mission statement of science, as one would say these days.

This entering of the *Leopoldina* into the societal and political space has meant that the Academy has encountered great problems and challenges during its long history. On the whole, however, the attempt to not be pressured by political forces into actions that were not compatible with its mission statement or simply with basic norms of proper ethical conduct has prevailed. The worst exception to this was the involvement that occurred under Nazism, when the *Leopoldina* with remarkable disinterest removed their Jewish members from its records. A research project that was launched recently will study the involvement of individual *Leopoldina* members in murderous projects of the Nazi government. In 2009 the Academy erected a stele in honour of its nine members who died in concentration camps.

During the forty years of communist rule after World War II, despite the totalitarian character of the regime, the *Leopoldina* was able to maintain a remarkable degree of independence. Above all it was able to resist the pressure to give up its claim to act as an academy both for the whole of Germany and the neighbouring German speaking countries.

In Germany, with its federal political structure, there had never existed a *National Academy of Science*. There were, rather, various Academies tied to states or to single universities. Given the history and the prestige of the *Leopoldina*, with its more than 30 Nobel Laureates, it did not come as a surprise that in 2007 it was declared the National Academy of Science by the German government. In this capacity the *Leopoldina* represents Germany within the circle of international academies. On the national level the *Leopoldina* gives advice to the government on scientific questions (e.g. climatic change, energy, ethical questions) or coordinates such advice given by other academies.

The history of the *Leopoldina*, particularly in the last century, has amply shown how important Human Rights in general, and the respect for the Human Rights of the individual scientist in particular, are for the proper conduct of science. About this, which is the topic of our symposium, our colleague Johannes ECKERT, the chairman of the Human Rights Committee of the *Leopoldina*, will now tell you more.

On behalf of the Academy I wish ourselves fruitful discussions to the benefit of science and of all who conduct it.

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## Welcome and Introduction on behalf of the Human Rights Committee of the *German National Academy of Sciences Leopoldina*

Johannes ECKERT ML (Zürich)

With 1 Figure

Ladies and Gentlemen

It is my privilege and pleasure to welcome you on behalf of the Human Rights Committee of the *German National Academy of Sciences Leopoldina*. A special welcome to all speakers whose names are listed in the programme. Further, I would like to welcome Mrs. Carol CORILLON, the Executive Director of the *International Human Rights Network of Academies and Scholarly Societies* (IHRN), who came a long way from Washington to us, Prof. Jutta SCHNITZER-UNGEFUG, General Secretary of the *Leopoldina*, Mr. Markus LÖNING, the *Federal Government Commissioner for Human Rights Policy and Humanitarian Aid*, Federal Foreign Office, and Dr. Markus MÖLLER, *German UNESCO Commission*. I am particularly pleased to welcome representatives or members of academies and universities from 12 European countries, including Austria, the Czech Republic, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Poland, Slovenia, Switzerland and Turkey (see List of Participants, page 95).



Fig. 1 Participants of the Symposium from left to right: Pieter J. D. DRENTH, Jan WOLEŃSKI, Gereon WOLTERS ML, Daniela SCHMIDT, Alenka ŠELIH, Robert ZIKA, Horst ASPÖCK ML, A. M. Celal SENGÖR, Bruno GOTTSTEIN ML, Johannes ECKERT ML, Carol CORILLON, Arne HAALAND, Hans-Peter ZENNER ML, Anna BENAKI, Rudolf COHEN ML, Elmar DOPPELFELD und Jean-Paul LEHNERS

The Human Rights Committee of our Academy is a small group of academy members living in Austria (Prof. Horst ASPÖCK, Vienna), Germany (Prof. Rudolf COHEN, Konstanz; Prof. Rüdiger WOLFRUM, Heidelberg; Prof. Hans-Peter ZENNER, Tübingen) and Switzerland (Prof. Johannes ECKERT, Zürich; Prof. Bruno GOTTSTEIN, Bern). Our Committee is kindly supported by an External Advisor, Prof. Heiner BIELEFELDT, Erlangen, and Dr. Hans-Jochen MARQUARDT, head of *Department of International Relations, Leopoldina*. Our committee was founded in 2001 and has been associated with the *International Human Rights Network* since 2003. The Network and its activities will be described later by Carol CORILLON. After this meeting Prof. Hans-Peter ZENNER will take over the chairman's function.

The main goals of the Network are (a) to aid members of the world-wide academic community who are persecuted because they *non-violently* exercised or supported human rights set forth in the *Universal Declaration of Human Rights* of the United Nations and other international conventions on human rights (see TOMUSCHAT 2008), and (b) to promote human rights that are essential to every human being, including the conduct of science and research.

Human rights activities in general are urgently needed in view of the fact that – according to the Amnesty International Report 2010 (*Amnesty* 2010) – freedom of expression is restricted in 96 countries, prisoners of conscience are held in at least 48 countries, people are tortured or otherwise ill-treated in at least 111 countries and unfair trials are conducted in at least 55 countries. Human rights violations are not only a problem in countries far away from us, as they also occur in Europe.

The *International Human Rights Network* has intervened in hundreds of cases of unjustly imprisoned or persecuted persons from the academic community by sending statements to the responsible authorities. Such actions will be continued in the future. Although not always successful, they can at least be a significant moral support for the persecuted persons.

Many organisations and institutions around the world are active in the field of human rights. Therefore, the question may be raised whether academies and other academic institutions should develop their own activities to promote human rights. In my opinion – which I share with many of my colleagues – the academic community should always be committed to making its voice heard if human rights are violated, and it should take on a special responsibility for science and scientists.

For example, the human right to “freedom of thought and conscience” – as demanded in the UN Declaration (Art. 18) (*UN* 1948) – has to be related to the increased social and political responsibility of scientists in our globally interconnected world. The role of human rights in research involving human subjects is an important issue as indicated – for example – by the discussion on stem cell research, gene therapy and euthanasia.

Science and academies can play an important role in realising, “human rights of the third generation”, which are also called “solidarity rights”. In his excellent book *Human Rights* Prof. TOMUSCHAT (TOMUSCHAT 2008) has described as most prominent examples of such rights, the “right to development, the right to a clean (healthful) environment, and the right to peace”.

We should be aware of the important role which human rights can play in international development aid cooperation and also in international scientific cooperation. Furthermore, we should know more about the institutions that are active in the field of human rights, and we should increase our awareness for severe human rights violations – such as torture – and their prevention.

Some of these aspects will be discussed in the symposium today. However, there are many more questions to be considered in relation to academic responsibilities, for instance the

universal human right to education. According to Art. 26 of the UN Declaration, “education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall support (“further”) the activities of the United Nations for the maintenance of peace”.

During the long period from 1961 to 1989 when Europe was divided into two parts by the “Iron Curtain”, the German Academy Leopoldina was able to build scientific and human bridges between scientists living in two opposing political systems and to promote a peaceful cooperation. Academies in Europe and in other parts of the world can use their scientific potential and prestige for promoting international scientific cooperation, and they should be aware that they are in the possession of valuable keys which can open doors of mutual understanding and peace.

I hope that this symposium today and our discussions tomorrow may contribute to a closer cooperation between European academies within the IHRN for the benefit of international human rights activities.

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*TOMUSCHAT, C.*: Human Rights. Between Idealism and Realism. 2<sup>nd</sup> edit. Oxford: Oxford University Press 2008  
*UN*: Universal Declaration of Human Rights. United Nations Department of Public Information 1948

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# The German Institute for Human Rights

Beate RUDOLF (Berlin)

## 1. Introduction

The *German Institute for Human Rights (Deutsches Institut für Menschenrechte)* is the independent National Human Rights Institution (NHRI) for Germany.<sup>1</sup> It was established in March 2001 following a unanimous motion of the German federal parliament. In setting up a NHRI, Germany followed the example of many states, and heeded the recommendation made by the UN General Assembly in 1993.<sup>2</sup> The German Institute for Human Rights is one of the few NHRIs that is organized as an institute, i.e. an institution with a focus on academic research. In its ten years of existence, the German Institute has acquired an excellent reputation, both domestically and internationally.

## 2. National Human Rights Institutions

The central purpose of National Human Rights Institutions is to help states comply with their obligations arising from international human rights law. NHRIs have been set up gradually in a number of countries since the early 1950s. The 1993 *World Conference on Human Rights* in Vienna brought new momentum to this development, emphasising the valuable contribution that NHRIs have made and can continue to make to promoting and protecting human rights on the national level. The UN General Assembly took up this idea; in its recommendation to the States, it incorporated the “*Paris Principles*”, a set of rules developed by academic experts that define NHRIs and the conditions for ensuring their independence.<sup>3</sup>

The *Paris Principles* provide that NHRIs must have a broad mandate to promote and protect human rights. The mandate must extend to all human rights treaties, even those not (yet) ratified by the state, and to all future human rights treaties drafted within the UN or regional organizations. Moreover, NHRIs must be free to choose the topics to work on and must be free to decide on their working methods. They contribute to “promoting” human rights by furthering the implementation of human rights treaties on the national level. They contribute to “protecting” human rights through all activities aimed at providing redress in specific cases of human rights violations. NHRIs may have the power to handle individual cases with the

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1 Website: <http://www.institut-fuer-menschenrechte.de>.

2 UN General Assembly Resolution 48/134 of 20 December 1993; last affirmed by Resolution 64/161 of 18 December 2009.

3 The *Paris Principles* are contained in the annex to GA Resolution 48/134, supra note 2.

aim of resolving a dispute, e.g. through mediation or by bringing cases before domestic or international courts. If an NHRI is not empowered to handle individual cases, it may afford protection through investigation, public reports, or intervention in court proceedings by submitting expert opinions (“amicus curiae briefs”).<sup>4</sup>

NHRIs must be independent of the state – institutionally, personally, and financially. For this reason, the *Paris Principles* require a legal basis for NHRIs and transparent and participatory appointment procedures for its members and staff that with the aim of ensuring pluralism within the institution. Moreover, the state must provide for adequate funding; its financial control must be carried out in a way that does not interfere with the independence of the NHRI.

Compliance with the *Paris Principles* is verified through an accreditation process carried out through the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC), the organization created by NHRIs worldwide. The SCA, in which NHRIs from all world regions are represented, performs a rigorous peer review. Upholding the strict standards of the *Paris Principles* is a collective interest that is, in fact, taken seriously and not subject to political horse-trading within the SCA. Only NHRIs fully in compliance with the *Paris Principles* are accorded “A”-status.<sup>5</sup> Institutions that either do not have a broad mandate or whose independence is not fully guaranteed receive “B”-status. NHRIs must apply for re-accreditation every five years. In case of alleged serious non-compliance with the *Paris Principles* that endanger the NHRI’s independence, the SCA undertakes a special review. The UN recognize the seriousness of the accreditation process by granting observer status and special participation rights to A-accredited NHRIs only. Thus, the “A”-status confers a strong mark of reliability upon an institution.

### 3. The Work of the German Institute for Human Rights

#### 3.1 General

The German Institute for Human Rights has been granted A-status since 2002. It is organized as an association under private law, thus excluding government interference with its internal decision-making. It is headed by a director and a deputy director, who are elected by the board of trustees after a public call for applications. In line with the Institute’s character as an academic institution, the board has come to choose scholars as directors after the short initial phase.<sup>6</sup> For the position of deputy director, it selected human rights activists with broad management experience.<sup>7</sup> The board of trustees consists mainly of representatives of civil society, including academia, with a proven record of human rights related work, two members of the

4 For a comparison of the powers of NHRIs see AICHELE 2010, <http://www.institut-fuer-menschenrechte.de>; and European Agency for Fundamental Rights (FRA), National Human Rights Institutions in the EU Member States, 2010, <http://fra.europa.eu>.

5 Information on the accreditation status of NHRIs is available at <http://nhri.ohchr.org>.

6 From 2003 to 2009, the director was the philosopher Prof. Dr. Heiner BIELEFELDT, who now holds the chair for human rights at Nuremberg University. In 2010, he was also appointed Special Rapporteur for freedom of religion or belief by the UN Human Rights Council. Since 2010, the present author, a law professor specialized in international, European and constitutional law, holds the position of director of the Institute.

7 From 2001 to 2010, the deputy director was Frauke SEIDENSTICKER, former secretary-general of the Swiss branch of Amnesty International. Since 2011, the position is held by Michael WINDFUHR, formerly head of the human

federal parliament and – without voting rights - representatives of the financing ministries (justice, foreign affairs, development cooperation, labour and social affairs). Presently, the institute has about 40 staff members. The academic staff presently consists of jurists, political scientists, ethnologists, pedagogues, historians, and academically-trained social workers.

### *3.2 Territorial Focus: Germany*

As a national institution, the Institute focuses on Germany, i.e. the conduct of German authorities inside and outside Germany. The larger part of its work relates to human rights questions within Germany; its international department deals with the promotion of human rights through Germany's foreign policy, development cooperation, and defence policy. For this reason and like most other NHRIs, it did not set up units dealing with particular countries or regions; however, in the course of its activities, it gained knowledge and developed expertise for specific countries, such as the Middle East and North Africa (MENA region). All departments regularly interact with the international and European level, e.g. with UN human rights bodies, the European Agency for Fundamental Rights (FRA), or the Council of Europe.

### *3.3 Research-Based and Human Rights-Oriented Policy Advising*

In order to promote human rights in Germany, the Institute provides policy advice geared towards the full implementation of Germany's human rights obligations. It does so on request or on its own initiative. In addition, it promotes the ratification of international and European human rights treaties by Germany. Finally, it aims at strengthening human rights institutions in Europe and on the international level.

As an independent institution, the Institute considers itself a bridge between the government and civil society, i.e. human rights NGOs, academia, charitable, faith-based or migrant organizations, or self-help groups, to name but a few. It fulfils this role by serving as a forum bringing together these different actors and by challenging them to engage in a human-rights oriented interaction on specific topics. These topics may relate to issues on which the Institute has produced a scholarly publication or intends to do so, or to recommendations addressed to Germany by international bodies. Through a rigorous internal review, the Institute aims at the highest academic quality of its publications. At the same time, the publications aspire at bridging theory and practice. For this reason, they regularly include recommendations on how to implement international legal requirements into national law and practice. In this respect, the Institute also serves as a bridge between the international and the national level. It is this focus on practical implementation and its expertise in international human rights law based on first-hand experience in, and contribution to the work of human rights bodies that distinguish the Institute from academic institutions.

Moreover, publications only serve as a starting point for intensive policy advising activities. Its addressees are government officials, members of parliament on the federal or state level, and civil society actors. In all these activities, the objective is to familiarize these actors with the normative requirements set up by international or European human rights law. As an independent and hence politically neutral institution, the Institute must refrain from taking a

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rights team of *Brot für die Welt* ("Bread for the World"), the development cooperation agency of the Protestant churches in Germany.

stance where human rights law leaves leeway to the State. However, it has to clearly delineate the limits that human rights set to the state's actions and to call attention to the non-fulfilment of human rights obligations through law or practice.

Beyond human-rights based policy advising, the Institute aims at promoting a public debate on human rights issues in Germany and at strengthening the cooperation among human actors in the country.

### 3.4 International Cooperation

The Institute's particular expertise in human rights law is continuously reinforced by its cooperation with human rights bodies of the United Nations, the European Union, the Council of Europe, and the Organisation for Security and Cooperation in Europe (OSCE). The Institute not only follows their activities closely, but also contributes to them, e.g. by participating in the negotiation of new human rights treaties, by submitting statements in monitoring procedures such as the state reporting procedure under UN human rights treaties or the Universal Periodic Review of UN member states by the UN Human Rights Council. Moreover, the Institute engages in an exchange with human rights bodies on their interpretation of human rights, as expressed in the treaty bodies' General Comments or General Recommendations.<sup>8</sup>

In addition, the Institute cooperates with other national human rights institutions, especially in Europe, e.g. through statements or third-party interventions in cases before the European Court of Human Rights. A particular strength of the Institute is its expertise in EU law, including the formal and informal policy-making procedures within the EU. Beyond the EU, the Institute is active in the Arab-European dialogue of NHRIs, and it has carried out training projects for NHRIs in the MENA region or the CIS states. Here, it can draw also on the expertise gained by its staff through membership in the European Committee on the Prevention of Torture (CPT) and the Advisory Council of the UN Human Rights Council.

### 3.5 Human Rights Education

In line with the *Paris Principles*, another major task of the Institute is human rights education. It develops training materials for professional groups, state authorities, and schools, and it conducts train-the-trainer seminars to spread the knowledge about how to use these materials. Human rights trainings for journalists and librarians are offered by the Communications Department and the Institute's Library, respectively. As the national focal point for human rights education, the Institute helps human rights instructors share knowledge and experience, and it aims at ensuring high standards for human rights education in Germany by engaging both with human rights educators in Germany and by participating in the pertinent work of international organizations, in particular the UN, the FRA and the Council of Europe. The Institute also carries out advanced education seminars for experts in development cooperation, police and the armed forces.

A persisting challenge is to incorporate human rights education into professional and academic curricula. In this respect, one often encounters a lack of insight into the cross-cutting nature of human rights, which reach beyond the law-applying professions into, e.g., medical

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<sup>8</sup> The Institute also published a German translation of these documents so as to promote their use in Germany, see *Deutsches Institut für Menschenrechte* 2005.



and care professions, economics (as the area concerning the realization of economic and social rights), or sociology (as the discipline through which information indispensable for the effective implementation of human rights for all societal groups can be generated).

### *3.6 Information and Documentation*

Finally, National Human Rights Institutions are mandated with providing information and documentation on human rights. For this reason, the Institute's human rights library is open to the public and thus permits access to publications often not available at other libraries in Berlin or beyond. Specialized library staff provides additional information and research support on request. The library also makes accessible international human rights documents as well as electronic publications through its website.

### *3.7 Examples of Thematic Areas of Work*

Since its founding, the Institute has worked towards upholding fundamental human rights standards and their applicability to security policy and anti-terrorism measures. It has defended the absolute character of the prohibition of torture, which was called into question in diverse fields. Examples are common military operations and cooperation with the secret service and police of other states, viz. with respect to combating Al-Qaida in Afghanistan, and a highly publicized criminal law case in Germany concerning the threat of torture by a deputy police chief against a presumed kidnapper of a child aiming at saving the child's life.

Another major area of the Institute's activity is protection against discrimination: The Institute developed numerous proposals for a coherent policy of non-discrimination and worked towards a better understanding that freedom and equality are not conflicting concepts, but that non-discrimination serves to ensure for everyone freedom of action. The Institute has focused particularly on racism and is promoting a modern understanding of racism, as developed in particular by sociology and critical race studies and taken up by international human rights bodies. According to this understanding, racism denotes not only theories based on alleged genetic features, but all approaches by which immutable and inescapable characteristics are ascribed to a group with the result of excluding these persons as "others" from equally belonging to the collective "us."

Because of the fundamental importance of the prohibition of discrimination and the principle of equal enjoyment of all human rights, the full inclusion of persons with disabilities has become an important issue for the Institute. It supported the process of drafting a UN Convention on the Rights of Persons with Disabilities, which replaced the medical, deficit-oriented concept of disability by a social concept focusing on barriers set up by society through structures and prejudices. In 2008, the Institute was denoted the independent monitoring body for the implementation of that Convention in Germany. It engages in dialogue with state and academic institutions on how to generate data on the situation of persons with disabilities in Germany. It also contributes to establish human rights-based indicators for the realization of the rights of persons with disabilities.

The Institute contributed significantly to the recognition, in Germany, of economic, social and cultural rights as rights, i.e. as individual legal entitlements, not just state obligations or mere aspirations, a view long held by constitutional scholars. These human rights require a change of perspective: Their realization must be an integral part of economic and social

policies and hence determine legal and policy priorities in these areas. They constitute the normative yardsticks for the relationship between a patient and medical or care personnel, or for determining the conditions of social security benefits and the calculation of their amount.

#### 4. National Human Rights Institutions and National Academies of Sciences

National Human Rights Institutions and National Academies of Sciences share the task of providing independent policy advice. They differ in their focus, but both may well benefit from increased interaction. NHRIs have expertise in human rights under international law, European law, and German constitutional law, which they could contribute to the deliberations of National Academies. Conversely, National Academies often bring together more disciplines than are represented within NHRIs and thus can contribute additional scientific knowledge to the work of the latter. Moreover, NHRIs are engaged in a continuous exchange with political actors, and National Academies may well benefit from these lines of direct communication with the competent governmental departments. Thus, both types of institutions will be able to even better realize their responsibility towards society – to ensure that scientific knowledge is available to policy-makers in a way that enables them to take decisions serving the realization of human rights.

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## The UN Special Rapporteur on Torture: Experience and Challenges

Manfred NOWAK (Vienna, Austria)

On 1 December 2004 I was appointed fourth *UN Special Rapporteur on Torture* (SRT) by the United Nations Commission on Human Rights and take the opportunity at the end of my six year tenure to assess the situation of torture and other “cruel, inhuman or degrading treatment” (CIDT) or punishment in the world.

### 1. The Definition of Torture

Torture is defined in Article 1 (1) of the *UN Convention Against Torture* (CAT) as, “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. This definition includes essential elements which taken together distinguish torture from other forms of CIDT as a most serious attack on victims’ dignity and personal integrity: infliction of severe physical and/or mental pain or suffering; State responsibility, by the involvement or at least acquiescence of a State official; specific intention to apply torture for a certain purpose (to extract a confession, to obtain information, to intimidate or discriminate, etc.) and powerlessness or defencelessness of the victim, who is completely dependent on the torturer and most vulnerable to any abuse, especially during detention.

Legal instruments against torture have developed before the *UN Convention Against Torture* and can be found chronologically in Article 5 *Universal Declaration of Human Rights* (1948), Article 3 *European Convention on Human Rights* (1950), Article 7 *International Covenant on Civil and Political Rights* (1966), Article 5 *American Convention on Human Rights* (1969) and Article 5 *African Charter on Human and Peoples’ Rights*. The 1970s accelerated the fight against torture in reaction to the systematic practice of torture in many parts of the world, especially during the military dictatorships in Latin America, against which Amnesty International and other non-governmental organisations (NGOs) started a global campaign.

This legal framework establishes the prohibition of torture as one of the few absolute and non-derogable human rights in international law, like the prohibition of slavery, slave trade, servitude and the prohibition of retro-activity of penal laws but contrast to many relative rights, such as the right to life and freedom of expression or personal liberty. According to

Article 2 (2) CAT no exceptional circumstances, such as, “a state of war or a threat of war, internal political instability or any other public emergency”, may be invoked to justify torture and according to Article 4 (2) CCPR, States are not permitted to derogate from their obligations to fully ensure the prohibition of torture.

However, despite its special protection as *ius cogens*, the prohibition of torture has been greatly challenged, particularly in the context of the so-called “global war on terror”. Confronted by fundamental security challenges, many governments have not applied legitimate and lawful means to protect their citizens but rather questioned the absolute and non-derogable nature of the prohibition of torture. History, e.g. the Nazi era, has shown us that undermining the absolute prohibition of torture equals an opening of Pandora’s Box.

## 2. Fighting Torture

The prevalence of torture in many regions of the world is largely due to the alarming scale and scope of impunity which I witnessed during my tenure as UN Special Rapporteur on Torture. Most of the 147 States Parties have inadequately implemented their obligations under Articles 4 to 9 of the *UN Convention Against Torture* to criminalise torture, to establish territorial, personal and universal jurisdiction and to take effective measures to bring suspected perpetrators to justice. Therefore, combating impunity is crucial in fighting torture in the world alongside the strengthening of preventive measures.

In the prevention of torture, the *UN Convention Against Torture* provides for the principle of non-refoulement (Article 3); the obligation to train law enforcement personnel (Article 10); the obligation to modernise interrogation techniques (Article 11); and the non-applicability of information extracted by torture (Article 15). One of the most important methods for the prevention of torture is a system of regular visits to places of detention by independent monitoring bodies which has been strengthened by the *Optional Protocol to the UN Convention Against Torture* (OPCAT) in 2002. It establishes on the international level the *Subcommittee on the Prevention of Torture* and on the domestic level it requires States to designate a *National Preventive Mechanism* (NPM).

The focus on the fight against impunity and the prevention of torture should not leave the victims of torture and their pain and suffering unacknowledged. As UN Special Rapporteur on Torture I tried to remind States of their obligations under Articles 13 and 14 of the *UN Convention against Torture* to provide victims of torture with an effective remedy and adequate reparation – yet, in most countries that I visited these provisions were either severely limited or non-existent.

## 3. The UN Special Rapporteur on Torture

The UN Special Rapporteur on Torture (SRT) was established by the UN Commission on Human Rights<sup>1</sup> (Res. 1985/33) in 1985 as one of the first thematic special procedures within the human rights system of the United Nations with a global mandate. The SRT is now appointed by the Human Rights Council for three years with one possible renewal and functions as an

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<sup>1</sup> The UN Commission on Human Rights was transformed into the UN Human Rights Council in 2006.

independent and impartial expert to address the situation of torture, cruel, inhuman or degrading treatment or punishment in all 192 Member States of the United Nations.

Amongst my manifold tasks as the fourth SRT, I received, on a daily basis, allegations of torture from victims, their families or NGOs and – if they were well-founded – I sent letters of allegations or urgent appeals to the respective government and studied their reactions in bringing the perpetrators to justice and granting the victims of torture adequate reparation. Once a year I reported both to the General Assembly in New York (in October) and to the Human Rights Council of the United Nations in Geneva (usually in March) about my activities and my assessment of the global situation of torture and ill-treatment as well as specific aspects in relation to the prohibition of torture. Furthermore, I responded to media requests and conducted torture-specific training, human rights education and public awareness activities, with a special focus on the promotion of OPCAT and other preventive mechanisms.

In order to objectively assess the global phenomenon of torture and ill-treatment I also carried out fact-finding missions and follow-up visits to eighteen countries in all regions of the world.<sup>2</sup> I could only carry out country missions when a government had issued an invitation and complied with my “terms of reference” which included freedom of movement, freedom of inquiry, unannounced visits to all places of detention and private interviews with detainees, victims and witnesses, assurance by the government against reprisals and appropriate security arrangements. In order to fully guarantee freedom of inquiry, the government issued a letter of authorisation which granted me access to all places of detention in the form of unannounced visits, confidential and unsupervised interviews with victims, witnesses and detainees and full access to all documentary material. The country missions would not have been possible without the support of highly motivated and professional staff, including human rights experts at the Office of the United Nations High Commissioner for Human Rights in Geneva and the Ludwig Boltzmann Institute of Human Rights in Vienna, forensic experts and interpreters that I always chose according to “gender balance”.

#### **4. Conclusions**

My assessment about the global phenomenon of torture and ill-treatment after six years as UN Special Rapporteur on Torture is disillusioning and goes beyond apprehensions by Amnesty International and other international organisations. In two of the eighteen countries that I visited I found systemic torture (Nepal 2005 and Equatorial Guinea 2008), in the majority of countries torture was practiced in a widespread or routine manner to extract confessions and information and only in Denmark did I not find any case of torture. This means that most of the 147 States Parties of the *UN Convention Against Torture* have not adequately implemented their positive obligations to prevent torture, to criminalise and investigate torture, to bring the perpetrators to justice, and to provide the victims of torture with an effective remedy and adequate reparation for the harm they suffered.

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<sup>2</sup> I have conducted fact-finding missions to countries in all regions of the world: in Africa (Equatorial Guinea, Nigeria, Togo), Asia (China including Tibet and Qinzhang, Indonesia, Kazakhstan, Mongolia, Nepal, Sri Lanka), Europe (Denmark and Greenland, Georgia including Abkhazia and South Ossetia, Greece and Moldova including Transnistria), Caribbean (Jamaica), Latin America (Paraguay and Uruguay), Middle East (Jordan) and the Pacific (Papua New Guinea).

I found the main reasons for the widespread practice of torture in the mal-functioning of the administration of justice, including corruption among law enforcement personnel and the pressure they face from politicians, the media, judges and prosecutors “to be tough on crime” and to extract confessions from ordinary criminal suspects which are mostly the poorest citizens.

However, even more alarming is the situation of conditions of detention in most countries of the world which amounts to a global prison crisis. In the detention facilities of most countries there is serious overcrowding, appalling hygienic conditions, lack of access to food, medicine, privacy and most other rights and basic needs which amount to inhuman and degrading treatment. In order to improve this devastating situation, I have urged the United Nations to draft a legally binding Convention on the Rights of Detainees. Regarding torture there are sufficient binding norms in international law that include positive obligations for States Parties to prohibit, eliminate and prevent torture. The high prevalence of torture all around the world cannot be explained by a lack of international norms but by a lack of political willingness of the States to fully implement these norms and take effective measures to eradicate torture.

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## **The Role of the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid**

Markus LÖNING (Berlin)

Protecting human rights and promoting universal respect for them is a cornerstone of German foreign policy. In the international arena the German Government's efforts are aimed not only at creating an international institutional and political framework for the protection of human rights but also – and most importantly – at protecting victims and potential victims of human rights abuses.

In practice this means that protecting human rights is a task which involves all areas of policy. It is in Germany's own best interest to make universal respect for human rights a reality. Enduring peaceful relations require stability, and there can be no long-term stability unless basic human rights are respected. This was the rationale for the establishment in November 1998 of the new post of Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Federal Foreign Office. Since 1 April 2010 the post has been held by Markus LÖNING.

### **1. Responsibilities**

The Commissioner is the contact point for all issues relating to human rights policy and humanitarian aid. His brief includes following political developments in these areas and submitting proposals to the Federal Foreign Minister on German policy in this connection. The Commissioner liaises closely with many other institutions active in the area of human rights and humanitarian aid.

These include other ministries, the German *Bundestag*, parliamentary groups in the *Bundestag*, the *Länder* (federal states), the Humanitarian Aid Coordinating Committee, political and private foundations, and non-governmental organizations.

### **2. Strengthening International Human Rights Protection**

For human rights policy in the international arena to be successful, it is vital to maintain regular contact with EU, OSCE, Council of Europe and UN bodies concerned with human rights protection or humanitarian aid issues. The Commissioner devotes a great deal of time to such consultations as well as the meetings of the UN's Human Rights Council in Geneva, where he heads the German delegation.

### **3. Mobilizing Civil Society**

More than any other policy area, human rights policy requires the active and ongoing participation of civil society. As an interface between government and civil society, the Commissioner takes part in the national and international debate on human rights issues and is also involved in the work of international bodies and institutions concerned with human rights protection.

### **4. Human Rights Protection in Germany**

The Commissioner for Human Rights Policy and Humanitarian Aid helps to shape human rights policy in Germany's external relations. He is not responsible for investigating individual complaints relating to possible human rights violations in Germany or for issuing recommendations or censure in this connection. His role is not that of an ombudsperson. Protection of individual human rights in Germany is in principle the responsibility of the courts. Under the German legal system, anyone who believes their rights have been violated is in principle entitled and obliged to take their case to court, as guaranteed by Article 19(4) of the Basic Law. In addition to the courts, Germany has a whole range of government and non-government bodies and organizations working to protect human rights. Petitions committees and commissioners for citizens' affairs provide people with a contact point where they can lodge their complaints. Such contacts are usually referred to as "ombudspersons". Such ombudspersons also exist at the European level.

### **5. Humanitarian Aid**

Unlike longer-term development cooperation, humanitarian aid focuses on providing immediate assistance and disaster relief with the aim of saving lives and alleviating human suffering. Our commitment to provide humanitarian aid is, like human rights advocacy, an important dimension of German foreign policy and reflects the affirmation of human dignity enshrined in our constitution. When people are suffering, nothing else matters.

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## **The International Human Rights Network of Academies and Scholarly Societies**

Carol CORILLON (Washington, DC, USA)

Scientists, engineers, and health professionals in many areas of the world are detained, imprisoned, often abused and sometimes tortured, solely for exercising their basic human rights – rights promulgated by the Universal Declaration of Human Rights. Some are repressed for expressing their scientific or political opinions; others are arrested for performing their medical duties or refusing to use their science for immoral or illegal purposes. Many are abused simply for demanding that their rights and/or those of others be respected.

Scientists, engineers, and health professionals everywhere tend to care deeply about the need to exercise rights and responsibilities in their work for it to flourish, but it is only in recent years that so many have come to realize that they can quite easily have a unique and positive influence in these areas. Many scientists around the world are now protecting, defending, and promoting the rights of their colleagues. Of course, many of the scientists who have the courage to speak or act on their beliefs or moral convictions, and subsequently are arrested, cannot always depend on their compatriots to defend them because those colleagues are then put at risk of reprisals as well. We have seen many such instances over the years, and they extend to lawyers who dare defend a human rights advocate and who are themselves subsequently arrested. Thus, those colleagues who live outside the countries in which severe rights abuses take place have an even greater obligation to speak out and continue to do so until justice is achieved. Sometimes this can take many, many years. But, continue they must. To those who ask what right do foreigners have interfering in our justice system, we can only reply that science does not stop at borders; nationalities and cultural differences are not seen as barriers, science unites scientists, and their science transcends national borders. To ask for humane treatment, a transparent and fair trial, or release on bail for a colleague who is detained for exercising his or her human rights is simply the right thing to do.

It was with this in mind, as well as many prior years of experience defending basic human rights, that three Nobel Laureates – one each from France, the United Kingdom, and the United States – as well as a member of the Council of State of the Netherlands, decided, in 1993, to create an international network of national academies to formally address human rights abuses perpetrated against their less fortunate colleagues.

The men who created this network were Francois JACOB, Max PERUTZ, Torsten WIESEL, and Pieter VAN DIJK. I became executive director of the organization which is known as The International Human Rights Network of Academies and Scholarly Societies (IHRN). Today, the Network's Executive Committee includes members from Africa, Asia, Europe, and North and South America, and many national academies around the world are affiliated with it.

Several dozen national academies now have active human rights committees that respond to Action Alerts issued on particular cases, after careful and objective research, by the IHRN's secretariat. (The secretariat is run by the Committee on Human Rights [CHR] of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine in the United States, of which I have been director for some 30 years.) The Network's Executive Committee also takes public positions or makes statements on occasion, and national academies affiliated with the network are free to endorse them. Examples include: *Responding to Terrorism while Respecting Human Rights*; a *Request to UNESCO to Abolish the "Obiang-Nguema Mbasogo International Prize for Research in the Life Sciences"*; a submission to the *U.N. Universal Periodic Review on Libya*; the issue of *Academic Freedom and Academic Boycotts*; and the *Crucial Importance of Access to Education and Scholarly Institutions*. These statements and others are all available on the Network's website.

Because academies and scholarly societies are held in high esteem, their efforts, through a worldwide network, are a powerful and effective tool in advancing respect for human rights. Each national academy has complete autonomy with regard to which actions suggested by the network they undertake and what statements or appeals they endorse. It is important that many academies are increasingly active and some are now identifying and referring cases and issues to the IHRN, so the process moves in both directions, which benefits all.

The IHRN communicates primarily by email, and it maintains a private website at which participating academies can access recent Alerts and the most up-to-date case information. Every two years or so, a national academy hosts a meeting for all network participants. This gives the individuals who are most involved in the Network's activities an opportunity to meet each other and form closer ties. There is usually a full day symposium to which are invited government officials, students and professors, human rights activists, former prisoners, and the families or colleagues of currently imprisoned scientists who can tell us about their plights and suggest potentially constructive actions by Network participants. This event is followed by a half-day session on regional science and human rights issues with reports on specific problems that have arisen since the previous meeting. Finally, we have a day-long workshop on future directions. At our next meeting, we plan to host a half-day event for science students to allow them to meet the many prominent scientists who attend our meetings and to expose them to the responsibilities felt by the participating scientists, as scientists, to promote and protect human rights. Scientists see it as their professional duty to come to the aid of their less fortunate colleagues and to address human rights issues that negatively affect science, engineering, and health, as well as practices in these fields that can or do negatively affect human rights.

National academies and their distinguished members have unique prestige, respect, and international reputations that make them heard and give them access to high-level decision makers. The IHRN's approaches include inquiries, appeals, diplomatic meetings, casual discussions, case submissions to various UN organisations, fact-finding missions, articles and reports, and public statements. The IHRN now has achieved a sufficient number of successes, both in consciousness-raising among academies and humanitarian appeals for colleagues to

governments so that, given sufficient funding, one can be optimistic about its continuation and expansion for years to come.

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## Freedom of Scientific Research and Human Rights

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### 1. Introduction

The freedom of scientific research is a human right but it is also limited by human rights or equivalent principles. This inbuilt tension makes it vulnerable. With these limitations science will have to live. However, we must acknowledge a growing scepticism towards science which is – generally speaking – directed towards scientific developments and the authority of scientists. Apart from that scientific research comes under pressure from political sides and theological angles as well as from mainstream considerations.

### 2. Freedom of Scientific Research

Freedom of scientific research is recognized as a human right in several, but certainly not all, constitutions of the world. For example, Art. 5 of the Basic Law of the German Federal Republic states that freedom of scientific research – together with artistic works – is to be protected. The jurisprudence of the German Federal Constitutional Court distinguishes between identification of a research objective, the research as such (including the methods of research) and the publication of results. Other constitutions, such as those of Spain or South Africa – both influenced by the German Constitution – contain the same or a similar provision. That other constitutions lack such a provision does not mean that scientific research is not protected. Research activities are protected under such guarantees as the freedom of thought or the freedom of personal development. However, two shortcomings may result there from, namely that the freedom of opinion can hardly be used to protect the research activities as such, although it may cover the theoretical development of a particular research method. Let me explain what that means without going into too much detail.

If research involves experiments with animals, under the German system such research must be evaluated by an expert group – broadly speaking to meet a test of proportionality – in which animal rights and the rights of research are balanced. In other legal systems which do not explicitly protect the freedom of scientific research one may argue that tests with animals are not covered by the freedom of opinion. Another disadvantage is that under these legal systems there is no real understanding for the particularities of research with the consequence that international guarantees for the freedom of scientific research are not fully appreciated.

As far as international human rights treaties are concerned the codification of the right to freedom of scientific research is not comprehensive. The *International Covenant on Civil and*

*Political Rights* does not contain a provision on freedom of scientific research but it defines limitations stating that no one, “shall be subjected without his free consent to medical or scientific experimentation” (Article 7). The *International Covenant on Economic, Social and Cultural Rights* refers to scientific research by saying Article 15 (1): “The States Parties to the present Convention recognize the right of everyone to: (a) ‘take part in cultural life, (b) to enjoy the benefits of scientific progress and its application’, and (c) ‘to benefit from the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author’”. Paragraph 3 of the same Article states that, “State Parties undertake to respect the freedom indispensable for scientific research and creative activity”.

The protection of freedom of scientific research under the *EU Charter of Fundamental Rights* has, so far, no significant impact. The wording induces a rather limited interpretation. In particular, one cannot deduce from it any obligation of the States concerned to foster, financially or institutionally, scientific research.

Article 15 of the *International Covenant on Economic, Social and Cultural Rights*, in contrast, starts from a peculiar premise. It is more concerned – which is a matter of consequence in view of overall objective of the Covenant – to secure for everyone the benefits which may accrue from research. The protection of research freedom is just a means to achieve this objective.

The particularity of Article 5 of the German Basic Law is that it does not formulate any limits or restraints of the freedom of arts, science, research and teaching, except that freedom of teaching does not release one from allegiance to the Constitution. This, however, does not mean that no such restraints exist. The jurisprudence of the Federal Constitutional Court of Germany has developed a methodology to that end. The freedom of scientific research may be limited if this is necessary for the protection of equivalent rights or principles protected under the Basic Law.

Before I turn to the limits let me say a word about what constitutes scientific research, or rather what does not. It is evident that this is the first – and the most dangerous – form of limiting this right, namely considering a particular activity *not* to be scientific research.

Scientific research is the attempt to increase the knowledge in whatever field. The results achieved are to be made public and thus open to criticism or scrutiny. Results must be based on logical deductions. Any political attempt to exclude certain issues from scientific research or to predetermine its results – a phenomenon experienced under the Nazi regime – is irreconcilable with the basic principles of scientific research.

### 3. Limits

What are the limits of the freedom of scientific research? As already indicated, according to the jurisprudence of the German Federal Constitutional Court these limits are to be derived from other rights or principles in the Constitution having the same value as the freedom of scientific research. One limit is being referred to in the *International Covenant on Civil and Political Rights*, namely that no human being shall be subjected to any form of experiments or tests unless he or she has consented voluntarily. Although not explicitly formulated, the same limit applies under Article 5 of the Basic Law Article 1 (human dignity) and Article 2 (protection of human life) and form the basis for this limitation. This limit reflects one of the darkest periods in German history, namely the genocide and the atrocities committed under

the Nazi regime, including the so-called medical research in the concentration camps. It was shocking to learn that some of the samples taken there were preserved long after 1945, and for the Max Planck Society only President MARKL apologized to the survivors for the so-called “research” on twins. The use of these samples and the reference to the results are, in my view, illegal and at the very least unethical.

Several restrictions on scientific research result from the protection of animals. The protection of animals as well as, more generally, the protection of the environment has a foundation in the Basic Law. However, one may doubt whether a proper balance is being achieved by implementing the relevant rules. That sometimes environmental considerations are given disproportionate weight cannot be denied. For example, the former German Minister for the Environment tried to stop an experiment on ocean fertilization (aimed at the reduction of CO<sub>2</sub> emissions) because such studies might undermine the pressure to reduce the use of hydrocarbons. Finally, scientific research activities may be restricted for security reasons. It is from this direction that the freedom of scientific research is facing particular challenges. With the aim to reduce the potential of terrorists, severe limitations have been introduced upon the publication and dissemination of research in biology, biochemistry and some areas of physics. Since these prohibitions also cover the dual use problematic they go quite far in practice. The Max Planck Society has developed a code to cover this particular aspect.

Taken together, the current trend is against freedom of scientific research. This right is understood by those critical of it as a privilege of overambitious individuals who – like *Faust* – would make a pact with the devil just for fame or profit. That scientific research is the motor of our social and economic development and fosters the community at large is neglected. To a certain extent researchers are to be blamed for that. For a long time they have been slow to explain the objectives of their research and have belittled the risks involved therein.

#### **4. Threats to Research**

Scientific research faces threats from many different sides, namely through laws which indirectly limit scientific research, from policy decisions of States to fund a particular approach and not others, from the scientific community itself marginalizing or even excluding researchers who do not follow the mainstream, and from universities which institutionally discriminate against some research and privilege others.

**Laws indirectly limiting scientific research.** Whereas the laws on the protection of animals directly limit certain research activities and thus balance animal rights with the right to freedom of scientific research, limitations resulting from other laws are less explicit. For example, for a long time the laws on data protection limited empirical studies in sociology and medicine. It would be of great assistance if the Federal Ministry of Research and Technology in Germany had the right to propose a law to the Federal Parliament – a right the Ministry of Finance has on financial grounds; such financial laws can lead to restrictions of scientific research.

**Funding.** Scientific research depends upon funding which is highly important for progress in science. For example, in Germany research on nuclear energy, even on nuclear energy security, has been significantly cut. Equally, funding concerning energy generation from nuclear fusion has been diminished. This has led to a significant reduction of such research which has emigrated to other countries. I have already mentioned the attempt to stop a project

on ocean fertilization. These decisions are taken on a high political level and have a more negative impact upon the development of a vibrant research climate than restrictive laws.

**Restrictions within science.** Perhaps the most significant restrictions stem from science itself. The necessity to publish in peer reviewed journals has – so it is said – resulted in a restrictive climate. There are indications that disagreeing with the dominant view is dangerous and may lead to the marginalization of scientists if this view is backed by powerful interest groups. The discussion on climate change reports illustrates what I want to say. The critics of the reports were marginalized academically by members of the Intergovernmental Panel on Climate Change (IPCC). However, one should also be aware that these critics were funded by major interest groups. Altogether this was not a good scenario for the freedom of scientific research.

**Developments in German universities.** Finally, certain institutional developments in German universities are not conducive for the freedom of science. Some University Councils, including representatives of the industry as members, seem to believe that research can be organized like the production of tires. I have been witness to remarks such as, “German industry has no interest in Africa; therefore we shall give up ethnology” – such remarks speak for themselves.

## 5. Conclusion

Freedom of scientific research is an individual human right but it does not only and not primarily serve individual interests. It is the motor for scientific as well as economic and social progress. It requires that the researcher has a free sphere in which he or she may develop research objectives with the fewest restrictions possible. Anyway, how independent the positions of researchers are, they should always be aware of the responsibility they have towards the system, society and their colleagues. They should also be aware of the restrictions they may encounter when cooperating with the economy and the military, but also with particular interest groups.

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## Human Rights Aspects of Research Involving Human Subjects

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Research involving human subjects can be considered as an ethical obligation of the medical profession as postulated since antiquity: “The physician must take care that curable diseases do not become incurable. He must know how to prevent incurability of diseases. He must be experienced in incurable diseases to avoid any useless treatment.” (HIPPOCRATES, *de articulis reponendis* 58). The benefit of diseased persons, known as “*salus aegroti*”, has been and is still accepted today as justification for this kind of medical research. During the Age of Enlightenment a different type of medical research emerged aiming to improve the basic knowledge of man. “Curiosité” was introduced as a justification for this research without a planned benefit for the participant. The subsequent expanding experimentation on man initiated in the 19<sup>th</sup> century led to debates of its conformity with the doctrine of human rights being worked out in the same time period. As a consequence of these debates the Prussian Minister of Cultural Affairs prescribed by decree of 29<sup>th</sup> December 1900, decades before the *Code of Nuremberg* (1947) and the *Declaration of Helsinki* (1964), that a person should only be involved in a research project under the condition of his/her free consent given on the basis of appropriate information. This precondition, today accepted world-wide as “free and informed consent” of the invited research participants, safeguards the respect of autonomy as an integral part of human dignity. The current provisions for a valid consent require that it is given without any undue influence in the light of information which is understandable for the participant.

Free and informed consent has its limitations, however, and is not valid if given to projects in contradiction to morality or to national law. Here specifically applies the risk/benefit/assessment in order to safeguard human integrity. The acceptance of a risk depends on the expected benefit for the involved individual. The range of this acceptance varies from research with a potential direct benefit for the participant to research without such a benefit e.g. research on healthy volunteers. In all cases the relation between risk and benefit must not be disproportionate. Research is carried out for the potential benefit of the involved individual and for the benefit of society. However, the interests and welfare of the human being shall prevail over the sole interest of society or science. The right of participants to respect their private life in relation to information about their health must be guaranteed.

Whereas there is no doubt about the right to information before entering into a research project, the requirement of providing information on the results of such a project is a rather new development. Research participants, like other persons, are entitled to know any information collected about their health. In addition the right not to know respects this principle of informational self determination. Both the right to know and the right not to know may only be restricted by law. It should be emphasized that these provisions also cover “incidental find-

ings” generated in the course of a research project. The information on results with relevance to the health of the participant, generated in the course of research, should be offered in the framework of healthcare, the right not to know of the person concerned must be respected.

Research on persons not able to consent – e.g. minors, victims of traffic injuries, persons with dementia such as Alzheimers disease – may be considered as justified if carried out for their expected benefit (“salus aegroti”). In addition, if research on this group is needed for the improvement of basic knowledge of conditions of disease, their diagnosis and treatment. The metabolism of a substance in minors e.g. may be different from adults and should therefore be known before establishing a drug treatment. In research on persons unable to consent, the free and informed consent is substituted by the authorization of the legal representative in conformity with national law. The represented person shall be included in the decision in relation to his/her understanding and maturity. Any objection has to be respected. If a potential direct benefit for the represented person is expected, risk in relation to that benefit can be accepted, and the representative may authorize his/her involvement. In contrast, research on persons not able to consent without a potential direct benefit for the participant can only be authorized under conditions of “minimal risk” and “minimal burden” for the involved individual. The terms “minimal risk” and “minimal burden” are defined by the research protocol of the Council of Europe.

By tradition most provisions to safeguard human rights aspects in medical research cover projects requiring physical interventions on humans. Actually research on stored biological materials of human origin and related data is becoming more and more important. There is a growing understanding that also for this kind of research human rights aspects must be respected. In particular is accepted the need of the free and informed consent of the donor to the storage and to the further scientific use of his/her biological material. By preference this consent should be asked for at the moment of the removal of the tissue. If not done then, it should be sought later on. In the current predominant understanding free and informed consent may only be given for a specific and documented research project. This condition does not meet the need of future research on stored biological material, research not foreseeable at the time of removal. To solve this problem the concept of “open consent” has been elaborated in the past. To avoid any misuse and any “blanket-consent”, specific conditions must be followed to obtain a valid “open consent”.

The summarised aspects of human rights concerning research involving human subjects are codified by national and international legal provisions. The *Convention on Human Rights and Biomedicine* (1997) of the Council of Europe and the *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Biomedical Research* (2005) are examples. In addition the *Recommendation Rec (2006) 4 of the Committee of Ministers to Member States on Research on Biological Materials of Human Origin* may be cited as a first international attempt to safeguard human rights aspects in the rather new field of research on biological material. As examples of documents other than legal instruments are mentioned the *Universal Declaration on Bioethics and Human Rights* (2005) of the UNESCO, The *International Ethical Guidelines for Biomedical Research Involving Human Subjects* (2002) of

CIOMS and the *Declaration of Helsinki Ethical Principles for Medical Research Involving Human Subjects* (2008) of the World Medical Association.

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## Realising Human Rights in Development Cooperation

Folke KAYSER (Eschborn)

With 2 Figures

### 1. Human Rights and Development Cooperation – the Way to Convergence

An increasing number of governmental and non-governmental development organisations are orienting their development cooperation explicitly towards human rights. The so-called human rights-based approach (HRBA) to development is a trend of only the past ten years. Before, human rights and development cooperation were two separate worlds without many interlinkages. Governmental development cooperation was dominated by the economic growth paradigm, while non-governmental development cooperation was identified as charity. Only with emergence of the multi-dimensional poverty concept<sup>1</sup> in the late 1990s based on the ‘human capabilities’ approach by Amartya SEN<sup>2</sup>, have issues of equality, rights, freedoms and empowerment become broader themes of development.

The human rights debate, on the other hand, was long paralysed by the artificial division of human rights during the Cold War. The Western block – which included most donor countries – emphasised civil liberties and political rights. Economic, social and cultural rights such as the right to food, work, health, housing, social security and water, which directly relate to ‘classic’ themes of development cooperation, were treated as second rank. The end of the Cold War finally led to the recognition of the equal importance and indivisibility of all human rights: The ability to read makes an informed citizen. Freedom of opinion and expression is a function of the right to education and *vice versa*. At the same time the international human rights system experienced a boost of development and thereby became more relevant to development practitioners.<sup>3</sup> This paved the way to convergence and to the HRBA to development.

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1 See *OECD Development Assistance Committee* 2001.

2 SEN 1999. The book argues that there are five interactive dimensions of poverty and well-being: economic, human, socio-cultural, political and protective.

3 After 1990 a large number of General Comments relating to economic, social and cultural rights were issued by the responsible UN human rights treaty bodies, which interpret and operationalise specific human rights. The Human Rights Council and the International Criminal Court came into existence. In 2006 the Universal Periodic Review, a human rights peer review process, was introduced at the UN. A large number of mandates of special procedures of the Human Rights Council were created, for instance the independent expert on the right to water, the special rapporteur on the right to housing or the special representative on human rights and business.

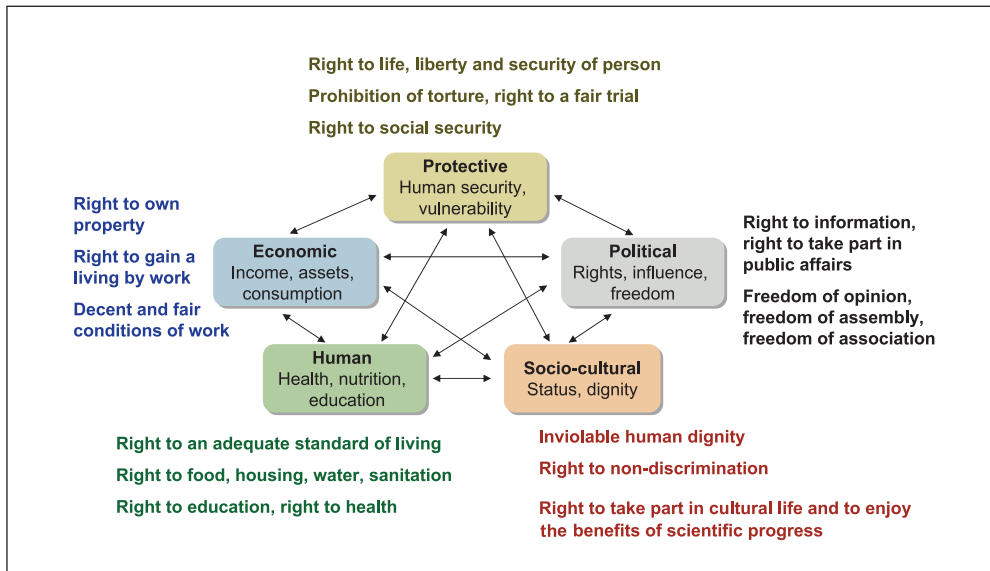


Fig. 1 Multi-dimensional poverty concept according to OECD/DAC (2001) and human rights stipulated in the core international human rights treaties ICCPR (1966) and ICESCR (1966).

## 2. The Understanding of the Human Rights-based Approach to Development

The HRBA to development is a conceptual framework that is normatively based on human rights and operationally directed to promoting and protecting human rights. First of all, development organisations themselves must make sure that they respect human rights (‘Do no harm’). In addition, the HRBA calls on development cooperation to positively protect and promote human rights. This means to orient all development interventions at all levels and in all sectors towards the human rights standards and principles. The international human rights system provides a number of human rights reference documents that interpret the standards and render them concrete and operational.<sup>4</sup> Human rights principles are the principles that underlie all human rights standards: non-discrimination and equality of opportunity, participation and empowerment of the right-holders, and transparency and accountability of the duty bearers.

The HRBA marks a change of perspectives: Needy target groups are now seen as ‘right-holders’ with a legal claim to minimum standards for a life in freedom and dignity; governmental counterparts become ‘duty-bearers’ with a legal obligation to implement human rights. To reduce poverty becomes a governmental duty, it is not about welfare or charity.

The HRBA places special emphasis on including discriminated, marginalised and vulnerable people into development and empowering them to change their situation. The HRBA is essentially about changing unfair power relations in society and thereby tackling the root causes of poverty, conflict and political oppression. Human rights are thus objectives in them-

<sup>4</sup> These are first and foremost the general comments by the treaty bodies. Other reference documents include the concluding observations by the treaty bodies on state reports, the documents of the *Universal Periodic Review*, the reports of UN special procedures, and jurisdiction by international and national courts.

selves but also means for improving the quality, impact and sustainability of development interventions.

Besides mainstreaming human rights as a cross-cutting issue, the HRBA also means to support more governance projects that specifically aim at protecting and promoting human rights ('twin track approach'). This includes projects to fight human trafficking, overcome female genital mutilation, strengthen indigenous people's organisations, overcome prison overcrowding, strengthening national human rights institutions and others.

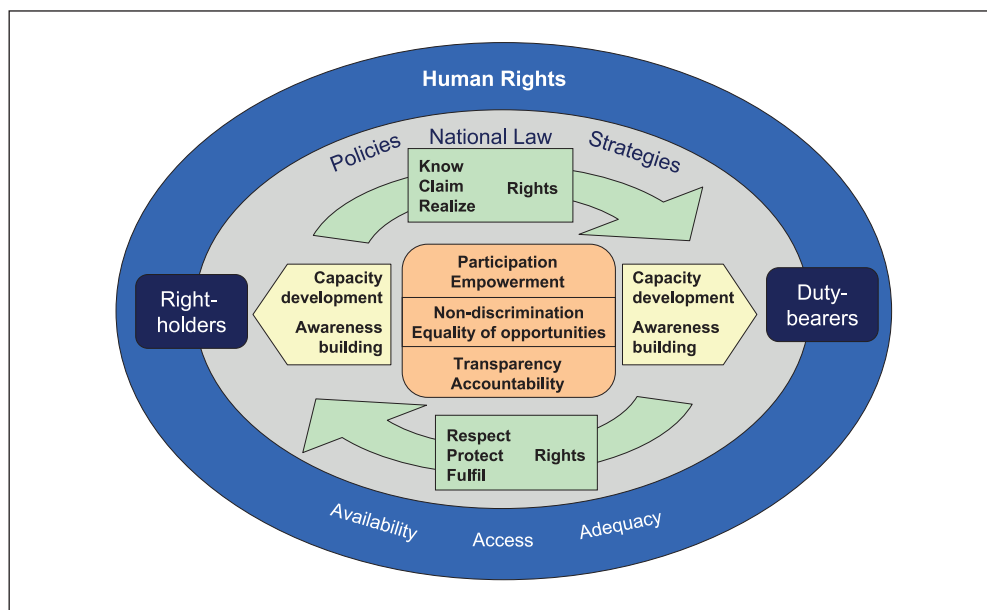


Fig. 2 Model of the human rights-based approach to development

### 3. Example of Applying the HRBA as a Mainstreaming Issue

Kenya has long acknowledged the right to water by ratifying the relevant human treaties. The General Comment on the right to water stipulates that water has to be available, geographically and physically accessible without discrimination, affordable and of acceptable quality. It does *not* demand that water be provided free of cost or by public providers only.

Once made aware of its concrete content, the Kenyan Ministry of Water and Irrigation and the German development organizations supporting the water sector reform found it a useful reference framework. As a result of applying the concepts the focus of the programme changed: Providing fast-track access to safe drinking water for impoverished areas, which before were neglected, has become a priority. Water kiosks for low-income groups were established and the tariff system was reviewed. For consumers that only use small amounts, tariffs have been reduced and cross-subsidised through the system. In seeking to involve those who are particularly affected the programme supported the organisation of water user groups.

#### 4. Lessons Learned

In every political context it is possible to implement both specific human rights projects as well as to orient sectoral projects towards human rights. However, in some countries it can be more conducive to avoid explicitly mentioning human rights.

In cases where human rights have explicitly been addressed in policy advice they worked as an additional political lever. Their internationally and nationally legally binding character adds legitimacy to the value-orientation of (German) development cooperation.

Another lesson is not to focus on human rights deficits but start with recognising achievements and potentials. That increases the receptiveness of partner governments to then discuss human rights challenges in other areas.

In order to change the dynamics of interaction between state authorities as duty-bearers and citizens as right-holders it is important to work with diverse stakeholders from civil society and government and facilitate dialogue and cooperation between them.

Conditioning aid on human rights is counterproductive if the problem is a lack of capacity to implement human rights – here the strategy should rather be awareness raising and capacity development. When a government intentionally violates human rights, conditions can be conducive, yet only if they are linked to concrete measures, are well targeted and well monitored. Otherwise they risk punishing the wrong target group.

The HRBA may require more efforts in the short run. However, evaluations show that the orientation towards human rights led to a more systematic analysis of social marginalisation and governance deficits. As a result the interventions produced better and more sustainable development results especially for vulnerable population groups.

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# Human Rights Aspects in International Scientific Cooperation

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## 1. Introduction: Some Preliminary Remarks

In the discussion of our topic, we normally find the concepts of ethics and values. Here we speak about rights. I will not enter into the discussion on the relation between these concepts. Let's admit for our purpose that values stand behind rights. What differentiates the concepts is that rights are legally binding, or, at least, taken into account by judges in their judgments. Human rights are rights and not a vague feeling or an emotional engagement for harmony and peace in the world, although, as Lynn HUNT writes in her book *Inventing Human Rights*: "The history of human rights shows that rights are best defended in the end by feelings, convictions and actions of multitudes of individuals, who demand responses that accord with their inner sense of outrage". States have the obligation to respect these rights, to protect them and to fulfil them. A similar role could be given to academic institutions. Human rights are universal and indivisible: The economic, social and cultural rights are as important as the civil and political rights.

Human rights have three components (I follow here Heiner BIELEFELDT): (i) normative universalism, (ii) emancipatory aims, and (iii) political and legal intentions. Human rights are a process, unfinished and open-ended. There is no linear evolution between the *Magna Charta* and the *Universal Declaration of Human Rights* of 1948, but we have continuities and breaks. New challenges demand new rights. Is this true? The risk is that a multiplication of declarations of rights may lead to a chaotic situation where nobody has an overview. Declarations are certainly important, but as important is the breakthrough of the content of these declarations for a larger public.

## 2. Presentation of Human Rights Documents

I want to present four types of documents: The draft of a declaration, a statement, an action plan and a communiqué. Many ideas expressed in these documents can serve as guidelines for human rights activities in international scientific cooperation.

The draft of a *Declaration on the Right to Education* has been elaborated by Prof. Emmanuel DECAUX (Université Paris II Assas), the rapporteur of the drafting group of the Human Rights Council Advisory Committee. It is planned to submit the Declaration to the General Assembly of the United Nations. The text contains a certain number of concepts that can be useful for our discussion: equal opportunities, a spirit of participation, inclusion

and responsibility, equality, full account of vulnerable groups, specific expectations of indigenous peoples, freedom of expression, the right to information, the prevention of human rights violations.

The second text is the *Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications*, published by UNESCO in 2009. Among the most recent reactions to this right I want to mention the AAAS (American Association for the Advancement of Science) *Statement* of April 2010. And last but not least: In September 2010 Sarah BASSIUONI received her *European Master Degree in Human Rights and Democratisation* in Venice. The title of her Master thesis is: “Our progressive nature. The environment and the right to enjoy the benefits of scientific progress and its applications”.

The third text is a *Plan of Action* for the second phase (2010–2014) of the *World Program for Human Rights Education*. The first phase was about the integration of human rights education in the primary and secondary school systems. The second phase focuses on human rights education in Higher Education and in human rights training for civil servants, law enforcement officials and the military.

A last text: The *Communiqué of the 2009 World Conference on Higher Education*. In this text there are three paragraphs about the role of international networks in societal change and development.

### 3. Human Rights Dimensions in Universities

To know if there is a human rights dimension in international scientific cooperation we have to know if such a dimension exists in the institutions organising this cooperation. Here, I present the results of a study on this subject which is not representative but provides some basic information. I have asked my colleagues who are participating in the European Master Programme in *Human Rights and Democratisation* and the members of the Association of Human Rights Institutes (AHRI). I received written answers from 15 universities: Maastricht, Utrecht, Bochum, Vienna, Abo, Padova, Deusto/Bilbao, Leuven, London Metropolitan, Essex, Ljubljana, Brno, Budapest, Dublin and Galway. Furthermore, I had discussions with colleagues and friends from the Master Programme in Venice. Interestingly, one of my colleagues, who works at a human rights institution of a university, has never wondered if his university has a human rights dimension.

In response to my inquiry 4 of 15 colleagues stated that there is no human rights dimension in their institutions. In one institution human rights are mentioned in the statutes of the university (Padua). This university also has an anti (sexual and moral) harassment code of conduct, a committee on equal opportunity, a commission on disability and a university ombudsman. Another colleague insists on the mainstreaming of human rights in all the faculties of his university. Some colleagues answer that there are human rights notions in several documents of the university, such as social responsibility, social justice, equal treatment, respect, dignity, ethical norms, solidarity, freedom of thought and opinion, equality of men and women. In one statement it is noted that “special attention is paid to the personal dignity of human beings, to the protection of the weak and to justice and peace”. One colleague refers to the activities undertaken by professors and students on specific occasions like the Human Rights Day or the Day of Antifascism.

The reason that human rights are not mentioned in agreements on scientific cooperation between universities and/or other institutions could be that they are already mentioned in the main documents of the university (mission statement, code of conduct, strategic plan) or simply that the law on higher education and the constitution are considered a sufficient standard for the university as a public institution. One colleague writes: "I am 100 % sure that our university does definitely not have a human rights dimension [...] the university only very reluctantly accepts the notion that human rights could have something to do with scientific work. And this acceptance is merely based on pragmatism, as human rights stand for interdisciplinarity, internationality and the ability to gain third-part funding – and all three of them are relatively appealing to the university".

A last remark on my university, the University of Luxembourg. Our University was founded in 2003. In the respective Law of August 12, 2003 human rights are not specifically mentioned, but among the fundamental principles we find the respect for the ideas of the others (*respect de la pensée d'autrui*) (Article 3 1 d). A University Council – established according to Article 26 – has the function to deal with complaints from students and to install an ethics commission. Article 30 is about academic freedom. Finally, Article 1 of the Mission Statement refers to various values, including human rights and fundamental rights. Furthermore, a "Code of Conduct for Students and Researchers" contains a general Article on equal treatment and non-discrimination, it allows to join associations promoting students' interests as well as free discussion and expression without being embarrassed except when fundamental rules of morality are broken.

#### **4. Recommendations**

At the end of this exposé I want to formulate some recommendations:

- (a.) If a human rights dimension should play a role in scientific cooperation, it should exist in the different participating institutions.
- (b.) This does not necessarily mean that the whole concept of human rights should be explained in cooperation contracts. It would be progress to mention some specific rights, such as freedom of expression. However, a better approach is to include a human rights dimension in mission statements, codes of conduct or plans of action.
- (c.) It would be a real advantage to include a paragraph on human rights in bilateral agreements, joint research projects or memorandums of understanding. The same is true for international networks.
- (d.) The best approach to establish human rights as a mainstream at universities or research centres is to make it a transversal dimension concerning learning, research, management, and service to the society.
- (e.) The declaration of human rights requires control mechanisms that check whether the rules are really implemented or not.
- (f.) An important human rights issue is a reorientation of scientific research in order to meet the needs of vulnerable and marginalised people.
- (g.) Scientists should actively promote the right to enjoy the benefits of scientific progress, for example that of academic freedom, considering its potential and its limits. In this context the link between intellectual property and human rights is a problematic issue.

- (h.) Finally, I recommend that scientists should become members of associations promoting and protecting human rights of teachers and researchers, for example “Scholars at Risk” or the *International Human Rights Network of Academies and Scholarly Societies*.

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## Human Rights Norms and Institutions in Europe

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### 1. Human Rights Protection at a Domestic Level

Primarily, human beings need protection against actions by their national governments. Therefore, adequate rules and institutions should generally be available at a domestic level. International protection comes necessarily late, and many times too late although it has become a valuable complement to national procedures and mechanisms.

Almost all European nations have constitutions providing for human rights guarantees and appropriate remedies. In the United Kingdom, the *Human Rights Act* 1998 has introduced the *European Convention on Human Rights* as a quasi-constitution. However, the quality of domestic protection varies enormously among the 47 member States of the Council of Europe, as can be seen from the number of applications filed with the European Court of Human Rights from certain countries, most of them still plagued by a communist past.

The traditional rights and freedoms are generally considered to be self-executing; accordingly, they can be directly enforced by judicial bodies. By contrast, economic and social rights require generally being particularized by acts of ordinary legislation before being able to be invoked as individual entitlements.

All the administrative and judicial bodies of a country should be called upon to respect, observe and implement the human rights and fundamental freedoms contained in the national constitution (together with the relevant implementing statutes) and international treaties to which the country is party. Constitutional courts bear the ultimate responsibility at the national level. But they are not the only institutions entrusted with enforcing human rights.

### 2. The European Union

Since the European Union (EU) is the product of 27 European nations that are all committed to human rights, it must also be obligated to respect human rights. In Article 6 (3) of the *Lisbon Treaty*, it is explicitly specified that fundamental rights, as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. Additionally, the EU has proclaimed that it will comply with the *European Convention on Human Rights*.

Furthermore, the EU has elaborated its own *Charter of Fundamental Rights* which has become an integral part of the *Lisbon Treaty*. The UK and Poland have been authorized not to subscribe to the Charter.

European Union law is not designed to replace national constitutional (and therefore national human rights) law across the board. The fundamental rights acknowledged in the Charter apply only within the limited scope of jurisdiction of the Union with regard to Union acts and with regard to national acts of execution of Union law. Many fears have been voiced to the effect that, in the long term at least, Union law will generally prevail over national constitutional law.

### 3. The European Convention on Human Rights

The *European Convention on Human Rights* has currently 47 States parties, including, e.g., Russia and Turkey. It is mainly confined to traditional rights and freedoms. However, according to the jurisprudence of the Strasbourg Court these rights encompass also far-reaching positive duties of protection.

The Strasbourg Court has developed an impressive body of case law. But it is hopelessly overburdened. Its backlog amounts to 138,000 cases. Out of these not less than 38,100 concern Russia, 16,200 cases stem from Turkey and 12,200 cases have reached the Court from Romania. Although the Court has developed a remarkable capacity to deal with the applications submitted to it (roughly 35,000 per year), the backlog amounts already to almost four years of hard work.

Recently, a reform protocol (No. 14) has entered into force which has introduced a number of procedural streamlining measures. In particular, applications can now be dealt with by a single judge. It remains to be seen whether these reforms will be able to accelerate the proceedings.

### 4. Not Everything Is Perfect

The European nations rely to a great extent on judicial protection. But there are groups in the population who, because of lack of education, are not able to benefit from these mechanisms. Not everything can be resolved by judicial methods. Solidarity and tolerance are required of every member of society. Only against such a background can human rights really flourish.

Recent problems with immigrants and asylum seekers have also shown that notwithstanding the abstract availability of protective mechanism, many persons in need are not actually able to access mechanisms of judicial protection.

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# **Strengthening of Human Rights by Scientific Cooperation: International Cooperative Projects of the German National Academy of Sciences Leopoldina**

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## **1. Introduction**

The German National Academy of Sciences Leopoldina follows the policy of engaging actively in national and international networks of academies in order to strengthen the mutual support among the partners for the protection and preservation of academic freedom. Strong networks with lively academic exchange create greater transparency, thus – hopefully – enabling a build-up of international pressure on governments in cases of infringements of academic freedom and human rights in general. The Leopoldina is truly committed to issues of human rights and will continue to engage in human rights-related programmes and activities.

As Head of International Relations at the Leopoldina I would like to introduce briefly our tasks to illustrate how we try to contribute to improving the situation of human rights through international cooperation.

## **2. Tasks and Methods**

Since global problems require closer cooperation, Leopoldina members are active in umbrella organisations of academies which operate in Europe and worldwide. In international working groups they jointly formulate statements and recommendations providing evidence-based political advice to decision makers and to society at large internationally. The goal of the Leopoldina international relations department is to ensure that German scientists can find their place and their role in the international scientific community of academies. Two main methods are applied to achieve this goal: monitoring and networking.

### *Monitoring:*

It is essential to find out:

- What is going on in the scientific world?
- What are the most urgent issues in key fields of expertise?
- What needs to be solved internationally?
- What has to be organised internationally?

### *Networking Worldwide*

In the framework of the G8+5/G20 summits the academies release statements and recommendations:

- G8+5 academies (Canada, France, Germany, Great Britain, Italy, Japan, Russia, USA plus Brazil, China, India, Mexico, South Africa);
- G20 academies (in addition: Argentina, Australia, Indonesia, Saudi Arabia, South Korea, Turkey plus European Union).

*Important umbrella organisations are:*

- InterAcademy Panel (IAP),
- InterAcademy Council (IAC),
- InterAcademy Medical Panel (IAMP),
- International Human Rights Network of Academies and Scholarly Societies (IHRN).

*Networking across Europe*

Important umbrella organisations are:

- Federation of European Academies of Medicine (FEAM),
- European Federation of National Academies of Sciences and Humanities (ALLEA = All European Academies),
- European Academies' Science Advisory Council (EASAC).

One of the department's major focal points is **EASAC**:

It was founded in 2001 and is funded by the science academies of EU member states to enable them to collaborate in providing evidence-based advice to EU policy makers. It functions as a mechanism for a collective voice of European science and covers all disciplines. The advice aims to be expert, authoritative, relevant and is independent of economic, political or other interests of any kind.

There are 23 national science academies of EU member states. Cyprus, Luxembourg and Malta do not have national science academies. Academia Europaea (composed of individual members; membership is by invitation) and ALLEA are also members. Three organisations have observer status at EASAC: The Norwegian and Swiss academies (Norway and Switzerland are members of the Organisation for Economic Co-operation and Development, OECD) and the Federation of Academies of Medicine of EU member states.

EASAC has the following operating procedures:

- Academies nominate highly experienced scientists to Council membership.
- The Council is supported by a professional secretariat and academy-nominated expert project groups. (The Secretariat is currently located at the Leopoldina. It has been in Halle since April 2010 and used to be at the Royal Society before then.)
- The Council prioritises and reviews projects, engages with EU policy makers in the EU Commission, in the EU Parliament and in the EU Presidencies.
- The outputs are reports, statements, workshops, reviews; the first major report was released in 2004.
- Outputs are generated by multi-disciplinary advisory groups with collective responsibility.
- Diverse perspectives across the EU are useful in suggesting alternative policy options.
- Messages delivered at the EU level should be accompanied by activities undertaken nationally.



All this contributes to achieving EASAC's goal, the transition from scientific to political consensus.

Selected EASAC Statements and Reports in 2009/10 are:

- Groundwater Situation in Europe (June 2010),
- Climate Change and Infectious Diseases (March 2010),
- Transforming Europe's Electricity Supply (June 2009),
- Drug-resistant Tuberculosis (March 2009),
- Ecosystem Services and Biodiversity (February 2009).

Current EASAC Projects (2010 – 2012) are:

- Synthetic Biology (Oct. 2010),
- Biofuels and Biodiversity (June 2010 – June 2011),
- Carbon Capture and Storage (Sept. 2011 – Dec. 2011),
- Climate Change Adaptations (until Dec. 2011),
- Toxicology of Nanomaterials (until Dec. 2011),
- Concentrating Solar Power (until Dec. 2011),
- Genetic Diagnostics (until June 2012).

The Leopoldina also has other focal points, for example in Sub-Saharan Africa.

Many global problems (e.g. energy, water, climate change, food security, infectious diseases, ecosystems, migration, poverty) require solutions in all parts of the world, including Sub-Saharan Africa.

One result of the L'Aquila summit in 2009 was the idea to establish Centres of Health Innovation. As a result a conference on infectious diseases and tropical medicine is planned for March 2011 in Kumasi (Ghana), under the patronage of the Ghana Academy of Arts and Sciences and the Leopoldina. We hope that this conference will be a first step towards a future Centre of Health Innovation in Africa.

Furthermore, at the moment we are a partner in a project called "Facilitating the Founding of an Academy of Sciences of Namibia". The project partners are the Ministry of Education of the Republic of Namibia (Directorate of Research, Science and Technology), the Network of African Science Academies (NASAC), the Academy of Sciences of South Africa (ASSAf) and the German National Academy of Sciences Leopoldina. The project is funded mainly by the International Bureau of the German Federal Ministry of Education and Research, but also by the project partners.

Medium-term focal points are:

- Closer cooperation with academies in Eastern Europe (e.g. Poland and Albania) following their redefinition, realignment and reorganisation. For example, a Memorandum of Understanding with the Polska Akademia Nauk (PAN) was signed.
- Cooperation with academies in the Middle East and in northern Africa.
- A further focal point will be the cooperation with academies in South East Asia and in Latin America, as far as the respective home countries are not among the G20.

### 3. International Cooperation and Human Rights

International cooperation creates trust and improves the conditions for free academic exchange. The greater the transparency in the national and international networks and science-based advice offered to politics and society, the better the chances for preserving academic freedom in teaching and research and for widely disseminating scientific knowledge and insights, regardless of the current government policy on a specific issue. A few examples show how fragile and endangered academic freedom can be.

#### *Israeli-Palestinian Science Organization (IPSO)*

IPSO is a not-for-profit organisation launched with UNESCO backing in April 2004, based in the city of Jerusalem with the mission to foster and sustain cooperation between Israelis and Palestinians and to promote dialogue and interaction among scholars and scientists in the two communities. In July 2007, IPSO received the formal responsibility for the Project for Israeli-Palestinian Cooperation in Science Education. IPSO was supported morally by 26 academies and also financially by various institutions. At the IHRN Meeting in Rabat, May 2009, there was a report about the successful work being done by IPSO. Despite the initial successes, IPSO's projects and other activities have come to a halt because of the uncertain political situation.

#### *South Africa and Ethiopia*

The famous journal *Nature* reported in Spring 2010 about the founding of the Ethiopian Academy of Sciences (EAS) and at the same time highlighted threats to academic freedom – and even basic freedom of speech – in African countries.<sup>1</sup>

The article cited Wieland GEVERS, Secretary General of the Academy of Science of South Africa (ASSAf): “Academic freedom should definitely be on the agenda for all African academies.” ASSAf had warned of “new threats to academic freedom” in South Africa after several high-profile cases of outspoken South African academics being penalised; in 2008 Anthony TURTON, a government-funded water scientist, was suspended following his criticism of government policy.

In 1993 at least 40 professors at Addis Ababa University were fired after criticising the government; some were later imprisoned. A 2003 report by Human Rights Watch found that the government's influence on academic appointments encourages self-censorship in Ethiopia's universities.

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1 [http://www.nature.com/news/2010/100409/full/news.2010.173.html?s=news\\_rss](http://www.nature.com/news/2010/100409/full/news.2010.173.html?s=news_rss).

**Human Rights and Science Issues in  
Various Countries – Short Reports**



## Introduction

Johannes ECKERT ML (Zürich)

The goal of this meeting is the discussion of:

- (a) Human rights activities of European Academies and human rights problems in their home countries,
- (b) problems associated with the documentation of cases of human rights violations and
- (c) options for better cooperation between European academies in the field of human rights.

In my opinion human rights issues deserve a higher priority in the activities of European academies. This is – *inter alia* – indicated by the fact that only a proportion of them have established a Human Rights Committee. Indeed, it cannot be expected that human rights are in the focus of the academies' interest, but they should at least be officially an integral part of the academies' concepts and public activities. For example, since 1993 the US National Academies have provided substantial financial, administrative and moral support to the *International Human Rights Network of Academies and Scholarly Societies* (IHRN). The secretariat of the IHRN invests an enormous effort in the documentation of cases of human rights violations and – in addition – is the leader in organising the biennial international meetings which are of high importance for international cooperation and exchange of information.

Our vision is to stimulate European academies to more activities and to a closer cooperation in the field of human rights. This should also include concerted efforts of fund raising for human rights studies and activities in the framework of the IHRN. In this sense I would like to open this meeting.

We start our programme with short reports on human rights issues. I apologize that only short statements of 10 min each can be presented by speakers from some countries who have indicated prior to this meeting their interest to contribute to this session.

The rest of the time can be used for discussing proposals for cooperation between European Academies.

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## **Freedom of Research and Teaching – A Slovenian Experience**

Alenka ŠELI<sup>H</sup> (Ljubljana)

Although twenty years have passed since the changes in Eastern and Central Europe (ECE) I would like to report on a case of curtailing freedom of research and teaching in the previous regime to show such events could have had very different forms.

As it is nowadays well known, the regimes in the ECE countries differed in many respects, and the former Yugoslavia was perhaps the country with the most specific system among them. It is also well known that in these regimes there had been periods of “thaws” and “freezes”. As far as universities and research are concerned, one should remark perhaps that scientists in natural sciences were exposed to criticism much less than scientists in social sciences. During one of the “freeze-periods” in Yugoslavia, in the mid-seventies, one of the professors of the Faculty of Law, University of Ljubljana, F. B. was accused of having published a book on administration in enterprises (three years earlier!) which was supposedly too critical of the existing system. A long procedure was instituted and the demand had been posed that the professor should be transferred from a teaching position to a research position which he declined. He did not accept the research project allocated to him. As a matter of fact he did not appear at work for months. After a year or so, the faculty administrators initiated a procedure to dismiss him from his position. Before this procedure was effective F.B. declared that he would enter into retirement as he had already fulfilled conditions for that (age, number of years of work). With this, the procedure was closed. This happened at the end of the seventies.

In the mid-eighties, when the social conditions in Slovenia were rather opened, the faculty – acting on the initiative of another professor S. C. – decided to analyze the whole procedure to see whether, taking into account the situation as it was in the eighties, some rights of F. B. were violated. The dean A. Š. supported the action, and for two years a specially named commission of faculty members tried to establish facts on the previous procedure. It came to the conclusion that, “[...] the procedure was initiated on the basis of a political action and that the book which was the basis for the criticism had neither in the time when it was published nor later been unjustly critical of the existing system of administration of enterprises”. The formal decision on that was passed by the faculty Council after two years of deliberations in June 1987 and was publicly accessible in October the same year.

The case shows that the processes of democratization in Slovenia (and probably also in other ECE countries) had started earlier than 1989 and had made the Big Change possible. It shows also that the level of pressure was different at different time periods and (probably) also in different countries.

*Alenka Šelih*

This report describes as an example a case of curtailing the right of freedom of research in the mid-seventies, the ways how the Faculty tried to minimize its consequences as well as how they tried to repair the damage as soon as this was possible.

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## **General Aspects and Activities of the Polish Academy of Arts and Sciences (PAU) Related to Human Rights**

Jan WOLEŃSKI (Krakow)

### **1. General Context**

Any discussions about human rights in Poland (the same concerns other post-communist countries) must take into account essential changes after 1989/1990. Roughly speaking, even if communist policy was more or less liberal (it was dependent on various circumstances, social, political, internal, external, economic, etc.) this liberalism was very strongly controlled. Hence, although human rights (or liberties) were declaratively recognized even in constitutions or other top legal statutes, this attitude was rather formal than material. In fact, several restrictions concerning liberties (free elections, freedom of speech, religion, travelling, education, scientific research, particularly in the humanities, etc.) were introduced and consequently executed. The “Autumn of People” in 1989 was absolutely fundamental for changing this situation in the direction of really respecting human rights in Poland and most countries of the post-Soviet bloc.

### **2. General Problems**

Although political transformation in 1989 and later the entrance of Poland into the EU (in 2004) resulted in the process of political normality, there are several problems related to human rights and their preservation. This is dependent on many factors, among others, the remainders of the old political systems, particularly existing in many presently legal regulations issued in the former social situation and for strengthening of it, serious economic difficulties, influencing the realization of social rights (unemployment, education, etc.) or the shape of the social consciousness (a general lack of trust of citizens in the state, and the reverse). These circumstances are known and investigated, their full diagnosis still awaits a complex elaboration.

### **3. Special Problems (Affecting Scientists)**

The number of people with academic education increased in Poland from 7% in 1989 (it was one of the lower co-efficient in Europe) to 15% in 2008. One can say that it was a real revolution. Private schools play a very important role in this respect. However, there are several problems related to education provided by private institutions. Thus, if the access to approximately equal (in the sense of a value) education is considered as one of the most important human rights, certainly there is a problem, because serious differences in quality

occur. More specifically, diplomas obtained from private schools are regarded as less valuable. Clearly it has further effects, for instance, in finding jobs. Thus, although one side of the revolution in education favours equality, the other acts in the opposite direction. One cause of the problem in question is that private schools do not have own scientific staff (they employ academicians working at second or even third positions) and rarely conduct normal academic research. Moreover, academic schools, according to legal regulations, having an insufficient number of professors working at first positions, could not award degrees such as doctorate or even magister, bachelors, etc. There are several consequences of this situation, for example, an unequal distribution of financial (and other) means given by the government for science and education. Additionally, the part of budget directed towards science and education is extremely small in Poland. This diminishes possibilities for doing science and results in *de facto*, although not formal, limitations on freedom of scientific research.

Another question which should be mentioned is that there are several problems related to human rights hotly discussed in Poland, for example, abortion, euthanasia, rights of sexual minorities or rights of animals. Ordinary people expect some hints coming from scientists, like biologists, philosophers, lawyers or theologians (I understand “science” as a collection of academic fields), in order to find answers related to these listed issues. Since Poland is a Catholic and thereby a conservative country, it frequently happens that discussions are too ideological. This affects not only academic or theoretical debates, but also protection of liberties by state authorities. In general, Catholicism (particularly in Poland) is against abortion, euthanasia, legalizing homosexual partnerships or attributing rights to animals. On the other hand, this attitude creates tensions. In particular, Poles more and more frequently put cases concerning liberties before international courts, and there are first judgments pointing out that Polish law is too restrictive as far as the matter concerns issues mentioned above.

#### 4. Activities of PAU Related to Human Rights

In general, Polish academic institutions devote much attention to human rights. There are several books published in the last years, conferences, discussions etc.; this is partly due to a shared conviction that we should compensate the deficiencies of the past. PAU actively participates in this process. The Academy organizes public lectures and seminars. Many meetings of this type were devoted to human rights. The same concerns committees (legal, philosophical, theological etc.) acting in PAU and having cyclic sessions. There is also the European Committee which discusses human rights in a broader international perspective. However, the main problem consists in introducing legal regulations effectively protecting human rights in Poland. Unfortunately, postulates of the academic circles directed to the legislature are too frequently ignored.

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## Human Rights: A Czech Perspective

Robert ŽIKA (Prague)

The tradition of human rights in the Czech academy could be traced back to spring of 1348 when our King and Emperor CHARLES IV of the House of Luxemburg founded the Prague University, having been inspired in Paris and northern Italy. This oldest university north of the Alps and east of the Rhine immediately became the centre of intellectual life of the four university nations: Czech, Bavarian, Saxon and Polish. The number one science in those times was of course theology, that is, the scientific knowledge aimed to celebrate God and his creation.

Fifty years after the foundation in Prague, began a movement to rectify the Church. Scholars basically wanted the Church to stop corruption, to make the bible accessible to lay people and serve liturgy in national languages so that every individual could understand the liberating word. The reformers were of diverse national background, e.g., Germans such as NICOLAS OF DRESDEN, Konrad WALDHAUSER from the Upper Austria, and from England, Peter PAYNE. The symbol of the reform movement was a chalice of wine – served to lay parishioners for the first time in 1414 by JACOB OF MIES.

The leading figure of this movement, the rector of the university Jan HUS, was summoned to the Church Council in Constance to explain his teaching in context of the philosophical dispute of nominalists with realists. Refusing to recant his teaching HUS made appeals to God as to the sovereign judge of his consciousness. This contradicted canonical law, and HUS was condemned to be burned at the stake in 1415. Consequences of the freedom of speech exercised by Czech reformers were horrendous: five crusades against the Bohemian Kingdom, civil wars and international isolation of the university. To this day the Prague University has never regained the reputation it had before.

However, devastating the punishment was it had some very positive consequences. HUS' message became universal. Inspired by an Oxford scholar John WICKLIFF, HUS later influenced Martin LUTHER and his reformation. Neither was the continuity of scientific work interrupted. Scholars from the Prague University helped to establish four new universities: in Krakow, Heidelberg, Vienna and Leipzig. Quite recently, JOHN PAUL II rehabilitated Jan HUS and gave him even an official status of the reformer of the Catholic Church. Obviously, some cases take six hundred years until they are solved. Until today the presidential flag on the Prague Castle bears the Hussite creed: "Veritas vincit".

The majority of Czechs "human rights fighters" were typically intellectuals, if not scientists or scholars, who chose non-violent resistance to the ruling ideologies and often sacrificed their lives, such as a student of philosophy Jan PALACH.

No wonder the first spokesman of the most important dissident movement, the Charter 77, was Professor Jan PATOČKA, the greatest Czech philosopher of the 20<sup>th</sup> century and a student of Edmund HUSSERL. He was dismissed from Charles University after the Warsaw

Treaty armies' invasion of the former Czechoslovakia in 1968 and died after a detention hearing. Other spokesmen of Charter 77 were diverse: scholars, journalists, priests, former communists, but also artists like our dramatist Václav HAVEL. The single idea which kept this heterogeneous group together was resistance to the regime by defending human rights.

Dissidents also tried to defend laws which were sometimes paradoxically adopted by the totalitarian state. In 1976 the Czechoslovak Socialist Republic formally adopted international norms of the Helsinki Declaration from 1975. Signatories of Charter 77 established the "Committee for the Defence of the Unjustly Persecuted" whose purpose was to follow cases of persons facing various forms of state persecution. Information about it was reported back to Czechoslovakia via the stations of Radio Free Europe, Voice of America and the BBC.

In 1988 the Czechoslovak (later Czech) Helsinki Committee was established to remind state organs to observe adopted laws. It has been active in human rights cases providing individuals and groups needing protection, counselling and education. It is still active today, dedicated primarily to disadvantaged people, minorities' rights, legal counselling, and school education, etc.

Some other movements opposed to the regime met at churches and in ecological movements. In the eighties almost everybody could see that the ideology, economy and many other things were not functioning. People were hungry for the truth; they attended theatres to hear some hidden message in plays, "samizdat" and illegal newspapers circulated.

What ignited the "Velvet (Gentle) Revolution" was the suppression of student demonstrations on 17 November 1989, when citizens were commemorating those Czech university students who were sent during WW II to Nazis' concentration camps. Rumours about a student who allegedly died during police intervention caused people to go to the streets and to start talking and publishing what really happened. The collapse of the regime was rapid. Political prisoners were released, and the Declaration of Human Rights was incorporated to the new constitution. Many dissidents became politicians; others could return to their original professional careers after decades of oppression.

It was also a time when the majority of Czech human rights organizations came into being. The Charter 77 in 1992 officially ended its activities because justice was given a democratic foundation. In 2007 the "Institute for the Study of Totalitarian Regimes" was established but there are still doubts about its task and whether it should be political or more historical. With the restoration of democracy Amnesty International, the Open Society Fund and some other organizations from abroad launched their activities in this country.

The leader of the student revolution Mr Šimon PÁNEK established a new organization the "People in Need" which – besides human rights – concentrates on humanitarian and social aid in diverse parts of the world. Other human rights organisations do similar work, such as: "Adra", founded by Adventists, "Czech Catholic Charity" and the "Czech Brethren Diacony". Czech people massively started to help abroad and are now the second greatest donors of humanitarian aid in the post-communist states, just after Slovenia. They became aware of their responsibility for the rest of the world by building schools and hospitals and wells in the Third World, supporting the development of civic societies in Eastern Europe, and helping to start new lives in countries devastated by catastrophes. In addition to these campaigns there is also the film festival *One World* which is dedicated to human rights topics during which the only Czech prize for human rights "Homo Homini" is awarded annually.

Czechoslovakia was for more than 40 years an isolated country where foreigners were rarely allowed to settle. As consequences of the war the Czech territories lost significant

numbers of minorities – Germans and Jews, in particular. Prague used to be a city of cultural dialogue where writers like FRANZ WERFEL, FRANZ KAFKA, Rainer Maria RILKE, Karel ČAPEK or Jaroslav HAŠEK created their masterpieces. This unique cultural community disappeared after World War II.

The only significant minority which remained in the country were Roma people. Most of the original Czech Roms did not survive the holocaust, but a new generation moved to the Czech lands from Slovakia. Attempts of communists to assimilate and even sterilize them during socialism failed. This left them devastated, socially deprived and still on the edge of society. Government, ministries, social workers and others develop strategies to integrate with them but there are no easy solutions. New ghettos for Roma people, revivals of Nazism, and anti-Semitism appear. We have new victims of the right-wing extremism like a burnt Roma baby – Natálka SIVÁKOVÁ. The police, journalists and the public are very active in such cases. However, integration of minorities, which includes protection of their human rights, is essential for maintaining stability, security and well being in the country. Apparently, there are new areas of human rights initiatives like “La Strada” concerned with human trafficking and prostitution, “Gender Studies” monitoring equality of men and women, and the “League of Human Rights” dealing with rights of seniors, children, prisoners and patients.

The Czechoslovak Academy of Sciences was a refuge for many nonconformists in the time of totalitarianism. It was active when democracy was born. Its presidents appreciated the International Human Rights Network of Academies and Scholarly Societies as an effective force helping oppressed colleagues abroad. There has not been any Human Rights Committee established in the Academy because its presidents can act on behalf the whole community and consider these issues as an integral part of their work. The latest testimony to this is the current Annual Report in which a paragraph is dedicated especially to the significance of human rights.

Communism claimed to base its ideology on science; however the sciences and their methods, instruments and goals could hardly be subordinated to any ideology. The Academy of Sciences of the Czech Republic is our largest scientific institution, with 53 institutes and almost 7,000 employees. Though dedicated to research it has always taken responsibility for public affairs and when needed helps to create national or European strategies on many issues. In 2006 the “Code of Ethics for Researchers” was adopted by the Academy Assembly. Words of Tomáš G. MASARYK, a sociologist who was elected the first Czechoslovak president in 1918, are quoted in the prologue to the code: “Pursuing knowledge is, indeed, an all encompassing endeavour, in fact, an exceedingly active life. If talking about ‘science’, you are speaking, at the same time, about pains, patience, tenacity, perseverance, sacrifice, honesty – all these are components not only of an active life, but of the moral life as well”.

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## **Intervention of the Norwegian Academy of Sciences and Letters in Support of Palestinian Students in “Administrative Detention”**

Arne HAALAND (Oslo)

During the Biennial Meeting of the *International Human Rights Network of Academies and Scholarly Societies* held in Rabat (Morocco) in May 2009, I proposed that the Network should take up the cases of Palestinian students held in preventive detention by Israeli authorities. The proposal received little support and was not accepted. After my return to Oslo I reported this result to the other members of our Human Rights Committee, and after a short discussion we decided to explore the possibility of taking up such cases on our own. On March 26<sup>th</sup> 2010 we sent a letter to the His Excellency Shimon PERES, President of Israel.

The letter was based on Israel’s obligations under international law as outlined in the *International Covenant on Civil and Political Rights* to which Israel is a state party, and on general comments on the treaty made by the UN Human Rights Committee which was established under that covenant. Information on Israel’s use of preventive detention of students was received from the widely respected Jewish-Israeli human rights organization B’TSELEM, the Palestinian human rights organization ADDAMEER, and the administration of Birzeit University in Ramallah. In particular we would call attention to the report “Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law” published by B’TSELEM in October 2009.

The last paragraph of our letter of March 26<sup>th</sup> 2010 reads as follows: “We recognize that that the government of Israel has both a right and a duty to safeguard the security of its citizens. The measures taken must, however, fall within the limits established by international law. As an Academy of Science and Letters we feel a particular responsibility for university students. We appeal to you therefore to see to it that the student detainees are fully informed about the charges against them and brought before an independent court for a fair and open trial, or else immediately released” (for the full text see Annex 1). A list with the names of 19 Palestinian students in “preventive detention” (status February 2010) was attached. Similar letters were also sent to Israel’s prime minister and the ministers of defence and foreign affairs.

In a brief letter dated April 29<sup>th</sup> 2010 the President’s Office replied by suggesting that that we apply to the Commander of the Israel Defence Forces in Samaria and Judea who has the authority to deal with cases of administrative detention. We found this answer disturbing, and in a second letter, dated June 28<sup>th</sup> 2010, we wrote: “If the state of Israel is in violation of international law, the responsibility rests on the political leadership of the country and cannot be delegated to military commanders. We urge you, therefore, to consider and reply to the questions raised in the letter of March 26 2010. If we have not received a reply to this letter by August 1, we shall feel free to publish our correspondence” (for full text see Annex 2).

The new letter was signed by the leaders of “The Norwegian Association of Researchers” (with close to 18,000 members), the “Union of Education in Norway” (with about 150,000 members this is the largest association of teachers in the country), and “The National Union of Students in Norway” (with about 200,000 members), as well as by myself on behalf of the Norwegian Academy.

Since we had received no reply by September 1<sup>st</sup> 2010, we sent a letter to Israel’s ambassador to Norway to inform him that the correspondence would be posted on the websites of the four organisations unless a reply was received within two weeks. Since no reply was received by October 1<sup>st</sup> 2010, the correspondence has now been published as indicated below:

- The Norwegian Association of Researchers (“Forskerforbundet”): <http://www.forskerforbundet.no/Nyheter/2010/Henvendelse-til-Israels-president-om-fengsling-av-palestinske-studenter/> (“Les brevvexlingen her” means “read the correspondence here”);
- The Union of Education in Norway (“Utdanningsforbundet”): <http://www.utdanningsforbundet.no/Hovedmeny/Om-Utdanningsforbundet/Internasjonalt/Andre-artikler/Fengslede-palestinske-studenter-bes-loslatt/>;
- The National Union of Students in Norway (“Norsk Studentorganisasjon”): <http://www.student.no/?p=2203>.

During the Symposium in Berlin it was suggested that the correspondence should be circulated to the other member academies of the International Human Rights Network so that they might write supporting letters if they so desired.

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## Annex 1

The Norwegian Academy of Science and Letters Committee on Human Rights  
Tove BULL, Professor of Linguistics, Former Rector, University of Tromsø  
Arne HAALAND, Professor of Chemistry, Former Chair, Amnesty International, Norway  
Asbjørn KJØNSTAD, Professor of Law, Former Dean, Faculty of Law, University of Oslo  
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Oslo, March 26, 2010

His Excellency Shimon PERES  
President of Israel  
Office of the President  
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According to its statutes, the Human Rights Committee of the Norwegian Academy of Science and Letters has been established to defend the human rights of scientists, students, teachers and others, and in particular to work for the release of those who have been incarcerated in violation of their human rights. Since January 2009 our Committee has interceded in human rights cases in China, India, Libya, Peru, Syria, Turkey (two cases) and Iran (three cases).

We are now writing to you to express our concern for two Palestinian graduate students at Birzeit University who are held in preventive detention by Israel:

- Raed Taye' Mohammad HAMED, born 01.05.1972, began his undergraduate studies at Birzeit University in 2004. He spent about 16 months in administrative detention from November 2004 to April 2006. In October 2008 he began his masters' studies in water and environmental science, but was arrested for the second time on April 21<sup>st</sup> 2009. He was not informed about the charges against him, but tried before a military court and sentenced to administrative detention on 01.05.2009.
- Zaki Muhammad Hussain AMRYEH, born 21.04.1976, began his masters' studies in Arab and Muslim history in October 2008. He was arrested on April 1<sup>st</sup> 2009, was not informed about the charges against him, but tried before a military court and sentenced to administrative detention on 01.05.2009.

Both students are incarcerated in Keziot Detention Centre in the Negev desert in Israel. This makes it very difficult for their families to visit them. The Fourth Geneva Convention (Part 3, Article 76) explicitly states that “protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentence therein.”

According to the Universal Declaration of Human Rights, no one shall be subjected to arbitrary arrest, detention or exile (Article 9). Everyone is entitled to a fair and public hearing by an independent and impartial tribunal (Article 10), and to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (Article 11).

According to the International Covenant on Civil and Political Rights, no one shall be subjected to arbitrary arrest or detention (Article 9.1). Everyone shall be entitled to a fair hearing by a competent, independent and impartial tribunal established by law (Article 14.1). The prisoner shall be informed promptly and in detail of the nature and cause of the charge against him and be allocated adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing (Article 14.3).

According to Article 4 of the Covenant the State Parties to the present Covenant may in “time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”, “take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation”.

It seems obvious to us, that if a state is allowed to derogate from all the abovementioned requirements in Articles 9 and 14, then a state would be free to detain anybody without due process of law, provided it had first declared a state of public emergency. Indeed, we note that the UN Human Rights Committee, which was established under the Covenant and given the responsibility for examining the State Parties’ implementations of the Covenant, has published a general comment on Article 4 (July, 2001), where it states that “The Committee is of the opinion that the principles of legality and the rule of law require that *the fundamental requirements of fair trial must be respected during a state of emergency*. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected”.

Further, in a general comment to Article 14 (August 2007) the Committee states “while reservations to particular clauses of article 14 may be acceptable, *a general reservation to a right to a fair trial would be incompatible with the object and purpose of the Covenant*”.

Israel has been under a declared state of emergency since 1948, and has made extensive use of administrative detention. According to the widely respected Israeli human rights organization B’Tselem, 335 Palestinian were held under administrative detention on September 30<sup>th</sup> last year. According to the best evidence available to us, this number includes more than thirty university and college students. See the attachment.

Detention orders are normally valid for six months, but may be renewed indefinitely. More than two thirds of the detainees at the end of September last year had already served more than six months, one third had served more than a year.

In the vast majority of these cases neither the prisoner, nor his lawyers have been informed about the charges against him or the evidence upon which these charges are based. It has therefore not been possible to submit contrary evidence or cross-examine witnesses. The latter seems to us to be particularly important. Administrative detention is not meant to provide

punishment for acts already committed, but to prevent violent acts in the future. To prove the intent to carry out such acts, and the probability that they will indeed be carried out, may depend on the testimony of undercover agents or informers, and should not always be taken at face value.

Like Amnesty International we believe that the practice of administrative detention in Israel and the occupied Territories violates fundamental human rights. According to Amnesty “all political prisoners, including those held in administrative detention, must be charged with a recognizable criminal offence and given a fair trial within a reasonable time, or else released.”

The US-based human rights organization Human Rights Watch has recently released a detailed discussion of the “arbitrary detention” of the rights activist Mohammad OTHMAN and concludes with the general statement that “although international human rights law permits some limited use of administrative detention in emergency situations, the authorities are required to follow the basic rules for detention, including a fair hearing at which the detainee can challenge the reasons for his or her detention”.

We recognize that that the government of Israel has both a right and a duty to safeguard the security of its citizens. The measures taken must, however, fall within the limits established by international law. As an Academy of Science and Letters we feel a particular responsibility for university students. We appeal to you therefore to see to it that the student detainees are fully informed about the charges against them and brought before an independent court for a fair and open trial, or else immediately released.

Yours sincerely,  
Arne HAALAND  
Chair

## Annex 2

The Norwegian Academy of Science and Letters  
Committee on Human Rights

Members of the Committee:

Tove BULL, Professor of Linguistics, Former Rector, University of Tromsø  
Arne HAALAND, Professor of Chemistry, Former Chair, Amnesty International, Norway  
Asbjørn KJØNSTAD, Professor of Law, Former Dean, Faculty of Law, University of Oslo  
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Oslo, June 28, 2010

His Excellency Shimon PERES  
President of Israel  
Office of the President  
3 Hanassi St.  
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Excellency,

We thank you for your answer to the letter from the Committee of Human Rights (CHR) of the Norwegian Academy of Science and Letters dated March 26 this year. In that letter the Committee presented arguments that lead it to the conclusion that Israel's use of administrative detention in the occupied territories violates its obligations under the International Covenant of Political and Civil Rights, a covenant to which Israel is party. The Committee requested, therefore, that 32 named Palestinian college and university students currently held in administrative detention, should be fully informed about the charges against them and brought before an independent court for a fair and open trial, or else be immediately released.

In your answer of April 29<sup>th</sup> (your reference no. 45032) you do not comment on any of the views or concerns raised by the Committee, but refer it to the "Commander of the Israeli Defence Forces in Judea and Samaria".

We, the signatories to this letter, who represent the largest associations of researchers, of teachers and of college and university students in Norway as well as the national academy of science, find this answer worrying. If the state of Israel is in violation of international law,

the responsibility rests on the political leadership of the country and cannot be delegated to military commanders.

We urge you, therefore, to consider and reply to the questions raised in the letter of March 26.

If we have not received a reply to this letter by August 1, we shall feel free to publish our correspondence.

Yours sincerely,

Arne HAALAND  
Chair, The Committee of Human Rights  
The Norwegian Academy of Science and Letters

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Enclosure: Copy of the letter from CHR of The Norwegian Academy of Science and Letters dated March 26, 2010.



**Committee for Freedom of Science of the Royal  
Netherlands' Academy of Arts and Sciences  
Commissie voor de Vrijheid van  
Wetenschapsbeoefening (Koninklijke Nederlandse  
Akademie van Wetenschappen, KNAW)**

Pieter J. D. DRENTH (Amsterdam)

A short overview of history, task and activities of the Committee is presented here.

The Committee was founded in 1978 under the name “Academy Committee for Human Rights”. Members: P. DE WOLFF (chair), P. VAN DIJK, J. DE BOER, H. DRION. The Committee advised the Board of the Academy on issues of freedom of science and oppressed scientists. Primary concern: oppressed and prosecuted Jewish scientists in the Soviet Union and Poland (refusniks). Some (moderate) success was achieved (release, permission to leave the country or to attend international conferences). Later the name was changed into *Commissie voor de Vrijheid van Wetenschapsbeoefening* (CVW) (Academy Committee for Freedom of Science).

Prof. P. VAN DIJK was co-founder of the *International Human Rights Network of Academies and Scholarly Societies* (IHRN) in 1993, and was Member of the Executive Committee of the IHRN from 1993 to 2009.

The Royal Netherlands' Academy of Arts and Sciences joined the IHRN right at its beginning in 1993. It took an active part in the activities of IHRN and was represented at the biennial conferences of the IHRN in Amsterdam (1995), Rome (1997), Stockholm (1999), Paris (2001), Ascona (2003), London (2005), Colombo (2007), Rabat (2009). At the Rabat meeting P. VAN DIJK presented the address “Security and human rights; balance or fear?”, and P. J. D. DRENTH contributed the paper “Academic freedom under threat: tensions and conflicts in developed democracies”.

The present composition of the Committee is as follows: Chairman: Prof. P. J. D. DRENTH (former President KNAW). Members: Prof. N. J. SCHRIJVER (secretary), Prof. W. J. M. LEVELT (former President KNAW), Prof. F. P. VAN OOSTROM (former President KNAW), Prof. R. S. RENEMAN (former President KNAW), Prof. P. J. ZANDBERGEN (former President KNAW), Prof. J. E. GOLDSCHMIDT, Dr. K. A. M HENRARD (representing the Dutch Young Academy). Executive secretary: Dr. W. DE HAAS. Address: KNAW, PO Box 19121, 1000GC, Amsterdam, the Netherlands.

The CVW studies and discusses general issues of infringement of freedom of speech, freedom of opinion, and freedom of mobility of scientists and scholars. It advises the Board of the Netherlands' Academy to take a stance, to issue statements, and to write letters of condemnation or protest with respect to cases of such freedom infringements.

In particular the CVW involves itself on behalf of scientists or scholars around the world who are subjected to severe repression solely for having non-violently exercised their rights as promulgated by the *Universal Declaration of Human Rights* (UDHR): the right to have and express their opinion (Article 19) and to associate (Article 20). In such cases the CVW

prepares letters of protest to be signed by the President of the Academy, and to be directed to governments (Prime Ministers, Presidents, Kings) of the countries involved, with a copy to these countries' Ministers of Foreign Affairs and Ambassadors in the Netherlands, and the Dutch Ambassador in the respective countries. We request that such scientists be given a fair trial and to release them immediately if only the above mentioned fundamental rights are exercised, and to bring the confinement into compliance with the UN Standard Rule for the Treatment of Prisoners. We always ask to be informed about further development of the case in question.

Suggestions for such cases of imprisoned scientists and scholars are almost always well prepared by and received from Carol CORILLON (National Academies of Sciences, Washington, and secretariat of the IHRN).

The CVW also deals with cases or incidents with respect to (endangered) freedom of speech and study in the Netherlands. A case in point was the governmental sanction regulation concerning the admission of Iranian students to nuclear power proliferation-sensitive university programmes. This followed the binding resolution 1737 of the UN Security Council and the common position of the Council of the European Union (2007/140/GBVB, Article 6 GS) urging states to take precautions and not to give such training to Iranian citizens. The KNAW successfully protested against the decision to exclude Iranian students categorically from certain fields of research and education as being against Article 1 of *UNESCO's Convention against Discrimination and Education* (CADE), and against ICSU's principle of universality of science. Only exclusion on the basis of personal merit or competence or individual risk to national security is acceptable.

The CVW (KNAW) supports activities to help and assist scholars and scientists who are at risk in their own country. For instance, it lent support to an initiative of UAF (University Assistance Fund, a private foundation that supports refugee students in the Netherlands) to organise a Dutch partner network on the *International Scholars at Risk Network* (SAR). The objective is that scholars at risk will be hosted by universities for a full or half year. The programme started in 2009.

Similar sympathy and occasional contacts exist/will be developed with: Committee on Freedom and Responsibility in the Conduct of Science of the International Council for Science (ICSU); Network for Education and Academic Rights (NEAR); Science and Human Rights Coalition of the American Association for the Advancement of Science (AAAS); Network of Concerned Historians and Amnesty International; Women Members NAS, NAE, IOM: support for Iraqi women scientists, engineers and health professionals; Israeli–Palestinian Organisation (IPSO), and others.

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## **Some Aspects of Human Rights Related to Italy**

Antonio GOLINI (Rome)

### **1. Human Rights and Some Problems of Research in General**

For some years severe financial restrictions have been affecting research in Italy with negative effects both on theoretical and targeted research and also on its international relations. Currently, Italian universities and researchers have only reduced access to European funds, both for structural reasons and for a negative tradition. At present we are trying to reverse this situation, but the positive process is slow.

This situation deprives a large number of scientists of freedom of research and expels many of them abroad, not in a “physiological” manner (linked to the right of mobility), but in a pathological one. Furthermore, these circumstances deprive a large part of the population of the “right to the protection of the moral and material interests resulting from any scientific, literary or artistic production” (UNESCO mandate for the protection of human rights). Finally, it reduces inputs for Italian industry, which in turn contributes very little to sustain and finance the research.

### **2. Human Rights and Some Problems of Specific Research**

In this context only one group of problems can be mentioned here. In research involving human beings the respect of law is a basic rule (as it was underlined yesterday by Prof. DOPPELFELD). Italian laws are largely affected by the Catholic point of view in regards to both the beginning of life and its end. Moreover, the work of ethical commissions and the results of their considerations may be influenced by Catholic values and doctrines. This situation is indicative of a conflict between different human rights: the right and freedom of religious belief on the one hand and of research involving human beings on the other. In consequence, strong counter positions between Catholic people and others develop (complicated by problems associated with Muslim immigrants), resulting in a huge negative impact on research in the field of genetics, biology, and also on medical practice. Thus, it is very difficult to achieve

*Antonio Golini*

consensus solutions, for example in cases of medical treatment of persons who – for physical, psychological or cognitive reasons – are not able to consent, or when the “right” to die is discussed.

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## **Comments on A. Golini’s Statements by Regarding Human Rights Aspects of Research Involving Human Subjects**

Elmar DOPPELFELD (Köln)

### **1. Specific Criteria for Research for the Benefit of Society/Public Health?**

The legal instruments and other proposals concerning biomedical research of the Council of Europe do not address fields of research in relation to the expected aim or benefit. They cover research as such. That research may be undertaken to improve healthcare or to enhance the basic knowledge in the sense of “curiosité”, one of the leading principles of science since the Age of Enlightenment. There can be an overlap of these two fields of research. Results of research undertaken for a better scientific understanding of Alzheimer’s disease e.g. may lead to methods of prevention or treatment. As a consequence costs of healthcare could be lowered. The scientific development of vaccination programs may be added as another example of research for the benefit of society and public health.

### **2. Human Rights and Research on the Human Embryo?**

The ethical and legal status of the human embryo stands to be subject of a controversial discussion in the 47 Member States of the Council of Europe. Therefore the planned additional protocol to the *Convention on Human Rights and Biomedicine* (Oviedo) concerning the protection of the human foetus and embryo has not been adopted as of today. Research on human embryos *in vitro* is not covered by the scope of other instruments and proposals of the Council of Europe. The *Convention on Human Rights and Biomedicine* (Oviedo) leaves this problem to national law stating: “Where the law allows research on embryos *in vitro*, it shall ensure adequate protection of the embryo” (Article 18,§1). However, the term “adequate protection” is not defined and may be understood in different ways by the Member States. The *Convention on Human Rights and Biomedicine* (Oviedo) does not allow the creation of human embryos for research purposes (Article 18,§2). The quoted provisions are considered by some Member States as too strong, by others as not strong enough.

### **3. Vaccination of a Population for the Protection of Public Health?**

An official order given e.g. by health authorities to perform a vaccination of a population or groups of a population to protect public health may be in conformity with the *Convention on Human Rights and Biomedicine* (Oviedo). Article 26 of the Convention allows to some extent

*Elmar Doppelfeld*

the restriction of the rights contained in it if restrictions are prescribed by law and are, “necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others”. No restrictions of rights shall be allowed in specific fields such as research including research on persons unable to consent or removal of organs or tissues for transplantation purposes.

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## Violation of Academic Freedom in Turkey: A Personal Experience

A. M. Celal SENGÖR (Istanbul)

### 1. Introduction

The following summary is a small selection of cases indicating violations of academic freedom in Turkey. The first part deals with my own experience and the second with what I know from second-hand (but reliable) sources, including one person who was personally affected.

### 2. My Own Experience

*November 2007:* I was elected as a candidate for membership in the Higher Education Council (YÖK) by the Inter-University Council (*Üniversitelerarası Kurul*).

*December 2007:* The Islamist newspaper *Vakit* published a slander about me alleging that I work as a director in one of our family companies. The basis of this report was an earlier news item published in the İstanbul daily newspaper *Milliyet*.

*January 2008:* YÖK asked my university to start an investigation of me.

*January 2008:* YÖK asked the university to stop its investigation because it decided to investigate me directly (second time in its history since 1983).

*May 2008:* I was interrogated by a YÖK committee of two people. They expressed satisfaction that the documents I provided proved that the violation of law ascribed to me had not been committed.

*10 October 2008:* The President of YÖK addressed me in a formal letter (dated 16th October 2008, no. B.30.0. HKM.06.02.001-6824, signed by the acting secretary general of YÖK Nur Gümüşsoy UNCU) indicating his dissatisfaction with his own investigation committee's report and said he would recommend to the general council that I should be removed from the university according to the law I allegedly violated. The letter invited me to a meeting in Ankara for a formal defence. Since the letter was received five days after the indicated date for my defence (5th November 2008 signed by Prof. Dr. Muhammed ŞAHİN, the *rector magnificus* of the Istanbul Technical University and myself), my university formally asked for a later date be arranged. YÖK never repeated its invitation.

In *January 2010*, the daily newspaper *Hürriyet* published an interview with YÖK indicating that my file had been shelved (my case had already overshoot its statute of limitation).

In *March 2010* the YÖK president told a journalist of the daily *Milliyet* that I had been given a mild punishment and thus could not be elected to the council. I checked with my university: No announcement of such a punishment had reached the university and hence it could

not have been meted out. However, the YÖK president successfully kept me out of the council membership by exploiting a slander and then lying about a punishment.

At this point it might be useful to cast a glance at the question, “Who is the YÖK president?” He is a sociologist with no previous administrative experience appointed to the head of the Turkish Higher Education Council by President Abdullah GÜL (GÜL had been elected solely by the votes of the representatives of the present ruling party in Turkey, the *Justice and Development Party – Adalet ve Kalkınma Partisi* – headed by the Prime Minister Recep Tayyip ERDOAN). Previously the YÖK president worked in the Islamic University of Malaysia. Through a microphone left on by oversight on TV, the former AKP Minister of Finance, Mr. Kemâl UNAKITAN, announced with laughter to a cabinet colleague next to him that the YÖK president “had to do whatever he was told” by “them”! Since then the YÖK President approved the opening of some tens of new universities with no infrastructure (libraries, labs, etc.) apparently to allow the government to appoint new rectors and thus to obtain the majority in the Inter-University Council. Recently the universities announced that they cannot refuse admission of religious head-gear-wearing students to classes although such a directive is against the constitution.

The YÖK stopped the investigation of me after a letter of inquiry was received from President CICERONE of the US National Academy of Science addressed to the President of the Republic Mr. Abdullah GÜL, the Prime Minister Mr. Tayyip ERDOAN and the Minister of Education Mr. Hüseyin ÇELİK!

I think that the allegations against me were dropped because they were obviously wrong. In addition three components played a role: (a) my international standing in science; (b) the fact that I have independent means, so that throwing me out of the university would have been more of a reward than a punishment, because it would have increased my freedom; and (c) I am well-known not to have any political connections and/or any administrative positions or ambitions.

### **3. My Knowledge of Violations of Academic Freedom on the Basis of Reliable Second Hand Accounts**

In 2007 the Turkish Government has started an investigation of the “Ergenekon” case in which persons were accused of provoking the overthrow of the current government by a military coup. After three years the very existence of such an organisation remains unsubstantiated. More than 175 persons were arrested, including senior retired military officers, leading figures from media, academics, lawyers, and activists from civil society organisations. There was growing concern that this investigation had become politicized, targeting critics and opponents of the ruling Islamist party. The *International Human Rights Network of Academies and Scholarly Societies* (IHRN) has investigated some of these cases, it published the names of more than 10 accused academics and concluded that, “none of them is known to have used or advocated violence”. In this context the IHRN criticized human rights violations in course of the “Ergenekon” investigation, such as detention without charge for prolonged periods.

I know personally people who have been jailed without trial and without any credible evidence of illegal activities due to the “Ergenekon” accusations. Alleged “evidence” consisted of illegal telephone tapings, unidentified witnesses and unsigned letters. Among them are Prof. Dr. Ferit BERNAY, Prof. Dr. Mustafa YURTKURAN, and Prof. Dr. Fatih HILMIOĞLU (the latter two experienced serious health problems in detention). All three had been university

rectors, all are known to be against Islamist penetration of the university system, and all three are known to have been active furtherers of the secular system and the values of the western civilisation in their communities. Another detainee was Prof. Mehmet HABERAL – an internationally highly respected transplant surgeon – whom I do not know personally. In his case the IHRN has emphasised in April 2009 that, “no evidence has been presented to date to support the serious charges brought against him”.

Prof. Dr. Kemâl GÜRÜZ is a close friend of mine. He was formerly head of the Higher Education Council. He is a dedicated supporter of a modern, secular Turkey, and a vociferous representative of western values as voiced by ATATÜRK. He was arrested and detained for four days and is now awaiting trial on trumped up charges of complicity in a coup attempt in the “Ergenekon” group. Because of my close association with him I know for a fact that the accusations against him are entirely baseless. He is being made to pay for his valiant stand for supporting human rights and dignity as well as against revelation and women’s servitude. In defending the independence of the university Prof. GÜRÜZ – in his previous function as head of the Higher Education Council – had dismissed Prof. Dr. Beşir ATALAY from his former position as university rector for supporting extremist Islamists. Prof. Beşir ATALAY is now Minister of the Interior. Kemâl GÜRÜZ has been also a well-known and vehement opposer of military coups. It is a bitter irony that he is being accused of complicity in preparing one. He was invited to attend this symposium in Berlin, but confessed that he was afraid of the possible consequences.

#### **4. Methods of Oppression Currently in Use in Turkey against Academics**

From my point of view I have to criticise various methods of oppression such as the following: *Prominent academics, journalists or soldiers* are slandered by unsigned letters and illegal telephone tapings and publication of these on the internet, or by production of unidentified witnesses. In extreme cases alleged video shots of improper sexual conduct have been produced. Moreover, persons are suspected of belonging to alleged “terrorist units”. However, no such “units” have yet been substantiated. In some cases the health of persons in detention has been ruined by diverse methods.

The *academic community* is exposed to influence by politicians, for example by appointing people of their own preference to important positions, such as deans, heads of graduate schools, graduate institutes or heads of examination boards.

The *High Council of Judges and Prosecutors* has tried to change the prosecutors and the judges dealing with the Ergenekon case during a routine rotation procedure. To prevent this, the Minister of Justice and the Under-Secretary of Justice (both AKP members) blocked the meeting by not attending it and made the routine appointments impossible just to keep the present prosecutor and judge team in place. This impasse has persisted now for a year. The government finally changed the constitution to be able to appoint its own people to The High Council of Judges and Prosecutors.

#### **5. Finally: Who Are “They”?**

“They” – who have to take responsibility for the current situation – are the *AKP party* in power and a *religious/commercial community* of the hard-line Islamist Nakhshi sect at least

nominally headed by a former preacher named Fethullah GÜLEN who, about ten years ago, fled from Turkey and now resides in the US. After the AKP government came to power all charges against him were dropped.

His group's involvement in the police and in the judicial system has recently been documented in a bestseller by a highly respected police chief, Mr. Hanefi AVCI. Not surprisingly, days after Mr. AVCI's book appeared he was charged with being a member of one of the alleged terrorist groups – which I have mentioned above – and put behind bars. Recent protests have been staged against this outrageous decision that included for the first time even some prominent liberal writers such as Mr. Cüneyt ÜLSEVER of Hürriyet.

## 6. Conclusions

In Turkey and other countries the judicial authorities have the mandate to investigate illegal activities and crimes. However, according to the UN *Universal Declaration of Human Rights* these authorities and the government are obliged to respect human rights (Articles 6-12), to guarantee fair trials, and to protect the rights of freedom, including freedom of science (Art. 29). Furthermore, governments should protect science from any religious, political or other ideology, which could be detrimental to basic human rights.

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## Comments on C. Sengör's Report

Pieter J. D. DRENTH (Amsterdam)

The speaker has rightly emphasised separation of religion, politics and ethics on the one hand and science on the other. These are two separate and different fields. But he then tended to question the 'raison d'être' of committees on science and ethics of Academies of Sciences. Many European Academies, as well as the federation of European academies ("All European Academies", ALLEA), have such committees.

The rationale behind this is as follows: Let us make a distinction between science *in stricto sensu* (the philosopher BOCHENSKI referred to this aspect as *Wissenschaft als Inhalt*) and science as the process of knowledge accumulation (*Wissenschaft als Tätigkeit*). The former is morally neutral and solely subject to methodological-scientific norms. Objectivity and independence have to be maintained against any pressure from religion, ideological movements, industrial lobbies and governmental and political pressure groups. In this sense science is value-free. Science as the process of accumulating knowledge, however, is embedded in the context of values, interests and political objectives. It is subject to ethical and social norms which have bearing upon the choice of hypotheses to be investigated, the manner in which data are gathered and experiments are conducted, and accountability for what is ultimately done with the research results. As such science is faced with a variety of (often religion-based) ethical, social, and political issues that should not be underestimated. Rather than denying this, or retreating to the safety of the ivory tower, scientists and scholars would do well to realise this and to take this responsibility seriously.

Academy Committees on Science and Ethics do take this seriously and try to analyse and evaluate and to advise their boards and members on these ethical questions in science and scholarship.

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## Human Rights Activities of the Academy of Athens

Anna BENAki (Athens)

Among the Research Centers and Scientific Bureaus of the Academy of Athens the *Bureau of International and Constitutional Institutions* regards as a principal activity the protection and promotion of human rights. This is done by a series of projects conducted by young specialists who regularly assess the implementation and compliance in general, primarily in Greece, of the obligations under the European Convention of Human Rights in the fields of legislation, administrative practices and case law.

Since the year 2000 the Bureau of International and Constitutional Institutions of the Academy of Athens (BICIA) has established a close collaboration with the International Human Rights Network of Academies and Scholarly Societies (IHRN), associated with the National Academy of Sciences of the United States of America. As we know, the same applies to many other European Academies. The activity is grounded in the principles set forth by the 1948 United Nations Universal Declaration of Human Rights.

The IHRN's regular meetings are attended by a member of the BICIA as it is in continuous communication with the above mentioned *Network* and responds on a regular basis to the call for support of different cases of grave violations of fundamental rights in different parts of the world. Emphasis is given to the freedom of opinion and expression of scientists from all over the world.

Further, our Academy along with other Scholarly Societies supports the *Israeli-Palestinian Organization (IPSO)* which fosters and funds scientific cooperation and scholarly endeavours between Israelis and Palestinians. The IPSO, a binational, nonprofit, and nonpolitical organisation supports cooperation in high-quality research in science and learning between Israeli and Palestinian scientists and scholars working together, typically in institutions of higher learning. The activities of the IPSO cover research projects, scientific and scholarly workshops and conferences and collaborative science-related training programmes.

Another important institution of the Academy of Athens, which might be eventually involved in the protection of human rights in the specific field of biomedical research, is the "Biomedical Research Foundation" (BRF).

The BRF is a non-profit institute dedicated to understanding, treating and preventing human ailments through biomedical research. It serves science and medicine. Established by the Academy of Athens on an over 25,000 square meter area, the institute conducts an international competitive biomedical research since 2002. The most recent achievement is the establishment of the *Hellenic Cord Blood Bank* with an aim to facilitate transplantations and potential applications in the field of regenerative medicine. The BRF is also cooperating with the *European Strategy Forum on Research Infrastructure for the Development and Coordination of a Pan-European Biobank*.

The legal team of the BRF is already confronted with the legal aspects of the above mentioned activities, following the international development on bioethics along with the harmonisation of Greek legislation.

Similar activities also existing, probably, in other Academies could give rise to some thoughts for a European multi-disciplinary cooperation related to science and human rights under the auspices of the Academies. A feasible target is the study on the implementation of the *Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine*.

The above *Convention on Human Rights and Biomedicine* has entered into force in late 1999 and has already ten years of application. This Convention was elaborated within the framework of the Council of Europe by a multidisciplinary highly-experienced expert group representing all the Member States: geneticists, physicians, biologists, lawyers, theologians, chemists and others worked for six years in the *Steering Committee of Bioethics* and produced a text that is the first international convention dealing with the relationship of biomedicine and human rights. The Convention has been supplemented by four Additional Protocols: a *Protocol on the Prohibition of Cloning Human Beings* (1998), a *Protocol on Transplantation of Organs and Tissues of Human Origin* (2002), a *Protocol on Biomedical Research* (2005) and a *Protocol on Genetic Testing for Health Purposes* (2008).

Currently, the Convention has been ratified by 26 out of 47 Member States of the Council of Europe, while the Protocol on Cloning has received 20 ratifications, the one on Transplantation 12 ratifications, that on Biomedical research 6 ratifications and the last on Genetic Testing has not yet entered into force.

It is generally acknowledged that the Convention has already had an important impact not only on national legislation of State Parties, but also in the field of free donation of organs, the rights of patients, scientific research by States non-parties to the Convention. The Convention has also inspired a number of directives of the European Union and serves as a model in financing research projects by the Union. On the other hand, the Convention is a useful tool for the jurisprudence of the European Court of Human Rights, the Court that guarantees the application of the *European Convention on Human Rights* (1950).

Yet, the fact is that very important European Member States are still outside the conventional framework. Those who are not parties, i.e. they have neither ratified nor signed it, argue *inter alia* that they have difficulties with Article 9 on previously expressed wishes by a patient who is not able to express his or her wishes; Article 17 on the protection of persons not able to consent; Article 20.2.i. on the protection of persons not able to consent on organ removal; and above all on Article 18.2. on the research of embryos *in vitro*.

Attitudes are changing, however, as manifested e.g. by the recent decision of the Highest Court (BGH) in Germany allowing the *in vitro* diagnostic research. A number of other resentments have been expressed in a wide range of fields, such as the crisis of European identity, the problem of wide dissemination of the principle enunciated by the Convention as well as the very weak, if not inexistent, mechanism of monitoring.

In view of the above remarks, I believe that the European Academies should examine the possibility of undertaking a multidisciplinary study on the overall assessment of the provisions contained in the Convention as well as in its Additional Protocols. Such a study would be useful for the scientific community, European governments and the Council of Europe itself, as it will pinpoint achievements, misgivings, weaknesses and further proposals regarding the complex issues of bioethics in the modern world.

The Academy of Athens could contribute to the suggested study through its “Bureau of International and Constitutional Institutions” and the “Biomedical Research Foundation”.

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## **Ten Years of the Human Rights Committee (HRC) of the German National Academy of Sciences Leopoldina**

Hans-Peter ZENNER ML (Tübingen)

In April 2001, following a proposal by Harald REUTER (Bern), Philipp U. HEITZ and Johannes ECKERT (both Zürich), the presidium of the Academy Leopoldina decided to establish a Human Rights Committee. Initially it consisted of Rudolf COHEN (Konstanz), Horst ASPÖCK (Vienna), and Johannes ECKERT (Zürich). Later, Rüdiger WOLFRUM (Heidelberg), Bruno GOTTSTEIN (Bern) and Hans-Peter ZENNER (Tübingen) were also appointed as members of the committee. In 2009 Prof. Heiner BIELEFELDT (Erlangen) kindly agreed to act as an external consultant. In July 2003 the HRC of the Leopoldina became a member of the International Human Rights Network of Academies and Scholarly Societies (IHRN). From 2001 until 5<sup>th</sup> October 2010 J. ECKERT acted as chairman of the HRC; his successor is H.-P. ZENNER.

In accordance with the aims of the IHRN the HRC of the Leopoldina assists scientists and scholars around the world who are subjected to severe repression solely for having non-violently exercised their rights as promulgated by the *Universal Declaration of Human Rights*. The HRC is also committed to (a) coordinating activities of individuals from the academic world who are already engaged in non-violently tackling human rights repression, (b) motivating members of the Academy Leopoldina and the wider public to become more concerned about and engaged in human rights issues, and (c) promoting collaboration on human rights issues between academic institutions in different countries. The method of choice for the HRC has been to conduct mailing campaigns against human rights violations which have been addressed to authorities, judicial bodies, embassies and governments all around the world. Since November 2004 a total of 32 cases of human rights violations have been evaluated and processed. These have concerned (in order of frequency) the Middle East, Europe, Asia, America and Africa.

The HRC has developed contacts to the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid, the Federal Foreign Office (Berlin) and the German Institute for Human Rights (Berlin). Furthermore, it plans a closer cooperation with Human Rights Watch Germany in investigating unclear cases of human rights violations. A special and new objective is the promotion of closer cooperation regarding human rights issues between European Academies.

The HRC prepares reports and publications. The reports are submitted to the presidium and senate of the German National Academy of Sciences Leopoldina. Recent publications can be found in “Leopoldina aktuell”, a newsletter accessible under [www.leopoldina.org](http://www.leopoldina.org).

*Hans-Peter Zenner*

The members of the HRC are convinced that a strong commitment to human rights issues is still needed. One of its guiding principles is the *Summary Statement* of the 2005 IHRN meeting in London.

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