

REALITY BITES: DO FUNDAMENTAL HUMAN RIGHTS STILL MATTER NOWADAYS?
Violation of human rights in conditions of global turbulence

“History is a teacher of life”

Centuries later, this commonly known quotation of Cicero had been objected by a historian V. Kliuchevsky, arguing that *“History is not a teacher but a warden: it teaches nothing but severely punishes for unlearned lessons.”* Admittedly, these unlearned lessons of history often become a sentence, particularly for public authorities, subsequently, however, significantly impacting individuals. One might even argue that it rarely fails to surprise how mirrored eras are and how similarly, if not identically, the authorities choose to act over centuries. The area of an efficient application of human fundamental rights, sensitive by its nature, might serve here as a vivid example.

Against this backdrop, the aim of this contribution is, based on existing legal framework, to briefly address the very fragile nature of fundamental human rights as well as, in particular, their non-permanent feature, illustrating this phenomena with few commonly known examples of potential violations faced recently by individuals. In conclusion it is argued that the “history” is not that much about legislating, as it is about willingness to observe and efficiently apply

Humanity tends to name the ongoing developments as a “turning point” in one way or another. It goes without saying that the II World War was doubtlessly a turning point from numerous perspectives, particularly when it comes to the violation of human fundamental rights, developed over centuries beforehand. In reaction to this devastation of elementary human standards, the international community gradually shaped a common minimum standard in this regard.

Firstly, the Universal Declaration on Human Rights (UDHR), being undoubtedly a milestone document in the history of human fundamental rights and its developments, proclaimed on 10th of December 1948 as a common standard of achievements for all peoples and all nations, sets out - for the first time - fundamental human rights to be universally protected. Nowadays - 75 years later - particularly the universality of these rights appears still being questioned across the world. This being so, interestingly, despite the universally known document, and despite the fact that the Declaration, albeit not being a binding legal document, is widely recognised as having inspired the adoption of over seventy human rights treaties and having been translated into over five hundreds languages.

Secondly, the European Convention on Human Rights and Fundamental Freedoms (ECHR) clearly marks the decision of all member governments of the Council of Europe (CoE) to take the primary steps to enforce most of these rights found in the UDHR, by codifying them into a body of law and setting the minimum standards for our region. While affirming the obligation of the Member States to observe human fundamental rights and establishing the Court accessible for individuals, ECHR constitutes doubtlessly an innovative feature as giving individuals rights in an international area. Seemingly, however, these landmarking

mechanisms are nowadays not enough for individual rights to be observed at national level, being compromised, mostly due to the temporary political interests.

Thirdly, at the European Union (EU) level, the entry into force of the Treaty of Lisbon has sent a considerable signal that the European Union is committed to the respect of fundamental rights. The Charter of the Fundamental Rights became legally binding, while fundamental rights, as guaranteed by the ECHR, constitute general principles of the EU's law (Art. 2 TEU), although the ECHR has not yet been formally incorporated into EU law. It should be underlined, however, in this context that the interplay of the jurisprudence of these two main courts, the one in Luxembourg (CJEU) and the other one in Strasbourg (ECtHR), also commonly known as a judicial dialogue, contributed to a *“co-operative relationship not being framed within an institutionalised context but being rather informal and structured “on a two-fold basis consisting of [an ambivalent] presumption of equivalent human rights protection and of an abstract legal commitment on the part of the CJEU to follow the jurisprudence of the ECtHR.”* [6; 96]

Finally, over the past decades there have been numerous legal mechanisms adopted at different levels of the international community, having differentiated scopes of regulation, which have gradually shaped the relatively extensive legal framework of fundamental human rights at both international/supranational and national level. The Courts interpret them, in general, in a broad and extensive manner, thus, adding to this traditionally developed basic set of fundamental human rights new rights, being rooted in the developments of sciences and technologies (relating to such issues as e.g. cybercrime, cybersecurity, sensitive data protection, etc.).

At the same time, however, the fragile nature of fundamental human rights remains as fragile as it always has been, easily being subject to misuse of powers of the authorities, compromising the m

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When the recent pandemic - covid19 - hit the world, fundamental human rights of individuals faced doubtlessly its “turning point” again. Firstly, the term “public health” has been quickly defined and, thus, interpreted as a part of public order, to facilitate - if not to enable at all - the justification of all the introduced limitations of fundamental freedoms and liberties of the civil society, not necessarily always following the proportionality requirement, set out usually at the constitutional level. Consequently, based rather on the political approach, health became public good whereas being individual one as by its nature. Secondly, in some European countries the governments considered mandatory vaccinations, without taking into consideration the individual rights (and therefore, individual health conditions) of their citizens and/or inhabitants. At the very same moment, the insurance companies denied their liability for (health) damages caused by “medical experiences” (the latter here including vaccines against covid19). Thirdly, an access to sensitive data of individuals has been extremely eased, not only often significantly breaching the requirements set out in the data protection regulations, but also equally often going far beyond what was necessary, i.e. again violating the proportionality requirements. Admittedly, the base for such an approach, was by no means to be found in any existing legal framework, but to a great extent steaming from the political decisions shaping new legislations.

The reforms of the Polish judiciary, in particular those affecting the guarantees of independence and impartiality of judges and the effectiveness of ordinary courts in Poland would serve here as another example of “*rediscovering the law as a weapon in the hands of political forces.*” [7] Since a few years already there are numerous cases ruled by the judges in Strasbourg - as well as in Luxembourg - clearly, consequently and reasonably questioning the independence of judges in Poland, being at the same time European judges when it comes to application of EU law. Additionally, even the jurisdiction of the CJEU over the organisation of the judiciary in member states, the latter constituting a part of the complete and coherent judicial system of the EU, is being called into question. Consequently, the right to a fair trial is facing difficulties obviously rooted in politically impacted decisions.

Over seven decades after the Second World War in Europe, creating the Peace Project, realised in the EU, this EU faces the strongest violation of human fundamental rights since its creation, actually coming back to its point of departure. Next to the EU borders arbitrary deprivation of life, i.e. unlawful or politically motivated killing, disappearance, torture, cruelty, inhuman or degrading treatment or arbitrary arrest or other unlawful related abuses of freedom, detention, denial of the fair trial, arbitrary or unlawful interference with privacy, family, home and/or correspondence, violence and harassment takes place [22], again rooted in political decisions, converting binding laws into mechanisms used for pursuing temporary political interests on costs of individuals and their fundamental human rights.

Concluding remarks

Coming back to the point of departure, the fragile nature of human fundamental rights remains as fragile as it has always been, as these rights are by no means permanent and they have never been so. “*The only thing that we learn from history is that we learn nothing from history*” (Georg Hegel) one might argue, considering the recent developments, clearly and considerably compromising the minimum standard established for protection of human fundamental rights while multiplying the sources of protection of our fundamental human rights, following temporary political interests. Facing global turbulence, individuals are rather not lacking on politically motivated legal acts in this context, neither on competent and independent judges, serving an interpretation and application of existing legislation. What individuals are lacking, however, is putting the existing legal framework efficiently in practice at every level - national and international/supranational - regardless of any political interest, but pursuing the interest of individuals, as the human fundamental rights are aimed at.

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OCHRONA PRAWNA UCHODźCÓW W ZWIĄZKU Z KONFLIKTEM ZBROJNYM PROTECTION OF THE RIGHTS OF FOREIGNERS IN CONNECTION WITH THE ARMED CONFLICT

Każdy konflikt zbrojny, który wybucha na terenie jakiegokolwiek państwa powoduje wiele problemów dla jego obywateli. W skrajnych przypadkach są oni zmuszeni do ucieczki przez agresją związaną z działaniami wojennymi. W państwie chroniącym przez skutkami wojny stają się uchodźcami. W związku z wybuchem konfliktu zbrojnego w danym państwie pojawia się naruszenie, a wręcz łamanie praw człowieka. Szczególnie dotyczy to ludności cywilnej, tej najbardziej narażonej na brak ochrony, najmniej uzbrojonej. Ofiarami wojny często są kobiety z dziećmi oraz osoby w wieku starszym (podeszłym). Toteż te grupy osób najczęściej podejmują decyzję o ucieczce z ojczystego kraju, jednocześnie szukając schronienia dla swoich rodzin, niejednokrotnie ratując tym samym swoje życie. Jedni świadomie i dobrowolnie godzą się ryzykować życiem, poświęcać, wpisując ryzyko śmierci w swoją profesję żołnierską. Inni nie chcą a muszą je ryzykować i