

Interview of Dr Stéphanie WATTIER, Professor of Constitutional Law and Human Rights (University of Namur – Belgium)

1. Who is "human" in the concept of modern human rights?

S.W.: *For sure, at least every human being is a "human" in the concept of modern human right. By "human being", I mean that Belgian Law considers that life starts when the person is "alive AND viable". For instance, a stillborn baby has been alive for several hours but then not viable. He can be recognized but he will not have juridical personality. Where the answer gets more controversial is regarding the "pre-human". Must a fetus already be considered as a human? In Belgium, abortion is legal until the 12th week of pregnancy.*

2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncounted in the Constitution is conflicted with a constitutional right?

S.W.: *In Belgium, the Constitutional Court is the guardian of the Constitution and its human rights. When a right is not regulated by the Constitution, the Constitutional Court uses a praetorian method to "correct" this lack. This method is called the "combinatory method" by the Belgian doctrine. It consists, for the Court, to consider every international human right in the light of articles 10 and 11 of the Belgian Constitution (principle of equality and non-discrimination). This means that every Belgian has, equally and without any kind of discrimination, all the rights of all the international Covenants and Treaties signed by the Belgian State.*

3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims? Are there any regulations in your legal system above international human rights standards? If there are, would you please explain?

S.W.: *There is no minimum standards fixed by Belgian Law. However, Belgium – as member of the European Union – is bound by several minimum standards imposed by European Union Law (e.g.: freedom of movement and residence for persons in the EU).*

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards? If it is, would you please explain?

S.W.: Yes, it is, and especially regarding the case law of the Constitutional Court. For instance, an important part of the system of filiation has been criticized and censored by the Constitutional Court. As consequence, the Belgian legislator has had to correct and adapt the legal system to meet the international obligations underlined by the Court.

5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights? If your answer is yes, would you please explain?

S.W.: Nowadays, I would say not really. With the development of medicine, new technologies, etc. however, this question will probably appear in a more obvious way (for instance: do robots have human rights? etc.)

6. Are there such human right regulations in the legal system of your country that is protected by the constitution but contradicts social reality and justice?

S.W.: In Belgium, I do not think so. I would only say that several human rights of the Constitution need to be modernized to better answer our contemporary challenges (for instance: transgender rights, etc.)

7. Are there any social realities contradicting international human rights concept based on individualism?

S.W.: In Belgium, I do not think so.

8. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?

S.W.: Yes, there are. A private person can be sued in justice for the violation of fundamental rights. When all the national remedies have been used, the last jurisdiction is the European Court of Human Rights.

9. Are there groups in your country who have their own national, ethnical, religious and linguistic identities? Could you please give some information about them (especially if you feel yourself one of them)?

S.W.: no, there are not. One important principle of Belgian constitutional Law is the absence of “sub-nationalities”. By that, I mean that in Belgium, there are only Belgian people (and strangers of course!) but there are no “Flemish”, “Walloon” or “Brussels” people. Furthermore, there is no status of “Catholic” or “Muslim” people that would be recognized by the Law. In other words, there is no specific identify, except the Belgian identify.

10. What is the definition of the notion “minority” according to your constitutional system? What is your opinion on this concept? Do you think that minority rights should be protected broadly by the constitutional level? Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?

S.W.: there is no official definition of “minority” in Belgian constitutional Law. However, some groups are constitutionality protected because of their “de facto” situation of minority. This is the case of French-speaking persons at the federal level of Belgium. There are considered as a linguistic minority compared to the Flemish people. Therefore, specific protective mechanisms are established in the Constitution (for instance, enhanced majorities are required in each linguistic group of the Parliament for the vote of special laws).

11. What do you think on the notion and the concept of minority rights in international law? Could the international regulations/treatments be a response to the reality and problems of the peoples in your country? In other words, do they cover the reality in your country from the view of the state and the view of peoples?

S.W.: *I think minority rights is a very delicate question because it depends on a lot of national peculiarities such as the historical, linguistic and religious contexts, the social realities, etc. In that sense, international regulation must stay flexible to be adapted to the national context.*

12. What you think is the most current human rights problem in your country?

S.W.: *I would say we do not have “one” current human right problem but we have a global challenge regarding the need of improving the protection of human rights of migrants.*
