

**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?**

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| <p><b>8.1.</b><br/> <b>Professor Dr. Carmen Thiele - Germany</b></p>                | <p><i>As a rule, human rights describe a vertical relationship between state and persons (keine unmittelbare Drittwirkung). But the German federal constitutional court ruled in the 1950s that civil law must be interpreted by the courts in a way that doesn't harm human rights.</i></p>   |
| <p><b>8.2.</b><br/> <b>Professor Juliano Benvindo - Brasil</b></p>                  | <p><i>Yes, there are. The Constitution and the Procedural Civil Code sets up a whole system of actions and mechanisms to be used as a way to protect human rights. Especially with the Constitution of 1988, which set up such rights as a fundamental core of the democratic system in Brazil, the premise that, besides such rights, instruments should be strengthened and created to protect them gained momentum. In reality, though, there are many difficulties in making them as effective as they should, but it is undeniable that, in comparison to previous constitutional moments in Brazil, there has been some progress.</i></p>  |
| <p><b>8.3.</b><br/> <b>Catherine Willis-Smith/LL.M Candidate – South Africa</b></p> | <p><i>If a person's fundamental rights have been violated by a private person they may seek a remedy in either private or public law, depending on the matter. For example, if someone assaults and injures another person, the victim would be able to lay a criminal charge against the perpetrator (i.e. having them prosecuted for assault) but they could furthermore seek a remedy in the law of delict, for pain and suffering and possible loss of earnings if their injury made them unable to work for a period of time. The remedy in delict is in the form of damages (payment/compensation) to try to restore the status quo ante or the position that existed immediately prior to the crime and delict. I do believe these mechanisms are effective but the problem comes in with the cost and time involved, in that it is expensive to access civil courts and furthermore it can take a long time for a matter to be finalised as courts are overburdened.</i></p> |
| <p><b>8.4.</b><br/> <b>Dr. Jur. Marton SÜLYÖK - Hungary</b></p>                     | <p><i>The Hungarian constitutional jurisprudence (HCC practice) is in general reluctant (and has been since the beginning in 1990) to accept a clear doctrine of horizontal effect (Drittwirkung). More recent HCC practice has set up the doctrine of "concurring fundamental rights positions" in cases where the exercise of the right to assembly infringes upon the personal privacy or the</i></p>   |

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|  | <p><i>private and family life of others. The HCC argued that conditions for the exercise of these rights in “fair balance” with each other should be created first by the legislator, then controlled by the courts and finally by the HCC (in .g. constitutional complaint proceedings).</i></p>  |
| <p><b>8.5. Benjamin Danpullo, LL.M - Nigeria</b></p>     | <p><i>Yes, there are legal mechanisms to protect human rights when violated. We have the “ENFORCEMENT OF FOUNDAMENTAL RIGHTS CIVIL PROCEDURE RULES OF THE HIGH COURTS’ in my country. They are effective when a person hires a lawyer to litigate the claims.</i></p>  |
| <p><b>8.6. Professor Dr. THIO Li-ann - Singapore</b></p> | <p><i>No, the Singapore system does not extend to horizontal human rights protection.</i></p> <p><i>Treaties like CEDAW recommend horizontal protections but treaties are not self-executing in Singapore and the government has chosen thus far not to legislatively incorporate treaties into domestic law</i></p> <p><i>Preference is made towards “soft” approaches in terms of standard setting e.g. child care, and non judicial methods of complaints and monitoring.</i></p>   |
| <p><b>8.7. Prof. Dr. iur Yiren Lin - Taiwan</b></p>      | <p><i>Gibt es in Ihrem Rechtssystem gesetzliche Mechanismen zum Schutz der Menschenrechte, wenn Grundrechte von Privatpersonen verletzt werden? Sind diese Mechanismen wirksam?</i></p> <p><i>Sollte es sich um die Grundrechtskollisionen handeln, dann wird im Berech der einfach Gesetzes von der Ordnungswidrigkeitsgesetz, <span style="float: right;">Bebauungsgesetz,</span> Umweltschutzgesetz etc. klar geregelt. Grundsätzlich ist es m. M. von dem Gericht fair entschieden. Allmählich werden Fälle der Kindermißbrauch von der Erwachsenen zugewachsen. Oder die Wohnensfreiheit ist zwar gewährleistet, aber die Recht auf Wohnung ist wegen des assymetrische Verhältnisses im Wohnungsmarkt stark eingebüßt. Bisher gibt es einige wichtige Urteile von der Verfassungsgerichtsbarkeit. Ein Beispiel für die Grundrechtskollision zwischen dem Persönlichkeitsrecht und der Pressefreiheit im abstraktes Normenkontrollverfahren über bürgerliches Gestzesbuches haben die Hohen Richter in Anlehnung die Idee der mittelbarer Drittwirkung die Standard der</i></p> |

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|  | <i>Rechtsanwendung und die Verfassungsmäßigkeit der Rechtssetzung beschlossen. Abgesehen von einigen Problemen, z. B. geschlichenen Fotos im Toilete,</i>  |
| <b>8.8. Dr. Sri Wahyun Kadir - Indonesia</b>         | <i>Very effective, everyone is equal before the law. That is the legal basis of Indonesia. Whoever does it must take responsibility for its actions. Many cases have been resolved well by the government and law enforcement agencies and all of them can still be said to be good, even though they are cases that are very sensitive to an individual's problem. This is because the public can see transparently what is happening with the incessant flow of information from social media. That said, social media can make good, but it can also create disaster. And this is where the government plays a role in maintaining the flow of information.</i>   |
| <b>8.9. Professor Marina Calamo Specchia - Italy</b> | <i>If a human right is violated by a private person and such behavior constitutes a crime, criminal justice ensures the necessary repressive protection and civil justice ensures the damages compensation. There is no direct appeal in the Italian legal system to the Constitutional Court for violation of a fundamental right.</i>  |
| <b>8.10. Josef Martin Zielinski Flores - Peru</b>    | <i>Of course they exist. But its application does not always end up being effective, again for material reasons, specifically adequate access to justice or adequate training of justice operators.</i>  |
| <b>8.11. Dr. Martín Risso Ferrand – Uruguay</b>      | <p><i>Yes. There are many guarantees for human rights that govern the actions of private persons. For example, the proceeding for relief, as a general guarantee, the habeas data action to protect the data of individuals in databases, etc.</i></p> <p><i>As for the effectiveness of the proceeding of relief, after several years of good development, certain judgments have begun to be seen as involving a recoil in the matter. A reaction from the Judiciary is expected, although no one can venture what the situation will be like in the future.</i></p> <p><i>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)?</i></p> <p><i>Ten percent of the population is composed by minority groups mostly Afro-descendants. There are rules to protect them, but the reality is not the best.</i></p> |

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| <p><b>8.12. Professor Dr. Shinar Adam – Israel</b></p>          | <p><i>The main mechanism is judicial review, by a petition to the Supreme Court. Efficaciousness depends on the particular circumstances.</i></p>  |
| <p><b>8.13. Assist. Professor Sombhojen Limbu – Nepal</b></p>   | <p><i>Yes we have strong legal provision to protect human rights. I would suggest if person violated human rights to a person or community it could be a State responsibility provides victims effective remedies and a culprit should bring into a legal punishment. A private person or communities are subject to legal action if they breach values of human rights to any particular person of community. In addition we have National Human Rights Commission, Women Commission, Dalit Commission including many mechanism of the Govt. to monitor human rights in Nepal and enforce laws against violators.</i></p> |
| <p><b>8.14. Suzan Tavares da Silva –Portugal</b></p>            | <p><i>Yes. Article 18 of the Portuguese constitution recognizes the german Drittwirkung doctrine, so fundamental rights are also immediately applicable to private relationships, respecting, of course, the limits of self-auto determination.</i></p>  |
| <p><b>8.15. Assist. Professor Zewdu Mengesha - Ethiopia</b></p> | <p><i>Yes there are different mechanisms that the grievance of such individuals may be addressed. We have the court system (federal and Regional courts) and the administrative mechanisms may be mentioned.</i></p>   |
| <p><b>8.16. Dr. Alexander Kim - Russia</b></p>                  | <p><i>Yes. But, it depends from region</i></p>   |
| <p><b>8.17. Prof. Dr. Vasanthi Nimushakavi - India</b></p>      | <p><i>The response to this is mixed; in that the protection of rights which are violated by private persons in some cases is available and not in others. For example the right to equality cannot be violated by private persons as well as State. On the other hand some rights are specifically available against State such as the right to seek special measures in employment.</i></p>   |
| <p><b>8.18. Massimiliano Buriassi - Italy</b></p>               | <p><i>Risp. Esistono ma non sempre sono efficaci. Anche se esistono molte leggi nazionali e internazionali a protezione dei diritti umani, ogni persona ha l'obbligo di promuoverli e difenderli. È</i></p>  |

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|  | <p><i>possibile tutelarli nel proprio territorio facendo attivismo, diventando avvocato dei diritti civili o lavorando presso un'organizzazione per i diritti umani.</i></p> <p><i>Non bisogna limitare la protezione e la promozione dei diritti umani all'operato delle Nazioni Unite o dei Paesi membri. Ogni persona ha l'obbligo di contribuire alla creazione di un ambiente in cui siano promossi e rispettati i diritti di tutti gli esseri umani</i></p>  |
| <p><b>8.19.</b><br/><b>Professor Dr. Ahmed Aubais Alfatlawi - Iraq</b></p>                                     | <p><i>By reviewing the legislative policy in Iraq, and for periods that may go back decades, We find that the Iraqi legislator has covered <b>most</b> of the issues that protect of basic rights of human rights, through mechanisms that allow to the victim or the victim's family to resort to the judicial process. These mechanisms are still legally effective.</i></p> <p><i>However, there are obstacles, not related to the law itself, but in implementation, which arise from the culture of Iraqi society, dominated by tribal customs and traditions, and these led to limiting access to the judicial process, especially if the victim and the accused of committing the violation of basic human rights are from the same family or tribe, as this violation is usually settled by waiving or satisfaction of the the victim's right voluntarily or coercively, all these settlements are carried out without recourse to the competent courts.</i></p> <p><i>Another reason is the lack of adequate awareness of legal culture, and these facts led to the provisions of the law mostly , exist in reality and are effective in substance, but not at the required level in terms of implementation.</i></p> |
| <p><b>8.20.</b><br/><b>Professor Dr. Hyungnam Kim - South Korea</b></p>  | <p><i>Until now, that was so confusing problem. We Korean Constitutional Law Professors called it “the effect of the third party of Constitutional Rights”.</i></p> <p><i>Some professors have contended that Korean Constitutional Court should rule about that case. But so many professors contradicted that. Usually that case would be treated as civil case.</i></p>   |
| <p><b>8.21.</b><br/><b>Associate Professor Tomáš Lalík, Ph.D - Roman Lysina, Ph.D Candidate - Slovakia</b></p> | <p><i>In Slovakia, it is not possible to lodge a constitutional claim against private person. Proceedings concerning violation of human rights might be started before Constitutional court only if the defendant is a public authority. However, protection against violation of human rights by other private person is provided</i></p>   |

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|   | <p><i>mainly by civil claims and criminal law (torts, discrimination etc.). If courts fail to provide adequate protection for an individual in these proceedings, one may lodge a claim against the court for violation of their human rights – usual right to a fair trial.</i></p> <p><i>This mechanism (that also prevents the constitutional court from being even more overflowed) seems to be effective, with the ultima ratio remedy of being able to reach out to constitutional court, if public authorities do not provide sufficient protection of human rights.</i></p>   |
| <p><b>8.22.</b><br/><b>Professor Mohammad Javid - Iran</b><br/><b>Dr. Javad</b></p> | <p><i>As national mechanism is more effective than. even regional or universal , since limburg principle offers establishment national NGO or commission on protecting HR, iran tends to create national institution as it must be engered trough a decree or bill. of parliament, so there is a temporary entity now under supervision of judiciary branch . But as limburg and paris agrements mentiined this entity must be independent of any other branch till reach to impartiality and true justice , so new dealing has been done to create an entity with the mixture of executive and judiciary in iran because complainants must be received by the judiciary so they hold themselves competent on the other side, the executive branch aquire such opportunity due to President ' responsibility to supervise the execution and implementation of constitutional principles in society. So, the great effort till now has done hopefully . And charter of citizens rights by mentioning the whole citizens' seem the phenomenon in respecting HR in an. individual and collective levels.</i></p> |
| <p><b>8.23.</b><br/><b>Professor Adrienne Australia</b><br/><b>Dr. Stone -</b></p>  | <p><i>Some human rights statutes do have a direct horizontal effect: they require private persons not to infringe the human rights of others. For example, the Racial Discrimination Act 1975 (Cth), mentioned above, applies to the conduct of private individuals. The constitutional Rights protections do not have a direct horizontal effect, but instead operate as restrictions on the legislative power of the federal Parliament.</i></p> <p><i>Further, some other human rights norms have an indirect horizontal effect. The High Court of Australia has said that the common law may be influenced by the requirements of the Constitution. Accordingly, the Court has modified the common law of defamation so that it conforms to the implied freedom of political communication, which is a constitutional right.<sup>31</sup></i></p>   |

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|  | <i>Further, the requirement in statutory charters of rights that laws be interpreted consistently with human rights may lead to the conclusion that statutes will be interpreted in a way that limits the scope of private rights in order that such private conduct does not infringe human rights.<sup>32</sup></i>  |
| <b>8.24. Professor Dr. Mark Tushnet - USA</b>                  | <i>There are some statutory remedies available against private parties who take actions that would violate human rights were they taken by a public actor. Procedural obstacles, though, make these remedies less effective in practice than they are in principle.</i>  |
| <b>8.25. Professor em. Dr. iur Reinhard Mußgnug - Germany</b>  | <i>Legislation has adapted the Civil Law to the Human Rights Concept of the Constitution by a well-balanced system of antidiscrimination rules. Besides that the Civil Courts apply Civil Law according to “the spirit of the constitution”. That protects effective against disregard of Human Rights by private institutions or persons.</i>   |
| <b>8.26. Professor Dr. Mabid Ali Mohammed Al-Jarhi - Egypt</b> | <i>Theoretically, courts are supposed to provide protection. However, judges are appointed by the military president.</i>  |
| <b>8.27. Assoc. Professor Dr. Patrick Emerton - Australia</b>  | <i>Mostly this is done through private law – that is, the law of torts (delicts). There is not a comprehensive system of horizontality. However, there is an established rule that the private law must respect and reflect Constitutional values. But that rule which was only declared by the High Court in 1997 has not had a large effect to date.<br/><br/><i>As mentioned above, there are legislative schemes that give (partial) effect to some international human rights instruments. These schemes govern private actors as well as state actors, especially in relation to non-discrimination and non-vilification requirements. Where “state action” is involved in aiding private action (eg legislation or administrative action) then that state action can be reviewed for conformity with constitutional requirements.</i></i> |
| <b>8.28. Professor Dr. Hajer Gueldich - Tunis</b>              | <i>In our legal system if a fundamental human right was violated by a private person, they would be faced with charges probably including imprisonment through a penal case. The law gives also</i>  |

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|  | <p><i>the opportunity to the victims whose right has been violated to present their case to a civil court as well for compensation or to present it along the penal case in front of the same judge. When it comes to breach of fundamental rights in Tunisia, once a case is presented to the prosecutor, even if the victim backs up and makes the choice to drop the charges, the state prosecutor has the right to keep the case going and punish the perpetrator. This is a guarantee to protect these fundamental human rights no matter what and presents an incentive to prevent such violations from happening. Our code of criminal procedures is firm on this way.</i></p>   |
| <p><b>8.29.</b><br/><b>Asst. Professor</b><br/><b>Narender Nagarwal -</b><br/><b>India</b></p> | <p><i>Ans: Yes, we have a proper structural and efficient legal mechanism to deal with the violation of fundamental rights (especially in respect to minorities) committed by a private person. Since India is a multi-religious, multi-ethnic, multi-linguistic and multicultural country and had a secular democracy, where people belonging to different religions, racial, cultural and lingual identities live together harmoniously. Mahatma Gandhi always believes in tolerance and acceptance of all religions within the Indian national framework. But despite these positive characteristics, the Indian government has struggled to maintain religious and communal harmony, protect minority communities from abuse, religious intolerance and provide justice when a crime occurs through a group of private persons. In recent times various untoward incidents are affecting the communal harmony in different parts of the country. In my view, the state machinery is not effective in tackling communal violence as the country has experienced periodic outbreaks of large-scale communal violence against religious minorities including in UP in 2013, Odisha in 2007-2008, Gujarat in 2002 and Delhi in 1984. Although the government of India established the special structure to investigate and adjudicate crime stemming from these incidents, the impact has been hindered by limited capacity, an antiquated judicial system, inconsistent use, legitimizations of political and corporate corruption (Panama paper case) and religious bias, particularly at the state and local level. Many cases stemming from these incidents are still pending in the Indian court system.</i></p> |
| <p><b>8.30.</b></p>  | <p><i>Courts can hear civil law cases on human rights violations, including by private persons.</i></p>   |

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| <p><b>Professor Gerd Oberleitner - Austria</b></p>                  |   |
| <p><b>8.31. Professor Dr. Adnan Oweida - Jordan</b></p>             | <p><i>Unfortunately, there are no effective legal provisions that protect human rights, especially if the person who violates human rights is the government itself.</i></p>  |
| <p><b>8.32. Dr. Andres Cervantes Valarezo - Ecuador</b></p>         | <p><i>In the Ecuadorian legal system, the Constitution and the Law of Jurisdictional Guarantees and Constitutional Judicial Review recognizes the possibility of bringing an “acción de protección” against private individuals who violate constitutional or human rights. However, article 88 of the fundamental norm establishes certain requirements.</i></p> <p><i>In this sense, a private person may only be sued through an “acción de protección” “if the violation of the right causes serious damage, if he provides improper public services, if he acts by delegation or concession, or if the affected person is in a state of subordination, helplessness or discrimination”.</i></p> <p><i>Regarding the question of the effectiveness of the legal order, it should be mentioned that theoretically the system provides satisfactory solutions because the judge has the power to order precautionary measures to suspend the alleged violation of rights during the duration of the trial. In addition, the Judge has the power to ask any public authority to help enforce his judgment. Finally, the procedural system contemplated by the law is expedite and has limited procedural requirements.</i></p> <p><i>However, in practice the system is very deficient due to the corruption of judicial officials in general, as well as the increasing abuse of constitutional justice to deal with ordinary lawsuits.</i></p> |
| <p><b>8.33. Asst. Professor Dr. Manal Totry-Jubran - Israel</b></p> | <p><i>Only within private law: mainly tort law. There is a antidiscrimination law that provides some protection of discrimination of individuals by private associations.</i></p>   |
| <p><b>8.34. Dr. Maria Paula Garat - Uruguay</b></p>                 | <p><i>Yes, there are mechanisms. The effectiveness depends on the case, the right, and on the judges.</i></p>   |
| <p><b>8.35. Professor Luis G. Francheschi - Kenya</b></p>           | <p><i>If one alleges that a right or fundamental freedom has been breached by private persons, one may look to the courts for recourse or other alternative dispute resolutions mechanisms. The highest law in the land that gives life to the recognition of</i></p>   |

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|  | <i>Rights articulates that it is binding on all persons. The courts are effective and can provide suitable remedies with an open locus standi and wide public interest litigation. Nevertheless, we are still challenged by a slow judicial process and a huge backlog case.</i>   |
| <b>8.36.</b><br><b>Professor Hugh Corder - South Africa</b>              | <i>YES, THE BILL OF RIGHTS IS "HORIZONTALLY" OPERATIONAL, NOT ONLY VERTICALLY BETWEEN THE STATE AND THE INDIVIDUAL, BUT ALSO BETWEEN PRIVATE INDIVIDUALS. THIS AGAIN DEPENDS ON THE CONTEXT, AND IS SUBJECT TO THE INTERPRETATION OF A COURT OF LAW, SEE SECTION 8 (2) TO (4).</i>   |
| <b>8.37.</b><br><b>Asst. Professor Umar Rashid - Pakistan</b>            | <i>No such mechanisms are contained in the Constitution, though the Supreme Court has at times interpreted the Constitution to provide enforcement of rights in such cases.<br/>So for example if certain actions of private actors lead to violation of fundamental rights, then the Supreme Court of Pakistan has interpreted the Constitution to consider such violation by private actors as amounting to violation by the state of its obligations to protect fundamental rights, since the state failed to protect the rights of the victims. So for example in case of deteriorating law and order situation in the city of Karachi, as a result of violence committed by private individuals, the Supreme Court (in the case of PLD 2013 SC 443) held that such a situation amounted to the violation of rights, under article 9 (security of person/right to life) and 24 (protection of property), by the state.<br/>In addition certain acts of parliament which have also legislated on certain rights, may provide enforcement mechanism against private persons. So for example the Transgender Persons (Protection of Rights) Act, 2018, provides for mechanism to protect the right of a transgender person if the right is violated by a private persons.</i> |
| <b>8.38.</b><br><b>Assist. Professor Simon Alexander Wood - Malaysia</b> | <i>there is only limited protection for violations by private persons for example complaining to the human rights commission</i>   |
| <b>1.39.</b><br><b>Professor Merris Amos-UK</b>                          | <i>The professor has chosen not to publish her answers.</i>  |

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| <p><b>8.40.</b><br/> <b>Ștefan Bogrea - PhD student at human rights law / Advocate - Romania</b></p> | <p><i>Yes, the fundamental rights are enforceable in court even against other private individuals, and these mechanisms are, by and large, effective, although not perfect.</i></p>   |
| <p><b>8.41.</b><br/> <b>Asst. Professor Dr. Cristina Tomulet - Romania</b></p>                       | <p><i>In the Romanian legal system, there are many legal mechanisms aimed at protecting human rights in case they are violated by private persons. For example, the majority of the Civil Code and the Criminal Code's provisions aim at protecting human rights from a horizontal perspective. In this context, it is important to underline that the general aim of a legal system should be to protect human rights. However, the effectivity of the existing legal mechanisms depend on the actual way that the justice system works in Romania. And from this point of view, there are many problems, such as excessive formalism, procedures which last an excessive amount of time, denial of effective access to justice and other violations of the right to a fair trial. According to the statistics published on the site of the European Court of Human Rights, out of a total of 1273 of judgments given against Romania finding at least one violation of the Convention, 640 regarded the violation of the right to a fair trial and 25 the violation of the right to an effective remedy<sup>12</sup>. In these circumstances, given the fact that the effectivity of the legal mechanisms protecting human rights depends on the effectivity of procedural rights, it is obvious that the horizontal protection of human rights in Romania suffers greatly.</i></p> |
| <p><b>8.42.</b><br/> <b>Professor Dr. Mahendra P. Singh - India</b></p>                              | <p><i>The basis of individualism is the struggle for recognition of individual rights and the rise of collective rights. Human rights are primarily based on individualism and struggle to provide equal dignity to each individual. Individualism goes beyond the political and social sphere claiming the space for identity. The practices of untouchability where physical contact with persons are avoided because of social beliefs have been abolished under the constitution of India. In spite of this constitutional arrangement untouchability still remains very much prevalent in our social realities.</i></p>  |
| <p><b>8.43.</b></p>  | <p><i>S.W.: Yes, there are. A private person can be sued in justice for the violation of fundamental rights. When all the national remedies</i></p>   |

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| <b>Professor Dr. Stephanie Wattier - Belgium</b>                 | <i>have been used, the last jurisdiction is the European Court of Human Rights.</i>  |
| <b>8.44. Dr. Malika Tastanova M. Narikyevev - Kazakhstan</b>     | <i>The professor has chosen not to publish her answers.</i>  |
| <b>8.45. Professor Dr. Jasna Baksic - Bosnia and Herzegovina</b> | <p><i>Nasilje u porodici je mogući primjer. Porodični odnosi iz izašli iz sfere privatnog I ušli u javni proctor. Nasilje nad ženama je ugrožavanje ljudskog dostojanstva, narušavanje fizičkog, psihičkog I moralnog integriteta osobe I u tom smislu moguće je da ljudska prava žena budu ugružena I od privatnih osoba-partnera, djece, roditelja I ostalih osoba sa kojom žrtva nasilja živi ili dolazi u kontakt. Cilj Zakona o zaštiti od nasilja u porodici je sprečavanje i suzbijanjem nasilja u porodici, kojim se krše ustavom i zakonima zagarantovana osnovna ljudska prava i slobode. Postojanje Zakona je jedan od pravnih koraka za razbijanje patrijarhalnih obrazaca po kojima je muž glava porodice, odgovoran za nju uključujući I kažnjavanje neposlušnih članova- žena I djece. Shvatanje da je žena vlasništvo supruga koji raspolaže njenim tijelom, imovinom I donosi odluke načinu života porodice još uvijek je dio stvarnosti BiH. Posljedice neravnopravnog položaja supružnika imaju za posljedicu I nasilje u porodici. Za zaštitu od nasilja bore se nevladine organizacije I državna tijela zadužena za zaštitu I promociju ljudskih prava.</i></p> |
| <b>8.46. Assist. Professor Dr. Iwona Wroblewska - Poland</b>     | <p><i>There is no general horizontal clause in the Polish Constitution of 1997, although such a proposal appeared during the work on its text. On the other hand, it does not follow from any provision that constitutional rights and freedoms apply only in vertical relations. There are several fragments of the constitution that can be regarded as the basis for its general horizontal effectiveness: Article 8 (principle of supremacy of the constitution and its direct application), Article 31 section 2 sentences 1 ("Everyone is obliged to respect the rights and freedoms of others"), Article 30 (principle of inviolability of human dignity; according to the Constitutional Tribunal of the Republic of Poland Article 8 (principle of supremacy of the constitution and its direct application), Article 31 section 2 sentences 1 ("Everyone is obliged to respect the rights and freedoms of others"), Article 30 (principle of inviolability of human dignity; according to the</i></p>  |

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|   | <p><i>Constitutional Tribunal of the Republic of Poland: "The prohibition on violating human dignity is absolute and applies to everyone. However, the obligation to respect and protect dignity was imposed on public authorities of the state" (Judgment of 24 February 2010, K 6/09). It is not clear what kind of horizontal effect is acceptable, but rather its indirect form. There are few CT judgments that allow horizontal action of individual rights.</i></p> <p><i>Article 32.2 of the Constitution is of particular importance: No one shall be discriminated against in political, social or economic life for any reason whatsoever (prohibition of discrimination). Not specifying the addressees of this rule leads to the conclusion that the constitutional legislator wanted to extend its operation to private law relations, that is, this provision applies directly to such relationships. It is said that this provision protects against private discrimination. This provision clearly distinguishes political life (the functioning of the individual in the state as a political organization) from social and economic life – it is more about the functioning of the individual in society, i.e. relationships with other individuals. Let's note that in the case of the principle of equal treatment under Article 32.1. (All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities) those who are subjected are specified explicit – public authorities. (This answer is provided within the framework of the research project entitled "Drittwirkung der Grundrechte as a legal concept. The German experience and recommendations for Poland" financed by the National Science Centre (2014/15/B/HS5/03190)</i></p> |
| <p><b>8.47. Professor Kwadwo Appiagyei-Atua - Ghana</b></p> | <p><i>Yes. They are effective but slow and expensive for many a disenfranchised or poor person to access.</i></p>  |
| <p><b>8.48. Paidamwoyo Mukumbiri - Zimbabwe</b></p>         | <p><i>There are national human rights institutions such as the Gender Commission, Human Rights Commission, the courts.</i></p>   |
| <p><b>8.49. Professor Dr. Helen Irving - Australia</b></p>  | <p><i>Some of the anti-discrimination Acts bind individual persons, but only in their public capacity – for example, schools may not discriminate against individuals (for example, with disability), but this is because schools receive public funding. Employers may not discriminate against potential employees, for example, on ground of gender – but this is because employment is governed by employment law. The Australian Human Rights Commission (mentioned above) can investigate complaints of human rights breaches.</i></p>   |

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| <p><b>8.50. Dr. Faridah Jalil - Malaysia</b></p>           | <p><i>Private individual may under Art 4 and Art 128 apply for judicial review to challenge the conduct. The mechanism can be said moderately effective.</i></p>  |
| <p><b>8.51. Dr. Tatiana Khramova - Russia</b></p>          | <p><i>Courts are meant to protect fundamental rights violated by private persons (cases of libel, discrimination, etc.) In civil cases (as opposed to administrative and criminal cases on matters of political importance) courts may be effective (although discrimination remains a problematic issue).</i></p>  |
| <p><b>8.52. Eduardo G. Esteva Gallicchio - Uruguay</b></p> | <p><i>Yes they exist for example, the “amparo” action against acts of private persons violating human rights. This action is based on articles 7 and 72 of the Constitution and was regulated by law 16.011 of 1988. It is a quick and effective guarantee. They also apply civil and criminal ordinary legal means for the protection against acts of private persons.</i></p>   |
| <p><b>8.53. Dr. Aldana Rohr - Argentina</b></p>            | <p><i>There is a constitutional judicial remedy, which can be used against public or private persons.</i></p> <p><i>At the Constitutional Level, section 43 states “ Any person shall file a prompt and summary proceeding regarding constitutional guarantees, provided there is no other legal remedy, against any act or omission of the public authorities or individuals which currently or imminently may damage, limit, modify or threaten rights and guarantees recognized by this Constitution, treaties or laws, with open arbitrariness or illegality. In such case, the judge may declare that the act or omission is based on an unconstitutional rule.</i></p> <p><i>This summary proceeding against any form of discrimination regarding rights protecting the environment, competition, users and consumers, as well as about rights of general public interest, shall be filed by the damaged party, the ombudsman and the associations which foster such ends registered according to a law determining their requirements and organization forms.</i></p> <p><i>Any person may file this action to obtain information regarding data about himself and their purpose, registered in public records or data bases, or in private ones intended to supply information; and in case of false data or discrimination, this action may be filed</i></p> |

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|  | <p><i>to request the suppression, rectification, confidentiality or updating of said data. The secret nature of the sources of journalistic information shall not be impaired.</i></p> <p><i>When the right damaged, limited, modified, or threatened affects physical liberty, or in case of an illegitimate worsening of procedures or conditions of detention, or of forced missing of persons, the action of habeas corpus shall be filed by the party concerned or by any other person on his behalf, and the judge shall immediately make a decision even under state of siege”.</i></p> <p><i>This remedy is also contemplated in the Inter American Convention of Human Rights as a “simple and prompt recourse or any other effective recourse [...] against acts that violate fundamental rights of people recognized by the Constitution or Laws of the state concerned or by this Convention...”<sup>1</sup>.</i></p>   |
| <p><b>8.54. Roman Schuppli<br/>- Switzerland</b></p> | <p><i>Since the 19th century, the Federal Supreme Court has held that it is at least the task of the courts to protect fundamental rights even where they are endangered or violated by private assaults. The obligation provided for in Art. 35 of the Federal Constitution to comprehensively implement fundamental rights takes up this practice and now states in constitutional force that fundamental rights must generally be protected from impairments, i.e. irrespective of whether the danger emanates from the state, from private individuals or from environmental and natural disasters. Today, it is recognised that all fundamental rights contain such a dimension of protection. Protection obligations are initially directed at the legislature, which has to design the legal system in such a way that assaults on fundamental rights are prevented or repressively sanctioned. Justiciable protection obligations can also arise in the area of the application of law or simple administrative action and require corresponding factual measures such as, in particular, police interventions to protect integrity rights. The state infringes the protection claims of the individual in any case if the authority has knowledge of the concrete – i.e. real and imminent – violation of fundamental rights or would have to know about it with due attention and sufficient diligence, but nevertheless does not take those measures which could reasonably be taken within the framework of the available means and from which a defence of the danger is</i></p> |

<sup>1</sup> Section 25 of the Inter American Convention of Human Rights.

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|   | <p><i>to be expected. The restrictive rule is that the necessary protective measures must themselves be in conformity with fundamental rights, i.e. they must not inadmissibly interfere with the fundamental rights of the (potential) perpetrators or third parties. This legal mechanism is, in fact, of a very effective nature, because it allows for inclusion of all the involved parties' legal positions and, thereby, allows for a flexible approach in conformity with all of the relevant fundamental rights.</i></p> <p><i>(Excerpt from KIENER REGINA, Grundrechte in der Bundesverfassung, in: Verfassungsrecht der Schweiz, 2. Ed., forthcoming)</i></p>  |
| <p><b>8.55. Dr. Ljubomir Frckoski – Macedonia</b></p>           | <p><i>Kitabını göndermiştir.</i></p>  |
| <p><b>8.56. Assoc. Professor Juan Pablo Beca F. - Chile</b></p> | <p><i>Yes. Constitutional actions (habeas corpus and a protection action) can be used against either the State or private individuals or corporations. These mechanisms are effective but in some cases they can be slow, considering urgent needs.</i></p>   |
| <p><b>8.57. Professor Simon Rice - Australia</b></p>            | <p><i>The principal legal mechanisms to protect human rights if fundamental rights are violated by private persons are legislative, both provincial and federal; they include criminal laws, anti-discrimination laws, privacy laws, industrial laws, family and child protection laws, and cultural heritage laws. Criminal laws are enforced by the state; they are not expressed in human rights terms but the have effect of exposing a rights violator to punishment for denying or limiting certain civil human rights, such as liberty, right to freedom of movement, right to life and freedom from torture. Anti-discrimination laws are enforced by individual complaint to a state oversight agency or a tribunal. Industrial laws are enforced by state oversight, and individual complaint to a state oversight agency or a tribunal. Privacy laws are enforced by complaint to a state oversight agency. Family laws are given effect through private litigation. Child protection laws are enforced by state oversight, as are cultural heritage laws. These laws address what can be recognised as human rights, but are not usually expressed or treated as 'human rights' laws. Rather, they are domestic laws that operate on their own terms.</i></p> |

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| <b>8.58. Dr. Renata Bedö - Hungary</b>                   |   |
| <b>8.59. Damir Banović - Bosnia and Herzegovina</b>      | <i>Bosnia and Herzegovina has a system of regular courts and the Constitutional Courts (with the appellate jurisdiction). Article VI/3 states “The Constitutional Court shall have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina”. The effectiveness of these mechanisms has mainly been burdened by two factors. (1) long legal procedures and (2) lack of judgments’ enforcements.</i>  |
| <b>12.60. Dr. Lilla Berkes, PhD candidate) - Hungary</b> | <i>The constitution must permeate the entire legal system, including both public and private law. Whereas it is directly applicable in public law, it is applicable only indirectly in private law. The Civil Code, the Labor Code etc. contain some rights derived from the constitution (personality rights, freedom of speech of the employee etc.) and the court shall interpret these regulations in accordance with the Basic Law. Also, on the institutional level, the Equal Treatment Authority may conduct investigation against employers or private organizations performing public utility services,<sup>2</sup> the ombudsman can also investigate the latter, the National Media and Infocommunications Authority can investigate violation of right to human dignity at media service providers.</i>  |
| <b>8.61. Professor Dr. iur. Jorge León - Peru</b>        | <i>El Tribunal Constitucional peruano ha determinado que el hecho de reconocerse como un Estado Social y Democrático de Derecho, como es el caso peruano, implica que los derechos fundamentales adquieran plena eficacia vertical – frente a los poderes del Estado – y horizontal – frente a particulares<sup>3</sup>. El Tribunal Constitucional ha ratificado esta posición en jurisprudencia constante. Esto quiere decir que no pueden existir actos de las personas privadas que estén desvinculados de la eficacia jurídica de los derechos fundamentales. El principal mecanismo que se utiliza en el Perú para tutelar las amenazas o agresiones de derechos fundamentales que provienen de particulares es el proceso de amparo. Este mecanismo resulta ser accesible a la población en general; sin embargo, tiene limitaciones como, por ejemplo, la demora en la resolución de los casos, lo cual se debe a diversos motivos tales como la falta de jueces especializados en materia constitucional, la sobrecarga procesal en el sistema de justicia</i> |

<sup>2</sup> <https://www.egyenlobanasmod.hu/en/basic-page/important-information-procedure-equal-treatment-authority>

<sup>3</sup> <http://www.tc.gob.pe/jurisprudencia/2017/00474-2016-AA.pdf>

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|   | <i>peruano, el exceso de una concepción de la justicia de forma legalista y formal, entre otros.</i>  |
| <b>8.62. Professor Thierry Rambaud – France</b>         | <i>An article was sent by the Professor.</i>  |
| <b>8.63. Mario Campora - Melisa Szlajen - Argentina</b> | <p><i>Yes, our constitution establish different tools to guarantee human rights. Professor Ferreyra enumerate some of this mechanism in his book Constitutional Basics:</i></p> <ul style="list-style-type: none"> <li>- <i>(i) The guarantee of jurisdiction access and procedimentales guarantees (arts. 17 and 18 NC and 8 and 25 of de American Convention of Humaxn Rights).</i></li> <li>- <i>(ii) Constitutional action of amparo (arts. 43 NC and 25 CADH) that protects in a quickly way every fundamental rights that were violated;</i></li> <li>- <i>(iii) Constitutional action of hábeas data (art. 43 NC) that protects the right to be informed and our private information.</i></li> <li>- <i>(iv) Constitutional Action of hábeas corpus (art. 43 NC) that protects our right of freedom.</i></li> <li>- <i>(v) Popular action in defence of the Constitution (art. 33 NC).</i></li> <li>- <i>(vi) Amicus curiae (art. 33 NC).</i></li> <li>- <i>(vii) The prohibition of violated people residence and private papers, privacy (art. 18 NC).</i></li> <li>- <i>(viii) Establish and imparcial judges (art. 18 NC).</i></li> <li>- <i>(ix) Constitutional appeals and others appeals</i></li> <li>- <i>(x) The authority of the people defensor (art. 86 NC)<sup>4</sup>.</i></li> </ul> <p><i>The most used action is the amparo. Article 43 of our National Constitution establish that, anyone can interpose this quickly action, if there don't exist another more appropriate judicial remedy, against any act or omission of public authorities or particulars, that in that moment, violated, limit, change or threaten, in an illegal way, rights or guarantees recognized by the constitution or other treaties<sup>5</sup>. This kind of action is used by civil organization to guarantee rights and for strategic litigation. The problem is that sometimes, although it is a fast remedy, it takes more time that it's need or the authorities don't reply, what turns difficult to make effective the resolution.</i></p> |

<sup>4</sup> Ferreyra, G. R, "Fundamentos constitucionales", Lección III, *Sobre la Constitución, Concepto, Composición y Mecanismos*, Ediar, 2013, p. 372.

<sup>5</sup> Art. 43, Argentinean Constitution.

*Also if a crime is committed people can go to the police or the prosecutor and reported it. Then an investigation is going to start to find who is the responsible for that crime and if the prosecutor or the judge find him or her, after a trial, a judge decide if he or she is guilty or not, respecting all the criminal process guarantees. Finally, if any of these two procedures authorities don't respect the process guarantees or don't give and answer to the victims we could always use the international remedies.*

*Article 44 of the American Convention of Human Rights establish that any person or group of persons, not governmental recognized entities can present to the Interamerican Commission petitions or denunciate violations to the American Convention of Human Rights done by a state part of the Convention<sup>6</sup>.*

*The is not a 4th instance or an appeal instance. People has to respect some conditions if they want that the Commission accept their petitions. Article 46 establish that to admit the petitions, according articles 44 and 45 of the same instrument, the petitioner shall be subject to the following requirements:*

*a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment; c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition<sup>7</sup>. The provisions of paragraphs a and b shall not be applicable when: a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from*

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<sup>6</sup> Art. 44, American Convention of Human Rights, adopted at Costa Rica, 11/22/1969, entry into force 07/18/1978.

<sup>7</sup> Art. 46, American Convention of Human Rights, adopted at Costa Rica, 11/22/1969, entry into force 07/18/1978.

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|  | <p><i>exhausting them; or c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies<sup>8</sup>. It is truth that the Interamerican process takes a lot of time, 10 years for the Commission, if it admit the case, and another 10 to the Court to resolve the case (although they have another remedies like precautionary measures or public audients that can be applied in less time) but like I exposed in answer number two, these international systems are important to protect people of possible violations committed by the states.</i></p> |
| <p><b>8.64. Dr. Alaa Nafea Kttafah - Iraq</b></p>          | <p>نعم فقانون العقوبات العراقي مثلاً يعاقب كل حالة احتجاز غير رسمية ويشدد العقوبات في حال وصل الامر التعذيب ، فضلاً عن وجود نصوص قانونية تعاقب الانتهاكات ضد الاعتداء على حق الانسان بالحياة وحقوقه المالية والشخصية .</p>   |
| <p><b>8.65. Professor Silvina Ramirez - Argentina</b></p>  | <p><i>Existen mecanismos contemplados en las leyes para la protección de los derechos humanos, tales como habeas corpus, amparo, amparo colectivo, habeas data, etc. Estos mecanismos son parcialmente efectivos, debido a que en la práctica judicial éstos no son resueltos con la prontitud requerida.</i></p>  |
| <p><b>8.66. Agnieszka Bien-Kacała - Poland</b></p>         | <p><i>The professor has chosen not to publish her answers</i></p>  |
| <p><b>8.67. Professor Dr. Claire Breen - Australia</b></p> |  |
| <p><b>8.68. Marwan Al-Moders - Bahrain</b></p>             | <p><i>The Professor has send articles.</i></p>   |
| <p><b>8.69. Dhia Al Uyun - Indonesia</b></p>               | <p><i>Iya, melapor melalui polisi. Mekanisme ini tidak efektif, karena tidak semua polisi berperspektif korban atau mau serta mampu membantu korban.</i></p>   |
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<sup>8</sup> Art. 47, American Convention of Human Rights, adopted at Costa Rica, 11/22/1969, entry into force 07/18/1978.