

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

Generally speaking, there are three types of the concept of "human": biological, moral and legal concept. The starting point of the biological concept is that all individuals who are part of the homo sapiens are humans. The moral concept of a human is about a person who is able to have an autonomous attitude, who, as a member of the moral community, makes a moral judgment about his life and adjusts his behavior accordingly. This concept requires a minimum of attributes. The legal concept is about the abstract equality of the human beings. These three concepts mingle in the international human rights theories and practice but it is necessary to mention that each human right is inseparable from the legal entity carrying it which is the human being which leads us to note that the human rights documents should look at the human being as a whole entity instead of focusing only a few aspects of it.

Christianity does not make this distinction, it has an other human concept: human is created to the image of God, its body and dignity is given by God, all human beings are capable of thinking and in this, they are individuals. Humans are rational beings with dignity and they are entitled to respect. In Christian philosophy human rights are derived from this human concept and from the dignity of human beings.

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?

Most of these rights are derived from constitutional rights so the objective side of a constitutional right guarantees the protection of rights regulated not in the constitution but in acts, too. The main difference is that the State has a wider discretion at limitation of these kinds of rights; meanwhile if the State restricts a fundamental right, a test of necessity and proportionality is used¹.

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?

¹ Basic Law Article I section (3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.

In general, International Human Rights Documents are considered in the practice of the Constitutional Court to be a minimum standard for the enforcement of fundamental rights but this doesn't mean that the Constitutional Court necessarily follows the interpretation of international courts in its practice. Also, the text of the Basic Law of Hungary² is mainly the same as of those human rights documents. However, there are some differences: there is a due process requirement for administrative procedures³, or some special cases for restricting freedom of expression which aims to protect minority groups.⁴

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

Courts (and other actors) shall interpret the text of laws they are applying in a case in accordance with the Basic Law.⁵ Because the sole authentic interpreter of the constitution is the Constitutional Court, all the actors need to follow the practice of the Constitutional Court, too. If there is no decision they can refer to, they can interpret the Basic Law in their own way, so in some way they can move forward the human rights standards but in the end, the last word is of the Constitutional Court's.

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?

Hungary has ratified almost every international human rights treaties but did not ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence and also there is no national monitoring mechanism regarding the CRPD. However, this doesn't mean that the protection is lower, the acts and regulations covering the obligations of the former document and the ombudsman is especially focusing on vulnerable groups, among them on persons with disabilities, too.

² http://njt.hu/translated/doc/TheFundamentalLawofHungary_20190101_FIN.pdf

³ Basic Law Article XXIV section (1) Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act

⁴ Basic Law Article IX section (5) The right to freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates their community, invoking the violation of their human dignity, as provided for by an Act

⁵ Basic Law Article 28 In the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble of that law and the justification of the proposal for or for amending the law. When interpreting the Fundamental Law or laws, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good.

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?

There are some problems regarding homelessness. According to the Basic Law of Hungary, the State and local governments shall also contribute to creating decent housing conditions and to protecting the use of public space for public purposes by striving to ensure accommodation for all persons without a dwelling. Using a public space as a habitual dwelling shall be prohibited. So in one hand the State and local governments are entitled to help homeless people which they do (there are homeless shelters and social helpers etc.) but on the other hand it's not enough and not all the homeless people can or want to use these services so they live on the streets which is also a misdemeanor. Also, the public either feels sorry for them and calls on the government to help them or doesn't want to see them on the streets or take the bus with them etc. In reality there are not much opportunities to solve the problem of homelessness.

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

Sometimes it is needed to consider individuals as group of people and grant them collective rights, for example in the case of national minorities, in order to preserve their cultures and national identities. Also, in some cultures persons primary consider themselves as part of the group which is more important for them than individualism.

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?

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,⁶ the ombudsman can also investigate the latter, the National Media and Infocommunications

⁶ <https://www.egyenlobanasmod.hu/en/basic-page/important-information-procedure-equal-treatment-authority>

Authority can investigate violation of right to human dignity at media service providers.

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)?

According to Article XXIX of the Basic Law of Hungary, national minorities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a national minority shall have the right to freely express and preserve his or her identity. National minorities living in Hungary shall have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues.

According to the Act CLXXIX of 2011 on the rights of national minorities (which contains a list), the national minorities in Hungary are the following: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian. The previous act made a distinction between national and ethnic minorities but the current one does not follow this method. Jews are not enlisted here, because of their own decision based on bad historical experiences (they don't want to be listed by the state).

The minority groups on the list are all historical minorities, most of them settled after the Mongol invasion of the Hungarian Kingdom which destroyed large part of the kingdom and its population. The second wave arrived after the Great Turkish War, the reason were the same and the third wave in the 18-19th century. This latter was the settlement of the Ashkenazi Jews who arrived mainly from Galicia and the Russian Empire. According to the census of 2011 the population of each national minorities are the followings: 315 583 – Roma, 185 696 – German, 35 641 – Romanian, 35 208 – Slovak, 26 774 – Croatian, 10 038 – Serbian, 7 396 – Ukrainian, 7 001 – Polish, 6 272 – Bulgarian, 4 642 – Greek, 3 882 – Ruthenian, 3 571 – Armenian, 2 820 – Slovene and 124 211 persons are part of other groups that are not considered as national minorities (Jews, Chinese etc.). These numbers probably don't show the reality perfectly, there should be more people with minority background.

They have the right to take part, through its representative in the National Assembly's legislative work affecting the interests and rights of national minorities, the State shall guarantee the conditions of the language use, for national minority self-government etc.

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?

It depends on what kind of minority we are talking about. The Basic Law does not have a definition but if we are talking about national minorities, according to the Act CLXXIX of 2011 on the rights of national minorities “ethnic groups resident in Hungary for at least one century, who are in a numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities are considered national minorities.” Because they are considered to be constituent parts of the State which means they are part of the political community, it is given that they are protected on the constitutional level. But overall the answer depends on how much the State wants to accommodate minority groups and how strong the claims of the minority groups are. The level of accommodation depends on certain elements: historical background (whether you need to justify them morally for example)

Other minority groups are protected by non-discrimination: According to the Basic Law of Hungary, Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. There is also equality before the law.

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?

The legal solutions we have for minority issues are much more comprehensive than the ones in the international law which tend to have a very limited efficiency. The national minorities in Hungary are mostly assimilated, so on the one hand we don't have tensions based on limitation of their rights and opportunities. The act on the rights of national minorities provides a wide range of individual and group rights for them and also, the procedural laws also guarantee the use of their own language for them. There are nationality schools, their parliamentary representation is ensured, they can have their

own self-government, too. On the other hand, the Roma minority is very much disadvantaged economically and also can be subject of discrimination and segregation which is hard to solve by legal means, be it national or international. The international law can provide some kind of answer for the problems of minorities but these differ in every state so other than some minimum standards real dialogue is needed between the majority and minority and the international mechanisms could provide a framework for that.

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

The contemporary debates are mostly about domestic violence and homelessness, both needs a really complex solution, the legal frameworks alone are not enough, the way of thinking needs to be changed, too.