



Social human rights are freedom rights! In advocacy of a liberal understanding of economic, social and cultural rights

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Freedom rights are commonly understood to be civil and political rights, whereas economic, social and cultural rights (in short social human rights), such as the right to work, social security, the highest attainable standard of health, adequate housing, an adequate supply of food, or education, are traditionally viewed as being “positive rights” or even “welfare rights.” This view is represented not only in the relevant constitutional and social-science literature, but also in many educational materials on human rights. In maintaining this view, however, the fact that also the social human rights are oriented towards freedom, and are themselves genuine freedom rights, is overlooked. These rights also affect the realisation of a social order in which the people can develop freely.

Freedom rights are based on the idea of people’s freedom to act – in the words of the philosophers – the “external freedom” (as opposed to the inner freedom to exercise one’s will which is not being dealt with here). In their widest sense, freedom rights should thus be viewed as protecting people’s ability to act independently and with self-determination, in political, economic, social and cultural terms. Of central importance for people’s freedom is the protection from infringements of their rights, oppression, cruelty, humiliation, exploitation, or other forms of external coercion (negative freedoms). Beyond this also the minimum real conditions must be created to ensure that the people are able to develop freely and lead a self-determined life (positive freedoms). It is hardly necessary to go into great detail to illustrate that extreme poverty, serious illness, chronic malnutrition, a lack of education and inhuman living conditions amount to serious barriers to freedom. As regards social human rights, both “negative” and “positive” rights are therefore very much connected with each other.

This connection can be clearly seen by looking at the interpretation rules from the UN Committee on Economic, Social and Cultural Rights, a commission of experts which, by way of the state reporting procedure, checks that the International Covenant on Economic, Social and Cultural Rights is being adhered to. According to these rules, all human rights contain, in principle, state obligations to respect, protect and fulfil. As the three obligation levels relate to both positive and negative freedom dimensions, they form a useful basis for a discussion on the liberal content of social human rights.

Protecting social rights and freedoms from state intervention

Obligations to respect oblige the states to refrain from hindering individuals, either directly or indirectly, from exercising their human rights. The state need not invest a great deal of effort to this end, and essentially these are obligations to acknowledge and refrain from acting: the state shall respect human rights and refrain from intervening in the free exercising of these rights. The state

obligation corresponds to a right of individual persons to protection against acts of the state, which, however, in the case of social human rights is still not adequately developed in constitutional and international law. However, anybody who becomes vaguely familiar with the social reality of large parts of the world will soon appreciate that it is not just the political and civil rights that need protection from state intervention which restricts freedom, but the social human rights as well. Such intervention is widespread.

A stark example is the state-ordered mass expulsion of people from the slum area in Zimbabwe in 2005, together with the demolition of entire residential areas. The dictator Mugabe had houses and huts, tiny shops and market stalls, churches and mosques destroyed and forced hundreds of thousands of people to flee their homes. There is absolutely no doubt that this measure, officially termed “*Murambatsvina*” (waste disposal) constituted a serious violation of above all the right to adequate housing, carried out by an inhuman regime which had previously expelled farmers, falsified election results and persecuted and murdered members of the opposition.

There have, though also been mass state-ordered house demolitions and compulsory expulsions under the regimes of democratically elected governments, supposedly so as to “solve” the slum problem. In New Delhi, India, and Mumbai, for example, hundreds of thousands of people were affected in 2004 and 2005. Human rights organisations such as *Habitat International Coalition* will not tire of criticising such compulsory expulsions, especially where those persons affected are not adequately consulted, informed and compensated, or where violence is used to carry out the expulsions. Also the house demolitions and confiscation of land by the Israeli military in the occupied Palestinian territories has been frequently criticised. These were increasingly carried out in previous years under the impacts of terrorist attacks as part of collective punishment, or as military precautionary or security measures.

The freedom-safeguarding nature of social rights becomes particularly clear in respect of state intervention in the right to health. When the state itself seriously damages the health of individuals or is responsible for such damage, it violates the bodily integrity of these people, which is also to be respected in the sense of civil and liberal appreciation. There are, however, many public infrastructure projects (roads, dams etc.) which, for example in Latin America, pose a threat to the health and basis of existence of those people living there, often *indígenas*, as international and national courts have criticised in specific cases. The same applies to state or state-like companies which pollute the environment in ways which are proven to be damaging to people’s health.

The right to education is equally not immune from state intervention. Here we need only consider the active, discriminatory exclusion of certain parts of the population from an adequate school education. Extreme examples were previously the racist education system during the South African apartheid or the Taliban regime in Afghanistan which systematically refused to allow girls to attend school. But there are also everyday examples which show that the problem is a severe one: in many countries it is still commonplace today for pregnant girls to be excluded from school. Also problematic is the exclusion of refugee children or ethnic minorities from attending state schools, in Eastern Europe for example the Roma children.

In addition to this there are politically-motivated restrictions to the free access to education. Particularly in dictatorships it is not uncommon for governments to attempt to control the education sector, restrict the freedom of teaching, opinion and research, and place school pupils, students and teachers under duress. In the former GDR going to university was coupled with the political good conduct of the young people and their parents. In Central Asian autocracies such as Kazakhstan or Kyrgyzstan even in the most recent elections the careers of some lecturers was dependant on them making voting recommendations which were in favour of the regime. In addi-

tion, individual schools or universities have been and still are occasionally subject to closure because of either actual or alleged activities which are critical of the regime.

Particularly as concerns the protective functions of social human rights, their liberal content becomes apparent. They serve to protect the freedoms of people to, amongst other things, feed themselves, maintain a safe living environment, to educate themselves appropriately or to protect themselves from health risks. In the same way as with civil and political rights, the obligations to respect social rights are aimed at the protection of “negative freedoms”, an aspect which is studiously overlooked in the relevant literature when social human rights are portrayed merely as “positive” rights. Also social human rights form the basis of a social freedom to live a self-determined life, which the state can not unduly restrict. Taking this view we are dealing here with, in the best sense of the word, “liberal” rights.

The protection of social rights and freedoms against infringements by non-state actors

Just like civil and political rights, social human rights are not only infringed by states, but also by non-state actors. In the case of social human rights, the (incorrect) behaviour of national and transnational enterprises is of particular significance. It is obviously problematical that these are not bound to follow human rights standards in the sense of international law, as at present there are only voluntary self-imposed obligations for companies. As far as international law is concerned, however, the state has also here a duty to protect individuals from infringements of their rights by third parties (obligations to protect). In contrast to the obligations to respect, it is therefore not sufficient that the state itself has not violated human rights. It is instead in fact the case that the state must actively make use of national laws and other effective measures to put in place protection for its people, and prevent or remedy human rights violations by non-state actors insofar as these violations are known and action is possible. The nature and scope of obligations to protect is naturally debatable.

In practice, the state in many places fails to act or is in some cases even an accessory to unscrupulous businessmen. Sometimes there is a lack of national legislation which should protect the people from, for example exorbitant rents, expulsion, exploitation, or damage to health. Often there are, though existing national laws which are either not implemented or simply circumvented in the interest of powerful or financially strong private individuals or companies. Corruption and a culture of impunity have the effect of promoting human rights violations, especially against socially underprivileged persons.

There are examples from all over the world of cases where big landowners or wood, mining or crude oil companies have forcefully expelled small-scale farmers or *indígenas* from the land on which and from which they lived, often with the full knowledge and even with the help of state authorities. The human rights organisation *FLAN International*, which advocates the right to adequate food, has been actively engaged in fighting such compulsory expulsions for many years. As part of its diverse campaign work it is, amongst other things, fighting the new approval of private open-cast gold mines, for example in Guatemala, Peru und Romania. Highly toxic chemicals are used in gold-mining, which contaminate the soil and water and pose a serious threat to the health and livelihoods of the population living there. The experiences in, for example Ghana, where the gold-mining operations violated the rights to adequate food, water and health, are astounding. The freedoms and chances of those living there to lead a self-determined, healthy life have been significantly curtailed.

Closely linked to the right to health is the right to work, and above all the rights in work, which are completely disregarded by many national and international corporations throughout the world.

Working conditions which are inhuman, exploitive and discriminatory, amongst other places on plantations, in mines or on production-lines for the global market (children's toys, textile goods etc.) no longer correspond in any way to a liberal image of humanity. Excessively long working hours, minimal wages, unpaid overtime, work without breaks, inadequate occupational safety provisions, extreme damage to the health of workers, arbitrary dismissals in the case of trade union organisation, illness or pregnancy, as well as the strict control of employees by supervisors right through to corporal punishment and the limited use of toilet facilities are all evidence of extreme exploitation and oppression.

In many places there are even “modern” forms of forced labour. The International Labour Organisation presumes there are over 12 million forced labourers worldwide. The problem is worst in Asia and the Pacific where there are an estimated 9.5 million. The overwhelming majority of these is attributable not to the state, but to private actors who impose forced labour for the purpose of economic and commercial sexual exploitation. The forced labour is in many cases a consequence of contract slavery, human trafficking, induced debt, intimidation, punishments or the practice of specifically making sure people remain dependent (retention of identification documents, wages, etc.).

These few examples should illustrate that even non-state actors undertake infringements of social human rights which restrict freedoms, and which should be legally and socially-politically prevented. There are laws in many states, which prohibit such practices, but in order to actually apply these laws a significant effort is required on the part of the states, the international community and the private sector, which is, as yet, hardly committed as far as human rights are concerned. It is in the context of the regularly cited globalisation that the human rights commitment of the economy is one of the major challenges of the future. In the battle for location and competition advantages, the protection of social freedoms can far too easily be forgotten, especially in those states which are poor, weak or corrupt. Social human rights can serve here as a touchstone for economic and economic-political activities – and as a freedom-granting corrective measure for the occasionally apparent early-capitalist excesses of the free-market economy.

Besides this, social human rights have effects which reach deep into social domains, for example as protection against female genital mutilation or against social traditions, according to which, for example, in the case of a shortage of food women and girls receive less food than men and boys. Also the protection of children, the sick and the elderly in private reformatory schools, nursing homes or old people's homes against inhuman treatment or life-threatening and health-endangering neglect is a part of this.

Guaranteeing social rights and freedoms

Obligations to fulfil oblige the states to enable the exercising of a right in the first place, by way of positive entitlements. To achieve this the state must create the legal, institutional, procedural, and not least the material conditions so that the rights can be implemented. Whether and to what extent these obligations (should) give rise to (individual) entitlements is highly debatable. However, we are also dealing with social freedoms here.

The significance of the guarantee dimensions of social human rights for freedoms already results from the fact that the actual granting of social rights is an important prerequisite and condition for the equal application of civil and political rights and freedoms, which, in many parts of the world, is distorted by social inequality and poverty. However, beyond this “derivative” significance, social human rights also exist as original freedom rights in their guarantee dimension. The actual conditions to enable the external freedom are necessary. This concerns not just the legal, but also, and

above all, the actual freedom which does not develop automatically, as it were, by way of the market or morals, but instead is to be realised by way of the provision and distribution of scarce resources. Freedom in this sense also requires freedom from extreme poverty, hunger, sickness, and misery, since hardship amounts to a removal of freedom for those people who suffer from it. The state and the community of states are obliged to act in such cases, even if they are not themselves responsible for failings and grievances. The manifest failure to act in the light of hardship situations which limit freedoms lies at the heart of the infringement of the obligations to fulfil. A state which, for example fails to act in the case of acute starvation, despite having the resources available or having been offered international assistance, violates the right to adequate food.

The UN Committee on Economic, Social and Cultural Rights has listed several measures in its “general comments” which the states should undertake in order to perform their obligations to fulfil. As a general rule, they make recommendations regarding the drafting of national action plans. In the area of health these are, amongst other things, aimed at ensuring a generally accessible, non-discriminatory provision of basic medical care, particularly also for disadvantaged or marginalised sectors of the population. The monitoring of infectious diseases, the control of epidemics or provision of necessary vaccinations against dangerous infections are, for example, part of the obligations to fulfil in respect of the right to health. In the same way the obligations to fulfil in respect of the right to adequate food, water and housing aim, amongst other things, at ensuring general access to food, safe water and living accommodation, specifically assisting those in need and helping them in times of hardship.

Social human rights do not demand the impossible from the state, and, not disregarding possible extra-territorial state obligations, the community of states. The obligations to respect and protect can mostly be implemented immediately and without significant financial means. The obligations to fulfil require merely the application of available resources, which must of course be made available as a priority to those sectors of the population who are particularly in need of assistance or disadvantaged. In doing so the states have a considerable scope for discretion and action. The social human rights do not in any way aim to transfer the responsibility for distributing state resources from the, ideally democratically legitimated political institutions to the courts. However, they do oblige the state to act as far as possible and to account for the measures they undertake. The fact that resources may be lacking can not be used as a blanket excuse for not acting at all, even in the case of the resource-intensive obligations to fulfil. On the contrary, the states are obliged to attain a full realisation of the rights as quickly and effectively as possible. Individual components of respective social rights which require hardly any resources to be implemented can be realised immediately.

From the point of view of human rights it is important that at least the core elements of the individual social human rights are not dismissed as being a merely part of the political programme, but instead developed as individually claimable rights. In this area there is still a considerable need for action on both the national and international level. Only a few national constitutions have significantly included social liberal rights as part of their catalogues of basic rights and afforded these particular constitutional protection. At the same time the direct application of internationally guaranteed social human rights before domestic courts is often disputed. There has also been resistance in recent years to efforts which have been made to introduce a complaints procedure for the International Covenant on Economic, Cultural and Social Rights. A stumbling block in this respect is the concern of many governments that wide-reaching and expensive demands could be made of them. Understood correctly, however, social human rights do not make any social-political maximum demands, instead they formulate in – at least as far as their principally justiciable main content is concerned – minimum guarantees for a humane life. As such they are invaluable for the respect, protection and guaranteeing of basic social freedoms, without which a person’s self-determined life is impossible.