

**Coalition  
in Support of Human Rights  
Defenders**

# **Human Rights — XXI century**

**Materials on the discussions of Russian human rights  
defenders, experts and scientists in 2019**

**Moscow  
2019**

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**Publication of the Coalition in Support of Human Rights  
Defenders**

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## Human rights — XXI century

Materials on the discussions of Russian  
human rights defenders,  
experts and scientists in 2019

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# **Human rights as a subject of discussion**

**(instead of introduction)**

**Alexander Sungurov**

This collection of articles presented to a reader is an attempt to move from the discussion on the cases of human rights violations committed by certain state structures, or on the activities of human rights organizations themselves, or on the problems of the modern Russian human rights community to the discussion of the very concept of human rights, taking into account the realities of the end of the second decade of the XXI century. This attempt does not detract from the significance of the all abovementioned topics that are constantly in the focus of most practicing human rights defenders' attention. Along with these topics, in our opinion, time came to discuss the very perceptions of human rights. A similar attempt was already made almost fifteen years ago in the framework of the project "The Future of Human Rights in Russia", implemented by the Perm Civil Chamber, which included a number of discussions within expert groups that gathered mainly in Perm. However, the focus of attention of its participants was still, consciously or unconsciously, concentrated on the human rights movement as such, and as a result, in our opinion, its correct name would be better formulated as "The Future of the Russian Human

Rights Community”. In the final publication of the project, mostly the texts of the main project’s initiator I.V. Averkiev were devoted to the concept of human rights.

The second attempt to discuss the contemporary problems of the human rights concept was the preparation and publication of the collective monograph *Human Rights Facing the Challenges of the 21st Century*, carried out by the Research Committee on Human Rights of the Russian Association of Political Science (RAPS) in 2010-2012. In the process of its preparation, several scientific conferences were organized and held in Moscow and St. Petersburg. In May 2010 and April 2011, two special two-day conferences were held at MGIMO-U, where the authors of this book’s main sections spoke. The initiators and main participants of the Perm project were members of the human rights community, with the participation of several representatives of the academic community, while the experts in the field of political science, law and sociology mostly participated in the preparation of the collective monograph under the auspices of the RAPS, with the invitation of individual human rights activists. Unfortunately, this book was published in a small edition, the remains of which were burned in a fire at the Institute of Scientific Information for Social Sciences of the Russian Academy of Science in January 2015. However, the text of this book is available on the website of the Interregional Center Strategy (including for download).

Another seven years passed, and in the spring of 2019, the permanent seminars *Human Rights – XXI Century* began its work in the framework of activities of the Russian human rights organizations community Coalition in Support of Human Rights Defenders (<https://hrdco.org/>). The initiators of the seminars were Sergey Krivenko, member of the board of the International Memorial Society, Alexander Sungurov, president of the Interregional Center Strategy and Andrey Yurov, head of the International School of Human Rights and Civil Action.

A brief concept of the seminars was sent to potential participants, including leaders of Russian human rights organizations and

representatives of academic science. This concept, inter alia, included the following lines: “In our opinion, complex and constantly changing realities of the 21st century require a constant reflection on the human rights concept, an analysis of the problems and challenges of this concept arising today, as well as proposals and discussions on its creative development. The seminar participants are representatives of the academic community and human rights defenders-practitioners, which consider the human rights universality concept an important achievement of human thought and development of the best traditions of liberalism, at the same time they do not regard it as a frozen dogmatic teaching. That is why they decided to discuss together the urgent problems of the human rights universality concept and the challenges that this concept is facing in the 21st century”.

The invitation to the seminar contained the following list of problems (far from complete).

- Has the concept of three human rights generations become obsolete after the adoption of the Resolution of the 1993 Conference on Human Rights in Vienna, which stated that all human rights are unitary, equal and indivisible?
- Is it worth talking about collective human rights?
- When does the most obvious human right – the right to life – begin and end?
- How does the principle of human rights universality relate to the concept of multiculturalism?
- Is it necessary to take into account the cultural traditions of people belonging to different civilizations?
- How deep into the past a modern understanding of human rights violations is worth spreading?
- How to engage in human rights dialogues with representatives of various religions and ideologies?
- How to continue protecting human rights if the state denies

its obligations to comply with them?

- Are human rights a way of thinking about an ideal future or are they necessary conditions for the society development?

About fifteen persons from Moscow, St. Petersburg, Voronezh, Rostov and Syktyvkar gathered to participate in the seminar. The results of the discussion in the form of articles were posted at the website of the Russian human rights organizations community Coalition in Support of Human Rights Defenders (<https://hrdco.org/>) and collected in this publication.

Having introduced the reader to the context of the discussions and texts that can be found below, now I turn to the main problems of the human rights understanding, around which the main discussions took place.

In my opinion, the most heated debate revolved around the presence of three (or more?) generations of human rights, as well as around the question on which of them should be considered genuine, fundamental rights, and how to treat other generations of rights. It is interesting to note that none of the participants in the abovementioned discussions and none of the texts' authors took the position of a "holistic" approach to human rights, according to which the very division of human rights into generations is a relic of the Cold War. This position is based on paragraph 5 of the World Conference on Human Rights Declaration adopted in Vienna in 1993, which states: "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equitable manner, on equal terms, and with the same emphasis". Today this position is very popular among well-known European human rights experts, while it did not find support among the participants of our seminars.

On the contrary, during our discussions, the position of "human rights fundamentalism" was clearly expressed, the arguments for which were formulated in the Theses on Human Rights

Fundamentalism by Alexander Verkhovsky, presented in this collection. I am very glad that our seminar and the discussions gave the author an opportunity (or a reason) to articulate his position so clearly by separating the most valuable fundamental human rights (i.e. the rights of the first generation) from the interests of certain social groups or segments of the population - socio-economic rights, or rights of the second generation. The second division proposed by the author is the difference between fundamental human rights and the different types of “identity policies” that “often split and even undermine the liberal (and not only) political nations and the very structure of the liberal society (where it exists) using the dictionary of human rights”. Based on this position, Alexander Verkhovsky reasonably believes that “the group human rights are an oxymoron”.

The articulated position of “human rights fundamentalism” has received support from many participants in the discussion. For example, among the authors of the texts for this collection it was supported by Lada Burdacheva. She wrote about the experience of the International School of Human Rights and Civil Actions, where they teach primarily fundamental rights and freedoms. The teachers of this school take a list of such rights and freedoms from the intersection of such three basic documents as the 1948 Universal Declaration of Human Rights, the 1966 UN Covenant on Civil and Political Rights and the 1949 European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Executive Director of the Institute of Human Rights, Valentin Gefter, generally supporting the approach of Alexander Verkhovsky, proposed to call these basic fundamental human rights “the anthropic rights”, explaining during the discussion that he uses the term “anthropic human rights” guided by the anthropic principle of the Universe structure. This principle, as we know, states that all the numerical values of all world physical constants are just such as to ensure the appearance of life on our planet: if these numerical values change a little, then, for example, the water in which life was born could not emerge. In my opinion,

Valentin Gefter is trying for many years to find some objective justification for the existence of human rights themselves, disagreeing with the fact that the concept of human rights, like all other concepts in the social sciences, is a social construct.

Lev Levinson was implacably opposed to the concept of “human rights fundamentalism”, both during the discussions at the seminars and in his text presented in this collection, which he polemically entitled as follows: “Who (except those sentenced to death) has the right to life?” Applying an indisputable thesis about the primacy of such a human right as the right to life, he writes: “The right to life is like a tree of life consisting of three branches. The first one is the right to a dignified life, to bread and shelter. The second one is elimination of both war and the state’s right to force its citizens to kill citizens of another state and to die in the name of whatever. The third one is the abolition of the death penalty”.

Furthermore, proceeding from this logic, he points out quite reasonably that this is the right to a decent life, including the right to bread and shelter. A substantial part of his text is devoted to the necessity of wars’ elimination, in other words, to the principles of pacifism, which other participants in the discussions barely mentioned.

Some other participants supported the Lev Levinson’s attitude. In particular, if to use the metaphor of Valentin Gefter on the rights of a naked human, the question arises: who is protecting these rights and, in general, is someone protecting them? Sometimes a person him/herself is not conscious about these rights, and if he/she protects them, only because he/she wants to survive. And this naked human, undoubtedly, has a right to property, because he needs a pelt, otherwise he will just freeze.

The participants in the discussion note that the difference in the problems’ understanding by ordinary people and by experts is that experts see the underlying cause of injustice, when ordinary people see only the consequences. There is also a view that the second generation of human rights arose because the people

did not understand the first. Therefore, the second generation is a type of bridge to ordinary people, it helps to explain them the concept of human rights. So, fundamentalism is good, but you need to understand how to talk to people in their language. Further, another participant believes that human rights defenders will soon become marginalized if they protect only the individual rights, which are of little interest to anyone now.

However, the position of “human rights fundamentalism” also found support among the participants in both discussions. For example, such phrases resonated: “But how can the state ensure the right to housing, if there is another right – to freedom of movement. It must be chosen: either the freedom of movement, or barracks in which everyone will be guaranteed the right to housing. If the right to housing means a ban on expropriation of housing, then it is determined through many other rights».

According to another participant, the endless expansion of rights dilutes the very idea of protecting human rights. He believes that “it is necessary to determine: these rights are real rights, and we can protect them and focus on it”.

A number of participants, agreeing mainly with the arguments of the “human rights fundamentalism” position, nevertheless consider that the right to education as a condition for the formation of a really independent and responsible person must be considered a fundamental right. The issues of digital rights, the features and problems of protecting human rights in the modern computerized world were also raised.

The division of human rights into generations and the reasoning for the priority of a particular group were not the only possible basis for the classification of the rights under discussion. For example, Igor Sazhin in his text proposes, when deciding whether there is a violation of human rights and, accordingly, the need for human rights defenders to intervene, to proceed from such a precondition as the hopelessness of the situation for the assisted target groups. He believes that if the degree of hopelessness is very high,

then there is a human rights activity, if not, then there is a need to look at other principles. He also emphasizes that the high level of hopelessness is determined by the high degree of the target group's dependence on those whose actions have led to injustice.

Another urgent problem that the participants raised during the discussions is the "state-controlled human rights". It was noted that the current concept of human rights was a product of states. The states have agreed among themselves and are watching each other, if they are violating or not, but they are not watching themselves! In result, human rights become an instrument of politics, demagoguery arises (these are violating, and those are not), and human rights defenders, playing on the field of states, according to the states' rules, ask the "good" states to punish the "bad" ones, etc., and eventually realpolitik is realized. Therefore, there is a need in privatization of human rights, in removing this concept from the state and transferring it to citizens, i.e. there should be real control of citizens over the actions of a state.

There is one more consequence of the "state-controlled human rights". Since no state recognizes human rights violations at home, human rights defenders within the state are the "fifth column", because they criticize the state, while other states use such criticism. As far as it is the consequence of the "state-controlled human rights", we can overcome it by privatization of human rights.

There is one more argument in favor of such privatization, and this is a question on if exclusively the state violates human rights. Let us note that until recently, the majority of human rights defenders had a strictly positive answer. However, today the situation is changing, and, for example, if we compare the power of the Lugansk People's Republic and the power of the Facebook Directorate, they both have enormous power, but completely different, and relating to completely different rights and to various degrees. It is worth agreeing with the position of the participant in the discussion that this is such a huge topic, which must be approached with great caution.

We hope that publication of this collection will be an important step towards discussing the real problems of the human rights concept. We also hope that Russian human rights defenders, representatives of an emerging civil society, as well as political scientists, lawyers, sociologists, philosophers and other people reflecting on the phenomenon of human rights and studying institutions on their protection, as well as the Russian Ombudspersons and staff of their offices will take part in this discussion.



# Theses on “human rights fundamentalism”

**Alexander Verkhovsky**

These notes do not pretend to be theoretical in depth. They solely reflect my personal thoughts on what human rights defenders do – as far as I know – in Russia and worldwide.

I must make several reservations right away in order to exclude, if possible, the most expected incorrect interpretations of these notes:

- This is not an action program. The person putting forward the program should be ready to implement it; otherwise, this is not the program. I personally do not see myself in such a role. That is why I call this text “notes”.
- It is clear that the definition of a human rights defender is not universally accepted. Attempts to make some definitions normative have repeatedly been undertaken and will be undertaken. This is very important, but here I am not going to participate in terminological discussions. I will use this definition to mark any person who is ready to identify her/himself as such, partially or completely. Accordingly,

the “human rights movement” as a collective of such people does not have the characteristics of a movement, i.e. it does not move anywhere collectively, but nonetheless it can undergo multidirectional metamorphoses.

- Turning statistically, human rights defenders are most often inclined to help concrete people or groups of people, and often have the idea that “a person is above everything”, but these characteristics are not determinative. If to say more correctly, it is through the conception(s) of human rights that human rights defenders want to help individuals, groups or the whole humanity, i.e. we deal with ideologically motivated people. It does not matter whether they themselves consider “human rights” to be some kind of ideology, a derivative of some kind of ideology or something like that. Thus, personally I see human rights defenders as the set of people who ideologically link their activities with a particular conception of human rights.
- Human rights defenders can be politically motivated (to change the government and/or the constitutional order of a country) and even can combine human rights activities with political activities in its narrowest sense (to be members of parties, to run election campaigns), but still it is usually possible to talk about combination of functions, rather than actual synthesis. In other words, I attempt at least fundamentally distinguish political and human rights activities.

Can such a set of people have a common understanding of anything, including the term “human rights”? No, it cannot, and we see it well. Consequently, any proposals addressed to this set of people can never be accepted by every one of them. Therefore, it is possible and necessary to talk not on “what the human rights movement should do” on a national, continent or world scale, but on “which way to suggest to turn or which efforts to make” for such

a subset of human rights defenders who finds these suggestions interesting.

I proceed from this task, and now I can move to a brief formulation of my initial principles and to the essence of my suggestions to the part of human rights defenders that may be interested.

Human rights are a part of a liberalizing program aimed at society modernization. As the main results (getting rid of the “old regime” social structures and of modern time dictatorships, especially totalitarian) achieved, there is a feeling that the basic initial tasks of society liberalization completed. Accordingly, at this moment the concept of human rights, being an instrument of public debate and struggle, begins to expand, indicating some new horizons. New “generations of rights” emerge, human rights advocates begin to specialize on them, and various human rights sectors rather confront (for example, advocates for freedom of speech and anti-discrimination advocates). Here I omit the historical considerations on the subject of how different human rights “generations” arose and promoted. However, it cannot be overlooked that to date “human rights” is an equally widely used, if not more popular, political brand or a rhetorical instrument, just as “democracy” is. On the one hand, it is good that there are so few principled and open opponents of democracy and human rights. On the other hand, such a victory means that the very terms have ceased to mean something politically, ideologically or in general, at least somehow, definitive. Thus, these terms can no longer fulfill their basic social function – to distinguish between “right” and “wrong”, but people have not really noticed it yet.

Therefore, the moment has already come when within the unlimited range of “human rights” it is worth highlighting more specific ideological directions, obviously related to certain rights, as they are fixed in documents and exist in public discourse, and it is worth to adhere these directions, calling them somehow to taste.

Personally, I believe that in the heat of expanding the concept of «human rights,» we, i.e. humanity as a whole and some of its segments in particular, hastened to abandon the priority value of basic personal, civil and political rights, although they express the very essence of human freedom, as it exists in social relations (other aspects of freedom are another matter). I bear in mind the set of rights that are described in Section I of the European Convention for the Protection of Human Rights and Fundamental Freedoms, but this is exactly the first approximation.

Other human rights are not so fundamental; moreover, the very application of this term to them is questionable. Or it is not human rights in the sense that neither the states nor the powerful can deprive them (as the inviolability of the person): I mean “the right to clean water” and the like, because with regard to them the problem is not in that the strong take pure water from the weak (or mainly not in this). Or it is actually not the universal rights that are inherent to all people, but collective interests expressed in the form of “human rights”, such as the employee’s right to rest. Definitely, I am not ready to draw a clear line between fundamental human rights and all others in each concrete case, but there is no practical necessity in it: I just want to outline this division.

I guess the time has come to create the movement of advocates of exactly the fundamental personal, civil and political rights, the movement of those who consider these “first-generation rights” to be fundamental, and ready to set aside other tasks and priorities. Let us call such people – as a working term, of course – “human rights fundamentalists”. Further, I speak as if about an existing movement, but this is only a rhetorical device, and not an assertion that such a movement exists.

Human rights fundamentalism does not mean to displace or devour other human rights defenders. Actually, to achieve its goals it can somehow form a block with any of them, as well as with non-human rights defenders. These issues are pragmatic, but widespread blocking and coalitions, widest possible involvement of supporters, in my opinion, should not be among the main

priorities of any human rights defenders – insofar as they are not a political current. Wide blocking is a feature of political rather than ideological currents.

On the other hand, human rights fundamentalism, which upholds, in essence, the basic values of the modernized world, defends them not only against the arbitrariness of various authorities or against anti-liberal militant movements, but also against unfolding “identity policies” that are not only defending someone’s rights and interests, but often splitting and even undermining the liberal (and not only) political nations and the liberal order itself (where it exists), using exactly the dictionary of human rights. And of course, human rights fundamentalism is opposed to autocrats, who manipulate societies using the aforementioned dictionary.

The societies in which we live are increasingly multicultural, regardless of the policies our governments pursue in this area, and this is not only a matter of “resettlement of peoples”. In no less degree, the matter is that identities recognized as variants of the norm are rapidly multiplying: it is already quite customary to have more than one national or ethnic identity, or to have unusual or transitional forms of religious identity. Division by identities related to sexual orientation has been universally added, and we all see how new identities become mainstream. All of them place an order for political representation (realized, fortunately, only occasionally through sectoral parties) and for their contribution to the language of human rights. However, in this increasingly complex world, someone should focus on upholding exactly what constitutes the basis of human rights and the condition for the democratic coexistence of these identities. Moreover, it is often necessary to uphold it in conflict with the requests of various social groups, not only socially dominant, but also minorities.

In particular, human rights fundamentalism must state that “group human rights” are an oxymoron. There are people with special needs, and, theoretically, there is no problem. However, there is a problem of re-interpreting basic human rights (usually

personal rights, it is easier with political and civil rights) in relation to new groups appearing at the public scene (a vivid example: a while ago, the right to marry was understood as the right to enter into marriage freely, but only into a marriage between a man and a woman). “Group rights” are group interests, and human rights fundamentalism considers those who advocate them a type of political movements: it is possible and often necessary to cooperate with them, but it is worth to mark clearly the differences in the basic concepts, including the definition of “human rights defender”. Naturally, without rejecting the right of other human rights defenders to be called that way, even if the differences in self-determination are really great.

What I am writing about can be called the word “fundamentalism” not only because of the reference to the phrase “fundamental rights”, which is controversial in itself, by the way. There is a similarity with fundamentalism in the religious sense – in the sense of returning to the origins, but at a new stage, not for restoration of antiquity, but for revolutionary transformation of the present, relying on somewhat “outmoded”, “outdated” elements of the credo. This comparison is risky, if to remember what religious fundamentalism brings to large groups and entire countries, but this comparison makes it possible to understand better what that means. It can be compared to the birth of a new liberal movement around Hayek’s ideas, which was a marginal group that opposed the “distortions” of the liberal order, and after several decades became the basis for a wide turn in the Western life. However, any comparison is nothing more than a comparison; it is always a similarity in something and a difference in many other things.

What is really similar here: any small ideological wave, fundamentalist or not, can become a social force and achieve something, only if it grows in allies that are not always expected, sometimes provisional, and sometimes strategic. For instance, the modern human rights movement in the West has grown largely in the long-term alliance with the political movements of minorities.

Human rights fundamentalism, as befits any fundamentalism, seeks to emphasize its own peculiarity, its difference from related trends, but this does not mean that it should be at enmity with them. On the contrary, a clear pronouncement of differences, unpleasant and conflictogenic at the beginning, allows building a healthier relationship in the medium term.

It is clear that, in many respects, for human rights fundamentalism long-term allies remain the same as for most human rights defenders. These are, for example, representatives of the interests of the systematically and seriously discriminated minorities (the word “seriously” is not superfluous here, since discrimination is not only an unpleasant fact, but also a subject of political manipulations). However, there may be situational allies. For example, in Dagestan, the authorities could be such an ally on the issue of female circumcision, and the Salafis – on the issue of freedom of conscience, although neither could be considered a group that supports fundamental human rights. Of course, let us not forget that a temporary ally may consider you rather an enemy, but temporarily tolerable – well, public coalitions are not always built on unity of mind and mutual love, and even usually not on them.

Finally, the last thing about the allies. Most often, they are the groups of activists speaking on behalf of a particular community. Firstly, we should clearly understand what kind of community it is, and not follow self-presentation (for example, the aforementioned Salafis are not Muslims at all). Secondly, even more important: it is necessary firmly remember that they act on behalf of, but do not represent their group, unless we see a real mechanism for the constitution of representation. It is easy for us to bear it in mind, if that community is a little bit familiar to us and we see internal differences, and more difficult, if vice versa. However, this is always the case.

In concluding these remarks, I want to repeat that this is not an offer to all human rights defenders. Actually, I think there is no proposal that all human rights defenders could accept. Apparently,

most readers of this text will perceive it as a counterproductive proposal, but I also ask such readers to pay attention to details: suddenly, disagreeing with my message as a whole, you will find something useful in particular.

# Notes on human rights fundamentalism

**Lada Burdacheva**

I would like to thank Alexander Verkhovsky for his text. It accurately reflects my visions and views.

I just have to add a little. Human rights ideas have existed for many decades and centuries. Many philosophers, historians, humanists, writers and poets turned to the ideas of freedom, equality, and justice. In the twentieth century, the idea that a person is weak and not protected in front of the state became so obvious that the need appeared to create and enshrine in international law the value of each person's life and the ways of its protection.

At the International School of Human Rights and Civil Actions, we are always talking about fundamental rights and freedoms. We were interested in what list of human rights each and everyone on the planet Earth has, regardless of his/her citizenship or lack thereof, color, religion, gender, etc.

We took the intersection of three main documents: – Universal Declaration of Human Rights; – Covenant on Civil and Political Rights; – Convention for the Protection of Human Rights and Fundamental Freedoms.

It turned out that each and everyone on this planet has a very small list of rights and freedoms that protect us from the state's

omnipotence. This is literally 15 points. For ourselves, we call it “fundamental human rights”.

I am engaged in education and awareness raising on fundamental human rights, because for me this is the basis. If the rights from this list are violated, everything else is impossible to implement and protect. Let us take any right, for example, the right to property. If I do not have the opportunity to apply to court for protection of my right, or to attend a rally (or any other public event), or to create an initiative/organization to protect this right, it is not clear how I can claim this right. Therefore, without working on fundamental rights and freedoms, everything else will end very quickly.

You can see our “list of fundamental rights and freedoms” here:

**[https://inthrschool.org/files/buklet\\_pch\\_2017\\_3\\_.pdf](https://inthrschool.org/files/buklet_pch_2017_3_.pdf)**

We are talking about “generations” of human rights. In my perception, this is not a very good approach, because usually the future is for new generations. However, in this case, the future can be ensured, if fundamental rights and freedoms are in the focus of attention, sufficiently protected and safeguarded.

At the same time, I appreciate the work of people in other areas, it is also important and necessary, but this is another story.

# About human rights – return to the roots and reflect...

**Valentin Gefter**

These notes have been driven by the recent discussions on the nature of human rights and their understanding, which is often mixed with the ideas related to the activities and “composition” of the human rights community in modern Russia. The latter seem more relevant, but those who want to understand the meaning of their activities will ignore the world, if do not return to their origins.

So, what are human rights, if to define them not in the spirit of “I have the right” or “to make the rules,” but on the basis of the modern ideas about Homo sapiens and the ratio of his biological and social sides.

Let us take one of the last universal documents on this subject – the Constitution of the Russian Federation of 1993, the second chapter of which with its nearly 50 articles is based on two UN Covenants of the 1960’s and the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted a decade earlier.

Let us try to present a list of rights and freedoms enshrined in the aforementioned documents:

a) individual (anthropic) rights to life and personal integrity, including home and property, with the prohibition of capital punishment, torture and arbitrary imprisonment, the rights on self-identification and privacy, on freedom of speech, belief and religion, communication and association with other people (including in a family union), movement and choice of residence.

b) civil and political rights related to participation in public life and government, equality before the law. There are voting rights, the right to peaceful assembly and unions, protection against discrimination on the grounds of belonging to an ethno-confessional group, race or gender, the right to search and disseminate information in society, the right to citizenship, etc.

c) separately highlighted the right to access and participation in the administration of justice, the rights to judicial protection and legal assistance, the right to a fair investigation and trial, ensuring due process rights of the participants.

d) sociocultural rights, including the right to free labor and rest, the allowance of various forms of ownership, the protection of the cultural and natural environment, etc.

Certainly, such a strict division into separate categories of rights cannot be absolute and universally recognized, as well as a division into biological and social nature of a human being. However, it is obvious that, in essence, the rights from the category “a” relate to an individual, although partly to his/her relationship with others, while the rest are directly related to a person as an elementary unit of a community (society or state). At the same time, the rights from the last three categories are fixed and protected in the Law (as in a social contract) in different ways, depending on social evolution of a society and the forms of its organization.

It means that, in contrast to the fundamental and inalienable rights of anthropic origin (category “a”), other rights may, under certain circumstances and for certain regions of the planet, be limited and determined by the socio-political structure and practices of different communities. Therefore, it is possible to call

them the legitimate rights and interests of individuals and legal entities, so that their composition and content may vary depending on the “location” and the borders of the states that adopt laws, and their unions, in small or large regions of the Earth.

The anthropic rights correlate with the «poles» of what can be defined as humanity – with a separate person and earthlings in general. These rights originated within the Homo sapiens family “by definition”, not according to a social contract in the form of laws and conventions, whoever proposed them – even the UN on behalf of all (?) Humanity. The universality of human rights is possible not through the boundless expansion of the list of diverse rights and freedoms in order to take into account or satisfy the interests of all kinds of actors (which has been taken place over the past 75 years). It is possible at the cost of narrowing it to the minimum without which a human person does not cease to be such, to the minimum that makes it allocated among the so-called social animals in the living world, including the Homo Erectus and other close anthropoids preceding modern humans.

This approach allows us to describe the axiomatic of individual rights, based on the anthropogenic nature of Homo sapiens. In this case, there is no need to develop the system of generations or “grades” for different categories of rights. The difference between categories of rights is connected to the sole thing – their origin, but the regulation of different rights, their protection and restoration can and should be carried out by the same or essentially identical methods.

Their peculiarity also lies in the fact that anthropic rights are universal and more absolute in nature; they are more difficult to “attribute” to one culture, socio-economic structure, socio-political system; they should determine the content of legal norms and practices, and not vice versa. Therefore, the principle of the rule of law does not consist of solely its priority over politics and the means of its normative regulation: the “starting point” of the entire system of law is fundamental anthropic rights and freedoms.



# **About the recognisability border of human rights defenders (reflection of a human rights activist-provocateur)**

**Igor Sazhin**

If we want solidarity, if we want mobilization for our values, we must outline the boundaries of our recognisability. People cannot drive to a vague and obscure value, cannot react to what is simply in the realm of good as such, no matter how much we want it. Any mobilization seeks quality. The mobilization of all causes the disappointment of all, and therefore, the mobilization of all is the mobilization of no one or those who are delighted to come, receive dividends and go on looking for a new object for admiring and receiving dividends.

Since we want the recognisability, our main concern is to draw a clear line separating human rights from non-human rights. It is clear that we are in the realm of good. Usually, inhabitants of any conglomeration think that they inhabit in the realm of good. However, the recognisability comes only when there are the specific indicators of the valuable which we distinguish in the realm of all good and which we earmark in the realm of good as our own.

One of the brightest indicators of our good is justice, but this is also too broad area. I tried to identify for myself a certain set of indicators that separate the real field of human rights activist's work from the work of other good people in the field of good and justice.

1. The basic principle is the hopelessness of the situation of those target groups that are assisted in the framework of the activity. If the degree of hopelessness is very high, then most likely this is a human rights activity, if not, then there is a need to look at other indicators. What we can consider a high degree of hopelessness of the target group requiring support? Of course, it is a high degree of target group's dependence on the people whose actions led to injustice.

2. The next important principle is the degree of independence of the decisions made by a target group. To what extent is a victim of injustice capable of acting proactively and independently due to the certain circumstances? What are the consequences of remaining proactive and independent? For example, the younger are the children in orphanages, the higher is their degree of dependence on the state; the older are the children, the more they are able to make independent decisions, and the system of orphanages becomes not completely closed to the public. The higher is the degree of disability or illness, the more a person is dependent on the state assistance; and the lower is the degree of disability, the more a person can help him/herself, protect his/herself rights or receive protection from relatives and non-state caretakers.

3. Another important principle follows from the aforementioned two. Any actions related to state institutions, where there are dependent groups of the population less able to resist the actions of state structures (which means that the possibility of arbitrariness is higher) – are in the area of the human rights activities.

4. And one more indicator. It is important to realize that

the human rights area of work cannot concern a wide range of vulnerable groups and an unlimited range of vulnerable groups.

5. At the same time, it should be born in mind that, by the very essence of providing the assistance, human rights protection is more likely to be an invasion than an expectation of a complaint from the victims, because the impotence of the vulnerable is a clear sign of the existence of human rights actions. It is clear that complaints can help identify such spots of hopeless vulnerability requiring human rights activities.

6. In connection with the aforementioned, all topics related to the protection of consumer rights, housing and communal services, business, labor or property rights, can be considered only through the prism of hopelessness, the inability to defend oneself and through the prism of the limited groups of victims. As soon as we begin to deal with this topic extensively due to its success, we lose human rights.

7. Special mention should be made of the human rights protection of refugees and migrants who are not in closed or semi-closed institutions, but are themselves in a very vulnerable position in a foreign country, and they are most vulnerable. In this case, it is necessary to determine which direction of refugee rights the problem concerns. If it addresses very serious cases, such as violence against migrants by the state or deprivation of property, then we can consider it a human rights area, because the degree of hopelessness for these people is quite high. If providing assistance to refugees addresses less serious problems, then we need to think hard about whether this is a human rights issue.

8. Special consideration should be given to the field of public control over the activities of state institutions and state bodies. Most often, from everyman perspective, this field of society's activity, aimed at control over the courts, police, and prisons, falls within human rights activities due to the specific position of these structures in the state system of protecting human rights. However, here as well I would narrow the topic down to the control over

the most severe forms of human rights violations, and would not consider the broad control and declarative forms of violations monitoring.

9. The area of the freedom of speech protection should also be considered especially. Here, unfortunately, it is necessary to limit human rights activities to those topics that directly address the protection of journalists' from the most severe persecution by the state. Wider interpretations of freedom of speech should be classified as not entirely human rights, or certainly not human rights.

Why else do we need such a tough approach to distinguishing between human rights and non-human rights in the fight for justice? The fact is that it will help to overcome one of the most serious diseases of the modern human rights movement – an “artisans’ approach”, when everyone knows each other and distrusts any person who enters this field, or even suddenly measures human rights activities of others by his/her personal attitude to a person. No matter how I treat a person, but if this person adheres to the boundaries formulated above, he/she is clearly the person acting in the field of human rights. At the same time, we will be able to avoid sectarianism in the human rights movement and will believe that human rights defenders are even those people who do not share our other values, not related to the field of human rights, but related to personal commitment to another form of political regime, to other aesthetic and religious preferences. We must admit that a person can be a human rights activist and at the same time vote for the Communists, a person can be a human rights activist and treat poorly certain religious groups. It could be.

# **Who (except those sentenced to death) has the right to life?**

**Lev Levinson**

We defend human rights as moral universals in full awareness that they must counteract rather than reject natural human propensities. So we cannot build a foundation for human rights on natural human pity or solidarity. For the idea that these propensities are natural implies that they are innate and universally distributed among individuals. The reality – as the Holocaust and countless other examples of atrocity make clear – is otherwise. We must work out a basis for belief in human rights on the basis of human beings as they are, working on assumptions about the worst we can do, instead of hopeful expectations of the best.

Michael Ignatieff. Human Rights as Idolatry

The quotation from the recent article by the famous historian and politician used in the epigraph is useful for our reasoning (not only for theoretical one). The contradictions of ideas about what human rights are have been existed for a long time, and they

can only be welcomed, like any contradictions discussed, so that, as the apostle Paul told the Corinthians, “the skillful ones would reveal among you”. We, the Russian human rights community, are lacking such discussions, as well as the desire to be conscious about the philosophy of human rights, to live and to develop it. It is also bad that, in the absence of competition of ideas, a “single correct” concept with a “scientific” justification for a restrictive understanding of rights and freedoms is being formed (or has already been formed – nature abhors a vacuum). Self-limitation of human rights intervention is expanding, and here the theory goes into politics, becomes topically relevant.

Therefore, the recent small discussion at the Human Rights Club, where the poles of these differences were marked in various coordinate systems, is so valuable. On the one hand, the Club’s guest, political scientist Mikhail Mizulin, was convincing the participants of the discussion that, in the civilized world, legal scholars long ago had put all rights in their right places, as in the Mendeleev’s periodic table, and the only problem was to translate their works into Russian and teach students to them. On the other hand, human rights activist Igor Sazhin was arguing, in fact, that the theory of human rights was determined by human rights practice, i.e. it was happening here and now depending on real challenges.

In terms of content, the conversation was about equality (or inequality?) of rights guaranteed by the Covenants: the right to be free from hunger and the right to be free from torture. To be able to eat our fill and to enjoy the life, or just to enjoy the life, without food?

The fact is that the classical idea of natural human rights as belonging to a human from the birth forms the basis of modern human rights activities, especially in Russia, and determines the ranking of human rights by the so-called generation criterion. This, in turn, leads to displacement from the human rights discourse of socio-economic rights arbitrarily attributed to the rights of the “second generation”. This generation theory, combined

with the denial of collective rights, gives rise to the formation of a view on human rights that is limited and far removed from life. As a result, in the eyes of TV-viewers, the civil human rights movement acquires signs of sectarianism and politicking. Lack of understanding creates a breeding ground for defaming human rights defenders.

For the authorities, however, the rhetoric of human rights is a time-tested mean of manipulation. The authorities in the Russian Federation, using article 55 of the Constitution as a lock pick, furiously multiplies prohibitive laws – and all in the name of human rights. Thus, censorship is introduced to “protect children from negative information”, and freedom of creation is limited to protect the rights of religious believers. With Orwellian connotation, the police in Moscow, having blocked all the entrances and exits, calls not to interfere with the passage of other, invisible citizens. This is not only a picture of «unauthorized» rallies, but also the way of exercising the citizens’ rights; it is the attitude to law in general: freedom of elections without choice, freedom to have a referendum on any issues, except all the pressing ones (it is forbidden to arise such questions), public control with the permission of those controlled... Everything is just like during Andropov’s times.

In the West countries, human rights defenders are in a more difficult position. The authorities in Europe have long agreed to respect personal (“natural”) and political (civil) rights, and although they violate them, there are independent courts, a free press and free-breathing human rights defenders. However – and this is especially visible in the former countries of «triumphant socialism» – outside this gentleman’s agreement between (not only state but also corporate) powers and civil society, the topic of the «second generation» rights moves to the terminology of «interests», «laws of economics», markets, competition, weather, and anything else but human rights. For doing so, it is emphasized that there were Soviet comrades and their satellites who placed social and economic rights into the Bill of Human Rights.

The inalienable rights of the first generation are in fact no better and no worse than those neglected, put in the second and third shifts, but they are consensus rights, i.e. those about which states more or less agreed among themselves and with their citizens. From the fact that nuclear war poses a greater threat than, for example, censorship, it does not follow that freedom of speech is less valuable than peacekeeping.

We are trapped with three (or already four?) generations of human rights. The best people advocated fair and safe labor, affordable education, everyone's right to housing long before 1948. Moreover, the Bible says: «Do not muzzle an ox while it is treading out the grain». In relation to what these rights became the second generation?

The trap is that such a gradation is beneficial only for the authorities: let them speak, write, believe, get into the square, vote... Even let them have an independent court and the presumption of innocence. And here let them have the right to life in the form of the abolition of capital penalty. Moreover, there is no need to abolish it in the Western world, while in Russia there is an unlimited moratorium introduced by the Constitutional Court. Maybe our grandchildren will live to see a time when there will be no death penalty anywhere else.

However, relatively few people are now dying on the Earth following a court verdict (from stoning, on a gallows or in an electric chair). Many more – and much more – die of hunger, cold, failure to provide medical care for treatable diseases, and during the war.

The right to life is like a tree of life consisting of three branches. The first one is the right to a dignified life, to bread and shelter. The second one is elimination of both war and the state's right to force its citizens to kill citizens of another state and to die in the name of whatever. The third one is the abolition of the death penalty.

Those who deny the equality of rights proceed from the assumption that if the state with good will can always respect

the rights of the first generation, the standard of living seems to depend on objective socio-economic conditions, and cannot be ensured equally in Monaco and Congo. Let me assume that this is not the case.

How insurmountable are the economic conditions for ensuring social rights? It seems that this is not an economic issue, but a political one. When a state has money to wage war, to maintain a gigantic police system and an impossibly bloated administration-and-control system, while declaring that there is no money for social development, then it adds to these “objective conditions” an idea that there is a division into generations of human rights, and the time for the second generation has not come yet.

A hungry person does not care about political rights. He/she is told: welcome to Turkey, Paris, the iron curtain has fallen! But he/she cannot afford to buy a travel card for public transport in his/her city.

Respect for personal and political rights does not require special costs from the state and corporations, in contrast to the labor rights, or the right to adequate housing, pension and the like. On the one hand, it explains why the concept of “generations” has taken roots in law schools, but on the other hand, it serves as a justification for the “objective difficulties” of the state in ensuring its social obligations.

The matter is also in ideological contradictions. Relatively speaking, human rights activists of the older generation, dissidents who suffered from pseudo-socialist regimes, have their historical memory and do not accept the equality of freedom of speech and the right to eat sausages. They even say that the Covenant on Social, Economic and Cultural Rights was adopted by the UN General Assembly exclusively to satisfy the Soviet Union. Allegedly, the Soviet delegation refused to sign the first Covenant if the second is not adopted, and insisted on the adoption of the second by the first, so as not to be deceived.

However, when you suddenly are not allowed to go up to the

river and to enter the water in the place where people have been entering it, have been swimming and fishing from time immemorial, because of the fence enclosing private property; when the forest, where the surrounding residents picked mushrooms, berries and herbs, turns out to be the dacha of some patriarch – this is a violation of both rights and freedoms, and there is nothing to do with the difficulties of the economy.

About 15 years ago, the authorities proudly reported on the full repayment of public debt to international financial institutions. At the same time, the state completely and irrevocably withdrew its obligation to return the lost (or rather – stolen) pre-reform savings of Soviet citizens. In the 90s, human rights defenders, who did not call themselves such (Elena Alexandrovna Sannikova, Taras Onishchenko), were engaged in this topic and its legislative fixation. Is it a human rights issue? If protecting victims of power's abuse and protecting victims of crime are human rights tasks, then how is savings recovery different from them?

A sketch format of this text does not allow a more detailed presentation of my thoughts on property rights, the definition of which has transformed from a "right to property" to a "property right". I can only say that the human rights mission is not to protect "sacred property", but to protect everyone's right to property, based on the principles of justice and solidarity. I am not talking about egalitarianism and war communism, but, for example, about a progressive tax that is more consistent with a human rights concept than a single income tax for all. In this connection, I recall a sermon on the miracle of the breads multiplication by Frey Betto, a Catholic priest, the author of *Conversations on Religion with Fidel Castro*. How did Christ feed five thousand with five loaves of bread and two fishes? The miracle, according to the preacher, is that some who came to listen to Jesus and had baskets full of provisions, shared with those who had nothing. It turned out that there was an abundance of food for everyone.

So the point is not that, declaring itself social (article 7 of the Russian Constitution), the state does not have the resources to be

such. First of all, it has. How much it wasted for the Olympics and football! Secondly, it does not matter. Priorities are important – both in public policy and in the minds of people, most of whom believe in the state. And they believe that the state is everything, and a man is a pawn in the system. Why do they need the rights of the second generation, not to mention the first one? Indeed, they need the rights enshrined in the Covenant on Social and Economic Rights, but they think about this need in the categories of weather, not of law: here is the thaw, we have to use a good day; here again a chill coming from the Kremlin. Marquis de Custine, in his book “Russia in 1839”, noted the consequences of successive Russian tyranny: “If you traveled with me, you, like me, would have noticed the inevitable devastation that absolute arbitrariness produced in the soul of the Russian people. ... Other peoples tolerated oppression, the Russian people fell in love with it, and they love it to this day».

We need fair laws, including the budget that should be the budget of the social state. When they say that this category of rights results from the development of the economy, which cannot immediately become equal everywhere, this is slyness. In this case, those who claimed that all human rights should correlate with the level of social development, traditions, backwardness, savagery, etc., would be right.

Igor Sazhin puts emphasis on “protection” in the phrase «human rights protection». I put it on “right”. Reliance on human rights service is a slide from human rights to a social protection field. Of course, there is nothing wrong with this, but human rights activities take place in the political space, no matter how much to ignore this fact. The authorities cannot privatize the policy under article 32 of the Russian Constitution: citizens have the right to participate in managing state affairs both through their representatives and directly. Human rights defenders working with refugees, homeless people, people with disabilities, helping prisoners are doing a great job, but “the task should be not to uphold individual rights, which is unpromising in general lawlessness, but to change the nature of the state” (V.V. Bibikhin.

Introduction to the Philosophy of Law). This change should come preferably in an evolutionary way.

Human rights assistance to specific people and protection of their rights is a matter of conscience, compassion, solidarity, but this is an applied part of human rights discourse. Even if all the inhabitants of our country renounced their rights, they would still have to be protected – not residents, but rights (residents, however, too). Human rights in themselves are a civilizational value. Being the cultural dominant of the Christian (“Western”) world, they by themselves require protection. Therefore, protecting human rights defenders is not an oxymoron. Thus, people who gathered in defense of article 31 of the Russian Constitution defended the intrinsic value of this right itself, regardless on the specific reasons for realization of this right. As Vladimir Bibikhin wrote, «my struggle is not for my interests, but for the right itself, including mine».

I must mention charity. Those altruists who work in such organizations as the Nochlezhka, the Mother’s Right or raise money for seriously ill children deserve universal gratitude. Since they work better than state institutions, the state should be developing a system of social contracts and support these NGOs. It is bad when the state uses them as a substitution, contrasting them with “wrong” (interfering in politics) human rights NGOs. Charity in itself has nothing to do with human rights. However, there are organizations that assist people and protect their rights, such as, for example, the Civic Assistance Committee, in whose work the human rights and social protection components are merged. Therefore, it is not surprising that this organization of Svetlana Gannushkina was one of the first to be included in the black list of “foreign agents”.

In the Soviet Union, there was a public organization – the All-Union Society of Persons with Disabilities (AUSPD), which probably did something, but above all, performed the main function of the Soviet public unions – was bluffing, serving primarily state interests. For sure, AUSPD was given all facilities – buildings,

sanatoriums, other benefits for activists. And there were those, like the artist and human rights activist Yuri Kiselev, who spoke about the true situation of people with disabilities in the USSR, where wheelchair users had neither accessible environment, nor the wheelchairs themselves; where the legless, armless after the war was displaced from the streets like garbage to Valaam and to other awful and remote places, out of sight. This is what Boris Altshuler, who knew Kiselev well, said on Radio Liberty: “He lost his legs in 1945, when he was 13 years old, he fell under a tram. He was moving on such a bench, and graduated from the Stroganov School, being disabled. 48 years ago, 1956, Stalin died 3 years ago. What dissidence, what demonstrations? Yura Kiselev, he was just 24 years old, lead 30 wheelchair users right to the Old Square, in front of the Central Committee building. In 1978, when the Helsinki Group was created (then they were quickly arrested), he created an initiative group for the protection of human rights, within the Helsinki Group. He was not arrested. He had a garage burned, the tires of his small car with a wheelchair were punctured, he was beaten at the entrance of his home – all this seemed like domestic assaults. He was repeatedly threatened, and then they burned his famous house in Koktebel, where friends were visiting him for so many years”.

Nowadays, the pressure on social or environmental human rights defenders is no less, if not stronger. We see how purely social organizations that are not involved in either control or monitoring fall into the category of “unreliable”. These places – homes for the disabled and the elderly, orphanages, psychiatric hospitals, special detention centers for street children, as well as environmental disaster zones like Cherepovets, and prisons – are closed to the outside world. Why? Because the authorities of the Russian Federation, as well as of the USSR in its time, consider its citizens to be serfs.

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The core of human rights work, human rights discourse should become the anti-war movement.

When it comes to war, it turns out that the Bill's provisions on human rights are secondary to it. There are special rules of international law – the Geneva Conventions, the rules of war. If there are rules, then war goes by the rules. However, demanding the abolition of the death penalty, international organizations demand the abolition, not the humanization of the procedure (i.e. the replacement of stoning by a lethal injection). The Constitution of Russia says about the death penalty “until its abolition”. And this “until”, as the Constitutional Court said, has already come. The same should be said about war.

In the early 90s, some former dissidents and human rights activists considered the death penalty acceptable. Today, none of them has any doubts about its inadmissibility. And society is slowly getting used to the fact that this attribute of a “strong state” is becoming a thing of the past. But what is the death penalty compared to war?

The air in Moscow is saturated with militarism. In America, also there is no hearing about antimilitary mass protests. The September 11th attacks turned out to be too convincing for the Americans.

I would not assert, but I think that the Islamic state and other Nasrallah-like terrorists could be defeated by using political methods, or, at worst, with an ultra-precise microsurgical operation, like, for example, bin Laden was previously removed as unnecessary.

We deal with compassion fatigue, to be honest. I confess: the first thought that came to me when the twin towers collapsed was this: “It's done, the reason is found, now the worst will begin”... After 10 months, the law «On countering extremist activity» was adopted in the Russian Federation.

How many Greeks and Trojans would not have been killed, had it not been for Elena, had the kings not quarreled? There is no reason to dig up ancient history. There were a lot of milestones, but today one cannot speak of a “just” war. Nobody threatens us,

except our own governments. The governments that are interested in long-playing wars and, for these purposes, feeding “their own bad guys”, like Saddam Hussein.

I would not mix anti-war with anti-army. There is an army even in the Vatican, although it is unlikely that the Holy See is going to fight with someone. The army – with warships, ulans, dragoons – is a beautiful and even useful thing, like fencing sections. Only if it is not large and not combat-ready. There is nothing wrong even in the military conscription, if there is a free choice between military and alternative civilian service. Military conscription exists in Switzerland, and it is maintained there not for militaristic reasons, but with the purpose to teach the citizens of the Confederation to use weapons not in war. The armed people are useful for the stability of democracy. And the authorities behave with integrity, when the people is armed, in comparison to when the people is trained to act on commands, but is unarmed. It should be noted that no one in free and wealthy Switzerland starts firing the guns.

I am convinced: who else but human rights defenders should oppose the war – any war, even if the right to peace is not assigned to either the first or to the second generation of rights. Few people recall the alternative civilian service that was introduced in Russia. It must be promoted, and for doing so no one will blame you to be extremist. We also have Leo Tolstoy, whom neither the Tsar nor Stalin were able to ban. Let him speak for us: the Soldier’s Memo, the Officer’s Memo, the Letter to Sergeant Major, the Patriotism and Government, the Kingdom of God Inside of You and other useful writings.

Dusan Makovitsky, a doctor of Tolstoy and his student, testifies: “L.N. spoke about a soldier who had come yesterday to ask for a help for those returning from Manchuria. He didn’t shoot at the Japanese: “After all, they too, like us, involuntarily were driven into the war. Like us, were lying, shaking. They [the authorities] told us: «[Go fight] to faith, to the Tsar.» After all, the Japanese were not taking away our beliefs from us”. L.N.: “In previous times, it was

impossible to find such a soldier in Russia, but now there are a lot of them». Since the time of the War and Peace, Plato Karataev has experienced, along with his author, a spiritual transformation. Together with his war buddies, he was burning weapons in 1895. He doesn't shoot anymore.

In 1945, Bertolt Brecht answered to those who was justifying war with the poem War Has Been Given a Bad Name:

I am told that the best people have begin saying  
How, from a moral point of view, the Second World War  
Fell below the standard of the First. The Wehrmacht  
Allegedly deplores the methods by which the SS effected  
The extermination of certain peoples. The Ruhr industrialists  
Are said to regret the bloody manhunts  
Which filled their mines and factories with slave workers.  
The Intellectuals  
So I heard, condemn industry's demand for slave workers  
Likewise their unfair treatment. Even the bishops  
Dissociate themselves from this way of waging war; in short  
the feeling  
Prevails in every quarter that the Nazis did the Fatherland  
A lamentably bad turn, and that war  
While in itself natural and necessary, has, thanks to the  
Unduly uninhibited and positively inhuman  
Way in which it was conducted on this occasion, been  
Discredited for some time to come.

Since war is a crime against life, is it permissible to protect the rights of military servicemen? I think yes. The rights of every human should be protected. However, such protection should not contradict the goals of human rights activities, i.e. it must pass through an anti-militarist strainer.

It seems that a professional army is much more harmful than a draft army is. For a professional military serviceman, if he serves in the army intended to war, this is a work for which he receives money, and he has to kill in exchange. A conscript fulfills the "sacred duty," i.e. this is he who pays. There is the reason why his duty is called "sacred": it could not be paid by violating the commandment "thou shalt not kill", because the God's commandment is more sacred than military regulations.

Alas, it is unlikely that it will be possible to say goodbye to war in forthcoming 30 or even 300 years. Anyway, by now.

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Negating collective rights is another common fallacy. When the Nazis exterminated Jews, Romanies, Communists, Jehovah's Witnesses in concentration camps, the intent of the performers, organizers, instigators and accomplices was in exterminating certain national, political, religious communities, not individuals who were already indistinguishable in their striped robes.

It is generally recognized that the rights of individuals are in priority over the rights of any community and the state interests, while the community rights (national, religious, cultural) are in priority over the state interests. If a Roma born in a tabor wants to go out into the open world, breaking with his relatives and buddies, this is his right as a person, no rights of the people and values of preserving ethnic identity can impede his personal freedom. However, if the state decides to do a great favor for the nomadic people, obliging them to live in five-story apartment blocks, but the people does not want to do this, the protection of the tabor is the protection of the collective rights. The ECtHR practice does not negate the collective rights and defends it in

the context of human rights law. Some examples of this are the decisions on the complaints “The Open Door and Dublin Midwives v. Ireland”, “Communist Party of Turkey v. Turkey”. There are plenty of such examples.

The collective rights as human rights are recognized in the Russian Constitution. If in the majority of articles in chapter 2 it is said about the right of everyone, and in some cases about the right of a citizen (for example, with regard to voting rights), in article 31 citizens are subjects of the law:

#### Article 31

“Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets”.

This article is usually referred to as protecting mass protests, but the term “assembly” extends the effect of this article to all the diversity of communities. Articles 30 and 31 should be understood in their systemic unity. Article 30 enshrines the right of everyone to associate with others, this is the right of an individual. In addition, article 30 guarantees the freedom of activity of public associations – this is the right of an organization acting either as a legal entity or without its formation. Article 31 refers to the collective rights of the associated citizens in the gospel sense, if you will: «where two or three are gathered in My name, there I am in the midst of them».

I would like to see the human rights community moving away from the sectarian isolation and the efforts to focus on the elite types of rights. The meaning of human rights activities is in legal opposition to any unlawful actions of the authorities, any state violence, any unlawful restrictions on freedom.

# **The concept of human rights and the Russian human rights community in the 21st century**

**Alexander Sungurov**

The complex, constantly changing realities of the 21st century require constant reflection not only of the human rights community activities in these conditions, but also of the very concept of human rights and the analysis of the problems and challenges of this concept that arise today, proposals and discussions on its creative development. Acceptance of the human rights universality concept as an important achievement of human thought and the development of the best traditions of liberalism does not mean, however, that this concept should be treated as a frozen dogmatic teaching or as a kind of “objective reality”.

On the contrary, the human rights universality concept, like all concepts, is the result of people’s ideas about this world, including both the conclusions of the philosophers of law and politics, and normative acts of various levels adopted, inter alia, on the basis of these conclusions. Nevertheless, these ideas can change, which will inevitably lead to a change in both the conclusions

of theorists and the normative acts. For example, I would be remiss if I did not quote here the passage from a speech of Andrei Yurov at the discussion Human Rights in XXI held during the Civil Forum in Moscow on December 8, 2018: “This year we celebrate the 70th anniversary of the adoption of the Universal Declaration of Human Rights. And that is great. However, if we do not take into account that by now in the world about a billion people are in China, about a billion – in India, hundreds of millions – in Africa, who can say that they had nothing to do with the adoption of this declaration, then we risk to become the sect of believers in the second coming of human rights!”

That is why for all those who consider themselves to be human rights defenders, it is important not only to understand the possibility (or rather, the inevitability) of changing the very concept of human rights universality, but also, as far as they desire and are able to, participate in these changes. In fact, these changes arise precisely because of public and expert discussions, and only then crystallize in the form of new formulations, resolutions of forums and texts of normative acts. Naturally, supporters of “human rights fundamentalism” can also take part in these discussions, as one of the participants of the seminar Human Rights – XXI Century held on April 9, 2019 defined himself by stating that he considers “human rights are only the rights of the first generation – personal, civil and political rights.” We will return a bit later to the concept of human rights generations as one of the most controversial part of the general ideas about human rights.

## **Human rights as a subject of public and expert discussions**

Who can participate in such discussions? On the one hand, of course, the members of the human rights community themselves, which, however, is also heterogeneous. In addition, it is necessary

to go beyond it, and participate in the discussion of human rights issues with other communities, including illiberal ones. Today, it is not easy because many social groups no longer have such a will. Decade or so ago, the Orthodox community, for example, had such impulse, when in 2008 Metropolitan Kirill published a book dedicated to understanding the concept of human rights in Orthodoxy [Metropolitan Kirill 2008]. And in the same year, at the Bishops' Council of the Russian Orthodox Church, the Fundamentals of the Russian Orthodox Church Teachings on the Dignity, Freedom and Human Rights were adopted. It would seem that there was an opportunity to use the interest of the ROC in the topic of human rights for the emergence of discussions. However, instead, a number of human rights defenders began to protest against the invasion of other social groups (especially the church and the church community) into the topic of human rights. For example, during the Second All-Russian Congress of Human Rights Defenders, Gleb Yakunin spoke about the Fundamentals of the Russian Orthodox Church Teachings on the Dignity, Freedom and Human Rights: "This Declaration undermines the democratic foundations of the society and contributes to the creeping constitutional coup". And no one objected then.

More than ten years have passed, and now the will to discuss the topic of human rights has faded away in the Orthodox community. We understand that the events that took place after 2012, and especially after the annexation of Crimea, significantly changed the general mood in the Russian society, but now the situation is changing again, and a previously absent public request for justice, equality before law and respect for people by the authorities has arose. Now, it is necessary not to miss again the opportunity to invite to the discussion on the modern understanding of human rights the representatives of the illiberal parts of the Russian society – church members, leftists, conservatives, etc. The experience of international discussions shows that the concept of human rights is used, albeit in different ways, by adherents of almost all ideologies, except the most radical.

The academic or expert community can become another area for discussion on the problems of the human rights concept. In the past decade, such discussions took place at the seminars and symposia of the St. Petersburg Humanitarian and Political Center STRATEGY. An important step towards attracting political scientists to the discussion of the human rights topics was the creation of the Human Rights Research Committee in 2004 (within the framework of the Russian Association of Political Science), started up by O.Y. Malinova, V.V. Smirnov and others. A particular result of these efforts was the publication of a thematic section in the journal *Polis* in 2010, as well as the preparation and publication of the collective monograph *Human Rights in Front of the Challenges of the 21st Century*. At the same time, with the active participation of the Human Rights Research Committee of the Russian Association of Political Science and, above all, its member, PhD in Political Sciences, S.I. Glushkova (University of the Humanities in Yekaterinburg), the first encyclopedic dictionary on human rights was published in our country, all-Russian contests for young scientists on the topic of human rights were held.

It is worth emphasizing that the creation and more effective operation of such expert and analytical platforms on the topic of human rights are still hindered by the interdisciplinary boundaries that exist today in the social sciences. The concept (or theory) of human rights all over the world is developing at the intersection of jurisprudence, political science, philosophy, sociology and a number of other sciences. Interaction «above the barriers» in modern science, especially in Russian, is very difficult, and scientists working in the interprofessional field are often considered by their colleagues as «not meeting professional standards.» In such situation, it is important to support the development of researches “at the crossroads”. So, in our recent article with Anna Zakharova (Semikova), we advocate for the expediency of developing such an interdisciplinary field of research as the political science of law, within the framework of which it is possible to consider more effectively the development of the human rights concept.

I am sure that the permanent seminar Human Rights – XXI Century, the first session of which took place on April 9, 2019, could become an important platform for such, on the one hand, expert-academic, and, on the other, interdisciplinary communication.

## **Briefly about some problems of the human rights universality concept**

Let us now consider as an example several problems associated with the modern understanding of human rights. First of all, here it is worth discussing the question of how the principle of human rights universality is related to the concept of multiculturalism, which involves the preservation and development of cultural differences in a particular country and in the world as a whole. Accordingly, the question arises, is it necessary to take into account the cultural traditions of people belonging to different civilizations, offering them the same understanding of human rights? This question was raised already 70 years ago, when at the end of the 1940s, the Universal Declaration of Human Rights had being prepared. A group of scientists from the American Anthropological Association, led by M. Gerskowitz, came up with a Memorandum calling into question the universalist concept of human rights. According to their position, “standards and values have a special character in different cultures from which they come from, therefore any attempt to formulate the postulates arising from the ideas or moral code of one culture prevents the spread of such a declaration of human rights to humanity as a whole...»

The first Dean of the political science faculty at the Higher School of Economics L.G. Ionin writes in his book *Sociology of Culture*: “The United Nations, in fact, ignored this memorandum, and laid the universal concept as the basis for the Universal Declaration of Human Rights, according to which human rights

are uniform for representatives of all communities in the world order, regardless of the traditions specificity constituting these communities and the principles of freedom's understanding inherent in these traditions”.

This ignoring occurred, in my opinion, because the states-victors of the World War II at that time urgently needed a concept that would allow building international relations on some other principle, different from the principle of sovereignty of individual states, which had recently seemed unshakable. Exactly, the inviolability of the sovereignty principle led to the fact that the first international global organization – the League of Nations – could not stop the crimes of Nazi Germany against humanity. The principle of human rights universality has become such a new unifying principle. Today, seventy years later, it turns out that ignoring the position of anthropologists does not lead to the disappearance of the problem itself.

Therefore, today nothing can prevent us from recalling how, according to the authors of the Human Rights Memorandum, these human rights should be declared: “The basis should be the global standards of freedom and justice, based on the principle that ... a person is free if he/she can live according to the understanding of freedom that is accepted in his/her society. And vice versa, an effective world order cannot be imagined if it does not encourage the free development of the personalities in relation to the members of the communities constituting this order”. Indeed, the very concept of human rights is a product of Christian European culture; moreover, it arose within the Protestant branch of Christianity. The followers of Catholicism had not immediately accepted this concept, while within the framework of the Orthodox subculture there are still heated discussions about the acceptability of the universally recognized norms of human rights, as well as their own interpretations of human rights are being put forward. And this is only within the Christian culture. In the world, there are other religious systems, such as Islam, Judaism, Buddhism, etc. How justifiable is it to impose a product of one

of the cultures on the others? But if we get away from such an imposition, will this not help various kinds of authoritarian and totalitarian dictators to keep maintaining their power in various countries of the world?

In this text, I will dwell on the second problem – the lack of a clear understanding in relation to the essence of the concept under discussion today: what human rights are we talking about? The position of “human rights fundamentalism” mentioned above assumes that true human rights are only the rights of the “first generation”, the rights referred to in the International Covenant on Political and Civil Rights. Indeed, for a state to exercise these “fundamental” or “negative” rights there is only a need in a state “goodwill”.

Nevertheless, today, even in the process of the activities initiated by the European Court of Human Rights in Strasbourg (which works on the basis of the European Convention on Human Rights, with focus mainly on political and civil rights), voices are growing in favor that the state should also protect positive human rights, social, economic and cultural rights, and find means and opportunities for this. As for the global level, the International Covenant on Economic and Cultural Rights was adopted by the UN General Assembly simultaneously with the International Covenant on Political and Civil Rights in 1966. At the same time, the problem of “distributive justice” arises here: at the expense of whom should we support the poor?

The biggest difficulties, in my opinion, arise with the “third generation” of human rights, or with the so-called group rights. Who is the subject of human rights: exclusively individuals or individuals and groups? Is it possible to consider the rights of the peoples by analogy with human rights? Is “positive discrimination” legitimate, i.e. providing additional opportunities to the groups that are in the least favorable conditions for realization of their rights? Isn't it a violation of the very idea of human rights? It is also known that many human rights defenders, for example, Marek Novitsky, consider it unjustified to talk about collective human

rights in general. They believe that it is more correct to talk about the rights violation of a particular individual in connection with his belonging to a particular ethnic or social group.

Finally, there is such a (holistic) point of view that the very division of human rights into generations is a relic of the Cold War. This position is based on paragraph 5 of the Declaration of the World Conference on Human Rights in Vienna in 1993: “All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equitable manner, on equal terms, and with the same emphasis.”

It seems to me that, perhaps, we should not win the consent on the generations of human rights; it is enough just to admit that there are different points of view on this issue, as well as on some other issues related to the topic of human rights. The same approach may be useful in analyzing the development of the human rights community itself: namely, in order to recognize the presence of various groups inside of it, nevertheless united by a common respect for the category of “human rights”.

## **Human rights defenders and the human rights community**

First of all, let us try to define the very concept of “human rights defender”.

The shortest definition of this concept we can find in Wikipedia, it is also repeated in other dictionaries:

***Human rights defenders*** are people engaged in public activities that consist in protecting human rights by peaceful means, as a rule, from the arbitrariness of state structures or officials.

The website “Law and Order” provides for the following

definition of human rights organizations (HROs), which seems to me quite appropriate:

***Human rights organizations (HROs)*** are a special type of non-governmental nonprofit organizations whose activities are aimed at affirming and protecting human rights and freedoms, effective monitoring on their observance by the state, its bodies and officials. HROs help reduce organized violence from the side of the state.

***To do this, they work simultaneously in three directions:***

- Protection of human rights in specific cases (this assistance should be free for the applicant), public investigations of human rights violations committed by state bodies.
- Dissemination of information about human rights, legal education.
- Analysis of the human rights situation.

It seems to me that, with this common denominator, within the community of human rights defenders, there may be subgroups united by their own understanding of the very concept of “human rights”. For example, “human rights fundamentalists”, who recognize only the first generation of human rights, may be regarded, conditionally speaking, as the right-wing liberals of the political spectrum, for whom the value of freedom is higher than the value of justice. The human rights activists who recognize both the first and the second generations and are aware of the importance of both freedom and justice, relatively speaking, are closer to the left liberals. Those human rights defenders for whom the priority is the equality of rights not of individuals, but of certain social, ethnic, gender and other groups are closer to the ideologies of socialism, multiculturalism, feminism, etc., which does not prevent them, to some extent, from being members of a community, together with left and right liberals. The idea that human rights are the main value of the emerging global justice, or the world law, standing above the sovereignty of individual states is common to all subgroups of human rights defenders.

Almost twenty years ago, I already had to propose an option for classifying Russian human rights defenders, distinguishing among them several types. Let us look at how the proposed classification works today.

As **the first group**, I singled out human rights defenders with “pre-perestroika” experience, i.e. those who advocated for human rights in Soviet times, and, accordingly, were subjected to repression. Undoubtedly, they are the “golden fund” of the Russian human rights movement; they are people who for the most part serve as a yardstick for other human rights defenders and for ordinary Russian citizens. The problem today is that, with the passage of time, these people are getting old and, unfortunately, are leaving this world. There are a diminishing number of them.

I will note here that even then, twenty years ago, when discussing the theses of that text, L. M. Alekseeva suggested that there were two subgroups in this group: true human rights defenders, for which promotion and protection of human rights of specific people remained the priority, and opponents of the Soviet regime who chose the human rights movement as a form of anti-Soviet activities.

Today I would describe the second subgroup as a more politicized part of human rights defenders, for whom the very interaction with the leaders of the authoritarian authorities becomes unacceptable. L.M. Alekseeva, by contrast, was a prominent representative of a minimally politicized subgroup of human rights defenders-veterans.

**The second group** consists of people who joined the human rights movement during perestroika or shortly after its end. As a rule, they were active participants in the political clubs of 1987-1988, and then members of the Peoples Fronts in support of perestroika, along with the «old» human rights defenders they also were the founders of the Memorial movement. At the beginning of the 90s, they, unlike most of their comrades from the Peoples Fronts, did not join political parties, but consciously chose activities in human

rights organizations, and by the end of the 90s, they had already gained solid experience in this area.

The human rights defenders from this group today have become the basis of the Russian human rights movement; they have gained important experience working with human rights defenders of the first group, in many ways have absorbed their moral principles of work and life. At the same time, many of them became good managers of their own organizations, having learned how to work and live in conditions of a sharp decrease in the resource base, in the face of growing negative attitude to their activities from the side of both the authorities and a part of the population.

As ***the third group***, I described human rights defenders, representing the very emerging, or “grass root” level. As a rule, they are ordinary people who have not previously participated in the democratic movement, but faced human rights violations (often by themselves or on example of their relatives) and were able to protect the violated rights. Very often, these people continue their activities on protecting the violated rights of other citizens, becoming a kind of «people’s advocate”. This type of human rights defenders was the most widespread twenty years ago; I wrote that they formed the basis of the human rights movement in our country.

In my opinion, today the situation has changed, and this type of human rights movement participants has decreased significantly. I see the reason both in the expulsion of various foreign funds from our country and in a change in the general atmosphere of the Russian society, an increase in the expression of the authorities’ attitude to human rights defenders as to representatives of the “fifth column”. Thus, the third group of human rights defenders remained, but significantly decreased.

Twenty years ago, representatives of ***the fourth group*** of human rights defenders were very similar in their origin to representatives of the second group, but unlike the latter, in the early 90s, they took an active part in the creation and activities of political parties and

movements, such as the Democratic Russia, the Democratic Party of Russia, the Free Democratic Party, the Republican Party, etc. Subsequently, they “did not fit” into the first or second echelons of Russian political parties, and their parties, movements and regional branches gradually found themselves “on the sidelines” of the political process. In this situation, some of these leaders decided to “play on another fields”, i.e. to switch from politics to the human rights movement.

This group of participants in the human rights movement decreased even more than the previous third group, and this was due to the fact that everyone who could have already joined the community of human rights defenders in the 90s. No new “former politicians” appeared, primarily because of sharp narrowing of the field related to political parties, which happened in the first decade of this century.

I classified to **the fifth group** human rights activists of various non-governmental non-profit organizations (NGOs) or, in other words, organizations of the third sector. They, in solving the tasks of their NGOs, came the way from understanding the need to protect the rights of their members to understanding the importance of protecting the law as such and the importance of public control over the authorities. This group exists today, and at approximately the same level (compared with the third and the fourth). New arrivals of human rights defenders appeared here not so much through NGOs, but through participants in the election observer movement, which arose in 2011-2012 and continued to be a significant force today.

**The sixth group** at that time consisted of young lawyers, often having their own legal practice, but devoting part of their time to participation in the work of human rights organizations (for example, by conducting specific cases or providing consulting services pro bono). Started to work as professional lawyers, they soon realized that without changing the attitude of the authorities towards the law, it is impossible to have a legal framework for the work of qualified lawyers. Some of them, being involved in the

activities of human rights organizations, were beginning to feel civil responsibility for the current events, thereby drawing closer to human rights defenders of the second group, but differing from them by their high professionalism in jurisprudence.

This type of human rights defenders, or human rights-oriented lawyers, still exists today, at least in large Russian cities. A vivid example of this type is the St. Petersburg lawyer Ivan Pavlov, who from 2004 to 2014 headed the Institute for the Development of Information Freedom. After recognizing this foundation a “foreign agent,” Ivan Pavlov created an informal association of lawyers and journalists entitled “Team 29”, which defends the rights of citizens on information in the courts and conducts awareness-raising activities by publishing on its website materials on state secrecy and legal instructions for citizens.

Twenty years ago, I distinguished three more groups of “quasi-human rights defenders”. Now, only one of them remains: imitation structures, or created with the support of the authorities (such as the Human Rights Movement Resistance headed by Olga Kostina, which for several years had been an operator of Presidential grants in human rights sphere), or created by personal initiative, but at a certain stage ceased to critically evaluate any actions of the authorities (such as the Moscow Human Rights Bureau of Alexander Brod). It is noteworthy that Olga Kostina and Alexander Brod were members of the Public Chamber of the Russian Federation. Moreover, in 2012, Alexander Brod became a member of the Presidential Council for the Development of Civil Society and Human Rights because of a special order issued by V.V. Putin after Brod’s hunger strike on the reason that he was rejected the membership in this Council initially.

Thus, today mainly the second, fifth and sixth groups of human rights defenders remain.

In conclusion, I would like to note one more particularly disturbing tendency related to the development of the Russian human rights movement. This tendency was identified by our

St. Petersburg humanitarian and political science center STRATEGY during the implementation of three projects (supported by presidential grants) with the general title “Development of constructive interaction between state and non-state human rights organizations” in North-West (2014), Central (2015) and Volga (2016) Federal Districts. It is a rather serious decrease in the number of human rights organizations in all aforementioned subjects of the Russian Federation (except Moscow).

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