

HUMAN RIGHTS AND FUNDAMENTAL RIGHTS  
AND THEIR IMPACT ON THE CIVIL LAW SYSTEM

## Terminology and abbreviations

### A. On the terms "human", "fundamental" and "constitutional" rights

- The term *human rights* stands pre-eminently for a philosophical concept. Human rights are the "natural rights" of every human being deriving from *natural law*. These rights are considered pre-legal. They existed before the state. The state can neither create nor abolish nor regulate them but must respect and safeguard them. The national constitution cannot grant them but only guarantee their respect and safeguard. For this reason, most advanced constitutions do not use the term "human rights" except in the preamble and in order to express the general commitment to the idea.
- The common way to legally implement the philosophical concept of human rights is to create corresponding particular legal positions within the national legal order. These positions are called *fundamental rights*. They are not identical to the human rights. They are created, shaped and granted by the state, can be repealed and are different in every state. But they are the rights that can be handled by the lawyers. If they are granted in the constitution, they are also called *constitutional rights*. However, in most states not all constitutional rights implement the idea of human rights or not all human rights have been transposed to constitutional rights.
- When human rights are guaranteed in *international treaties*, they are still called "human rights". However, in this case, the words represent a legal term. Like the fundamental rights, these "human rights" are not the natural, pre-legal rights of the human being but artificial rights. They have been created and organised by the treaties and show many similarities to the fundamental rights guaranteed in the constitutions. There may even be a special legal procedure to defend these rights. However, they usually pretend to be just a *mirror of the natural rights* and therefore are called like them. In this case, they just define indispensable minimum standards. For this reason, usually the standards of the fundamental rights in the national constitutions are higher.
- Most constitutions reserve some fundamental rights to persons having national citizenship and grant other fundamental rights to all human beings. The first category may be called *rights of citizens*. The second category may be called *rights of man* [= of all human beings]. The term "human rights" is not appropriate to describe this category because dogmatically these rights are not human rights but fundamental rights too. A constitution cannot grant human rights but only fundamental rights. In the given context, "human right" and "right of man" is not the same. The many theories and concepts concerning the human rights as "natural", pre-legal rights do not apply and cannot be transferred to the fundamental, legally shaped rights of man. By ignoring the described worldwide linguistic usage, the Constitution of the Socialist Republic of Vietnam of 2013 causes serious misunderstandings that affect the debate on human and fundamental rights in Vietnam.

### B. Titles and abbreviations<sup>1</sup>

abbreviation	official title/designation
ACHPR	African Commission on Human and Peoples' Rights / African Court on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AHRD	ASEAN Human Rights Declaration
AP	Additional Protocol
Banjul Charter	African Charter on Human and Peoples' Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women / Committee on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination

<sup>1</sup> For the titles and abbreviations in German legal terminology see *Schmitz, Terminologie und Abkürzungen*, 2006, [http://lehrstuhl.jura.uni-goettingen.de/tschmitz/Downloads/Schmitz\\_IntMRSch\\_Terminologie.pdf](http://lehrstuhl.jura.uni-goettingen.de/tschmitz/Downloads/Schmitz_IntMRSch_Terminologie.pdf).

CESCR	Committee on Economic, Social and Cultural Rights
ChFR	Charter of Fundamental Rights of the European Union
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child / Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities / Committee on the Rights of Persons with Disabilities
ECHR	European Court of Human Rights / Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention]
ECJ	European Court of Justice
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
European Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
ESC	European Social Charta
ECSR	European Committe of Social Rights
GRC	Convention relating to the Status of Refugees [Geneva Refugee Convention]
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights / Inter-American Court of Human Right
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
OP	Optional Protocol
SPT	Subcommittee on Prevention of Torture
UDHR	Universal Declaration of Human Rights
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review [of the human rights situation in a country by the UNHRC]

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