

## RÉSUMÉ

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When building-up a logical system of any theory, the so-called axioms, i.e. statements which are not demonstrable by any further proofs are put as cornerstones. Based on correct rules of derivation, to which particularly deduction is ranked, propositions – theorems are derived from which it should be possible to deduce any statement of a certain theory. The concept of human rights and natural law as such is based on two basic axioms – statements saying that people are born free and are equal in dignity and rights.

This phrase has appeared in many legal documents on human rights and it is traditionally contained in constitutions of individual states. Human economic, social and cultural rights and freedoms make such ranges of rights and freedoms of individuals or groups which rights and freedoms dwell, by their nature, particularly in active role of the state as the main executor of the rights and duties. However, it is a matter of knowing and setting the degree of the rights and freedoms because, though the legal regulation has and must have its objective, it cannot be the prescribed living standard of each citizen.

To determine or at least estimate the legal state development directions in the area of legal regulation of the co-existence of the members of the society is difficult. There's no other choice but to state as *ALEXIS de TOCQUEVILLE* (1805 – 1859) did in his work "*Democracy in America*" that it is not necessary to worry about equality because it will always be pushed through, however long it may last, but it is necessary to worry about liberty which may suffer a lot in when equality is being pushed through.

According to the Constitutional Court of the CR, the category of equality embodied in Art. 1 of the Charter of Fundamental Rights and

Freedoms belongs to those fundamental human rights that make, by their nature, the social values constituting the value regulations of the society. Within the social process, these values fulfil the function of rather only ideal typical categories expressing target ideas which cannot quite correspond to the social reality and can be attained in an approximate way only. Equality might thus become a universal principle only at the objective of the social and historical development, within this development, its consistent observance might be appealed to only a certain measure. Equality may thus correspond to reality only in certain basic data; otherwise it may appear at a limit which may be overstepped at the price of a breach of e.g. freedom.

Equality is thus put quite consequently in the relations with freedom which it is mutually conditioned with appearing thus on the basis of both mutual support, and conflict. This also means, therefore, that inequality in social relations, should it touch on basic human rights, must reach the intensity challenging to at least a certain measure the very substance of equality. While freedom, as to its content, is given straight by the substance of an individual, equality usually requires "go-betweens", a relation to another social value.

The state must be established as the so-called "Madison" system which tries to satisfactorily resolve, or, more precisely, conciliate contradicting principles.<sup>39</sup> The first principle is the people's self-government which means that in certain areas of social life, majorities may govern themselves. The second principle which cannot often tolerate the first one says that there are things that majorities may never do to minorities, nor individuals. Individuals and minority must have freedom here.

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<sup>39</sup> In details BORK, R.H. *Amerika v pokušení [The Tempting of America]*, Prague: Victoria Publishing, 1993, p. 151 – 153.

However, the conciliation of these two quite antipole principles cannot be made once for all. The dilemma solution dwells withal in finding the right balance of interests of the majority and those of an individual and its relevant reflecting in legal standard which will not be a mere ad hoc solution.