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The Value Basis of Education in the State School

The Educational Concept Based on Human Rights is not, and cannot be, the only Legal Form

Abstract: Although in public discourse the concept of human rights is legitimate and undisputed, as has characterised the Slovenian space since at least the end of the 1980s, in the pedagogical profession we can still continuously find theorists who draw attention to the 'postmodern doubt' regarding the existence of universal values that are 'common to all men and indisputable' and that could form the basis of education in the state school. This doubt is also applied to human rights as an ethical concept. In the article we attempt to show that human rights are an ethical concept that is a justifiable basis for education in the state school. The concept of human rights and responsibilities also includes 'the basic social moral' in as much as it includes and connects ethical principles that also form part of particular value-moral systems. Here we refer to the utterly basic ethical norms or values in interpersonal relationships, with which the ethics of human rights implement universal moral responsibilities towards one's fellow man; responsibilities that include the important dictates of traditional morals that are key to human existence.

Key words: the ethics of human rights and responsibilities, the educational plan of the state school, legal form, values in state schools, the education of teachers

UDK: 37.034

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Theoretical doubts about the concept of human rights as the value basis of education in the state school

Although in public discourse the concept of human rights is legitimate and undisputed, as has characterised the Slovenian space since at least the end of the 1980s, in the pedagogical profession we can still continuously find theorists who draw attention to the 'postmodern doubt' regarding the existence of universal values that are 'common to all men and indisputable', and that could form the basis of education in the state school. This doubt is also applied to human rights as an ethical concept.

As part of philosophical-anthropological knowledge, this kind of doubt and discussion is legitimate and essential since it is one of the paths to reflection on the tension in value systems, to understanding the human being as a social being, to reflection on the specificity of cultural contexts and so on. However, in view of the Slovenian constitutional provisions and the organisation of public education ensuing from these, the pedagogical profession cannot and should not avoid conceptualising the basic framework of values on which teachers in the state school rely in the pedagogical process. Teachers in the school always function in a morally educative way and they must thus also reflect on how school should provide moral education in order to ensure that in so doing no one will be excluded or privileged based on their values, religion, affiliations with philosophy or faith, sex, ethnic affiliations, race etc.

Although, hypothetically speaking, social or cultural anthropology (e.g., Vuk Godina 1990; Benedict 1934; Mead 1928; 1935), or the philosophy of morals (e.g., MacIntyre 1987), for instance, could demonstrate that there is no value system that is common to all mankind and valid for everyone, such a debate would not be decisive in the state school. As already stated, from the viewpoint of the formal frameworks on which the Slovenian state is based, it is today indisputable that human rights represent a value matrix in which the place of common values is located. Pedagogical theory, in as much as it concerns education in the Slovenian

state school, must therefore engage with the question as to what kind of ethical principles and values the concept of human rights brings with it, what this implies in relation to other, particular value systems, and similar questions. Thus, in this context it would be misguided to send the message to school practice that there is no indisputable, commonly acceptable value system, that only diversity exists in the postmodern world in which there are no common values, and similar.

Is the formal institutionalisation of human rights an obstacle to interpersonal function – education in the spirit of these rights?

In an article from 1991 concerning education in the postmodern era, Medveš draws attention to '... the illusionary search for a lasting historical value system common to all mankind, indisputable and acceptable to everyone...' (Medveš 1991, p. 109), which at the same time would not be particular and thus exclusive. Approximately a decade and a half later, he again addressed the questions of values and education, referring to and revising his thesis quoted above. He enquires 'whether it is possible to define a universal moral codex in the postmodern era at all. The question is whether we can even speak about the consensual acceptance of a codex (for instance, about human rights) in view of the discrimination and exclusion of certain (minority) cultures and values in almost every social environment' (Medveš 2007, p. 23). He added that 'the postmodern resists theses that seek to bring finality to everything by determining, defining, framing, ...' and that the message of the postmodern is precisely that 'this striving towards the validity of the One is that which in the modern era not only failed to prevent the great human catastrophes of the recent past... but actually triggered them with its intolerant attitude towards monolithic world culture' (ibid.). We believe that the question is incorrectly formulated here. It is a notorious fact that it was just after World War II that the concept of human rights was formally generally accepted (the United Nations, the European Council, the Second Vatican Council). It was accepted as the norm precisely as a consequence of the radical disrespect of these basic ethical principles that had led to the Second World War. It was also accepted because the concept of human rights establishes the ethics of allowing diversity in an entirely clear way (or, put in more philosophical terms, it invalidated the validity of the One, as in the place of One positively determined Truth it implemented freedom, or autonomy, of the individual and of specific cultures). The fact that, in reality, human rights are infringed everywhere – through discrimination, exclusion etc. – is not an argument against them being the formally generally accepted common value system. Unless we do not think it could ever be possible to live in an ideal world of the absolute validity of the concept and the realisation of its principles. If it were like this human rights would no longer be necessary as everyone would already always behave according to these norms.

Here a question that directly concerns pedagogical practice can legitimately be posed: Why do human rights not have an appropriate place in the education process in the state school?

Medveš sees the reason in the *formal institutionalisation* of human rights. He writes that '... The General Declaration of Human Rights calls on society and the individual to respect these rights and to educate in the spirit of their respect, but in practice the interpersonal function of human rights is, to a large degree, open and undetermined precisely because of their formal institutionalisation' (Medveš 2007, p. 12). Here there is, first of all, the question of what the expression formal institutionalisation actually refers to. From the continuation of the argument it can be seen that the author understands formal institutionalisation as legal procedures. This is evident from establishing the answer to the question as to 'what human rights mean in the relationship between pupils and teachers', adding that 'in execution they transform themselves into instrumentalised legal procedures' (ibid.). We completely agree with his thesis that 'in order to implement rights in interpersonal relationships a person must develop something essentially more fundamental than just knowing and mastering procedures that ensure the protection of rights in state institutions' (ibid.). We do not, however, share the opinion that the ethical side of rights 'due to their formalistic instrumentalisation is obviously not even able to be developed, neither in everyday life nor in the operation of institutions' (ibid.). Further, it is impossible to overlook the fact that in this formulation the thesis becomes even more generalised: not simply legal procedures, but *form as such* – 'formalistic instrumentalisation' – prevents the ethics of human rights being vitalised in everyday life and the operation of institutions. We accept, to a certain point, the argumentation that the concept of human rights – not just in pedagogical practice – has been thematised and equated with formalist instrumentalisation, but we must add the suspicion that, at least in pedagogical practice, this has been facilitated to a great extent precisely by the prevailing theoretical interpretation. This interpretation, taken only from the conditionally said disciplinary educational perspective, (co)creates and confirms such a view. Below we offer a critique of such an interpretation.

Education in the spirit of human rights – or common sense?!

First we will answer the question of what education in the spirit of human rights means. Medveš asks 'what does education in the spirit of human rights mean?' (ibid.), claiming that human rights are dealt with because 'numerous articles in the foreign and Slovenian press exaggerate the significance of human rights for education in the contemporary era, seeing in them a new Archimedes' Point on which the entire educational concept of the state school can be based, and forgetting about ideological burden,¹ ethics or morals' (ibid.). As a starting

¹ The criticism that by having the concept of human rights as the value basis of education in the state school one 'forgets about the ideological burden' cannot be addressed here since what is meant by 'ideological burden' in this context is not clarified by the author. Of course, the concept of human rights is in itself – among other things – oriented precisely against any kind of indoctrination. A great deal has already been written about the criteria of the European Court that are also used in school practice in this regard (cf. Kodelja 1995; Kovač Šebart 2002).

point for the *answer* to the question, he repeats the thesis that with these rights 'all that is established in school is a set of rules and a »legal environment«' (ibid.), and he writes that human rights come to expression 'rarely on the statement of any kind of warning, reprimand or threat of something even worse, that is, in procedures for which the school and its organs must hold to the prescribed procedures...' (ibid., p. 13).

The answer to the question of what education in the spirit of human rights means is thus connected by the author to that which is, according to him, most explicitly embodied in practice, where in his opinion human rights are reduced to a legal form. Here the implicit² conclusion is derived that ethics (where the author equates ethics with opposites and the contrary positions of the prosecutor and the advocate, who are characteristic of the form of legal procedures) in the spirit of human rights are not sufficient, therefore 'in the goal orientation of educational conduct, the school should give priority to ethics in general, as well as to the ethical dimension of human and child rights, over the legal dimension. (...) the school should accept human and child rights only in connection with their ethical definitions' (ibid., p. 14). The emphasis on the fact that pedagogical theory and practice should engage with the ethical and legal dimension of human rights is completely correct. However, in so doing we cannot overlook the thematisation of the following theoretical conclusion: 'because we know that there is no ethical theory that would give reliable support, it is possible to simply conclude that the school should accept the principle of the ethics of »common sense« as its ethical codex' (ibid.). In this conclusion it is difficult to overlook the message that there are actually no determined common values, and that we should rely on 'common sense', although the author immediately uses the latter in the sense of judgement and behaviour that must be the way it is: 'This Šthe principle of the ethics of 'common sense'Ć should mean that in school nothing can happen that is in contradiction with its goals, duties and social mission, nor with the values of human rights and justice in general' (ibid.).

This conclusion is not (in itself) disputable, and we accept it. In connection with the broader context of his argument, however, the finding is unclear and possibly also ambiguous. Why? On first view, it invalidates the message of the previous conclusion: if the directive was previously 'common sense', then 'common sense' is now reinterpreted as something other than that which we normally understand it to be. *Common sense* normally means that someone *according to their own judgement* follows the *prevailing social norms*.³ This can be misleading

² Through a series of 'paradoxes' (cf. Medveš 2007, pp. 13-14).

³ Merriam-Webster's Unabridged Dictionary (2005) defines 'common sense', which has its etymological roots in Latin and Ancient Greek (Latin: *sensus communis*; translated from the Ancient Greek: *koinē aisthēsis*), amongst other things as: 1. 'good sound ordinary sense: good judgment or prudence in estimating or managing affairs especially as free from emotional bias or intellectual subtlety or as not dependent on special or technical knowledge Štoo absurdly metaphysical for the ears of prudent common sense P.E. MoreĆ; and 2. (we leave out the specific philosophical understandings): 'the unreflective opinions of ordinary men: the ideas and conceptions natural to a man untrained in technical philosophy'. The Dictionary of Slovenian Literary Language (2007) connects 'common sense' (Slovenian: 'zdrav razum') with: 'to be healthy intellectually, capable of thinking, to act in a considered

because the author refers to 'the social mission of the school', 'human rights' and 'justice'. The author fails to provide a more detailed clarification of what the social mission of the school and justice should actually mean. He now attempts to anchor the term human rights above all as the foundation of ethics in the state school and not simply as a normative edifice. However, as doubt is expressed in the context of the text about the possibility of defining a universal moral codex, the reader can here again fail to understand the concept or fail to take it as the ethics of human rights, but instead in the sense that, as the author has expressed, it is 'undeniable that the school cannot⁴ infringe human rights in its conduct' (ibid., p. 14). Further, if in practice and in theory the concept of human rights is understood as formal institutionalisation, and if doubt is expressed about the possibility of a universal value framework, and thus common sense is evoked, teachers' behaviours in school, which should respect human rights and follow these norms, can very quickly be understood simply as respecting the established rules (the rules and responsibilities of the pupils) and the legal procedures in determining sanctions.

As the basic message regarding values in the training of teachers, such a conclusion needs to be clearly supplemented precisely because together with the postmodern thesis that it is impossible to establish any positively formulated value framework for education in the state school, but only 'common sense', it is possible to read the message as: *teachers, behave in education 'according to your own judgement'*. This enables the introduction of a kind of 'blank space' of the field of values; a 'blank space' only at *on first sight*, of course: the concept of common sense and education based on this principle would, of course, not establish an *empty space* of values as there is no consistent concept of common sense without its own measure of judgement, without a normative framework on which it is based, thus on the *prevailing* or on some other kind of specific particular defined social norms and values. Or, as Haydon pointed out, 'it would have to always be embodied in the practice, habits and expectations of persons who live in society, not in choice and reflection from the world of discrete individuals' (Haydon 1987, p. 3). Thus with the very concept of common sense we covertly introduce precisely the concept of a positive value framework (as already stated, the contents of the prevailing norms and values within a specific society, or some other specific value framework that the teacher follows as a member of a particular community). In contemporary multicultural society, however, this by definition means that the state school would be based on a particular value framework, albeit that of the majority, and that it would not have a measure of how to behave

way'. The notion of common sense, therefore, tends towards a measure of judgement and the 'common man's' capacity of judgement, while the statement 'to be healthy intellectually' implies the negation of 'insanity', which presupposes the border between normality and insanity, something that sociologists, cultural anthropologist and others have already incontrovertibly demonstrated is culturally determined and defined by prevailing norms, opinions etc. How 'common sense' is understood in common usage is probably suitably expressed in 'non-scientific' sources such as Wikipedia: 'what people in common would agree', 'the knowledge and experience most people have, or are believed to have by the person using the term' (Wikipedia 2007).

⁴ Perhaps what is meant here is that the state school 'is not allowed to' infringe, as *de facto* infringements can of course occur.

in situations where various particular value frameworks come into conflict (cf. Lukes 1997; Kymlicka 1995). With the concept of common sense we do not follow the postmodern with the motto that the place of values or authority should be *in principle* empty; rather we covertly introduce the principle of the reign of a framework of particular values and broadly open the space of self-will. If at the same time human rights (if we understand them as a correction of common sense) are established only as a legal form (not as ethics, as they should be in this case) and because the term 'justice' (if we do not define it in more detail) does not convey anything determined as it can signify a range of contradictory theories of justice, with such ambiguous directives teachers are not given a clear answer as to what (which norms, values and rules) should form the basis of their decisions regarding their educational judgement and behaviour when they make a decision according to their own judgement, whose criteria is 'common sense'. Without the normative, value framework of human rights, teachers do not have the support, safeguards and correction that, at least in principle, enable them to avoid the caprice of their own particular system of value judgement on one hand, and to avoid the exclusion or favouritism of the prevailing, but still particular, value judgements in conduct towards the individual pupil, on the other. Of course, it is true and beyond doubt that in the state kindergarten and the state school it is necessary to impart as the common norm a range of habits of civilisation that are culture-specific and, in the end, arbitrary (for instance, certain types of food are eaten with a fork and not with the fingers or chopsticks etc.). Thus we 'rationalise' and find some logical foundation for these habits (such as reasons of hygiene) and in such contexts a suitable educational approach could be for the teacher to simply tell the pupil that 'in our society' 'we simply do it this way', and that in other places it is done differently. However, moral education in the state school cannot remain non-reflective in the area of basic common values. It is necessary to internalise these norms and know how to use them as principles, and this holds for teachers as well as being an educational goal for pupils.

The thesis that we refer to in the text as something that is insufficiently embodied in practice, namely that human rights should hold as ethical norms in everyday life and in the life of the state school, is also in our opinion actually referred to by Medveš' analysis. The 'lack of definition' or 'lack of consummation' of the ethics of human rights in the state school, and the institutionalisation of this concept, demands continued further debate and explanation, but this does not mean that the concept of the ethics of human rights in the state school should not be taken as a 'universal ethical codex'.

Here one cannot pass by the elaboration of the concept of the ethics of human rights and responsibilities, which is supposedly unfulfilled in schools. Therefore, before treating this in more detail we first answer the questions: Can we speak about *the ethics* of human rights at all? Do human rights include that which we would traditionally call 'moral principles'? Why should education in the state school derive precisely from the ethics of human rights?!

Can we speak about the ethics of human rights that are a justifiable basis for education in the state school?

We should begin by pointing out that, as a concept, human rights can be implicitly introduced in such a way that we do not actually mention the concept itself by name as, for instance, in the excerpt quoted below. We should first emphasise that in the second part of the text that we quote in the continuation, McLaughlin writes that as well as establishing obligations towards public values it is also necessary in the state school to establish understanding, debate and critical reflection precisely in relation to difference in the area of privacy. There is no need to demonstrate how this necessarily follows from the demand of respect and the inter-connection of four sets of articles of the Convention on Fundamental Rights and Freedoms: the right to respect for private and family life; the right to freedom of *thought, conscience and religion*; the right to freedom of *expression*; and the *prohibition of discrimination* (Convention... 1994, Articles 8, 9, 10 and 14). On first view, in the following quote the author appears to define the value basis of 'the common school' without connection to the concept of human rights, when he writes that:

'The common school in relation to moral education (...) seeks the substantive commitment of its pupils to the public or fundamental values. They include basic social morality, ideals (such as individual autonomy), methodological principles (relating to the way in which public disputes are settled), and moral and political values (such as respect for persons and toleration). In view of the close connection of many of these values with the domain of the political (they include 'civic virtue'), this task should be conducted in close harmony with a significant form of political education – in particular, education for citizenship. In relation to these public values the school seeks more than simply understanding and critical assessment on the part of pupils, and there is little room for pluralism and neutrality. For this reason, it is wrong to regard common schools of this kind as lacking a moral foundation, not least because the public values involved are not merely procedural, properly understood they require the formation of substantial commitments and virtues. On the other hand, in relation to the diversity of the private domain, the schools seek exploration, understanding, debate and critically reflective decision by individuals. This does not necessarily require the strategy of 'teacher neutrality', which is only one of a number of alternatives which can be employed' (McLaughlin 1995, p. 30).

For some of the values listed by McLaughlin it is immediately clear that they coherently and precisely include the concept of human rights. Take, for instance, the autonomy of the individual as an ideal. The rights (the first generation) are conceived as freedoms in such a way as to give the individual the right to make decisions about his or her own personality and body (cf. Kovač Šebart, Krek 2007). It is also clear that these rights determine the basic methodological principles regarding the way public debate proceeds; namely, the freedom of speech (the Convention... 1994, Article 10) and the freedom of beliefs, conscience and religion (ibid., Article 9), with which the principle of the legal state (the rule of law) with

its specific rules (cf. *ibid.* Article 6 and 7) is connected. It is hardly necessary to specifically point out that the basic concepts of human rights are the moral and political values of respect of the individual (including the right to privacy, *ibid.*, Article 8) and tolerance as the demand for the responsibility of respecting the rights of others, which derive from numerous rights (cf. Krek 2004).

The notion of 'basic social morality' at first sight exceeds the boundaries of that which is included in the concept of human rights. The 'social morality' of a particular society necessarily also includes norms specific to that society, that is, the prevailing norms of that particular society, with regard to which various societies also distinguish themselves from one another. Although we would understand this notion in this sense, it is possible to show that the concept of human rights itself also includes contemporary social morality. Human rights are also included with those that determine individual rights in terms of content, that is, they protect the basic conditions of civilised human habitation as an inherently social being and thus, amongst other things, also enable the coexistence of specific prevailing and minority social norms. Not least, the concept of human rights conceives social ethical principles, which oblige the individual to follow particular behaviours in relation to others. These principles do not determine particular contents, that is, they do not determine positive⁵ individual morals and convictions. They are general social norms that (on the one hand) guarantee protection – establish a border between society, the state and the individual – against other individuals and society (as well as the state) encroaching upon the individual (or on a minority) in areas that are fundamental to humanity and human habitation. The ethics of human rights and the appurtenant responsibilities are elementary ethics according to which each person has, amongst other rights, the right to live, not to be enslaved, not to be tortured; the right to hold, as a thinking human being, his or her own beliefs and religious affiliation and to be able to publicly express his or her own thoughts; the right to move freely, to marry, and not to be discriminated against due to any kind of personal characteristic (language, skin colour, gender etc.), to mention just a few basic rights. Of course, this is only possible if each individual respects the same rights of others. On the other hand, this is a concept of social morality because the rights are valid only in as much as they are implemented in societal, state and individual behaviour in the form of responsibilities towards others. Rights are always also responsibilities towards others. Thus in various texts (cf. Kovač Šebart 2002) we have already warned that the positing of 'the ethic of rights' and 'the ethic of responsibilities' as opposites⁶

⁵ Cf. the distinction made by Berlin (1992) on the difference between positive and negative social freedom.

⁶ In understanding the concept of human rights, the interpretation has often been emphasised in Slovenia that only 'rights' or, as we have already pointed out, 'the ethic of rights' is recognised in this concept (cf. Kovač Šebart 2002). Thus B. Marentič Požarnik, for instance, writes: 'I draw attention to the given formulation that is derived more from »the ethic of rights« than »the ethic of responsibilities«, although we would, in line with the UNESCO recommendation, also have to view »independence, personal responsibility and the sense of community« as three complimentary synergetic values' (Marentič Požarnik 1994, p. 69).

which we find in pedagogical theory is problematic since it overlooks the fact that in the concept of rights the supposition and claim is written that they must be respected. Rights do not exist if they are not respected; the respecting of rights imparts an obligation on both the state and the individual to respect these rights, that is, responsibility. Every right has an *eo ipso* correlation of various responsibilities; the structure of rights even presupposes responsibilities that are not directly rights. For example, the responsibility of tolerance, which is one of the most obvious and most important consequences of the concept of human rights, is a moral responsibility that is indirectly (due to the responsibility of respecting very diverse rights) built into the concept of human rights. Positing 'the ethic of rights' and 'the ethic of responsibilities' as opposites overlooks the fact that without respecting rights as responsibilities each right in reality becomes some kind of 'independent', free-floating 'ethic of rights'. On the other hand, however, if we do not explicitly connect the 'ethic of responsibilities' with the structure of human rights, which gives it content, the 'ethic of responsibilities' also in terms of content remains an undefined (in principle) specific ethic of the individual, without any clear connection and ethic responsibility precisely from the perspective of the common values of society.

In other words, the social conception of the *relationship* of rights and responsibilities is initially located in the fact that concrete responsibilities derived from the rights of others impose behaviour with relation to which norms are not established by the individual (his or her individual freedom) because the content of these responsibilities is *socially* determined. Therefore, education aimed at the pupil taking on the norms and values included in human rights must, in addition to an awareness of one's own rights and behaviours in harmony with them, impart an awareness of one's responsibilities to others and the ensuing behaviours – duties derived from the content of rights that hold for everyone. Further, we could perhaps also write that education that is bound to the ethics of human rights, with the purpose of enacting them in society, is in the first instance education that is bound to the responsibilities towards the equal rights of others.⁷

The concept of human rights and responsibilities thus includes the 'fundamental social moral' in as much as it includes and connects ethical principles that are part of particular religious-moral systems. Here we refer to the absolutely basic ethical norms (moral values) in interpersonal relationships with which the ethics of human rights introduces universal moral responsibilities to one's fellow man, including the diktats of traditional morals important for human existence (cf. Kovač Šebart 2002, p. 72). For example, the right defined within the concept of human rights as *the right to life*⁸ at the same time imposes the responsibility

⁷ Waldron, for instance, who is aware of both the logic of duties as a consequence of the respecting of rights and of the frequency of the miscomprehension of the relation between rights and duties, when speaking about rights does not tire of constantly adding, at least in parentheses, 'and duties' or 'and duties correlative to those': 'People have *special* rights (and duties) arising out of promises, acquisitions, roles, and relationships, as well as the *general* ones we call human rights (and duties correlative to those) ...' (Waldron 1993, p. 170)

⁸ 'Everyone has the right to life, liberty and security of person' (Declaration 1948, Article 3).

defined in the Judaeo-Christian tradition as the Commandment *thou shalt not kill*. The right to possession is imposed as the responsibility *thou shalt not steal*.⁹ The Commandment *thou shalt not lie* ('speak the truth') is a supposition of the concept of the legal state, i.e., the right guaranteeing a fair trial (cf. *ibid.*). 'Respect the father and the mother' is converted into the universal right to non-discrimination, which on a personal level imposes the responsibility on every individual to *respect everyone*, irrespective of their personal characteristics etc.

Perhaps a certain difference in the structure of responsibilities lies in the fact that these obligations (responsibilities), which are (or were) in religious traditions also placed on a person in relation to God (not just one person in direct relation to another person), are here effected regardless of the person's relation to God, and in themselves exist within the framework of the relation of one person to other people or, even more importantly, to the dignity of other people's personalities. Nonetheless, it is evident that in terms of their basic content (unless one interprets one's responsibility to God as effecting intolerance, discrimination and violence towards one's fellow man) traditional moral responsibilities are not in contradiction with the responsibility to one's fellow man imposed by the ethics of human rights; on the contrary, these responsibilities are also binding in relation to one's fellow man. Here it is necessary to add that the ethics of human rights also build upon and exceed traditional specific value systems. For instance, they introduce the concept of a fair trial as part of modern social morals, combined with the concept of legal protection (the legal state). Amongst other things, this ethic determines in a self-restrictive way so-called freedoms at points where the majority of traditional value (religious) systems have specific diktats. The rights to freedom of thought, conscience and religion (cf. the Convention 1994, Articles 9 and 10) as well as the prohibition of discrimination (cf. *ibid.*, Article 14),¹⁰ rather than the particular content of diktats, introduce personal freedom and the universal responsibility to respect every human being in the place where, as already stated, they hold in various value systems – the particular content of diktats. It is true that in so doing the ethics of human rights depart from traditional value concepts in certain points that are key to human existence; it is also true that it is precisely by doing this that it enables the coexistence of all of these specific value systems and of the differences between individuals.

The concept of non-discrimination obviously also reveals *equality*¹¹ as a common supposition of all rights. As already stated, when the ethics of human rights introduce the concept of the equal humanity of all people, which is the basis of all

⁹ 'No one shall be arbitrarily deprived of his property' (Declaration 1948, Article 17).

¹⁰ 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status' (the Convention 1994, Article 14).

¹¹ Kodelja points out that the notions of freedom and equality are fundamentally connected with the contemporary conception of democracy: 'Democracy (...) is based on two values: on *equality* and *freedom*, says Norberto Bobbio, one of the most renowned Italian philosophers of politics and law' (Kodelja, 2002).

rights and thus of modern ethics, it also introduces the diktat of tolerance (this is, of course, not only connected to the right to non-discrimination, but also to responsibility towards others, which derives from such fundamental rights as the right to life, as well as to responsibilities that derive from the rights to freedom of thought and discussion, as well as religion and belief). If we then add social rights (rights of the second generation) and minority group rights (rights of third and fourth generations), it becomes clear that the concept of human rights does not only include ethics in the traditional sense of basic moral diktats, but also social ethics on which it is possible to build modern social cohesion or, to state it more strongly, that are a precondition for social cohesion in the circumstances of the diversity of modern life. As in connection with this we conclude in an analysis of various authors (cf. Kovač Šebart 2002) human rights are no longer simply one of the ideological doctrines, but rather civilisation in the sense 'that, to paraphrase Hall, combines within itself the best that has been produced by various moral and value systems (cf. Hall 1988, p. 4) and about which today there is agreement that they are the best and are generally acceptable' (Kovač Šebart 2002, p. 72). This is also achieved by not including – and in so doing enabling life, coexistence – that which is specific to various moral-religious systems and unavoidably, constitutively separates them from each other; it also builds upon these systems with norms that are appropriate for the modern context and for social diversity.

We therefore believe that the concept of human rights is not just the form of the law and documents such as the Universal Declaration of Human Rights (1948), the Convention on Fundamental Rights and Freedoms (1994 Š1950Ć), the Convention on the Rights of the Child (1989), the Resolution on the European dimension of education (the European ... 1989, pp. 3-5) and numerous other international documents, the Constitution of the Republic of Slovenia and the various acts that commit the state. The justification for the place that this form has in modern society is based on its contents, on the ethics of human rights. Here there is, as McLaughlin writes, 'little room for pluralism and neutrality' (McLaughlin 1995, p. 30). This does not mean an ill-informed or non-reflective implementation of human rights as the fundamental value matrices of the contemporary era; rather it means that human rights should be established as a solid point, an unambiguous point of certainty, from which the education plan of the state school is derived, and on which this plan is based. And this in an era that, for want of a better term, we could call postmodern precisely because (amongst other reasons) of the possibility of the existence of a *pluralism of values*. It is the very principles of human rights and responsibilities that enable the actual coexistence of diversity. That is why they are a necessity in the school and why we should not depart from these principles in the school. Education in the state school should give the pupil a value orientation; not just in any way, but so that the value guidance imposes responsibilities ensuing from rights that lead to the respect of every person regardless of the differences that are part of human diversity.

Form versus content? Or form as a necessary part of content?

Let us dwell further on the criticism of the concept of human rights that is based on the conceptual background of the division into form and content. In a division depicted in this way, form, in the final instance, also takes in advance the place of the negatively value-marked opposite pole of 'content' (the latter often remaining undefined in texts!). In this understanding, however, formalisation (of educational activities and behaviours) appears as a barrier to the educational operations in the school.

If we concur with the thesis that the form (= formal institutionalisation, instrumentalised legal procedures, formalistic instrumentalisation etc.), of human rights prevents the implementation of ethics, then paradoxically the next logical step is that it is no longer necessary to deal with the *content* of human rights (how to implement individual rights and responsibilities, what they mean in a practical sense, what they demand etc.). Instead, there follows a preoccupation with *how to do away with the form* that hinders us when bringing human rights to life in practice. But we cannot bring human rights to life if we do not engage with them in terms of content, if we do not reflect on them and realise them in a concrete way; this is particularly impossible if we equate them with 'formal legal procedures'. At the same time, we must not neglect the fact that formal institutionalisation is an inherent part of the concept as it also embraces the concept of the legal state.¹²

The logic of division, in which form (law, institutionalisation) is declared at fault for not being content (ethics), and on this basis the understanding of the concept of human rights in practice can quickly lead to the situation where human rights are, as is established by the critics, valid neither as ethics nor as legal protection. The entire argument is devoted to demonstrating the 'paradoxes' we arrive at by reducing human rights to legal form. This can be taken to an absurd extreme, through an illustration that is based on the rhetorical question as to 'whether a teacher who catches a pupil in an 'impure act' should caution the pupil in a similar way to a policeman: 'You have the right to remain silent; anything you say can and will be used against you' (Medveš 2007, p.13). Our belief is that this kind of reduction is only possible in the absence of an understanding of the concept of human rights as an ethical concept. Instead of giving teachers instructions on when and in which context to clarify to the pupils the sense of these kinds of legal forms, the message is that it is impossible to educate in this way. The point of the argument is mistaken in two ways: firstly because he does not demonstrate what the contents of human rights actually are, even though he claims that this is precisely what is needed. Secondly, due to the fact that the concept of the legal state is ridiculed, which conveys the message that the school context is so specific that the logic of legal protection is entirely inappropriate for it.

¹² Here we mainly have in mind Articles 6 and 7 of the Convention (1994), the 'right to a fair trial' and the principle that 'there is no punishment without law'. These, however, indicate the general logic of how the concept of human rights establishes a relationship between form and content (cf. Articles 6 to 11 of the General Declaration of Human Rights from 1948).

If this message were sustained in the education of teachers it would implicitly allow the message that self-will – in as much as it 'dismisses' the rules of the legal state and the ethical criteria of ethical principles common to all – is the essence, or at least a condition, of pedagogical behaviour. In other words, the message is that a formal framework of operation is unnecessary, that the professional behaviour or rather professional autonomy of the teacher is sufficient as a self-limiting mechanism. Given that the ethics of human rights are implicitly reduced to legal form, it is of course logical of the author to question whether the ethics of human rights can be basic value norms. We believe, however, that such a question is purely rhetorical because if there is no idea of what the ethics of human rights are, if they are reduced to 'legal form', it is no wonder that that which 'is not' or which is shown to be absurd at the very start cannot 'take hold' and thus play the role of the basic value matrix of education in the state school.

Taken in its entirety, the conceptualisation of ethics and values in the state school in Slovenia remains within a framework that we characterised as early as in 1990 with the words that 'either we know that this kind of theoretical standpoint is not determined in a balanced way, that its sense is not clear, or we are betting on a concept that we doubt will actually »come to life« in practice' (Šebart 1990, p. 494).

The ethics of human rights and form

In the idea of the ethics of human rights it is accepted as fact that *homo sapiens* create a world of conflict, that man and his world are imperfect, and for precisely this reason (amongst others) it determines basic norms that prescribe how these conflicts (including infringements of the law and the possibility of self-will) are (also) ordered in the world of law. If we analyse the concept of rights as a coherent structure whose relevance is historically confirmed and honed, it is not difficult to see that the relationship between ethics and law is established in the concept as a complementary relationship in which neither ethics nor law are separated; in this concept it is clear, however, that the legal implementation of the protection of rights is only part of the implementation of the ethics of human rights. It is just as important that these ethics are implemented in public discourse, that they are implemented in the norm of free speech, thought and religion, that in public discourse the principle of non-discrimination is implemented etc., and, of particular importance for the state school, that these principles are also implemented in interpersonal relationships, thus also in education.¹³

One of the provisions of the concept of human rights is that for punish-

¹³ Here we refer to the argumentation of J.S. Mill in his work, *On Liberty* (1859), which demonstrates that the freedom of the individual in society is enabled precisely by the respecting of the limits that are set by the rights of others. The respecting of these limits is, in the final instance, established on the basis of moral convictions which, of course, in their basic features are formed through a process of education and socialisation, and in the broader social context on the condition of the freedom of speech (and thus the freedom of thought).

ment it is first necessary to have a form of punishment ('there is no punishment without law').¹⁴ A general idea of the concept of human rights that concerns rights in general as well as the concept of the legal state is most certainly the idea that form, in its various senses, implies the protection of the individual or of the particular culture. According to this logic, the *removal of form* is the first step towards self-will; or, conversely, one of the guaranteed elements of justice according to this concept is precisely form (the establishment of form itself). In more concrete terms this means:

1. that *rights* must be explicitly formulated, determined by laws, in sets of rules¹⁵ etc., which *eo ipso* also imposes appropriate responsibilities;
2. it should not be overlooked that these ethics compel the establishment of *rules* that determine various borders from which on one side stretches the jurisdiction of state officials and on the other the freedom of the individual, and along with this the limitation of any kind of self-will.

If we logically transpose this to the state school (of course, in a way appropriate for the school institution) the concept of legal protection through rights and responsibilities, as well as through rules in as much as they establish the border of self-will, in no way limits the school's *pedagogical* operation unless we presume that self-will is the essence of the existence of pedagogical operation. A problem also emerges when we assume that by passing laws, writing rulebooks, establishing rules etc., we have done everything, i.e., that the form as such already guarantees its own implementation. This is, in fact, the converse of the illusion that locates the reason for the lack of success of ethics in the existence of form, but it is still no less of an illusion.

Even when we have form it is necessary, to put it in Kantian terms, to use the power of judgement and to enact *rights and responsibilities*, norms, rules: form has to be realised. However, in the end it is impossible to shake off personal responsibility in the use of one's own judgement. And there is no need to demonstrate that it is impossible to write a special rule for each particular situation. This fact in itself generates the logic of the establishment of unwritten values, norms and rules. This is to a certain degree unavoidable and unproblematic as long as principals and teachers, as well as pupils and all of the other participants in the implementation of the educational plan, are aware that the role of their power of judgement also lies in assessing when the unwritten values, norms and rules that a particular community has established (the hidden curriculum) infringe values or human rights and responsibilities (the explicit curriculum), and providing they know how to alleviate this.

¹⁴ The Convention (1994) determines that *there is no punishment without law*, defined by the wording: 'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. (...)' (the Convention ... 1994, Article 7).

¹⁵ Here it is also necessary to know how to limit and establish frameworks of behaviour both because it is impossible to capture every concrete situation in that which is written and because a large number of finely detailed rules lead to their being impossible to implement.

Some theses for the education of teachers, or about what is it necessary to reach an agreement?

In as much as it is a fact that human rights are an ethical concept that is also a *formal* diktat, the stereotype that they are only *formal* values that are in reality infringed and are therefore invalid must be countered with the statement that human rights are, in fact, formally established values, but for this very reason they are binding on everyone. They are binding on everyone but the message should be clearly conveyed to teachers that it is in fact up to them as teachers whether or not human rights are implemented (the task of realising these fundamental values presupposes that teachers *know how* to realise them, that they *want* to realise them – at least on the level of being bound by their obligations as teachers in a state school – and that in difficult circumstances they *are able* to realise them).

If the pedagogical profession now conveys the message to future teachers that formal institutionalisation hinders ethics, this assertion, which is not actually supported by empirical data,¹⁶ could become a self-fulfilling prophecy. Namely, if we convey the message (albeit only implicitly) that *form hinders content* we are not far from the generalised message that everything that is formally (= institutionally) established is actually surplus, even more that it is an obstacle to pedagogical practice, true, informal education etc. According to this logic, in its extreme it would be necessary to first do away with every kind of form (institutionalisation) so that practice could 'in reality' come to life. Because this is, of course, impossible, this kind of presentation of 'form' as an obstacle to 'content' offers a permanent alibi for failing to take human rights seriously in education in the public school as basic social values.

The fact that human rights are formalised in various documents is surely not a reason for teachers not to want to embrace them in their pedagogical practice. However, if we do not present the content of the concept of human rights to them in such a way that they see the real historical conflicts and tragedies from which these rights have developed, and that they understand the kind of life situations these rights are connected with today, it is less likely that they will see the sense in these values.

If they remain on the level of understanding human rights and responsibilities through one of the stereotypes (that they are only 'on paper', 'theory' divorced

¹⁶ The range of data from empirical research about the authority of the teacher, about values, respecting rules and the social climate in school, in no way raises concerns about the state school operating contrary to the ethics of human rights (cf. Krek, Kovač Šebart, Hočevar, Vogrinc, Podgornik 2007). A respectful attitude toward others, respect for the individual and of his or her rights (which the research has measured as respect for others, attitude towards various individuals, mutual understanding, mutual help, behaving according to rules etc.) demonstrate that state primary schools and grammar schools operate according to ethical norms, in spite of the fact that, for instance, in half of primary schools this is not explicitly part of the educational plan. On one hand, the empirical data show that basic human rights are already part of the educational ethics in the state school, even though it would be possible to build upon them further; on the other hand, data concerning the inclusion of the Rules on the Rights and Responsibilities of Pupils in the educational plans of schools demonstrate the fact that this institutionalisation does not act as an impediment, in fact quite the opposite.

from practice,¹⁷ that they are 'open and undetermined in interpersonal function', that they neglect responsibilities), it is indeed probably less likely that future teachers will embrace them as the basis of their education behaviour. That which needs to be done on the level of education in order for human rights as a value framework not to be 'open and undetermined in interpersonal function', so that the teacher starts to educate in the spirit of human rights and responsibilities, is to first move away decisively from the implicitly negative presentation of institutionalisation (or, in general, form as such).

Human rights should be taken seriously, which means that students and teachers ought to be educated on a deep level about the concept and ethics of human rights as well as on how to locate these in educational behaviour in the state school. Moral education in the state school cannot remain unreflective in the field of fundamental common values. It is necessary to internalise these norms and know how to use them as principles, and this holds for teachers as well as being an educational goal of pupils.

Education in the spirit of the ethics of human rights introduces to moral education in the state school the demand that the teacher or educational worker implements the kind of educational behaviours that are the expected or prevailing cultural norm when it comes to the moral education of the individual (for instance, as guiding values for the pupils, the teacher imparts norms: speaking the truth, not stealing the property of others etc.). In addition, however, they also demand reflection and appropriate behaviours in areas where in society there are differences between individuals in terms of cultural and other norms and convictions, thus also differences between pupils and parents and, not least, between educational workers themselves. The norms of the concept of human

¹⁷ We must have a suitable theory, with reference to experience, on how to realise the concept in practice. If we do not have such a theory, and if we see practice as 'something completely different', as a field that is entirely divorced from theory, the difficulty does not necessarily lie in a 'bad' concept (in the content of human rights), but rather in the fact that the theory of how to realise the concept *is still insufficient*, and thus educational practice does not match the theory. Against an illegitimate leap from theory to practice – 'pushing aside' the theory with the argument that the theory does not hold in practice – in his text entitled 'On the common saying: this may be true in theory but it does not apply in practice' (1990 Š1793Ć) Kant provides an explanation that is no less valid today than when it was written. Thus he points out, for instance, that when it seems that theory does not suit practice it can be because we lack the power of judgement, saying: 'because it is not possible to again and again provide the power of judgement with rules according to which it must behave in subsumption (as that would continue *ad infinitum*), it is possible to present theoreticians who can never in their lifetimes become practical, as they lack the power of judgement' (ibid., p. 197). In this case, therefore, we *do not know* how to appropriately use the rule, as the application of the rule is never a 'mechanical' process, it is not automatised, but rather it is necessary to decide in each concrete situation which rule is suitable and how to use it. However, in the case where there is a natural gift of the power of judgement, but the theory is still not perfected (= does not suit the practice), 'the theory is not at fault if it has not come into use in practice, but the fault rather lies in the fact that there *was not enough theory* that man has learned from experience, and it is a true theory even if he is not able to present it and as a teacher systematically pass it on in general sentences...' (ibid.). In other words, when we have a particular concept it is also necessary to have an appropriate theory (and knowledge of how to use the concept practically). Therefore, when it seems that the 'concept' does not take hold, that it is 'not appropriate' etc., the difficulty does not lie *in the theory as such* (= generally 'in theory'), but rather in the fact that we do not (yet) have a *suitable* theory (and knowledge about how to use it).

rights provide basic guidelines according to which it is necessary to make judgements in these situations, and on whose basis one can conceive the educational behaviours within the state school. For instance, the principle of non-discrimination imposes on the educational worker an obligation not to treat boys and girls differently purely on the basis of gender. The teacher must ask him or herself the question (and must know *how* to ask the question) as to whether he or she is actually biased on this point; and if the answer is 'yes', his or her behaviour must be corrected accordingly. The same applies to all of the differences that are embraced by the principle of non-discrimination (Convention... Article 14), and for all of the other principles that are part of the concept of human rights and responsibilities. For instance, in spite of the fact that in a certain environment hate towards Roma people has been the cultural norm – a norm that parents, often unaware of it themselves, have transferred to their children – the teacher must not simply uncritically accept this norm as a value that will be unreflectively carried forward. Instead, the teacher must place this norm in the value context of the principles included in the concept of human rights, i.e., equality, non-discrimination, tolerance etc., as it is from this that the teacher's educational operation and instruction is derived. The teacher must know how to reflect upon positions when it comes to respecting religious and other convictions (Convention... Article 9) and so on. These demands, which are established by education in the state school, mean that in the case of pedagogical workers their knowledge of the concept of human rights and responsibilities cannot, and must not, be superficial or marginal. Reflection (which includes knowledge as well as open debate about these norms and behaviours) is the path and precondition to ensuring that in education pupils can internalise the values of the concept of human rights *in the form of principles* (for instance, speaking the truth etc, as well as the principles of equality, the equal rights of others, solidarity towards others, an absence of violence etc.), according to which as adults they can autonomously judge concrete situations, their own behaviour and the behaviour of others.

In educational institutions everyone has at least two viewpoints: the viewpoint of the institution as a whole, which must evaluate and form its educational operation within this perception; and the viewpoint of the individual, who must work within the institution. However, these are questions that we will deal with in a future discussion.

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