

## **Vulnerability, Human Rights, Adjudication**

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## Vulnerability, Human Rights, Adjudication

*Baldassare Pastore*<sup>1</sup>

**Abstract:** This paper highlights how the use of the argument of vulnerability is bringing an interesting approach to the human rights practice insofar as it enables a context-sensitive assessment of violations of these rights. The concept of vulnerability is a heuristic device that may contribute to identifying the violations of rights and explaining the peculiarities of cases. Vulnerability is a human condition and hence gives rise to fundamental needs. It is associated to its negative aspect of susceptibility to harm. In order to prevent the occurrence of harm and socially generated suffering, moral and legal obligations arise of protecting individuals from such threats by attending to their dignity. The notion assumes a substantially hermeneutical-interpretive value. Vulnerability suggests a promising intertwining with the framework underpinning human rights. It can be used as a criterion for human rights adjudication.

**Keywords:** *vulnerability, human rights practice, dignity, jurisdiction, legal interpretation.*

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## 1. Introduction

The notion of vulnerability has become increasingly relevant in the theoretical reflection and in the interpretation and application of human rights. Vulnerability defines our humanity. The idea of vulnerable human condition is closely associated with human rights. They are rights enjoyed by individuals by virtue of being human and as consequence of their shared vulnerability. Human rights cannot be enforced without the support of legal protection. From this point of view, Judicial institutions are essential ingredients for guaranteeing the dignity of the person.

Vulnerability is a paradigm that can be applied for the purpose of representing and interpreting various aspects of reality, as well as to take account of the precariousness, fragility, insecurity, threats and hazards which characterize contemporary times and have an impact on the life of individuals and/or groups<sup>2</sup>.

Vulnerability may manifest itself in manifold forms (Brown et al. 2017). It is a broad phenomenon regarding susceptibility to harm or injury, which includes internal and external components, depending on the various circumstances of life (Cole 2016).

Vulnerability evokes the finite and fragile dimension of human beings, as well as the condition of dependency characterizing the existence of individuals, who are exposed to the occurrence of events that threaten their autonomy, integrity and dignity. From this perspective it is necessary to be wary and not fall prey of the pitfall of adopting vulnerability as a stigmatising label (Furusho 2016, 198).

The notion has an *ontological*, existential dimension, and a *situational*, contextual dimension. Vulnerability may in fact be considered as a peculiar, essential trait of human beings and at the same time as an accidental, variable condition, since it is tied to moments of an individual's life and the different ways in which intersubjective relations are structured. Within the latter category, it is possible to identify a subset of situational vulnerability, consisting of *pathogenic* vulnerability, which includes cases resulting from prejudice or abuse in interpersonal relations, injustice, oppression, and violence produced in the sociopolitical realm (Mackenzie et al. 2014, 9; Mackenzie 2014, 39). Therefore, we are dealing with a universal vulnerability and with particular vulnerabilities.

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<sup>2</sup> The term 'vulnerability' indicates the conditions 'determined by physical, social, economic, and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards'. This is the definition proposed by the *International Strategy for Disaster Reduction* (ISDR 2004, 16).

It is worth highlighting, at this point, the distinction between *precariousness*, as a form of vulnerability universally shared by all human beings and having to do with their bodily, incarnate nature, which exposes them to injury, but also to care, and *precarity*, which regards its differential distribution, dependent on the way economic and social relations are organised and the presence or absence of supporting infrastructures and political institutions (Butler 2006, 28-30).

The reality of our universal fragility has played some role in the design and construction of our institutions. These institutions collectively form systems that play an important role in lessening, ameliorating, and compensating for vulnerability. If that is so, then the reality of our vulnerability should also be a significant part of the measure of the effectiveness and the justice of the operation of those institutions (Fineman 2010, 269).

We are vulnerable by virtue of our embodiment, which leaves us susceptible to different kinds of harms. Furthermore, vulnerability underscores common susceptibility to pain and suffering as a compelling reason to create a social and institutional apparatus aimed at reducing harms in the form of systems of human rights protection which seek to increase collective human security (Furusho 2016, 185). The term 'vulnerable' describes an inevitable, enduring aspect of the human condition that must be at the heart of our concept of social, political and legal responsibility (Fineman 2008, 8).

Vulnerability is posited as the characteristic that positions us in relation to each other as human beings and also suggests a relationship of responsibility between institutions and individual (Fineman 2010, 255-256). The nature of human vulnerability forms the basis for a claim that legal and political institutions must be more responsive to that vulnerability. Additionally, those institutions are themselves vulnerable to a variety of internal and external corruptions and disruptions, and this realization is the basis for the further claim that these institutions must be actively monitored by the civil society.

The *vulnerability turn*, which has marked discussion in the realm of the social sciences and practical philosophy in recent decades (Burgorgue-Larsen 2014), has led us to reconsider the image of the individual, not as an abstract subject, but rather as a person rooted in the concrete, diversified situations of life. Attention has shifted to the demands for recognition in various spheres of human existence. It pertains to a complex set of identifications, evaluations, and behavioural expectations.

Recognition is characterized as a notion embracing demands for justice (Renault 2004, 57) lying at the intersection between the individual and the intersubjective dimension of coexistence. The concept of justice presupposes the concept of recognition. The denials of recognition, connected to

humiliation, lack of respect, social exclusion, and the degrading of a person's value, represent experiences of injustice. A central aspect of justice is the commitment to protecting the vulnerable individuals. Principles governing how the basic institutions of society secure the social conditions for mutual recognition come into play here. Rights are the result of members of a community recognizing each other as free and equal (Turner 2006, 41, 54; Anderson and Honneth 2005, 138-139, 144). Legal and political institutions have a moral duty to take rights seriously by providing equal concern to individuals, preventing and protecting vulnerable individuals from harm and structural patterns of oppression (Furusho 2016, 198). These institutions deal with obligations that guarantee the creation of the conditions required so that violations of rights do not occur. The nature of such obligations is to remedy violations of human rights that increase vulnerability and suffering.

Vulnerability may be understood as a 'container word', useful for designating the condition of someone who is exposed to the risk of harm caused by the fact of 'being at another's mercy' (Ferrarese 2018, 1, 24, 81). Hence, in the sphere of intersubjective relations, qualifying someone as vulnerable serves to highlight an inequality among individuals, i.e. a situation of disadvantage in which some find themselves vis-à-vis others. Such a situation is viewed as unjust and as a phenomenon that requires interventions to prevent it from arising or remedy its consequences.

## 2. Human Rights as a Social Practice

The origin of human rights lies in the *moral* intention of indignation in the face of injustice. Such rights, in fact, serve to guarantee that whose denial constitutes a serious outrage against justice; that which is due to every human being simply because they are human. The vocabulary of rights is a many-faceted instrument for reporting and asserting the requirements or other implications of a relationship of justice from the point of view of the person(s) who benefit(s) from that relationship (Finnis 1988, 205). Human rights are related to the understanding of justice as the determination to give to others their due. Rights help express the requirements of justice by emphasizing that each and every person is a right-holder and fundamentally equal to every other in this respect. The great reach of justice is about what should be done and not done by one to other, what is justified for one to do to other.

Human rights constitute a complex cultural phenomenon, which may be viewed as a specific 'social practice' connected to legal enterprise globally considered (Trujillo, Viola 2014, 103, 129). They constitute a practice that has

profoundly impacted the international and national legal experience of our time. The practice of human rights incorporates documents, sets of rules, institutions, procedures, attitudes, behaviours, evaluations, interpretations of values and principles. The end inherent in this practice is the protection of persons in their singularity and specificity, which, in the tension between normativity and effectivity, requires continuous updating.

There are indeed goods that are essential for every human being and which individuals or (public or private) entities may not tamper with, violate, or trample on, without committing a wrongdoing. In this respect, human rights represent criteria of justice tied to the expectation of eliminating socially produced suffering (Baxi 1998; Turner 2006).

Although their origin is to be found in the moral realm, human rights are not fully such until they are incorporated into positive law. They arose in history as responses to the violation of the dignity of human beings as vulnerable individuals. They are legal rights, officially recognised by the domestic and international legal systems. However, they claim an axiological superiority that coincides with their normative superordination. This axiological element places them 'above and beyond' all systems of positive law, bringing their critical and corrective power to the forefront (Pastore 2021, 32-33).

The positivization of rights is the endpoint of the processes of argumentation that justify them and enable a specification of the terms of their recognition, as well as their exercise and protection. Here we are dealing with an open list. In this regard, it is impossible a complete identification of the rights connected to the impossibility of an exhaustive enumeration thereof. Just as there no limited number when it comes to the protection of persons, there is no limited number of dangers that need defending against. Hence, the practice of human rights is continuously evolving. It is not something given once and for all. It must grapple with the repeated, painful denials of human rights, often caught between the rhetoric of proclamations and the rhetoric of reiterations (i.e. the constant unheeded appeals to their memory and observance).

The practice of human rights develops through nonlinear processes, marked by violations and rhetorical uses for multiple purposes, connected to the considerable ambiguities inherent in the language of rights, their proliferation and the expansion of their content, and biased, cynical, hypocritical assessments resulting in ineffectiveness. We deal with factors that have contributed to the crisis of the age of rights, to the delegitimization of the culture of rights.

From this point of view, the practice of human rights requires effort, vigilance, initiative, a critical attitude, hermeneutical congeniality, and a shared pre-understanding. It can be compared to a building that needs

constant maintenance, as well as constant extensions due to the demands for new recognitions and new protections (Pastore 2021, 33).

In this perspective, the reference to vulnerability has applicability from a heuristic standpoint, where the aim is to identify situations that undermine human dignity, to define rights accurately and strengthen their effectiveness. The use of the category of vulnerability, therefore, serves to orient the specific content of human rights towards the satisfaction of a minimum threshold, below which dignity would be violated to an intolerable degree<sup>3</sup>.

### 3. Dignity and Socially Generated Suffering

In the field of human interaction we are in the presence of the power exercised by one agent over another agent, who is on the receiving end. This 'power over' others (the exposure to another's power to act) offers permanent opportunities for inflicting harm and imposing suffering. We can thus speak of an 'original correlation between acting and suffering', considering the fundamental dissymmetry inherent in interaction, resulting from the fact that an agent, when exercising power over another, treats the latter as the 'patient' of his/her action (Ricoeur 1995, 18-19).

Suffering is connected to action and it is defined by the diminishment, and also by the destruction, of the capacity to act and the ability to do, which are felt as an attack against the integrity of the self.

Rights are thus to be seen as resources for protecting against the evil that human beings can reciprocally inflict on one another, due to the asymmetric relations of power and strength. In this perspective, rights are considered as 'laws of the weakest', as an alternative to the 'law of the strongest', which would prevail in their absence (Ferrajoli 2007, 59).

It should be highlighted, in this regard, that it is precisely the dissymmetry between individuals (those who act and those who undergo) that gives rise to the moral problem within the structure of interaction. Here the theme of suffering is tied to that of dignity. It is essential, therefore, that persons are guaranteed conditions such that their life can be considered and felt as a life worth living through the elimination of socially generated suffering, which

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<sup>3</sup> Judgment no. 4455/2018 of the Italian Supreme Court of Cassation, First Civil Division, is significant in this regard. In addressing the criteria relevant for the purpose of an appropriate application of the provisions governing the issuance of residence permits on humanitarian grounds (art. 5.6 Legislative Decree no. 286/1998), the Court ruled that the condition of vulnerability may also depend on the lack of the minimum conditions for leading an existence in which the possibility of satisfying the essential needs and requirements of personal life, such as those closely connected to one's own subsistence and the reaching of minimum standards for a dignified existence, is not radically compromised.

erodes the basis of dignity, and of equal and mutual respect. The exposure to suffering is an experience revealing the structural fragility of the human condition. There is a connection between socially generated suffering and the normative argument according to which society should be organized in such a way as to reduce, if not eliminate, suffering that generates exclusion and lack of recognition, humiliation, violence.

Dignity is the result of understanding what ‘human being’ means. It is thus to be considered starting from the insurmountable coordinates of existential finiteness, and regards what is lacking and vulnerable, such as a human being<sup>4</sup>. Materiality and needs are part of the specific form of dignity of a human being. It pertains, therefore, to concrete persons, caught in the contingency of their life situations and the fabric of social relations. We may indirectly deduce it, considering the modes of offence, humiliation, and degradation. These negative experiences have given practical propulsive force to the notion of dignity as a normative goal.

The idea of dignity plays a fundamental and comprehensive role with respect to the rights listed in, or emerging from, different sources, and represents a hermeneutical basis for defining the content of such rights and a limit to the possibility of restricting them (Barak 2015, 103-113), in the face of intrusions by public authorities and other entities into the individual sphere.

Humiliation, exposure to injury and harm, the reduction of human beings to an object (a mere means) are situations that produce suffering, violate dignity, and are connected to the condition of vulnerability. The latter is an indicator of circumstances that may give rise to consequences which must be countered on the basis of rights (Andorno 2016, 265; Furusho 2016, 198). This requires that it be associated with values and principles. Only in this manner may it acquire normative weight. Indeed, vulnerability is not a principle<sup>5</sup>, but rather a fact, a condition, precisely, that takes on relevance from a normative standpoint when it is recognized and connected to axiological options (Andorno 2016, 264-265; Pariotti 2019, 162). Therefore it appears as it entails a horizon of normative reasoning (Ferrarese 2018, 25), In this context a fundamental role is played by dignity.

Human rights can be considered as the result of the convergence of two factors: a *normative* one (the intrinsic value of every person) and a *factual*

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4 On the use of the concept of vulnerability with an emphasis on its relationship with the idea of dignity, see Timmer 2013, 150.

5 It is considered as such in the 1998 *Barcelona Declaration on Policy Proposals to the European Commission on Basic Ethical Principles in Bioethics and Biolaw*, in connection with the other principles of autonomy, dignity and integrity.



one (human fragility and susceptibility to harm)<sup>6</sup>. From this point of view, vulnerability has ethical-normative implications in the understanding of core values underlying human rights protection. Vulnerability consists of a transversal concept which provides a starting point to an enhanced understanding of foundational principles in human rights theory, namely freedom, autonomy and capabilities.

Human rights find justification precisely in the need to minimize socially avoidable suffering (a suffering inflicted by public powers and private abusers), to protect against the violation (marginalization, exclusion, erosion, mutilation, destruction) of a person's status as an individual with agency who is able to lead one's own life. We deal with a just legal framework that protects individuals from these forms of disrespect (Anderson and Honneth 2005, 132-133). Human rights constitute a response (in terms of rejection) to the threats to dignity, which requires equal consideration for everyone's fate and full respect for their personal responsibility in determining how to live their life.

Human rights are a particular sector of international, supranational, and domestic law (especially following the processes of constitutionalization), which have become increasingly interlinked due to a growing osmosis. We might thus speak of what is largely a *game without borders* (Pastore 2021, 40-41). Rights determine the point of intersection and convergence between the national, regional, and international legal areas. However, we should not ignore the fact that the protection of rights has a hard time finding a place on the agenda of the international community. The present reality appears to be affected by a crisis when it comes to the effectiveness of rights. Their protection is not seen as a priority. The priorities today seem to lie elsewhere. States continue to be one of the largest threats to rights and the dynamics characterizing international relations represent a powerful obstacle to their protection. But nor should we underestimate the fact that the violation of such rights is often perpetrated by non-state actors. Among other things, technology and economics (one need only consider, for example, information technology and genetic engineering on the one hand, and the market, left to its own 'natural' dynamics, on the other) have taken on an absolutely central role. Therefore, legal normativity, whose legitimizing criterion is the protection of rights, at least within the framework of multilevel constitutionalism, is increasingly called into question, made subordinate

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<sup>6</sup> Vulnerability is assumed as the foundation of human rights by Turner (2006). It is considered as a useful conceptual basis to account for the universal nature of human rights by Furusho (2016). On vulnerability's relationship to, and possible influence on, human rights law see Timmer, Baumgärtel, Kotzé, Slingenbergh (2021).

to, if not eroded by, economic and technological interests, expressions of powers that are more often than not uncontrollable, and whose irresistible binding force is enhanced.

The implementation of rights is in many respects the problem of the authority which oversees them. Rights become practicable and applied only following discussion revolving around them in *real* situations. Their functioning implies a complementarity between the level of their formal recognition – which regards general and abstract formulations in legal documents, typically in the form of principles, and enables an assumption of validity *prima facie* – and that of their concrete realization in individual cases, which requires an effort of interpretation, constrained by the need to observe the core of values they enshrine (Pastore 2014, 59, 67-69; Trujillo, Viola 2014, 24-28). The context of their application thus proves essential for the implementation of rights and their continual reformulation to bring them up to date. It is thanks only to the activity of interpretation of the courts, where the focus is on concrete cases, that a progressive mapping of the semantic area of rights can be achieved. Therefore, by virtue of court judgments, the criteria for measuring action, consisting in rights, become full of meaning in connection with the concrete existential circumstances and the particular problems they pose. A full understanding of rights may be attained only through their application. Their specific normative significance will depend on the case. What is required here is an equitable assessment of the needs emerging from the situation, which implies an accurate study and an evaluation of the elements characterizing it. From this point of view, the notion of vulnerability becomes a tool for identifying violations and a parameter for evaluating the case. The notion is also used in order to define the level of protection.

Vulnerability is a theoretical response to enhance human rights interpretation, paving the way for enhanced institutional responses of law and politics to current human rights challenges concerning inequality, subordination, marginalization, and oppression (Furusho 2016, 205).

#### **4. The Task of Jurisdiction**

Law crosses through the territories of vulnerability, inhabited by various individuals. It sometimes takes on a collective dimension, connoting groups and segments of the population (Macioce 2021). In any case, vulnerability is a matter of situations, circumstances with ‘a variable geometry’ (Pastore 2021, 76-77). It eludes every attempt at a definition or systematic characterization. It can be understood, however, as a unitary category capable of bringing

together a plurality of heterogeneous subjective figures needing some form of protection, tailored to the specificities that are relevant on each occasion. Therefore, when it comes to ascertaining situations of vulnerability (and *vulnera*), the moment of application plays a decisive role.

From this point of view, the task of jurisdiction is not easy. It is a matter of identifying and preparing suitable measures for safeguarding people and the answers are to be found within a composite set of legal provisions of domestic, supranational, international origin. We deal with a multiplication of protection systems. In this regard, it is worth noting the important role of systematic and teleological interpretation, which enables a connection to be made between legal documents, in the first place between those enshrining rights (the Constitution, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and other international human rights acts) as essential tools for protecting vulnerable and harmed individuals and/or groups (Bossuyt 2016).

The ultimate aim is an integrated protection. Such protection regards the rights themselves, above and beyond the sources that acknowledge them and the variety of formulas that express them. They are integrated and complete one another precisely through interpretation. Human and fundamental rights are substantially unitary and many courts are called on to interpret and apply them, without there being any compulsory hierarchy among them. What is asked by the courts is an effort at least in the common direction of defining agreed standards of protection, and thus – ultimately – in the construction of a *ius commune* of the rights of the person (Pastore 2021, 77-78).

In this perspective, the contribution of the European Court of Human Rights (ECtHR) has been (and continues to be) considerable. In its decisions, and in the arguments set forth to support them, the Court makes reference to vulnerability in order to interpret the provisions of the Convention and identify the cases falling within the scope thereof. The approach is aimed at providing the most suitable protection of the rights of individuals who find themselves in disadvantaged situations of varying nature (Peroni, Timmer 2013; Timmer 2013; Besson 2014; Al Tamini 2015; Arnardóttir 2017; Baumgärtel 2020).

Indeed, the Court has on various occasions attributed importance to vulnerability – though the concept is not present in the text of the European Convention on Human Rights, nor is it defined in the case law of the Court itself – and has done so when interpreting and applying the provisions of the Convention (Chenal 2018); when articulating its reasoning related to the determination of the obligations implied by teleological norms and the identification of unexpressed exceptions to expressed norms; when balancing

principles; when qualifying certain individuals as vulnerable or particularly vulnerable, either because they have certain characteristics or find themselves in a certain situation, and are thus deemed to deserve particular protection or a particular treatment; and when weighing their vulnerability against other aspects of the case for the purpose of the proceeding (Diciotti 2018). The European Court of Human Rights has developed interesting cases. Vulnerability is used here both as a descriptive and prescriptive tool in legal reasoning and interpretation. The Courts' acknowledgment of vulnerability as heuristic device has already marked a starting point to a more context-sensitive assessment of human rights violations and to a more holistic understanding of interdependent human rights (Furusho 2016, 200-203).

In the case law of the Court, the qualification of 'vulnerable' – attributed to an individual or a group of individuals – implies that it should be evaluated in the light of the concrete circumstances. Vulnerability is seen as a category that does not fit the criterion of 'all or nothing', but rather operates in a relational manner, with different degrees, under the influence of a plurality of factors, all of them connected to the specific situations in which persons find themselves. The Court, therefore, is called upon to conduct an individualized examination of the position of the claimant in order to define the level of protection and uses the notion as a means of assuring an effective protection of rights.

We are in the presence of a multiform approach where the common aim is to provide protection to individuals whose dignity as human beings has been wounded. Reference is made to particular situations people are involved in because of age (the elderly, minors), gender, health conditions and/or disability, but also to the damaging and harmful effects that may impact on people. The focus is on cases regarding victims of torture and inhumane and degrading treatment, victims of rape and/or other forms of sexual violence and gender violence, as well as situations in which the harm is produced by conditioning that is not always unlawful, but which nonetheless do not exempt the State from adopting protective measures. Here as well there are various types of cases: they may involve detainees, defendants in criminal proceedings, foreign migrants, asylum seekers, and members of minority groups. It may also happen – and often does – that some individuals combine several conditions of vulnerability (we are in the field of intersectional vulnerability) that justify particular responses with an eye to combating discrimination. From this point of view vulnerability is at the basis of a duty of protection to be fulfilled through the adoption of legal measures designed to compensate for or eliminate the discriminatory effects apt to hinder the enjoyment of rights. Such measures relate to positive preventive obligations (i.e. to prevent harm), positive obligations of compensation (reparation),

and promotional obligations (Ippolito 2020, 336-338, 340-365, 378-385). It is worth highlighting, in this regard, the ECtHR's application of the margin of appreciation, whereby the choices made by the Member States are respected as long as they do not conflict with the general standards set by the Court itself. The width of the margin, in actual fact, is not free, but rather varies based on different factors, some of which are connected precisely to the nature of State obligations: it is recognised that some measures cannot be allowed (as they exceed the margin), as they constitute clear violations of the Convention. Therefore, as far as vulnerable individuals are concerned, the margin of appreciation becomes narrow (Peroni, Timmer 2013, 1080-1084; Al Tamini 2015, 28, 34, 39, 50, 56-57).

Law encounters vulnerability every time it is a matter of providing protection for certain existential situations, where the aim is to restore a balance in subjective positions, prohibit discrimination, remedy power asymmetries (of an economic nature, or due to an information asymmetry). This task implies the provision of suitable protections on various levels. The complexity of the situations of harmed individuals requires protections tailored to the specificities that emerge on each occasion, that is calibrated according to the identified fundamental needs.

The specificity of each type of vulnerable (and harmed) individual requires a 'laborious' law, which increases the importance of the role of interpreters. In many respects this is connected to a 'bottom-up' approach to law, which opens up the question of access to protection systems. The difficulty of such access places individuals in a situation of vulnerability that may give rise, in turn, to further processes of marginalization. The actual possibility for people to have their rights respected comes into play here.

The discovery of vulnerability which marks human existence has oriented judicial interventions aimed at the fulfilment a concrete commitment to protecting individuals and/or groups. From this point of view, vulnerability represent a summarizing, unifying concept that enables us to account for existential situations tied to diversified subjectivities. The attention is focused on real human beings 'in flesh and blood'. Through the reference to vulnerability, specific subjective figures take on relevance, all of them different expressions of the human condition.

## **5. Vulnerability and Legal Interpretation**

Human rights should be considered as components of a potential order that exists within the dynamic context of an unfolding interpretive practice. They represent the fruit of the interpretations that clarify their normative

meaning. Their positivization for purposes of application implies a constant contextualization. In this manner, the abstract content of legal formulations acquires the face of real people. Only as regards the different specific existential situations do such normative orientations assume a defined profile.

The semantic indeterminacy of rights is continually lent substance through the definition of the ways in which human rights are to be exercised. The argumentative aspect is peculiar to their identity and structure, and the reasoning applied to them, in relation to the types of action, brings to light hidden implications and potentialities. Therefore, the formal listing of rights is only one step – certainly necessary but not sufficient – towards their realization. It represents a normative set that applies for the wide range of *possible* cases.

It should be pointed out, in this regard, that rights only provide guidelines for action, indicate a criterion to be abided by, without any specification as to how, where, when and other conditions of application. They tell us that there are aspects of the human person that must be protected, but not in what way, to what extent, under what circumstances, within what limits, or whom we should be concerned with.

A full understanding of rights may be attained only through their application, that requires reasoning and deliberation in relation to specific cases. A legal case regards an articulate, clearly ordered series of incidents, which is reviewed by a judge, starting from a guiding question that derives from a need for regulation and the requests made for protection. A case must be considered in its singularity and the law itself, after all, exists in the contingency of cases and is realized in the activity of concretization.

This brings the jurisdictional element into the foreground and enables us to reflect on the role played by the concept of vulnerability in the practice of interpretation and application and in the modes of argumentation connected to them. The criterion of vulnerability seems to serve for a careful and incisive judicial function that requires judges provide a set of arguments in light of which the decisions are coherent with human rights practice's goals and values (Barranco Avilés 2023, 21-28).

Vulnerability, therefore, is a term that can perform a heuristic function in relation to justificatory reasoning, understood as the grounds put forward to support the conclusion reached by the interpreter and the steps towards reaching it. The use of the notion in a judicial context presupposes a model of situated decision-making, which is founded on the individual characteristics of the parties involved in the dispute. It is necessary to focus attention on the particular circumstances and devised measures that, with reference to the case, may safeguard the vulnerable person through adequate protection.

Ascertaining such circumstances entails identifying the situations, which are varied and diversified and have different degrees of intensity, and assessing them. The notion of vulnerability expresses a trend towards particularization of human rights, anchoring them to a tailored enforcement according to the needs of anyone whose fundamental entitlements are harmed (Ippolito 2020, 406-407). Vulnerability allows for the reconciliation of the apparently paradoxical dualisms of universality versus particularity (Furusho 2016, 204).

Indeed, ascertaining the facts is a crucial problem as far as the decision is concerned. The facts constitute the starting point of judicial reasoning and the data that guide the entire process of interpretation and application. However, the facts are the result of selections, which imply a reliance on the criteria whereby the selection is made. The 'legal relevance' is undoubtedly an essential criterion, but it is not determinant. We must also consider the 'logical relevance', thanks to which some facts can be used as premises from which to draw inferences useful for ascertaining the legally relevant facts. It should be highlighted, however, that the relevance of a fact also derives from the attribution of autonomous importance to specific circumstances, which become significant in reference to value judgments of a social, moral, and political character. It is on the basis of such judgments that one identifies the facts that 'deserve' to be taken account of in the legal proceeding. Only *afterwards* it will be established whether there is a provision that can be adapted to these facts, to which a legal qualification can be given. The category of 'vulnerable individuals' or 'vulnerable groups' acts at this level of the process of argumentation, coming into play *before* the qualification of the circumstances, events, and behaviours, in the light of the legal materials.

The scenario revolving around vulnerable individuals finds in jurisdiction – which increasingly lies within a complex normative whole where materials belonging to different centres of legal production intertwine – an essential place for ascertaining situations of aggression that harm the rights of people and for ensuring their protection.

Without a doubt, determining the objective and subjective elements of vulnerability is not an easy task. It is necessary to take into account the particular situations of individuals and the harm that they have suffered. Vulnerability is a qualitative and quantitative indicator of the violations of dignity committed in various spheres of interaction. If, therefore, being vulnerable expresses the existential condition of people, the protection of human dignity cannot but be viewed as a lodestar, which judges, in cases concerning discrimination, prejudice, deprivation, violence are bound to follow, and as an internal criterion guiding the practice of interpretation and application of rights. Dignity provides a convenient language for the adoption of substantive interpretations of human rights guarantees which

appear to be intentionally contingent on contextual circumstances. The concept of 'human dignity' plays an important role in contributing to particular methods of human rights adjudication (McCrudden 2008).

Vulnerability emerges as a situation of lack of protection, as exposure to the risk of harm, or as a defenceless condition in which the harm may be or has been produced. Thus, the category acquires a hermeneutical value as a 'qualitative and/or quantitative indicator', or as an 'alarm bell' of situations of humiliation, discrimination, subordination, domination, and violence, all causes of suffering (Pastore 2021, 75).

Making reference to vulnerability allows the use of a heuristic device (Fineman 2008, 9) that may contribute to identifying the violations of rights and explaining the peculiarities of cases in which requests for protection are put forth.

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