



## ABOUT RULE OBSESSION AND HUMAN RIGHTS

*An interview with Gro Hillestad Thune, previously judge at the Human Rights Commission in Strasbourg*

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**I**nterviewer: Why is it that violation of HR turns out to be something that refers to third world countries and not our daily lives? HR have more or less become an instrument of critique of other civilisations, and not an instrument for definition of the state of affairs here and now.

**Thune:** I don't know whether you need to connect the situation in Norway to a value-debate about values that HR protect, social rights, civil or political rights. My impression is that in Norway HR are seen as something relevant to look at in other countries, as if HR problems are to be found in other countries and not in Norway. That is a misunderstanding caused by a lack of knowledge about what HR really are. We do not understand that HR are also concerned with problems that we have in Norway today, because we connect the idea of HR with big violations, big assaults in countries where violations are so obvious that we cannot so easily overlook them. Things that happen in Norway are looked upon as if they have another character, as if they are not serious in relation to the convention. We look at HR violations in Norway as a non-existing problem.

**Interviewer:** A brilliant example of this is a problem that you are working with currently, namely the daily lives of demented patients that are not treated in a humane manner due to their mental limitedness. The Norwegian government meets the problem with rules and laws without thinking of legal protection and risk of violation.

**Thune:** There are many problems only with the fact that HR does not rule the public domain that it is not even on daily debate. Because what can be done in a home for the elderly or another social institution is not even placed on daily debate as a problem. So you can ask, what are the problems? It is important that we are aware of HR in relation to things that happen in Norway. What we think is that there is not so much to nag about. It is not necessary to train people when we are as content as we are now. And then when one works with the problem for so many years, one sees that there is so much dodgy business going on and in direct collision with the HR convention. And then there is a question about why and how this happens. It happens in many different situations and in many different ways. This is directly connected with the fact that we fail to understand it. We believe that we can solve the problem with some sort of over-regulation. We have many good rules but we lack the understanding of the fact that not everything should be regulated with rules, and that some things fall between rules. The problem here is our over-eagerness to follow the rules instead of using reason. If we are to improve the situation, it does not help to look at the rules one has, but one has to look at what happens with rules in practice: if it is OK to treat someone like that or it is not OK. Here in Norway we have an exaggerated focusing on whether rules have been followed, especially in the public care system, therefore we allow a lot of ethically dodgy situations to arise and violate basic human rights.

**I**nterviewer: This discussion also forces upon us a question of whether research deals with these sides of reality. There is a big distance between empirical data and research, even in the HR research. Some would call this lack of coordination, but is this really the case, is it really lack of coordination or is the question here the fact that HR are understood as a type of theory?



**Thune:** It is not possible to understand HR without relating to reality, reality to empirical data and facts. To understand, one has to go down to the ground level, to look at what is really happening, register it and take people's history as a starting point. A lot of HR work is going on in high theoretical abstractions, far away from the concrete reality experience. There one creates a distance, which makes impossible the understanding of real problems. This is problematic if the hope is to increase consciousness about these problems. The HR world is being made into a theoretical, philosophical world that lives its own life, while what people are being exposed to in reality is happening in another world. In my opinion these worlds have to come together, otherwise this will never be more than amusing party games where one discusses different question, without having any purpose for practice. You need two things, you need thinking and abstraction of this in the form of rules and regulations, but you need both things in order to get anywhere, and as it is now, there is too much focusing on the theoretical part, at least in the academic part of HR.

I can illustrate this with an example: One of my colleagues in the HR-commission in Strasbourg came to be a judge for complaint-cases from the whole of Europe. He had a lot of experience as a HR-expert, and he was also in the UN. I asked him after a few months (since I was the president of the chamber he was at) what he thought about our work in Strasbourg. He answered that after he heard the discussions there, he became a "new man". Now he understands what HR are, earlier he only had theoretical knowledge, but he then understood what it was all about. The reason for this was that the starting point was an individual as a thinking subject, the individual's description of what it is to be violated. If you start there, then it is possible to have a meaningful discussion about where does the limit go.

**Interviewer:** If the Strasbourg commission's task is to practice connection between the research and particular cases, the question is: How well does it function?

**Thune:** That is debatable. In a historical perspective it really functions best within the area of HR so far. It is unique because there is no other such possibility anywhere else in the world. This is why its decisions are taken seriously by states. All systems have their strong and weak sides, but it is very important that it exists, and to take care of what there is.

**Interview:** OK, so we have research on one side and we have the commission on another, while at the same time we have the women's convention and the convention against race discrimination, which are not yet implemented in the Norwegian law.

**Thune:** In Norway, in general, there is a hesitation to commit oneself concretely in relation to HR. We hesitated for very long time to incorporate the children's convention; we were amongst the last of the countries in the world to do so. There is some sort of tradition to be careful with taking conventions into the juridical system in an obligatory manner. We do not have many HR in our constitution, and it is risky according to the juridical environment that establishment is relating to. For example, the children's convention was pushed through with enormous political pressure, despite the scepticism from the juridical environment. Here one had gone relatively far also in relation to make the children's convention a part of Norwegian law with precedence. This is really to go far, and then we got reactions such as: this is unclear, one does not have a overview over situation, this is not to be recommended, etc.. On top of that we get a strange difference in treatment of the women and the children's convention.

**Interviewer:** But it is not all that accidental that precisely the women's convention was excluded?

**Thune:** No, it is easier to get consensus for strengthening of children's rights, but on the other hand I am not so sure that all those who sit and coordinate rules in Norway see clearly "children's best"-principle. What we can say is that it is definitely not accidental that the children's convention was taken before the women's



convention. Even though such a view has to do with women, it also has to do with a general situation in Norwegian juridical system, a general hesitation when it comes to taking HR seriously and a tendency to question it by arguing that it is complicated, that it is an international system that intrudes and disturbs our juridical system, our democratic system, etc..

**N**o, maybe not. It is easier to get a consensus for strengthening children's rights. On other hand we did maybe take on more than we can handle. Many individuals in leading positions have barely see what it means when Stortinget accepts that "children's best" shall gain priority in all forms of governmental power exercise. When one did not go so far as to incorporate the women's convention in the same way, this has to do with a general hesitation with juridical environment against stretching Human rights too far. One can understand this hesitation in the light of lacking interest amongst Norwegian politicians to take HR actively in use and really understand what does it say not to ratify and at least incorporate an international convention into our juridical system. My impression from other countries is that at least some politicians get hold of this. Here in Norway it is difficult to pinpoint one single politician that does it.

**Interviewer:** For the time being you also work with questions related to integration, especially with Somalis in Oslo. Lately, there have been debated some important questions concerning this group, such as circumcision of young girls. The state suggested medical examination of the girls as a way of dealing with this situation. But isn't this just another way of violating of these children?

**Thune:** To speak very concretely, circumcision of young girls is definitely a violation of the girls. Therefore all states have an obligation to stop this, they have an obligation to protect the girls from the circumcision. The state has under HR convention an obligation to protect the girls against the violation from the private persons. In the case of circumcision the state has an obligation to protect the girls also against their families, to protect them against violation that can be committed by their families. But when authorities shall protect them, they cannot use methods, which are violating and straining, like for example stigmatising the entire group. This is not effective. When one threatens with control and punishment, one brushes the problems aside. The situation gets worse, and this is not an effective protection of the girls either. The Norwegian politics around circumcision is both: neither wise nor effective. The problem is that we are not enough result oriented, in Norway today we are much more interested in demonstration of power and disgust. This is a big problem. The problem with forced marriage is very much like the problem of circumcision. We are driving very intensively against this practice and the groups are quickly shutting away from us. This is not easy, but this is about being clear, and this is about engaging oneself in cooperation with immigrant groups instead of sitting high up and just ordering them around giving orders about what they should and should not do.

**Interviewer:** This is a conflict between legislations and customs, traditions. One cannot rationalise someone's lifestyle from a distance without engaging oneself and think first on others premises, so that a possible change is reached also from their premises.

**Thune:** To stop the damaging traditional practice people's views and attitudes have to change. It is difficult to change people's attitudes via legal regulations. It is very important that authorities say very clearly that that something is not allowed, but that is already in the laws, and everybody knows it. The problem is that that one does not take these very seriously, so the decisions that refer to immigrants in general in the whole world are not translated in Norwegian, people are not informed, etc. And suddenly we have too much activity, so that there is no consistent follow up in relation to this, to protect the girls.

**Interviewer:** It turns out that it is because of the large amounts of knowledge about immigrants in Norway, or others in general, that we get a compulsive need to regulate or organise their daily lives in the way we think



is best for them. This in order to get away from having to admit that some of these problems to a certain degree stem from us and not only from those immigrant groups we think are more problematic than others.

**Thune:** We are becoming completely helpless by using our own methods. Norway is an expert in this. This is also a sign of distrust or immigrants can understand it that way. Instead of talking to them, instead of finding solutions together with them, instead of sharing responsibility for it, on sits on the Norwegian side, makes new rules, creates new projects, or creates a new plan of action which is only Norwegian model taken from the Norwegian method. This is not necessarily in order to achieve something good, that that is what they want. This is just the same problem all the way, demonstration of power without use of reason.

**Interviewer:** There is one group of immigrants that HR especially are more and more relevant, as a valid argument or demand of immediate changes in the Norwegian as well as European juridical system. Those are the immigrants who never really come into the country they remain sitting in imprisonment until they are either sent back or until they eventually after a long time are taken into the country. The other question is about those who cannot be sent back, what about them? They are very suitable objects for overproduction of legislations without giving the public proper insight into what is really going on with them.

**Thune:** Yes all these people become sort of “not-people”, it is as if they disappear if we just close our eyes. We are playing with the idea in hope that we do not need to do anything with their existence. Despite all this, they should have rights, and all this is in huge collision with HR. They are people with rights, either we like it or not, independent of status or citizenship. This practice. What they are exposed for each day, is very doubtful in relation to HR conventions that authorities obliged themselves to follow.

**Interviewer:** Isn't Norway one of the worst countries in relation to imprisonment, also of its own citizens?

**Thune:** Yes, all these people become “not-people” and this is just denying the clear facts. In case of the not-returnable immigrants we just pretend that they can be returned, even though they just remain here. This is just one of many HR violations in Norway today.

**Interviewer:** Another case you are working with, that we both are familiar with is care for elderly, demented, senile people who do not want to be placed in an institution, and therefore they live at home. We, who know about this problem, we know also that there are no control instances to take care of what happens and what does not happen in people's private homes daily. Isn't this also a form of violation of HR?

**Thune:** What is interesting here is that there should be control instances within the system. We have too many control instances that are dysfunctional. We are not smart enough to see what we are capable of doing, which framework we have, which possibilities we have, which possibilities for sanctioning we have, etc.. Knowledge about what possibilities for action we have in such systems is essential to being able to protect those who are easily exposed to different assaults and violations, whether it happens by the public system or by the private persons. Other people also violate people. That is a HR objective, if it is elderly care, home care, or if it is the family that does something wrong. If the authorities know about it, they have the responsibility to act.

**Interviewer:** Is it accidental that Norway in particular has such a bad reputation in relation to systems faults, which result in violations of HR?

**Thune:** We do not know how bad we are, because there is no system that can weigh or measure this. It is those who are violated, obviously there are a lot of them, they have nowhere to go in order to tell their stories,



to get their possibilities evaluated. Violations done in hospitals, homes for the elderly, in psychiatry or in private homes, are also done in other countries. This is because at once when you have a closed area, there is a high risk of something happening. Whether we are worse than others in Europe, we just have no way of knowing that.

**I**nterviewer: Due to the extremely developed bureaucratic system, or formalisation of the health services, today bureaucracy is also on the one hand used to a high degree for a defining away of responsibility whenever something serious happens. Like for example the “tram-murders”. On the other hand, care givers are surrounded by rules they must follow, and at the end of the day there is not much left for the personal care that should be there, except from the care giving routines the patients are going through on a daily basis. Isn’t this inhuman?

**Thune:** Yes, I think that is the biggest problem in Norway today, namely formalisation, bureaucratizing of the health services, where focus lies on laws, free from use of reason and solutions for actual problems. You can never regulate all the situations with rules, despite all the efforts. You will anyway end up in situations where there are no rules, where the situation is not already rule-defined. For example, there was a family of refugees whose asylum application was rejected and they were to be sent back. The man in the family gave a clear message that he cannot fly because of his heart problems. Anyway, since we in Norway today only have procedures for sending out of asylum seekers by planes, the police came and took the whole family and placed them on a plane home. The state chose in other words to risk causing a man’s heart attack instead of organising the trip back differently, by sending the family back on a bus or a train. It was so much easier to violate the man instead of trying for once to think differently. Such treatment of a human being is in colossal collision with HR. It is actually tragic-comic that the human being is violated out of taking into consideration the standard practice or administrative forms. There is no reasonable meaning; this is just a system for the sake of the system. This kind of rigidity is in a steady increase because one gets new rules all the time, and each new problem we solve with a new rule, and one gets it layer on top of layer, without even looking at how the rules function in relation to reality or in relation to other rules. In HR context this is a huge problem because it is concerned with all those who do not fit into such systems, those that fall between two stools. This is a serious social problem that not necessarily HR can solve, but we have to figure it out if we want to make progress.

**Interviewer:** So HR have human-concern as its objective?

**T**hune: In Norway today it is much easier to be a gambling machine than it is to be a human being. If you are a gambling machine, you get a lot of people around you all the time whether you function or not. There is always someone there, either those who play or those who repair you. But if you are a human being, you just get problems. You are very lucky if you have someone around you some times during the week, just to check if you are OK. This is actually absurd. We have even weight control for all those who sell goods by scale, the ones in charge of control go around and check that the salesman’s scale weighs correctly. We have care and control for so many things; we have statistics, reports, a lot of formalising around buying and selling, and around different services. At the same time we have surprisingly little focus on care for human beings and treatment of people, how we treat people in different situations.

**Interview:** So HR focus first of all on battle against powerlessness and injustice, which are not interpreted as that type of formalism. But there is a special case, and that is the case of war criminals that for example are residents of Norway. They have had either short sentences, or their sentences had been “forgiven” in exchange for information that led to arresting of even more war criminals.



**Thune:** If someone had done something wrong, and they are residents of a local community, nobody can call on HR and demand from authorities that they punish the same person. Only if someone had experienced something personally, then they can maybe raise a HR question, but generally it is not a HR to get someone punished.

**I**nterviewer: But isn't this a form of assault, a violation if they are allowed to live where they like, and especially to allow them to live close to their earlier victims? First they were in Haag, and the next day they are my first neighbours? Isn't this a HR violation from the side of state, because it is the state that allows them to live wherever they want?

**Thune:** Technically speaking I am interested in using HR for what they are meant to be. The problem I see, is that HR are used in many different ways. I do not think that we can come any further with HR as a concrete instrument for the fight against bad treatment of people if we do not become more precise in ways we use the HR concept. Here I speak as judge, because HR have to be looked upon as a legal apparatus, as a way of exercising power. If one speaks about HR from the philosophical perspective, as for example 'the right to food', etc., then we are going too far and we end up with not being able to use them for anything because they remain rhetorical, and therefore it is not understood by states as obligatory. In other words, it becomes very much like a utopia even though HR are very concrete. They should not be allowed to sign a declaration and convention if they do not plan to follow it up and take the responsibility for it in relation to the concrete situations that may occur. Rhetoric is dangerous.

**Interview:** Are you trying to say that the fact that people are dying of hunger is not a HR problem?

**Thune:** No, what I am trying to say is that this is not ONLY a HR problem; it is all kinds of problem. It is a decency problem, it is a political problem, it is a religious problem, and it is a HR problem. It is necessary to do something dramatic with the world in order to sort it out. But I think that this should not be called only a HR problem because you should be able to resolve the hunger problem without referring to HR at all, because it is clear that people have a decent demand of food, clean air and clean water, to live. In the complexity of HR it is very difficult to move further because there are so many demands, and there is so much good will and good intentions, and this leads to the fact that the states sign this as form of intention-declaration rather than as binding juridical document, and that is wrong. If someone signs the paper saying that no human being shall suffer from hunger, this cannot be legally binding, something which can end up in court. It has to be an intention we shall work for that no one shall suffer from hunger. This is a utopia, because there is always someone who suffers from hunger in this world.

**I**nterviewer: it certainly appears as if that what is far away from us seems less binding, while whatever is closer to us seems more binding?

**Thune:** The world is full of problems, the world is full of people who are suffering, the world is full of people who are exposed to assaults of one or the other kind. And then it was decided that we should establish the human rights system. This is the product of what happened in the Second World War, but we did not get as far as to really find out how this system should be used, and this goes also for us who work with it. Books are written, thoughts are thought, thick books are written about this, we come up with new rights all the time, new conventions, but still there aren't that many news about how this is to help us working against problems, which is the starting point for the whole thing. If we take it completely cynically, it is the state that gave these rules, because they gave them through the cooperation with institutions, which are beyond the state. This is about relation state-individual. Those who violate HR are these states, the same states that made the rules, and they violate them by not following up the HR. And then the states are supposed to also enforce the rights too,





so that you have the three things in one. As Montesquieu said in his time, democratic principles can never come from the same instance, if we are to call a system 'democratic'. It should always be that one is practicing, one is judging and one is juridical. One gives laws, one breaks laws and one judges the lawbreaking. The difficulty within HR area is that all of it is in one hand; the state has all three roles. The conclusion one can draw is that the state is not so interested in effective enforcing of HR laws because that means that the state would be criticised. There will not be any change within this area as long as people do not understand what these rules are trying to protect, and as long as people see themselves as thinking subjects, and do not pretend as if the state is suppose to introduce, enforce, etc., these rules because it is precisely the state that violates them.

And then there is a question about who shall prosecute and who shall correct this? They are not the state authorities because they themselves are the violators. In Norway we have a HR system which has the responsibility for HR in two sectors: the single departments, but they are also those responsible for the same laws that are possibly in collision with HR, or they are responsible for practice, or they are responsible for lack of correction, just to clarify what we are talking about here. This is hidden, camouflaged, as long as one establishes a certain HR theology on a high level, as very important, very principal, very universal. It lies up in heaven, and there are the big heroes, and as long as they have HR there, they are not able to use them. Then we see them up there, very clearly, but we cannot use them that much in practice. It says there how they should be, but then you get the frustration, there it says how they should be, but it is not the same in reality, there you get the distance. So that people should understand the distance, one has to start looking at them as rules, as juridical system that can be criticised, you have to have a juridical practice, and they have to be made concrete. This is the task for the committee in Geneva, their task is to make these principles concrete. But then the next step is that people take them seriously. Here are the facts, here it says so and so, and therefore this also goes for me, I demand that this happens. Being able to use HR in practice is a condition for there being a point in having them in the first place.