

**The Topicality of Social Human Rights
in Wealthy Countries such as Germany**

(Lecture at the Jose Martí Conference 2019, Havana)

„We light the oven so that everyone may bake bread in it.“

José Martí, Nuestra America y Otros Escritos, 1891

„Rights are to be taken, not requested; seized, not begged for.“

José Martí

„Men have no special rights simply because they belong to one race or another. When you say ‘men’, you have already imbued them with all their rights.“

José Martí in Patria (Kuba), 16.04.1893

Introduction

It is a great pleasure to take in a conference of the international solidarity-project Jose Martí on behalf of our foundation for human rights and participation for the second time. Once again, I am accompanied by my wife, Azize Tank, former member of the German parliament representing the Left party and member of the committee for work and social matters in the Bundestag!

In my contribution to the 4th International Conference FOR WORLD BALANCE I shall focus particularly on two issues which are being debated in the global forum:

- The role and challenges faces by new social movements in view of increasing social disparities in Germany and globally;
- The practice of basic human rights under the present conditions at the beginning of the 21st century, and especially concerning the social human right to work and housing.

A Few Words About Myself

I have been active as a lawyer in the field of human rights since 1978 and worked in progressive lawyers' unions, and was a member of the international „Cuban Five“ lawyers team. I took part in the Conferencia Internacional Con Todos y Para el Bien De Todos 2016 in Havana and am a board member of the International League of Human Rights. Together with

my wife Azize Tank, I founded and chair the charitable Eberhard Schultz Foundation for Human Rights. I also have personal ties to Havana: My son, Dr. Rainer Schultz is Director of the Consortium for Advanced Studies Abroad/Cuba Divisional Center (CASA-Cuba) in Havana in cooperation with the Casa de las Américas.

1. Presentation of our Foundation for Social Human Rights

Our young, charitable foundation, founded in 2011, is the only one in the German-speaking world whose goal is to contribute to the realization of social human rights on the basis of the 1966 UN Social Pact. The comprehensive recognition and implementation of these rights as subjective rights, which can be legally enforced before the courts and the UN Committee if necessary, is not only a mandatory requirement of international law. Especially in times of increasing social division in one of the richest countries in the world, in which growing right-wing populist forces demand discrimination and marginalization of entire parts of the population, the implementation of social human rights for all is late-breaking.

The focus of our work to date is on public relations, also in cooperation with other human rights organizations and initiatives from the social movements, the promotion of social projects, symposiums and discussions with experts from science, politics and NGOs.

2. Assessment of Important Factors Concerning the Balance

I would like to begin with an assessment of important socio-economic factors on the global as well as national level. Since the last conference two years ago there have been positive as well as negative developments. Let us begin with the negative developments.

2.1. Increasing Social Divide

The gap in the unequal distribution of wealth around the globe has worsened further to a dramatic extent. According to the latest figures published by Oxfam, 82% of global increase of wealth went to the wealthiest one percent of the global population, while assets of the poorer half of the world's population have remained unchanged.¹

¹ Oxfam Study: Reward work, not wealth, 2018, p. 8: <
https://www.oxfam.de/system/files/bericht_englisch_-_reward_work_not_wealth.pdf>

Even in Germany, one of the richest countries in the world, social divisions have developed dramatically. In the German government's most recent regular report on poverty, several passages on poverty were omitted – apparently because the truth was too shocking.

One in six persons living in Germany in 2015 was threatened by poverty. Without the redistributive effect of social benefits, one in four persons in Germany would have been threatened by poverty.²

Around 21 % of all German children spend at least five years of their childhood in permanent or recurring poverty. The number of pensioners who depend on food donations has doubled over the past ten years. At the end of the year 2017, 522 000 senior citizens received social benefits, compared to 371 000 at the end of 2006. Women and persons with reduced earning capacity, who pay high deductions on their pensions, are particularly affected.

2.2. Towards an Authoritarian Police State: Growing Racism, Exclusion of Minorities and the Shift to the Right

A further negative development is the powerful rise of racist, xenophobic and populist-nationalistic right-wing – in some parts even fascist – movements and parties across Europe. In Germany, the AFD (Alternative for Germany) is such a party, which is now represented in parliaments of several states as well as the federal parliament. The party may well become the second or third strongest party within the foreseeable future. Worse still, the AFD is driving other parties to adapt more right-wing positions.

In my book³ on the negative image of Islamophobia and institutional forms of racism, published in 2018, I carry out a critical analysis of cases from my practice as a lawyer to demonstrate in which way increasing anti-Islam racism in Germany since the attacks of 9/11, has fueled violence and attacks against immigrants and their facilities (mosques, refugee shelters and so forth), and vice versa. At the same time, citizens' rights are being limited and withdrawn under the pretext of a fight against terror.

In a joint declaration by the RAV, VDJ and the Committee for Basic Rights and Democracy, published on the October 2, 2018, the authors state:

² Bundeszentrale für politische Bildung, Ausgewählte Armutgefährdungsquoten (04.04.2018): <https://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61784/armut>

³ Schultz, Eberhard (2018): Feindbild Islam und institutioneller Rassismus – Menschenrechtsarbeit in Zeiten von Migration und Anti-Terrorismus. Hamburg: VSA-Verlag.

„Standards of social and personal rights are being eroded across Europe. In domestic policies and policies concerning migration, we are faced by a never-ending wave of tightening of laws. These changes are substantial and concern all fields

[...]

this concerns a housing law which proves on a daily basis that the boundaries of protective rights of tenants are set by the interests of economic exploitation, for as long as rented space remains a commodity, the fulfillment of this basic need remains essentially limited by financial means.

this concerns the continued unequal treatment and unequal ranking of men and women and LGBTIQ persons. It concerns the roll-back of hard-fought for laws such as for example the current criminalization of doctors who carry out abortions, the promotion of a retrogressive image of the family through the payment of benefits for mothers and the planned cutting of funds for gender studies. At the same time cases of domestic and sexualized violence are being used for racist agitation. [...]

This list is neither complete nor final. But it makes clear that law in its function of protection against discrimination, exclusion and public encroachments is losing its meaning and is more and more turning into a means to protect the ruling system of ownership of wealth and the legitimization of actions by the state.”

2.3 Social Movements and “Refugee Crisis“

This also has concrete implications for social movements, as shown by attempts to criminalize parts of them, to cut their financial resources and so on - even if it is not yet on the scale that many seem to fear for Brazil, after a president has come to power who not only secretly admires the military dictatorship that was overcome decades ago.

But it is not only Donald Trump who is trying to turn back time with the help of a monstrous wall on the Mexican border - and this of all things by a historically very burdened means, a wall, to deepen the rifts between the USA and Latin America again. But Europe is also sealing itself off with a series of measures on its border to Africa on the Mediterranean with increasing military means; this Frontex border regime is rightly fought as a "fortress of Europe" by all progressive forces. The barbaric consequence of this fortress: thousands of refugees die every year trying to reach Europe and drown miserably in the Mediterranean. To combat this, we have just called for the support of civil sea rescue in a press release.

"The EU, and thus above all the German Federal Government, is making a major contribution to this catastrophic development with its policy of militarily arming the murderous border regime (Frontex) and at the same time trampling underfoot the most important human right of all, the right to life and physical integrity. As long as people have to flee from hunger, wars, ecological catastrophes and an unjust world economic order, the enforcement of social human rights remains on the agenda and the commitment to civil sea rescue remains a first-rank humanitarian duty!"

2.4. Growing Resistance and Protest

Growing resistance and protest are developing against this threatening development, especially at the extra-parliamentary level. But also in the German parliament the Left fraction and parts of the Green fraction try to steer against it. At the end of last year, for example, the left-wing parliamentary group tabled proposals entitled "Overcoming Social Inequality - Guaranteeing Social Human Rights" (printed matter 19/4561) and prepared another one entitled "Defending Human Rights as Rights of Resistance against Injustice, Exploitation, Oppression and War - 17 Years of the Universal Declaration of Human Rights". The Green fraction is particularly committed to combating climate change, but also to upholding civil liberties.

Also encouraging was the engagement of numerous NGOs with parallel reports on the Federal Government's State Report, including the participation of two dozen representatives of key NGOs at the public hearing held by the UN Social Committee in Geneva last September. Our Foundation also made contributions to the joint parallel report. We put in the foreground the fact that the Federal Government cannot excuse itself by having been in office for only six months and, even less so, cannot hide behind the competence of the federal states in some areas (education, culture) - being the responsible subject under international law, it is its task together with the federal states to ensure the implementation of social human rights. This also includes the ratification of the Additional Protocol to the UN Social Pact. This is the only way for individuals and organizations to petition the UN Social Committee in case of human rights violations.

3. On the State Report of the German Federal Government, in Particular the Social Human Right to Housing

In our parallel report to the Federal Government's State Report to the UN Social Committee, we mention the deficits of the social human right to housing:

Homelessness is a nationwide problem and a major problem, especially in the big cities, which has recently also affected an increasing number of refugees, migrant workers from Eastern European countries and other people without secure status. At the moment, the Federal Government emphasizes that it is the sole responsibility of the municipalities to solve problems of homelessness.⁴

Given the estimated figures of the Federal Working Group on Homelessness (BAGW) of 860,000 homeless people⁵ and 52,000 people without any shelter (2016),⁶ it is urgently needed in a rich industrialized country like Germany to give everyone a legally enforceable right to adequate housing.

According to a study by the Eduard Pestel Institute, only one in five economically weak households in 2012 had the possibility of getting social housing.⁷ The demand for 5.6 million homes was offset by just 1.6 million available apartments. In order to maintain the status quo alone, 130,000 new homes were needed each year. Especially in large cities, urban areas and university cities, the situation is often particularly delicate.⁸ Since 1990, the number of social housing has fallen by 60%; in 2016 there were still about 1.2 million social housing apartments.⁹

Not only are too few new social housing projects being built, but public housing associations are being privatized and state subsidies are linked to temporary commitments, which will eventually expire. This approach promotes the drastic reduction in the number of social housing through conversion to owner-occupied or rented apartments.

It was all the more pleasing for us, as for the other committed NGOs, that the UN Social Committee took up the criticism in its concluding remarks. The Federal Government is requested to submit an urgent interim report within 24 months on the three issues of the situation of older people in care, child poverty and the right to housing.

In Berlin and on a national level, a large number of tenant initiatives have been founded and their protests have become increasingly public. In the alliance #rent madness (#Mietenwahnsinn) dozens of NGOs are united, which support affected persons, protest

⁴ State Report 2016 (fn. 2), p. 57-8.

⁵ Since 2016, BAGW includes the number of homeless recognized refugees in its estimates. Without including this group of people, the number of homeless people was 420,000 in 2016, of which 32,000 were children and minors.

⁶ BAG Wohnungslosenhilfe e.V. (BAGW), Zahl der Wohnungslosen 2016, <http://www.bagw.de/de/themen/zahl_der_wohnungslosen/>.

⁷ Eduard Pestel Institut, Wohnungsmarkt <<http://www.pestel-institut.de/themenbereiche/wohnungsmarkt/>>.

⁸ *Ibid.*

⁹ BAGW, Pressemitteilung: BAG Wohnungslosenhilfe: 860.000 Menschen in 2016 ohne Wohnung, Prognose: 1,2 Millionen Wohnungslose bis 2018 (14 November 2017) p. 2.

against rent increases and forced evictions and demand the expropriation of particularly profit-greedy housing enterprises. They also urge the municipalities to finally build more social housing again or support their construction. In October, our foundation awarded a special prize to a tenant initiative in Berlin that is particularly affected by rent increases. The press has reported on this in particular. We are in the process of carrying out a campaign with them titled "Realizing Article 28 of the Berlin State Constitution: Everyone has the right to adequate housing". The new constitution of Cuba could historically be seen as an important attempt to establish civil liberties and social human rights in a comprehensive catalogue. As such, it could perhaps become the model of a constitution for the 21st century.

This year we are also planning a symposium on the social human right to work together with the dominant German metalworkers' union IG Metall and other cooperation partners, experts and politicians. One goal is to denounce and change the still existing blatant discrimination against women who receive on average 20% less pay for the same work.

4. A Ray of Hope: Cuba in "Good Constitution"

Finally, I would like to point out a very positive development, not only as a tribute to our hosts: the new constitution of the Republic of Cuba, which is to be adopted shortly, is an event of world historical importance, not only because last year's draft was discussed and supplemented in thousands of consultations at grassroots level and is to be put into effect in a referendum - in which of our Western democracies has the people ever been involved in this way? Above all because of its important content. Here I shall confine myself to human rights:

- in Art. 40 the draft has been supplemented by the explicit determination of "human dignity as the highest value".
- in Art. 41 the Cuban state expressly guarantees the irrevocable, indivisible, universal and independent human rights
- Art. 42 stipulates that all people are equal before the law and exercise the same rights and freedoms and possibilities "without any discrimination on grounds of sex, age, sexual orientation, identity, ethnic origin, colour, religious belief, disability, national or territorial origin"
- Art. 43 expressly states that also social rights are exercised equally by all;

- and in the articles 46 ff. important social human rights are also expressly established with constitutional rank, so the right to security, peace, health, upbringing and education among other things. Their guarantees are recorded in astonishing precision.

A first conclusion: for the first time since the end of the socialist community of states, which had insisted on treating the social human rights from the UN Social Pact of 1966 equally and enforcing them worldwide, all human rights are comprehensively, universally and bindingly laid down in a constitution. And there is a good chance that this constitution, drawn up jointly by the people of Cuba, at the grassroots level and at all levels of society in a hitherto unprecedented process, will also pass the practical test - the gap between the written constitution and constitutional reality is known to be a huge problem in most states!

As far as I can see, the Cuban Government has not yet ratified the Additional Protocol to the UN Social Pact, but it should be possible to catch up quickly!

Most Western democracies could take a leaf or several out of the Cuban book! At least the Federal Republic of Germany. After all, social human rights are neither listed in the constitution nor are they recognized by the courts as subjective rights with constitutional status. They still play a shadowy role in contrast to civil liberties such as freedom of the press and freedom of expression. And this in a country that likes to celebrate itself as the "world champion of human rights"! But it is not only in football that some world champions have been dethroned again, as happened to Germany last year in Russia!

The new Cuban constitution could thus be seen historically as an important attempt to enshrine civil liberties and social human rights in a comprehensive catalogue. And so perhaps become the model of a constitution for the 21st century.

In this spirit, I wish our conference in Havana a successful course in order to restore the "balance of the world".