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## REPORT

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# GROUP RIGHTS AND INDIVIDUAL RIGHTS: CAN THEY COEXIST?

### Executive summary

In the past 50 years globalization has spurred a resurgence of ethnic and national awareness, which also by the nature of the Second World War, came in hand with a posterior development of a legal protection of group rights. The development of these rights under International Law will chronologically be assessed in this report.

Nevertheless, the concept of group rights is very much discussed: from its existence to the scope of it. Moreover, there is also no consensus on the characteristics that a group must have in order to be a right-holder. However, most scholars agree that a certain level of unity and identity must persist in the group: it must be a conglomerate collectivity with a shared understanding and intra-group solidarity capable of taking moral action on its own, different from an aggregate interest of its members.

The relation between group and individual rights is also discussed: do they co-exist? Do they complement each other? Or are they mutually exclusive?

Those who believe they can co-exist argue that individual rights contradict themselves as often as group and individual rights do, so a conflict between the two should not be a motive to dismiss group rights altogether. Moreover, some consider group rights as a necessary tool to act against an excessively powerful state and others argue that only being able to claim rights which are enjoyed individually but not collectively would be an arbitrary decision.

The arguments in favour of a complementary relation between group and individual rights purport that both pursue the same interests in most occasions, and that in fact, in order to enjoy individual rights sometimes it is necessary to enjoy a group right as well, such as cultural or linguistic ones.

Contrariwise, those who defend that group and individual rights are mutually exclusive due to its nature and contradictions, are additionally concerned about the possibility of an individual not being represented by the group he or she belongs to and not being able to defend a right on his or her own because the matter has group standing instead. Under such circumstances, the quality of individual rights as safeguards would be violated.

In practice, the case of Cyprus and the Annan Plan V (2003) show that there is a conflict between the protection of group rights, such as cultural and linguistic rights of the Cypriot communities, against the individual rights of the citizens to not be discriminated on basis of their race, language, etc. as well as their right to property, settlement and movement. The Annan Plan envisaged a strict bizonality of the country which would limit individual freedoms in favour of established quotas of permanent residents in both constituent states. Moreover, the consociational model of government designed by the Plan would perpetrate the division of the country by ethnic lines, in disregard of future domestic demographic dynamics, and would provide with a strict governmental representation based on the origin of the candidate.

Although it is not possible to provide with a clear answer whether group rights and individual rights can co-exist, complement or exclude each other, it seems that group protection can actually contribute to the guard of individual rights, but at the same time there are cases where group rights breach individual liberties. This paper suggests not to deny the existence or the utility of group rights, but to examine on a case-by-case basis when group rights conflict with individual rights. Finally, this report recommends developing guidelines to try to find the balance between the two to ensure the maximum level of protection of both individual and group rights.

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## Introduction

Globalization has fuelled an “ethnic revival” during the last fifty years due to its assimilation tendencies and the increased intercommunication. The resurgence of nationalism was not expected, for example, in French Canada, and there is no clear agreement on the specific causes: some claim it is instigated by a response to a bigger threat suffered by cultural minorities caused by the increase of communications and technological developments, population growth and stronger state nationalism; others say that it is due to a new paradigm on individual and community identities; and others argue that is brought by the better hearings minority claims have.<sup>1</sup> Before we examine them we should provide for a distinction between individual and group rights.

Individual rights can be defined as those equality rights that can be fought on an individual basis, even if the rights at stake are violated in terms of discrimination for belonging to a group (race, sex, beliefs, language, sexual orientation, etc.). An example would be the right not to be tortured, which although might be violated on the basis of group discrimination, can be fought individually.

However, group rights are a much more discussed concept. While some argue they are merely the sum of the individual rights of the people belonging to a specific group<sup>2</sup>, others say that group rights are those that are held by a group rather than by its members separately.<sup>3</sup> In the first view, individuals decide to take collective action in order to most effectively fight against discrimination. This collective action will only exist as far as the discrimination takes place and will dissolve afterwards. In the second view however, group rights have a much more independent standing, and the group as such is the right-holder, for example in the case of a linguistic right.

This paper will define group rights with the latter description, and will examine its conditions, criticism and relation with individual rights. Later it will observe the relevant international law and will pay special attention to the case of Cyprus and the Annan Plan.

## Conditions for a group to hold rights

The conditions a group must satisfy in order to be considered a right-holder generate controversy. It is mostly agreed that a group must possess a certain level of unity and identity, but to which extend? And how can they be analyzed?

In regards to unity, Peter French refers as a group able to hold rights a “conglomerate collectivity” in contrast with an “aggregate collectivity”. The former is an organization formally constituted with internal structure, norms, etc. that it is predictable as such, without necessarily making foreseeable the conduct of its members; for example, a political party. The latter is a mere collection of individuals, for instance middle-income earners, whose rights and responsibilities ultimately fall within their individual realm.<sup>4</sup>

Dwight Newman makes an analogous distinction, but in regards to the persistent character of a group when its members change. He differentiates between “collectivities” and “sets”, the first one being an identifiable collectivity even though its affiliates change, while the second one becomes a different aggregate under the same circumstances.<sup>5</sup> In that sense, a group capable of holding rights would be a collectivity.

As far as identity is concerned, formal organization might not be an essential requisite for a group to have an enduring identity. For instance, nations have not always enjoyed rights over one specific territory, and some, like

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<sup>1</sup> Sanders, D. *Collective rights*. Hum. Rts. Q., 1991, 13, page 368.

<sup>2</sup> Idem

<sup>3</sup> Peter, J. Group Rights. *Entry in the Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights-group/> (30.04. 14), 2008.

<sup>4</sup> French, P. A. *Collective and corporate responsibility*. New York: Columbia University Press, 1984, page 13.

<sup>5</sup> Newman, Dwight G. Collective interests and collective rights. *Am. J. Juris.*, 2004, 49, pp. 128-129.

the Kurds, have never achieved state recognition. However, the possible lack of formality does not deprive a group from having an identity.<sup>6</sup>

Other considerations in regards to identity must be examined under a psychological and sociological prism. According to Galenkamp, a group will be able to bear rights if it has a strong intra-group solidarity.<sup>7</sup> In the same line, McDonald argues that it is a shared understanding amongst the members of a group which permits the collectivity to hold rights, because they have similar moral purposes, shared objectives, history, language, etc.<sup>8</sup> Similarly, Larry Marry argues that a group who performs actions and possess an intrinsic interest has a moral status which allows it to bear moral responsibility and rights.<sup>9</sup>

In conclusion, the necessary conditions for a group to bear rights are not universally ascribed, but many scholars agree that certain level of unity and identity are necessary. In regards to unity, it should be a conglomerate collectivity, where there are some norms and its behavior is predictable, even if all the adherents change or it is not possible to predict the individual behaviors of its members. As for identity; group solidarity, shared understanding and the moral status of a group, according to different scholars, are the main components to determine whether a group can hold rights on its own.

### **Criticism on the concept of group rights**

There are three main criticisms against the concept of group rights: firstly, that group rights dissolve into individual rights or they are actually not rights at all; secondly, that groups as such cannot bear rights; and thirdly, criticism comes from the consequences of attributing rights to groups. The following section will examine the first two in detail and provide with some contra-arguments. The consequences of attributing rights to groups and its conflicts with individual rights will be analyzed in the next chapter.

Concerning the first criticism, on the one hand, some claim that the recognition of individual rights is connected to the recognition of collective rights, and that it is not possible to make a distinction between the two categories since all rights have individual and group features. On the other hand, others reject these arguments:<sup>10</sup> some individual rights can be claimed without connection to collective rights (due process, free trial, etc.) but others, like the freedom of religion and other cultural rights, cannot be effectively claimed without the respect for collective rights.<sup>11</sup> Moreover, if a victim is targeted because it belongs to a group, the solution must require the protection of that group.<sup>12</sup> For example, the General Assembly Resolution 96 (I) affirmed genocide was “a denial of the right of existence of entire human groups”, and the UN Genocide Convention built up on that idea, protecting groups from physical annihilation.

Due to that, some conflict between individual and collective rights arises, and the way to solve it is finding the balance between the two. States normally implement policies to provide advantages to members of groups who have suffered historic inequality, such as affirmative action or positive discrimination.<sup>13</sup> Moreover, the government

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<sup>6</sup> Peter, Jones. Group Rights. *Entry in the Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights-group/> (30.04. 14), 2008.

<sup>7</sup> Galenkamp, E. M. *Individualism versus collectivism: the concept of collective rights= Individualisme versus collectivisme: het concept'collectieve rechten'*. Rotterdam: RFS, 1993, pp. 81-100, 111-2, 131.

<sup>8</sup> McDonald, M. Should Communities Have Rights--Reflections on Liberal Individualism. *Can. JL & Jurisprudence*, 1991, 4.

<sup>9</sup> May, L. *The morality of groups: Collective responsibility, group-based harm, and corporate rights*. Notre Dame: University of Notre Dame Press, 1987.

<sup>10</sup> Sanders, D. *Collective rights*. *Hum. Rts. Q.*, 1991, 13, page 368.

<sup>11</sup> Freeman, M. *Are there collective human rights?*. *Political Studies*, 1995, 43.1, page 32.

<sup>12</sup> Kuptana, R. *The universality of human rights and indigenous peoples: new approaches for the next millennium*, Rights and Humanity Roundtable, Strengthening Commitment to the Universality of Human Rights (Amman, Jordan, April 1993), pp.4, 10.

<sup>13</sup> Freeman, M. *Are there collective human rights?*. *Political Studies*, 1995, 43.1, page 33.

may allow the special representation of collectivities, although that goes against the principle of individual equality of citizenship, in order to protect individual human rights of minority groups' members, protect their collective interests and maintain peace.<sup>14</sup> Generally, liberal democracies recognize group rights because they deem it necessary to protect individual and collective interests.<sup>15</sup> A dilemma arises if a community claims for a political tradition which goes against human rights.<sup>16</sup>

As far as the skepticism in regards to the idea of a group holding rights is concerned, independently of their level of unity and identity, some argue that "only individuals can make decisions, can literally have values, literally engage in reasoning and deliberation".<sup>17</sup> Nevertheless, proponents of group rights defend their position with different arguments. French suggests a strategy that follows the premise that if human individuals can hold rights because they possess several characteristics, groups should do too if they share the same features. For him, conglomerate groups which are able to take actions representing its own intentions, are moral persons and capable of bearing moral rights and responsibilities.<sup>18</sup> Capacity for agency is, therefore, deemed essential to be able to hold rights. However, not all scholars agree: Graham believes that it is enough for a group to have a moral concern in order to acquire a moral status,<sup>19</sup> while Newman states that a collectivity, in contrast with a set, has different interests than the merely aggregation of the ones of its members, and therefore it can bear rights of its own.<sup>20</sup>

### **Group rights in relation with individual rights**

How can group rights relate to individual rights? Can they co-exist? Do they complement each other? Or are they mutually exclusive? There is a wide array of diverging opinions on this topic, with no clear answer to the questions they pose.

Some scholars believe both categories of rights are mutually exclusive, and they raise concerns over the consequences of accepting groups as right-holders. Vincent argues that if a group has a standing independently from its members, the individuals will not have a case on their own on matters which the standing lies on the group. As a result, members' wills will be unrecognized on those issues, and that will negatively affect their individual rights.<sup>21</sup>

There is also a fear for oppression of group rights over its members, which is of higher concern in "ascriptive" groups, where people cannot opt out, such as race, ethnicity, culture or language groups.<sup>22</sup> For example, it is frequently alleged that conceding rights to cultural minorities can reinforce the elite's power to maintain traditions and the integrity of the minority, against the wishes of other members of the group. This phenomenon is called "minorities within minorities".<sup>23</sup>

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<sup>14</sup> Van Dyke, V., *Human rights, Ethnicity, and Discrimination*, pp. 10-1, 14-5, 26-8, 55-6, 76-7, 96-7, 101, 125-6, 139.

<sup>15</sup> Freeman, M. *Are there collective human rights?*. Political Studies, 1995, 43.1, page 34.

<sup>16</sup> Van Dyke, V. *Human rights and the rights of groups*, American Journal of Political Science, 18 (1974), pp. 730, 734-5.

<sup>17</sup> Narveson, J. Collective rights. *Can. JL & Jurisprudence*, 1991, 4, page 324.

<sup>18</sup> French, P. A. *Collective and corporate responsibility*. New York: Columbia University Press, 1984, pp. 32-38.

<sup>19</sup> Graham, K. *Practical reasoning in a social world: How we act together*. Cambridge University Press, 2002.

<sup>20</sup> Newman, D. G. Collective interests and collective rights. *Am. J. Juris.*, 2004, 49, pp. 128-129.

<sup>21</sup> Narveson, J. Collective rights. *Can. JL & Jurisprudence*, 1991, 4: 329.

<sup>22</sup> Peter, J. Group Rights. *Entry in the Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights-group/> (30.04. 14), 2008.

<sup>23</sup> Eisenberg, A.; Spinner-Halev, J. (ed.). *Minorities within minorities: equality, rights and diversity*. Cambridge University Press, 2005.

Similarly, there is also the concern that if we ascribe rights to both individuals and groups, we might encounter that group rights overtake individual ones. This will cause that individual rights will no longer protect persons from those who hold power.<sup>24</sup> For the above reasons, group rights and individual rights would be mutually exclusive.

However, other scholars argue that both categories of rights can co-exist, and allege several motives that sustain this viewpoint. For instance, they argue that finding a group right in conflict with an individual right should not be a reason to dismiss all group rights, because it depends on their content. Some of them do not conflict and should be accepted. Moreover, they argue that it would be arbitrary to state that right-holders can only claim for goods which they can enjoy as an independent individual, but not for those enjoyed as a group.<sup>25</sup> In addition, Alexis de Tocqueville and the English Pluralists held the theory that group rights help to maintain a balance of power and the liberty within a society, since they check and act against an excessively powerful state.<sup>26</sup> Lastly, some argue that the conflicts between group rights and individual rights might arise as commonly as between individual rights themselves. Thus, there is no reason to dismiss them for that.<sup>27</sup>

Finally, some other scholars argue that in addition with their co-existence, group and individual rights can complement each other. In fact, they claim that the interests that individual and group rights seek to protect are often the same<sup>28</sup> and pursuing this stance, some even claim that an individual right might depend on the realization of a group right. For example many individual rights depend on the enjoyment of group rights, such as linguistic and cultural claims.<sup>29</sup>

There is no consensus on the relation between group and individual rights, and the tension between them increases when they enter a conflict. In the next section we are going to present an overview of the most relevant provisions in International Law that deal with them, which will be followed by the examination of the Annan Plan in Cyprus.

## International Law

Human rights doctrine affirms two fundamental principles of Western liberalism: a human individual is the most fundamental moral unit and all human individuals are morally equal (also known as egalitarian individualism). However, this doctrine has two collectivist principles: states are the primary agents of international relations and the ones obliged to protect human rights, and states represent nations (this claim is more uncertain).<sup>30</sup> The following list is a chronologic overview of the main Treaties that protect group rights:

- **League of Nations (1919):** most extensive system of minority-rights protection which recognized group rights such as equal rights for individual members of minority collectivities for example. It weakened the dogma of state sovereignty in favor of human rights protection. The League was dissolved in 1946.
- **UN Declaration of Human Rights (1948):** Most rights are expressed as individual rights, however, the UN Declaration of Human Rights has some collective characteristics: families have the right of protection by society and the State (Art 16), individuals have the right to participate in collective practices (Art 20 and Art 27), the authority of the government is based on the “will of the people” (Art 21), parents have the right to choose the education they want for their children (Art 26), everyone is entitled to a social and international order where the human rights can be fulfilled (Art 28) and all rights are subject to limitations of morality, public order and welfare of a democratic society (Art 29). It does not mention minorities (the United States opposed the inclusion).

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<sup>24</sup> Peter, J. Group Rights. *Entry in the Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights-group/> (30.04. 14), 2008.

<sup>25</sup> Idem.

<sup>26</sup> Stapleton, J. Group rights: Perspectives since 1900. 1995. *Thoemmes Continuum*.

<sup>27</sup> McDonald, M.. Should Communities Have Rights--Reflections on Liberal Individualism. *Can. JL & Jurisprudence*, 1991, 4.

<sup>28</sup> Raz, J. *The morality of freedom*. Oxford University Press, 1986.

<sup>29</sup> Jacobs, L. A. Bridging the gap between individual and collective rights with the idea of integrity. *Can. JL & Jurisprudence*, 1991, 4.

<sup>30</sup> Van Dyke, V. *Human rights and the rights of groups*, *American Journal of Political Science*, 18, 1974, page 25.

- **Covenants of International Human Rights (1966):** Common Article 1 declares that all *peoples* have the right to self-determination. Although this right developed from the context of post-colonialism, it has been used to express aspirations of national and ethnic minorities and indigenous peoples. The two Covenants must be examined separately.

- **International Covenant on Civil and Political Rights (ICCPR):** Art 27 declares that *persons* belonging to certain minorities shall not be denied the right, *in community with others*, to participate in the culture of their group. An interesting example where this article was applied was the *Nibutani dam* case in Japan. Up until 1997 the government had failed to recognize the Ainu, an indigenous people in Japan, as a minority. Because of that, their cultural rights were not acknowledged either. For many years, the Ainu challenged the assimilationist laws and policies of the Japanese government which banned their traditional lifestyle and use of language. Particularly, through the Ainu Association of Hokaido (AAH), they challenged the expropriation of Ainu's lands for the construction of the Nibutani dam, and although they were not successful in all the courts, they succeeded in achieving judicial recognition of the Ainu as an indigenous people with associated collective cultural rights. To reach this decision, the court referenced to ILO Convention No. 169 and Article 27 of the ICCPR, concluding that if a country aims at implementing a project similar to the Nibutani dam, which may affect the culture of indigenous minority groups, "the government has a special duty to give adequate consideration to such cultures with a view to avoiding unjust encroachment on their rights".<sup>31</sup> Later on, the Japanese parliament adopted on May 1997 the Act Regarding the Promotion of Ainu Culture and the Dissemination and Education of Knowledge Concerning Ainu Traditions which repeals earlier assimilationist laws of the Ainu, recognize them as people and guarantees the promotion of their cultural rights by teaching Ainu traditions.<sup>32</sup>
- **International Covenant on Economic, Social and Cultural Rights (ICESCR):** recognizes in Art 25 "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources". Other people's rights include those to self-determination, international peace, economic, social and cultural development, and a satisfactory environment.<sup>33</sup> The UN is currently considering an optional protocol to the ICESCR that, according to the way it stands now, would authorize *individuals* and *groups* to file complaints regarding alleged violations of the rights guaranteed in the Covenant, virtually comprising violations of the right to self-determination.<sup>34</sup>

- **Lisbon Treaty (2007):** the Charter of Fundamental Rights of the European Union constitutes an integral part of the treaty which entered into force in 2009. The EU Charter of Fundamental Rights recognizes the right of collective bargaining and action (Art 28). In the *Viking* case (438/05)<sup>35</sup>, the Court referred for the first time to Art. 28 and reaffirmed the right to take collective action.<sup>36</sup>

The European Citizens' Initiative, a major innovation of the Treaty, allows the citizens to submit a proposal to the commission if one million EU citizens residing in seven different member states sign a petition within a year, under the following legal basis: Article 11(4) of the Treaty on European Union (TEU); Article 24(1) of the Treaty on the Functioning of the European Union (TFEU); Regulation (EU) No 211/2011; and Rule 197a of Parliament's

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<sup>31</sup> Ibid., p. 90.

<sup>32</sup> Salomon, M. E. *Economic, social and cultural rights: a guide for minorities and indigenous peoples*. Minority Rights Group International, 2005.

<sup>33</sup> Crawford, J. (ed.). *The rights of peoples*. Oxford: Clarendon Press, 1988.

<sup>34</sup> Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights. Note by the Secretary-General. UN doc. E/CN.4/1997/105, 1996, paras. 24-8. See, also, Report of the open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its first session, UN doc. E/CN.4/2004/44.

<sup>35</sup> Case C-341/05, Laval [2005] OJ C281/10, para. 91 et sequ.; for the freedom of establishment see case C-438/05, Workers Federation v. Viking Line [2006] OJ C60/16. para. 44

<sup>36</sup> Pernice, I. *The Treaty of Lisbon and fundamental rights. The Lisbon treaty*. EU constitutionalism without a constitutional treaty, 2008, page 248. Access:

[http://www.judicialstudies.unr.edu/JS\\_Summer09/JSP\\_Week\\_1/Pernice%20Fundamental%20Rights.pdf](http://www.judicialstudies.unr.edu/JS_Summer09/JSP_Week_1/Pernice%20Fundamental%20Rights.pdf)

Rules of Procedure.<sup>37</sup> The effect on the protection of group and individual rights of this Initiative is yet to be seen since, although envisaged to improve the direct democracy in the EU, no initiative has managed to gather enough signatures yet.

**- Other treaties referring to the protection of group rights<sup>38</sup>:**

- Convention on the Rights of the Child (CRC)
- European Charter for Regional Minority Languages
- Framework Convention for the Protection of National Minorities
- International Convention on the Elimination of All Forms of Discrimination Against Women (ICEDAW)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)
- International Labour Organization's (ILO) Indigenous and Tribal Peoples Convention (No. 169)
- United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Elimination of Discrimination in Education.

**Case study: Cyprus and the Annan Plan**

According to Andreas Theophanous<sup>39</sup>, the strict bizonality conditions of the Annan Plan V (2003) would violate the three fundamental Human Rights freedoms - to move, to acquire property and to settle – and consequently create apartheid conditions, since it would envisage restrictions on the number of Greek Cypriots that may reside in the Turkish-Cypriot constituent state and on the Turkish Cypriots that may reside in the Greek-Cypriot constituent state. Moreover, 19 years after the implementation of the Foundation Agreement, either constituent state could take safeguard measures to protect their identity, making sure no less than 2/3 of its permanent Cypriot residents speak its official language as their mother tongue. These restrictions - although meant to be eased with time, but never derogated - constitute a fundamental problem and a violation of individual rights in favor of group rights.

In light of the consociational model designed in the Annan Plan, intended to diffuse societal tensions in the unified country, some tensions between individual and group rights can be observed too. The basic fundamental principles of consociationalism are proportionality, grand coalitions, cultural autonomy and minority veto<sup>40</sup>, and the belief that lies behind is that high level of autonomy and firm separation of disputant groups at the popular level encourage negotiations and compromises at the decision-making level (elite). In other words, consociational theory “predicts that if, in a fractured society, a system of governance is created which shares governmental decision making between political representatives of the disputant groups, then the conflict can be contained and stable government continued or established”.<sup>41</sup> According to Lijphart<sup>42</sup> there are various factors to improve the successful implementation and maintenance of consociationalism, the most relevant being segmental isolation, external threats, a balance of power between segments of similar size and a small population. However, providing proportionality already discriminates in favor or against the origin of a person who wants to become part of the government, and the minority veto allows a collective group to stop an action decided by the majority of individuals. Furthermore, consociational democracy also freezes ethnic divisions, building a particular political

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<sup>37</sup> Fact Sheets on the European Union, European Citizens' Initiative. Access: [http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU\\_2.1.5.html](http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_2.1.5.html)

<sup>38</sup> Salomon, M. E. *Economic, social and cultural rights: a guide for minorities and indigenous peoples*. Minority Rights Group International, 2005.

<sup>39</sup> Theophanous, A. *The Cyprus question and the EU: The challenge and the promise*. Intercollege Press, 2004, pp. 89-90.

<sup>40</sup> Varnava, A.; Faustmann, H. *Reunifying Cyprus: The Annan Plan and Beyond*. IB Tauris, 2009, page 27.

<sup>41</sup> Yakinthou, C. *Political Settlements in Divided Societies*. KEY TO SYMBOLS, 2009, page 11.

<sup>42</sup> Crepaz, Koelble, Wilsford (eds), *Democracy and Institutions: the Life Work of Arend Lijphart*, Ann Arbor, University of Michigan Press, 2000, page 165.



structure around an *ad hoc* demographic situation, in disregard of future changes in domestic dynamics.<sup>43</sup> Would a democracy that only listens to two ethnic voices be stable? What about the rest of present and future minorities? Would not this institutional structure of the state perpetuate the ethnic division of the island?

Other practical questions would have arisen if the Annan Plan had been successful, for example, how would a business in Cyprus have respected individual rights of non-discrimination, free movement and right to property and to settle, if in each constituent state the national majority of the employees had responded to the nationality of the constituent state?

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<sup>43</sup> Brass, P. R. *Ethnicity and nationalism: Theory and comparison*. Sage Publications (CA), 1991; REYNOLDS, Andrew. *Constitutional medicine*. *Journal of Democracy*, 2005, 16.1: 54-68.

## Conclusion

The concept of group rights as well as its relations with individual rights is highly discussed by academics, reaching little agreement. While some argue that group rights do not exist since they are ultimately individual rights, others recognize them and set conditions for a group in order to be considered right-holder. These conditions are a certain level of unity – conglomerate collectivity – and of identity, not necessarily with formal structure, but with a moral shared understanding and group solidarity. They believe that groups have interests of their own, and are not the mere sum of claims of its individuals; therefore they can bear rights and have responsibilities.

The relationship between group and individual rights -whether they are mutually exclusive, they can co-exist or even complement each other - is under academic discussion. In practical terms, as we have seen in the case of Cyprus and the Annan Plan, group rights can conflict with individual rights, and even breach them. **How could the individual right of non-discrimination and the fundamental freedoms of movement, property and settlement be respected under strict bizonality conditions to protect both communities?**

On the one hand, scholars who argue that both rights are mutually exclusive are concerned that group rights might take over the possibility of an individual to stand on its own to defend a matter also protected by the collectivity; that the group will not represent the concern of its members but rather from their elite; and that the safeguard quality that individual rights gave to people to defend their interests will not be possible to be fulfilled anymore.

On the other hand, the defenders of both rights being able to co-exist state that only some group rights conflict with individual rights and that there is a similar amount of cases where individual rights contradict with each other, so it should not be an argument to dismiss them altogether. In addition, they consider that group rights serve as a counter balance against an overmighty state, bringing liberty within society, and that restricting the rights to those who can be enjoyed in an individual basis but not collectively, would be a rather arbitrary decision.

Finally, those who argue that group rights and individual rights complement each other defend that both normally seek to protect the same interests and that actually, in order to protect an individual right some group rights need to be protect as well, such as the cultural and linguistic ones.

Under International Law, the trend is that individuals are the main subject of protection, with increasing attention to minorities and other group rights. State practices indicate similar tendencies, seeking both cultural assimilation and protection of minorities using positive discrimination. The tension between both rights exists, and the rising protection of group rights is making the conflict increasingly visible not only in national but also in international arenas. Cyprus might be one of the most interesting cases where these tensions clearly arise, since it is struggling between protecting communities and defending the individual rights of the Cypriots, and also has other recognized minorities and the need to build a sustainable democratic and stable government.

In conclusion, this report suggests that group and individual rights can in general co-exist, even complement each other, but in some occasions they are mutually exclusive. These cases should be examined individually and should not serve as an excuse to dismiss group rights or deny their overall utility. In contrast, further studies and cases should be studied to try to find a balance between group and individual rights. The current developments in Cyprus, with starting peace negotiations again, could bring an opportunity for further research and a thoughtful implementation of rights that would respect communities and individual interests.

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