

## *Selma*

By Bernie Forster

Bernie Forster's film tells the story of a young woman's search for an apprenticeship and of the difficulties she encounters. Her surname – Krtic – reveals that she comes from a foreign background, more precisely the Balkans. She comes to believe that her foreign background has caused the difficulties she has encountered and the rejections she has endured. Battle-weary, she decides to go to Strasbourg. Why Strasbourg? In order to claim the right to work to which she believes she is entitled.

This film enables several questions connected with human rights to be addressed. The first, the right to work, should be understood within the more global context of the classification of human rights into civil and political rights on the one hand, and economic, social and cultural rights on the other. The second concerns discrimination. The third relates to the international courts, notably the European Court of Human Rights, charged with overseeing the respect given by States to human rights.

### **Civil and Political Rights and Economic, Social and Cultural Rights**

Civil and political rights consist of what are called fundamental freedoms. These were the first rights to be recognised and consist of individual freedoms – of thought, religion, opinion, expression and so on. They are the oldest existing rights. They were conceived with the desire to free the individual from the control of States and other constitutive bodies, such as religions. With regard to these rights, public authorities are expected to abstain from certain behaviour: they may not infringe individual liberties in an arbitrary manner.

Economic, social and cultural rights are much more recent; they date globally from the end of World War II. With regard to these rights, the individual does not have “freedom from ...” but rather “freedom to ...”: to work, to health, to education, etc. This fundamentally changes the nature of the States' obligations. In effect, States are forbidden from infringing civil and political rights, whereas in the case of economic, social and cultural rights they are obliged to act so that individuals can have the benefit of their right to work, to health, to social security, to education, etc.

The *Universal Declaration of Human Rights* (see *Bouly le campeur*) sets out the two categories of rights (articles 3 to 20 for the first and 22 to 28 for the second)

without distinguishing between them. Nevertheless the international treaties that have been adopted as a result, in order to give effect to the UDHR, have introduced a significant difference between these two types of rights. These involve essentially the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* within which is found the right to work.

It can be seen therefore that human rights are not identical in so far as they cost money. Although it costs nothing financially for a State to abstain from doing something, on the other hand the assistance envisioned by economic, social and cultural rights is dependant on its resources and wealth. The right to work evoked in Bernie Forster's film is an example of this.

### **The right to work**

The first paragraph of article 23 of the *Universal Declaration of Human Rights* reads as follows: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." This right was taken up in article 6, paragraph 1 of the *International Covenant on Economic, Social and Cultural Rights* which stipulates: "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

Nevertheless, even within the terms of the Covenant itself, the right to work is not an essential right. Article 2, paragraph 1 makes it clear that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

It can therefore be seen that economic, social and cultural rights, such as the right to work, are not essential in that the Covenant itself subordinates them to "available resources" and mentions that they can be "achieved progressively".

This is the same approach adopted by the *Swiss constitution*. In effect, by virtue of article 41, paragraph 1, inserted in the chapter dealing with social goals:

"The Confederation and the Cantons shall strive to ensure that, in addition to individual responsibility and private initiative, (...)

d) every person capable of working shall sustain himself or herself through working under fair and adequate conditions". However the same article makes it clear in paragraph 4 that: "no subjective right to prestations by the state may

be derived from the social goals”. In other words, the inclusion of the right to work in the Constitution does not thereby imply the right to derive a benefit from it.

Nevertheless it remains to return to the Universal Declaration of Human Rights so that instead of assuring work, a State must at least protect against unemployment. For countries having the means, this can take the form of minimum revenue and of health and social coverage.

## **Discrimination**

The film also poses the question whether Selma’s difficulties in finding a job are related to her background, in which case she would be the victim of discrimination.

Discrimination means treating differently people who ought to be treated in the same way. Forbidding discrimination is the consequence of the principle of equality affirmed many times by the Universal Declaration of Human Rights. Discrimination can be direct, that is to say intended; it can also be indirect, that is to say unintended, the consequence of the application of identical rules to people who are not in the same situation. In certain cases, discrimination is necessary in order to re-establish equality between people. This is what is called “positive discrimination”. This consists in taking measures on behalf of persons or groups of persons who in fact are victims of discrimination: equality between men and women in elections, employment reserved for members of discriminated minorities, etc.

The film itself deals with racial discrimination. In addition to its prohibition by the *Universal Declaration of Human Rights* and by numerous treaties, there is also a special treaty dealing with it, the *International Convention for the Elimination of Racial Discrimination*. This convention prohibits any distinction or preference based on qualities such as skin colour, ancestry, national or ethnic origin (see *Un altro mondo*).

There is also a specific text dealing with discrimination in the area of work: the International Labour Organisation *Convention (C 111) concerning discrimination (employment and occupation)* of June 26 1958. It is there affirmed that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity” and that “discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights”. It forbids all discrimination in this area, that is “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which

has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (article 1, paragraph 1). It deals with access to vocational training, access to employment and to particular occupations, as well as terms and conditions of employment (article 1, paragraph 3). <http://www.ilo.org/ilolex/english/convdisp1.htm>

Switzerland is a party to these two conventions. It has also inscribed the prohibition of discrimination, including racial discrimination, in its constitution: “No one shall suffer from discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical or political convictions, or because of a corporal or mental disability” (article 8, paragraph 2).

### **To go to Strasbourg?**

By evoking the city of Strasbourg, the protagonist of the film is clearly thinking of the European Court of Human Rights which resides in this city, and therefore of the possibility of bringing a case before this court as a result of what Selma considers to be a violation of these rights.

The European Court of Human Rights <http://www.echr.coe.int/ECHR/> is an international tribunal created by the *European Convention on Human Rights*. It aims principally to ensure the respect of the States for this convention. In the case which interests us, were it brought it would have no chance of success because the European Convention of Human Rights is concerned exclusively with civil and political rights. It is in no way concerned with economic, cultural and social rights such as the right to work. Certainly it prohibits discrimination, but only in the exercise of rights recognised by it. In other words, the Court has jurisdiction only if the discrimination involved concerns one of the civil and political rights upheld by the Convention.

It will be different once Protocol n°12 becomes effective in Switzerland. This supplementary treaty, which was adopted in 2000 and became effective in 2005, fills in the gaps of the Convention with regard to the fight against discrimination. It makes the right not to be subjected to discrimination an autonomous right extending to all rights covered by the law and not just those identified by the Convention. It has not yet been ratified by Switzerland. <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=1/23/2007&CL=FRE>