

concerning § 1 of the workshop

Introduction to fundamental rights in Europe

I. On terminology: "human rights" and "fundamental rights"

- see *special material* "On the terms 'human rights', 'fundamental rights' and 'constitutional rights'"

II. Foundations in history and in the history of ideas

- The fundamental idea of human rights and its implementation by fundamental rights are achievements of the *Enlightenment* and modern history. They are *not rooted in Christianity*; partly they have even been obtained by struggling with it. However, the Christian Imago Dei Doctrine (the human being as the "image of God"), which is reflected in the secular concept of *human dignity*, has favoured their development (→ *School of Salamanca*¹, 16th century)
- 1776: the *Virginia Bill of Rights* (U.S.) as first binding catalogue of fundamental rights
- 1789: proclamation of fundamental rights in the *Déclaration des droits de l'homme et du citoyen* (France)
 - 1791: integration into the first French constitution
- 1948: *Universal Declaration of Human Rights* of the UN General Assembly

III. The parallelism of fundamental and human rights regimes in Europe

- 1) The primary responsibility of the state for the effective protection of human rights
 - In the present legal world order of states, this responsibility is a conclusive consequence of the sovereignty of the state and the ultimate responsibility deriving from it.
- 2) The plurality of human and fundamental rights regimes
 - However, there is a plurality of human and fundamental rights regimes that apply parallelly on the same territory: national fundamental rights, geo-regional human rights treaties (not in Asia) and global human rights treaties.
 - In Europe, all 47 member states of the Council of Europe have ratified the European Convention on Human Rights of 1950, which is complemented by additional protocols. It guarantees classical civil and political rights, which are enforced by a powerful *European Court of Human Rights* in Strasbourg, with the option of the citizen to file an *individual complaint* to this court. The Court has used the Convention as a "*living instrument*", enlarging the scope of its rights and closing gaps by generous interpretation, limiting the impact of the outdated, far-reaching limitation clauses by restrictive interpretation and developing a sophisticated human rights doctrine that has influenced the development of the constitutional law in many European countries. The Convention is complemented by other European human rights treaties, in particular the European Social Charter.
 - The Charter of Fundamental Rights of the European Union is one of the most modern fundamental rights regimes in the world, with a distinct anti-neoliberal approach and several innovations. It is binding to the EU institutions and to the EU member states when they execute Union law or encroach on the economic fundamental rights of the Union citizens.
- 3) The reasons for the plurality of human and fundamental rights regimes
 - The reasons lie in the *recurring insufficiency of the national human rights protection* and the *necessity of guarantees from outside the State*. International h.r. treaties serve as instruments of "mutual insurance", operating like a *second safety net*. Furthermore, geo-regional f.r. regimes are expressions of the *identity of civilisations*. Finally, the supranational power of the European Union, which is not bound to the member states' constitutions, needs its own f.r. regime.
- 3) General aspects of the parallelism of human and fundamental rights regimes
 - Binding public authorities to several f.r. and h.r. regimes provides an *intensified protection through cumulative requirements*. National and international rights do not compete or collide but complement each other.
 - Usually, the various regimes *operate parallelly without correlation or interference*. The intern. h.r. treaties only set minimum standards, while the national standards should be higher. There is, however, a *mutual influence of interpretation*.
 - A *risk of conflicts* exists *only in case of concepts obliging authorities to intervene* (e.g. prohibition clauses, rights with direct horizontal effect, duties of protection).

IV. Overview of the human and fundamental rights regimes applicable in Europe

- see *special material* "Who said it would be easy?"

(Datei: Introduction-Eu (FRGermany))

¹ Underlined text passages contain links to additional Internet resources. These can be called up directly in the PDF file for this introduction (downloadable on my website).