

## INTERNATIONAL HUMAN RIGHTS LAW

## Diagram 2: Geo-regional human rights protection mechanisms

Preliminary remarks: Note that the effective protection of human/fundamental rights at any level is *primarily the mission of the state's courts of justice in the general context of their jurisdiction!* All other mechanisms are only complementary.

### A. European human rights protection mechanisms

#### I. Pan-European human rights protection by the Organisation for Security and Co-operation in Europe [OSCE]

- a purely political mechanism in the context of prevention of or mediation of violent conflicts

#### II. Pan-European human rights protection by the Council of Europe

- a pan-European international organisation with 47 member states specialised on the promotion of human rights, democracy and the rule of law
- prepares in particular new European human rights treaties
- with a *Commissioner for Human Rights* with advisory functions

#### III. Pan-European human rights protection by the *European Court of Human Rights* in Strasbourg [ECtHR]

- in case of alleged violation of the European Convention on Human Rights or its additional protocols
  - an important international court, whose decisions are legally binding
  - a well-functioning "safety net" for the case of failure of the national protection of human rights
- 1) Interstate complaints (art. 33)
    - rare
  - 2) Individual complaints (art. 34)
    - an effective remedy for the protection of the individual citizen
    - applicant must be personally and directly affected by the alleged violation
    - applicant must first exhaust all domestic remedies
    - ECtHR can afford *just satisfaction (compensation)* to the injured citizen (art. 41)
  - 3) Opinions of the ECtHR
    - a) Opinions at the request of the Committee of Ministers (art. 47)
      - not on questions relating to the content or scope of the guaranteed rights - therefore very rare
    - b) Advisory opinions at the request of high courts and tribunals (Prot. 16)
      - non-binding opinions on questions of principle relating to the interpretation or application of Convention rights
      - request needs to be accepted by the ECtHR

#### IV. Control mechanisms of European human rights treaties on special subjects

- *state reporting procedure* with recommendations of the Council of Europe's Committee of Ministers
- Advisory opinions of the ECtHR (→ Convention on Human Rights and Biomedicine of 1997)
- collective complaints lodged by social partners and other NGOs (→ Revised Social Charter of 1996)
- visits (also unexpectedly) of detention facilities for torture prevention (ECPT)

#### V. The enforcement of the fundamental rights in European Union law

- by European Court of Justice (at EU level) and domestic courts (at domestic level) in the context of their jurisdiction

## B. American human rights protection mechanisms

### I. American human rights protection by the *Inter-American Commission of Human Rights* in Washington and the *Inter-American Court for Human Rights* in San José [IACtHR]

- 1) Advisory functions of the Inter-American Commission of Human Rights
  - state reports, thematic reports
- 2) State reporting procedure
  - for Optional Protocols
- 3) Interstate complaints
  - optional, not yet in practice
- 4) Individual complaints (art. 44 ACHR)
  - also collective complaints by NGOs
  - applicant must first exhaust all domestic remedies
  - two-stage proceedings before Commission and (on submission by state or Commission) before IACtHR
  - IACtHR can order remedial action or compensation
  - IACtHR judgements are legally binding
- 5) Opinions of the IACtHR (art. 64 ACHR)

### II. Control mechanisms of American human rights treaties on special subjects

- in particular state reporting procedure

## C. African human rights protection mechanisms

### I. African human rights protection by the *African Commission on Human and Peoples' Rights* in Banjul and the *African Court on Human and Peoples' Rights* in Arusha [ACtHPR]

- 1) Advisory functions of the African Commission on Human and Peoples' Rights
- 2) State reporting procedure
- 3) Interstate complaints
- 4) Individual complaints (art. 56 et seq. Banjul Charta, 5 et seq. 34(6) ACtHPR Prot.)
  - applicant must first exhaust all domestic remedies
  - two-stage proceedings before Commission, and (on submission by state, Commission or GO) before ACtHPR
    - until 2020, *no state has submitted a case* and the Commission has only submitted 3 cases
  - optional: directly before the Court by citizen or NGO with observer status at the Commission
    - *accepted by 6 states only* after 4 states have withdrawn
  - ACtHPR can order remedial action or compensation (under ACtHPR Prot.)
- 5) Opinions of the ACtHPR (under ACtHPR Prot.)

### II. Control mechanisms of African human rights treaties on special subjects

- state reporting procedure

## D. Arab human rights protection mechanisms

- state reporting procedure before the Arab Human Rights Committee; planned: Arab Court of Human Rights

## E. No Asian human rights protection mechanisms