

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 jurisprudence

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 8 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