# § 1 Introduction

## I. Historical foundations of human rights and their protection

- the development of the idea of natural, pre-legal rights of the human being in the philosophy of the enlightenment
  - first approaches in Spain, based on the philosphy of natural law by the School of Salamanca (16th century)
  - an important milestone: the French Déclaration des droits de l'homme et du citoyen (1789)
- guaranteeing and enforcing human rights originally an exclusive mission of the state
  - important steps: English Magna Carta Libertatum (1215, on rights of nobles), English Bill of Rights (1689), Virginia Bill of Rights (1776), 1st to 10th Amendments of the U.S. Constitution (1791), French Déclaration of 1789 as part of the first French Constitution (1791)
- first rudimentary steps towards international human rights protection in the 19th century
  - prohibition of slave trafficking in intern. treaties
  - humanitarian interventions to protect persecuted Christians in the Osman Empire
- first universal human rights treaties after the First World War
  - 1926: Convention to Suppress the Slave Trade and Slavery
  - 1930: Forced Labour Convention
- the development of a global human rights protection system after the Second World War
  - 1945: commitment to human rights anchored in the Charter of the United Nations
  - 1948: Universal Declaration of Human Rights
  - 1948: Convention on the Prevention and Punishment of the Crime of Genocide
  - 1951: Geneva Refugee Convention
  - 1966: two *general global human rights treaties*: ICCPR and ICESCR
  - since 1966: numerous global h.r. treaties on special subjects prepared by UN
  - since 1990s: strong increase in ratifications of human rights treaties
- the development of geo-regional human rights regimes
  - 1950: European Convention on Human Rights
  - 1969: American Convention on Human Rights
  - 1981: African Charter on Human and Peoples' Rights
  - 2004: Arab Charter on Human Rights
  - 2012: ASEAN Human Rights Declaration

## II. Universality or cultural determination of human rights?

### 1) The naturally universal approach of the idea of human rights
- human rights protect any human being and bind any public power regardless of their characteristics and backgrounds
- human rights are by nature challenging: historically, they did not aim to preserve culture and society but to change them

### 2) Cultural relativist attempts to deny or dilute human rights: a serious approach or just an excuse for oppression and intolerance?
- an intensive debate at the time of the turn of the millenium
- nowadays, a total rejection of the idea of human rights is rare but cultural or ideological backgrounds are invoked to reduce or undermine human rights

### 3) The growing global consensus: human rights are universal but their design and balancing can vary in detail
- as long as the international minimum standards are still met... (see infra, IV.3)
- different limitation clauses can give the same rights a higher or lower weight in different states, taking into account national particularities
- in some countries still resistance against the primacy of human rights over religion

## III. Human rights and fundamental rights

### 1) On the terms "human rights" and "fundamental rights"

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

### 2) Human and fundamental rights regimes and other mechanisms

- human rights regimes (in international treaties and protocols) and fundamental rights regimes (in constitutions and laws) are *comprehensive integrated systems* including
  - the substantial human rights law
  - the law on the institutions to monitor and/or enforce compliance
  - the law on the mechanisms (procedures, legal remedies) to monitor/enforce compliance
- they are often complemented by political mechanisms (e.g. reports and interventions of human rights commissioners) that mainly serve to raise human rights awareness

## IV. The parallelism of human and fundamental rights regimes

- the primary responsibility of the sovereign state for an effective h.r. protection
- the emergence of a global human rights regime and several geo-regional human rights regimes that do not replace but complement the national h.r. protection
  - see for illustration the special material from another course on the many human and fundamental rights norms a public servant must bear in mind in Germany
- The reasons:
  - the recurring insufficiency of the national h.r. protection, which calls for external guarantees
  - the use of intern. h.r. treaties as instruments of "mutual insurance", which operate like a *second safety net*, just guaranteeing *international minimum standards*
    - geo-regional minimum standards considered imperative within the given civilisation or global minimum standards considered imperative for any human civilisation; the national h.r. standards need to be higher
  - the need for a particular fundamental rights regimes for the EU as a supranational power
  - geo-regional human rights regimes as expressions of identity of civilisation
    - the answer to the debate about the universality of the human rights and its limits
    - similar rights can have a different emphasis in different civilisations; this usually manifests in different limitation clauses
    - some rights may be unique to individual civilisations
- The consequences:
  - intensified protection through comulative requirements
  - usually parallel operation of the various regimes without correlation or interference
    - risk of conflict only when special concepts oblige public authorities to intervene
  - mutual influence of interpration