

Regional Human Rights Protection Systems – Introduction

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ABSTRACT

When discussing human rights, we specifically refer to the protection that international law guarantees to individuals (and groups) – including children – through international treaties and other mechanisms. It should be emphasised that the idea of limiting the power of the state over the individual is much older than these international legal mechanisms. Human rights are, therefore, a cross-cutting issue regulated not only by international law but also, and above all, by domestic law. International human rights protection differs from traditional international law in many ways and covers a wide range of issues. In addition to the development of international human rights protection, this article outlines the basis for understanding human rights, characteristics of human rights obligations, and possibilities for limiting them.

KEYWORDS

international law, concept of human rights, generations of human rights, universality of human rights, indivisibility of human rights, obligation to respect, obligation to protect, obligation to fulfil, The International Bill of Rights, leading human rights treaties, United Nations human rights bodies, Council of Europe, European Court of Human Rights, monitoring bodies, fundamental rights in the European Union, African Union, Organization of American States

1. Introduction

International human rights protection differs from traditional international law in many ways and covers a wide range of issues. For this reason, it has come to be regarded as a separate discipline, often taught independently of general international law.¹ Accordingly, this section provides an overview of the main instruments of international human rights protection and their institutionalised mechanisms.

In addition to the development of international human rights protection, the following section outlines the basis for understanding human rights, characteristics

1 Further reading: Mertens, 2020, see further about Klabbers, 2021, p. 119-137.

of human rights obligations, and possibilities for limiting them. It is followed by an overview of international and regional regimes for the protection of human rights.

When discussing human rights, we specifically refer to the protection that international law guarantees individuals (and groups) through international treaties and other mechanisms. However, it should be emphasised that the idea of limiting the power of the state over the individual is much older than these international legal mechanisms. Almost all states have a catalogue of fundamental rights in their constitutions – at least in letter – that can be enforced in the courts. Human rights are, therefore, a cross-cutting issue regulated not only by international law but also, and above all, by domestic law.

2. Short history and development of human rights

Human rights have their foundations in natural law considerations, especially those of rationalism and the Enlightenment. According to Immanuel Kant, they exist a priori, meaning they are inherent from the very beginning.² This implies that human rights do not need to be written into positive law to be valid. Every human being is born with them. In practice, it is necessary to regulate and enforce these rights. This first occurred at the national level. For example, they were postulated in the Virginia Declaration of Rights during the American Revolution of 1776³ and in the Declaration of Human and Civil Rights during the French Revolution of 1789.⁴ Subsequently, they declared the aims of the Bourgeois Revolution in Europe in 1848.

However, international law did not originally prescribe how states should treat their citizens. The assumption was that only the protection of non-citizens and national minorities required regulation at the international level. However, the Second World War demonstrated the need for external regulation and control by states concerning their citizens. Although the League of Nations had already conducted valuable work on the protection of minorities during the interwar period,⁵ the development of human rights protections at the international law level primarily occurred after 1945. In this context, Article 1(3) of the UN Charter already postulates the promotion

2 See the critical interpretation of Immanuel Kant's concept: Aguinaldo Pavão, Faggion: Kant For and Against Human Rights, cited in: Andrea Faggion, Nuria Sánchez Madrid, Alessandro Pinzani (eds.): *Kant and Social Policies*, Palgrave Macmillan, 2016, pp. 49-64.

3 See full text: The Virginia Declaration of Rights, National Archives [Online]. Available at: <https://www.archives.gov/founding-docs/virginia-declaration-of-rights>. (Accessed: 29 October 2024).

4 See full text: The Editors of Encyclopaedia, 2024, Declaration of the Rights of Man and of the Citizen, Encyclopedia Britannica [Online]. Available at: <https://www.britannica.com/topic/Declaration-of-the-Rights-of-Man-and-of-the-Citizen> (Accessed: 29 October 2024).

5 More about the League of Nations: League of Nations, The Editors of Encyclopaedia [Online]. Available at: <https://www.britannica.com/topic/League-of-Nations>. (Accessed: 29 October 2024).

of human rights ‘without distinction as to race, sex, language or religion’⁶ as an objective of the United Nations. Against this background, the first universal declaration of rights applicable to all human beings was proclaimed on 10 December 1948.⁷ This was the birth of human rights protections under international law. Subsequently, several international treaties and “soft law” instruments have been developed at the international and regional levels to protect human rights.

3. The concept and the nature of human rights obligations

International law essentially assumes that individuals are mediated. Accordingly, the primary addressees of the international legal order are states, while individuals are only indirectly covered by traditional international law. This is particularly evident in the fact that individuals typically depend on their home states for enforcement at the level of international law. The principle of the mediation of individuals is increasingly violated in international human rights protection. Individuals are the direct recipients of human rights guarantees and thus become bearers of international rights, in contrast to international criminal law, where obligations are primarily imposed on individuals. In some cases, individuals have even been given the opportunity to enforce their rights directly before international tribunals.

Human rights often conflict with state sovereignty and the principle of non-intervention because they dictate how states must treat people within their jurisdiction, including their own citizens. This creates challenges for enforcing human rights guarantees. For instance, the right to diplomatic protection is particularly ineffective when a state violates the human rights of its own citizens, because it can hardly exercise the right to diplomatic protection “against itself”. Additionally, applying traditional enforcement methods in international law to human rights treaties is complicated by the lack of reciprocity; the rights of third parties and individuals are standardised rather than arising from a reciprocal contractual relationship. To ensure compliance with human rights, international protection mechanisms are needed and guaranteed by international organisations or treaty bodies.

According to the principle of the universality of human rights, all human rights are valid everywhere and apply equally to all people. This principle is opposed to the idea of relativism or regionalism. Relativism derives regional and ideological differences

6 Article 1(3) UN Charter: ‘To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,’ United Nations: United Nations Charter [Online]. Available at: <https://www.un.org/en/about-us/un-charter/full-text>. (Accessed: 29 October 2024).

7 See more about the circumstances of the proclamation of the universal declaration: Lynn, M., (2024) ‘Eleanor Roosevelt in the UN Chronicle 1946-1949): On the Making of the Universal Declaration of Human Rights [Online]. Available at: <https://www.un.org/en/un-chronicle/eleanor-roosevelt-un-chronicle-1946-1949-making-universal-declaration-human-rights> (Accessed: 29 October 2024).

in the content and application of human rights from differences in the moral concepts of different cultures or religions. The Vienna Declaration and Programme of Action, adopted by the 171 states present at the 1993 World Conference on Human Rights,⁸ states that all human rights are universal, indivisible, and interdependent. It emphasises that these rights to everyone, hold equal value, are interdependent and complementary, and should therefore be implemented as a “package”. However, this declaration is non-binding soft law. The practices of many states, particularly regarding the so-called Sharia reservations, show relativistic positions regarding respect for human rights, contrary to the idea of universality.⁹

A particular problem is the commitment of international organisations to human rights, particularly given their extensive immunities. In most cases, commitment to human rights standards is only given under customary international law. However, bodies such as the UN Security Council have no regular reviews or enforcement mechanisms. An exception is the EU, which has established a comparatively strong internal protection mechanism and is negotiating to submit to external control under the European Convention on Human Rights (ECHR).¹⁰

Human rights can be roughly divided into three generations based on their developments in international law and the debates surrounding them. Although this categorisation is simplistic—especially with regard to the historical genesis of individual human rights it is helpful in better understanding the division of human rights into different treaties.¹¹

The first generation includes so-called political and civil rights. These are primarily human rights, which were first enshrined in constitutions as fundamental rights in the 18th and 19th centuries. They limit the power of the state to interfere with the individual, and are therefore known as the “right of defence”. These rights include the right to life, freedom of expression, and freedom of religion. At the international legal level, they are primarily found in the 1966 International Covenant on Civil and Political Rights (ICCPR).¹²

In the context of the development of international law related to communism and socialism, the focus was primarily on human rights where the state was seen as a

8 More about the conference: World Conference on Human Rights 14-25 June 1993, Vienna [Online]. Available at: <https://www.un.org/en/conferences/human-rights/vienna1993> (Accessed: 29 October 2024).

9 For a more recent case connected to the Sharia-law in the practice of the European Court of Human Rights see the case of: *Molla Sali vs. Greece* [GC], no. 20452/14.

10 About the ECHR: European Convention on Human Rights [Online]. Available at: <https://www.echr.coe.int/european-convention-on-human-rights>. More about the current status of negotiations: EU accession to the ECHR (“46+1” Group), Council of Europe Portal [Online]. Available at: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/accession-of-the-european-union-to-the-european-convention-on-human-rights> (Accessed: 29 October 2024).

11 Domaradzki, Khvostova, Pupovac, 2019, pp. 423-443.

12 See full text: International Covenant on Civil and Political Rights, United Nations Human Rights, 16 December 1966. [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Accessed: 29 October 2024).

“provider” for individuals. This second generation includes economic, social, and cultural rights, also known as entitlement rights. These include the right to work, education, and health, and are primarily codified in the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹³

Conversely, third generation human rights are applicable to entire (ethnic) groups and are mostly collective rights. In particular, they include the right to self-determination, development, and the use of natural resources. The rights of Indigenous people are also collective rights.

Initially, it was often assumed that states had different obligations based on their first- and second-generation rights. The primary basis for this distinction lies in the general obligation clauses found in Article 2(1) of the ICCPR and the ICESCR. While Article 2(1) of the ICCPR obliges States Parties to respect the rights in the ICCPR, Article 2(1) of the ICESCR establishes the obligation for states to ‘take steps, (...) 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’. In this context, a distinction is also made between “substantive” and “procedural” obligations. However, owing to the interdependence of all human rights, this distinction is now considered outdated. It is now assumed that all rights encompass both substantive and procedural obligations. For example, the right to health may include the development and implementation of a programme of action to reduce maternal mortality as a duty of conduct, while reducing maternal mortality to a certain internationally defined minimum serves as a duty of outcome.

States have a threefold obligation regarding all human rights: the obligations to respect, protect, and fulfil. In principle, the protection of each right requires the fulfilment of all three obligations, although one obligation may be more pronounced than the others depending on the nature of the right. The obligation to respect includes the classic prohibition of interference, which prohibits the state from interfering in the sphere of the individual protected by human rights. The obligation to protect requires states to protect individuals from interference with their human rights by third parties. The obligation to fulfil, on the other hand, involves positive measures by states to create the basic conditions for the unrestricted exercise of rights by each individual. These usually depend on available resources.

Depending on the nature of individual human rights, a distinction must be made between absolute and relative rights. Most rights are relative, allowing for interventions in protected areas as long as they are proportional. A good example of the principle of proportionality is Article 18(3) of the ICCPR, which addresses freedom of thought, conscience, and religion. The specific necessity of a state measure is particularly important, and the least restrictive means must always be chosen. However, for

13 See full text: International Covenant on Economic, Social and Cultural Rights, United Nations Human Rights, 16 December 1966. [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (Accessed: 29 October 2024).

certain human rights – such as the prohibition of genocide, slavery, and torture – no state intervention is permitted at all. Intervention cannot, therefore, be justified in emergency situations, by the behaviour of the victim of the violation, or by the need to protect the rights of third parties.

Many human rights can be suspended in exceptional situations, such as war or serious disturbances. Human rights treaties usually contain an emergency clause, such as Article 4 of the ICCPR. However, certain particularly important rights are usually excluded. These are called “non-derogable rights”. In any case, absolute rights are considered non-derogable, but not all non-derogable rights are absolute. For example, freedom of thought, conscience, and religion cannot be suspended even in a state of emergency, as stipulated by the ICCPR and the American Convention on Human Rights. However, it should be noted that the emergency clause of the ECHR does not mention these rights.

Since the Second World War, institutions for the protection of human rights have been established at both universal and regional levels. At the universal level, the UN has taken on this responsibility, while at the regional level, several human rights treaties and protection mechanisms have been linked to regional international organisations. These include the Council of Europe, European Union, African Union, and Organization of American States (OAS).

4. Human rights and the United Nations¹⁴

- a) The International Bill of Rights: The United Nations (UN) has developed numerous instruments for the protection of human rights. These include documents and binding treaties designed to protect human rights in general, certain categories of rights, or particular groups of people. Additionally, international protection mechanisms have been established. A distinction is made between institutions established based on the UN Charter (charter-based bodies) and treaty bodies, which are based in the respective human rights treaties. In both cases, various instruments are usually available to ensure that states comply with the outlined standards. These instruments include state and individual complaints, state reports and investigations, and periodic field-monitoring missions. To date, no state complaints have been made about the international human rights protection mechanisms of the UN system. However, individual complaints are playing an increasingly important role.

The Universal Declaration of Human Rights (UDHR) was published in 1948 as a resolution of the UN General Assembly.¹⁵ It contains all the human rights of the

14 For a more detailed introduction, see Human Rights, United Nations [Online]. Available at: <https://www.un.org/en/global-issues/human-rights> (Accessed: 29 October 2024).

15 Detailed description of the history of the Declaration: History of the Declaration, United Nations [Online]. Available at: <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (Accessed: 29 October 2024).

first and second generations, which are also found in later binding human rights treaties. Although it is often used as a starting point for discussions on human rights, as the Declaration is a non-binding decision of an international organisation and has a recommendatory character. However, the doctrine argues that its content is largely based on customary international law. Along with the two UN human rights covenants (ICCPR and ICESCR) and their additional protocols, the UDHR is informally referred to as the International Bill of Rights.¹⁶

Due to the ideological divide during the Cold War and the differing focuses on human rights on both sides, there are not one but two distinct UN human rights covenants: the ICCPR and the ICESCR. Unlike the UDHR, these covenants are binding international treaties.

As a protection mechanism, the ICCPR requires member states to report to the Human Rights Committee, which also allows for complaints by states. The Human Rights Committee is a treaty body established under the ICCPR and consists of 18 human rights experts. In the case of the ICESCR, the Committee on Economic, Social, and Cultural Rights, established by the Economic and Social Council, receives reports from states. Both committees provide feedback on states' reports through "concluding observations" and issue general interpretative statements known as "general comments", on the Covenants. The Optional Protocol to the 1966 ICCPR (in force since 1976) allows for individual complaints. A corresponding Optional Protocol to the ICESCR has also been open for signatures since 2008 and has been in force since 2013. An individual complaint is only admissible if the same matter is not already under consideration by another international investigative or conciliation body, and if the person has already exhausted all available domestic remedies. Exhausting all available domestic remedies does not need to be met if the relevant domestic procedure requires an unreasonable amount of time. Both Covenants have been signed and ratified by more than 160 countries.¹⁷

- b) Leading human rights treaties under the UN: In addition to the two covenants, seven other core human rights conventions have been developed within the United Nations to protect specific groups of people or categories of rights. These include the¹⁸ Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention Against Torture and Other Cruel,

16 Humphrey, 1976, pp. 527-541

17 See an interactive dashboard for the status of ratification of main international human rights treaties: Status of Ratification Interactive Dashboard, United Nations Human Rights Office of the High Commissioner [Online]. Available at: <https://indicators.ohchr.org/> (Accessed: 29 October 2024).

18 Core international human rights treaties: The Core International Human Rights Instruments and their monitoring bodies, United Nations Human Rights Office of the High Commissioner [Online]. Available at: <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>.

Inhuman, or Degrading Treatment or Punishment (CAT, 1984), the Convention on the Rights of the Child (CRC, 1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC, 1990), the Convention on the Rights of Persons with Disabilities (CRPD, 2006), and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED, 2006).

These treaties usually require periodic reporting by state parties to the respective treaty bodies, which are composed of independent experts. There is usually no provision for state complaints, with the exception of the CERD. Some optional protocols occasionally provide for individual complaints. Additionally, the CAT allows for ex officio investigations in cases of alleged torture.

Two other important treaties are worth mentioning: the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG, 1948)¹⁹ and the International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSPCA, 1973).²⁰

- c) UN Human Rights Bodies: The Human Rights Council²¹ is a subsidiary body of the UN General Assembly, based in Geneva, and is composed of 47 member states. Created in 2006, it succeeded the Commission on Human Rights, which was established in 1946 under Article 68 of the UN Charter and was subordinate to the Economic and Social Council (ECOSOC). As a subsidiary body of the UN General Assembly, the Human Rights Council reports directly to the General Assembly. Its establishment was based on UNGA Resolution 60/251 (2006). The composition of the Human Rights Council is often viewed critically, as it includes some states that are not necessarily considered “role models” in human rights protection.

The Human Rights Council meets three times a year, with the possibility of holding special sessions. In cases of serious and systematic violations of human rights, a two-thirds majority of the UN General Assembly can exclude member states from the Human Rights Council. A major innovation compared to the Commission on Human Rights is the so-called “Universal Periodic Review” mechanism, which requires all UN member states to report on their human rights situations every four and a half years. This is in addition to the reports they must submit under the two human rights covenants (ICCPR and ICESCR) and other specialised human rights treaties. The Office of the UN High Commissioner for Human Rights also provides information on the situation in these states.

19 Background and ratification: <https://www.un.org/en/genocide-prevention> (Accessed: 29 October 2024).

20 Kattan, V., Johnson, D. (2023), The Crime of Apartheid beyond Southern Africa: A Call to Revive the Apartheid Convention’s “Group of Three”, EJIL:Talk!, Blog of the European Journal of International Law [Online]. Available at: <https://www.ejiltalk.org/the-crime-of-apartheid-beyond-southern-africa-a-call-to-revive-the-apartheid-conventions-group-of-three/> (Accessed: 29 October 2024).

21 For more about the HRC, see United Nations Human Rights Council [Online]. Available at: <https://www.ohchr.org/en/hrbodies/hrc/home> (Accessed: 29 October 2024).

Previously, the Commission on Human Rights operated two procedures: the public 1235 procedure and the non-public 1503 procedure, both named after the resolutions of the ECOSOC that established them. Under the 1503 procedure, a special group of experts examined individual requests from individuals and NGOs to determine the existence of serious human rights violations. When such a situation was identified, the Commission held a closed meeting with representatives of the concerned state. The procedure was either closed, or it was decided that the country would continue to be monitored, if necessary, with the involvement of a special rapporteur or an ad hoc commission. If the state continued to refuse cooperation or if the situation did not improve, the situation could be made public through the 1235 procedure. This procedure involved the investigation, monitoring, and publication of the human rights situation in certain countries and regions or specific human rights violations by a special rapporteur, experts, or working groups. These two mechanisms continue to exist. However, the 1503 procedure is now referred to as the “complaints procedure”, which includes a time limit for handling complaints and easier access. On the website of the Office of the High Commissioner for Human Rights, it is possible to download a complaint form that can be sent directly to the Complaints Section. If deemed acceptable, the complaint will be forwarded to the Situation Section for processing. The 1235 procedure is referred to as the “special procedure”.²²

The Office of the UN High Commissioner for Human Rights (UNHCHR) was established as part of the 1993 World Conference on Human Rights and reports directly to the UN Secretary-General. Based in Geneva, the Office supports the UN’s work on human rights, including the Human Rights Council through the Universal Periodic Review (UPR) mechanism.²³

22 The system and description of special procedures see: Special Procedures of the Human Rights Council, United Nations Human Rights Office of the High Commissioner [Online]. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council>. More in detail about the complaints procedures under the human rights treaties see: Complaints procedure under the human rights treaties, United Nations Human Rights Office of the High Commissioner [Online]. Available at: <https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/complaints-procedures-under-human-rights-treaties> (Accessed: 29 October 2024).

23 The Universal Periodic Review mechanism was established in 2006 by the UN General Assembly (Res.60/251). The UN Human Rights Council calls for each Member State to undergo a peer review of its human rights records every 4.5 years. The fourth cycle of review began in November 2022. For key documents and status see: [Online]. Available at: <https://www.ohchr.org/en/hr-bodies/upr/upr-home> (Accessed: 29 October 2024).

5. Human rights and the Council of Europe

The Council of Europe was founded on 5 May 1949 by the Treaty of London, which established its Statute.²⁴ Today, it has 46 member states, including all EU member states. The main organs of the Council of Europe, particularly regarding the protection of human rights, are the Committee of Ministers, the Parliamentary Assembly, and the European Court of Human Rights.

The Committee of Ministers²⁵ is the decision-making body of the Council of Europe, consisting of the foreign ministers from member states who meet annually. For day-to-day business, they are represented by their permanent diplomatic representatives, who meet weekly. The Parliamentary Assembly²⁶ was the first plenary body of an international organisation with a parliamentary character established at the European level. Among other responsibilities, it provides political impetus to the Committee of Ministers, prepares draft conventions, and makes recommendations to the Committee of Ministers and the Member States. It is composed of Members of Parliament and their substitutes, delegated by the national parliaments of the member states. The Assembly meets four times a year for sessions lasting several days. Recommendations and resolutions are already prepared in special standing committees that meet approximately every six to eight weeks. The European Court of Human Rights²⁷ monitors member states' compliance with the ECHR.²⁸ It consists of one judge per member state. The judges are not representatives of states, but are independent and serve on the Court in a personal capacity.

The Council of Europe is active in the field of human rights and has developed numerous conventions in this area.²⁹ Its most important instrument for the protection of human rights is the ECHR, signed in Rome on 4 November 1950 and in force since 1953. Although its preamble explicitly references the UDHR, adopted two years earlier, the ECHR mainly contains first-generation rights, that is, civil and political rights. All member states of the Council of Europe are parties to the ECHR. The unique feature of the ECHR, and the reason for its significant importance in the context of

24 See: Details of Treaty No.001., Council of Europe Portal [Online]. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=001> (Accessed: 29 October 2024).

25 See: Committee of Ministers, Council of Europe Portal [Online]. Available at: <https://www.coe.int/en/web/cm> (Accessed: 29 October 2024).

26 See: Parliamentary Assembly, Council of Europe Portal [Online]. Available at: <https://pace.coe.int/en/> (Accessed: 29 October 2024).

27 See European Court of Human Rights [Online]. Available at: <https://www.echr.coe.int/home> (Accessed: 29 October 2024).

28 For a detailed description and further links to the ECHR and its protocols, see European Convention on Human Rights, European Court of Human Rights [Online]. Available at: <https://www.echr.coe.int/european-convention-on-human-rights> (Accessed: 29 October 2024).

29 Complete list of the Council of Europe's treaties, Council of Europe Portal, [Online]. Available at: <https://www.coe.int/en/web/conventions/full-list> (Accessed: 29 October 2024).

human rights protection in Europe, is its comparatively strong enforcement mechanism. The European Court of Human Rights (ECtHR), based in Strasbourg, monitors the implementation of the Convention by the state parties. Jurisdiction is not optional; all states that have signed the ECHR are subject to ECtHR jurisdiction.

The ECtHR³⁰ cannot act on its own initiative but can only proceed based on complaints addressed to it. There are two ways to initiate proceedings: a state application under Article 33 of the ECHR and an individual application under Article 34. However, applications by state are the exception; nearly all applications originate from individuals. The option for individual applications exists for all persons subject to the sovereignty of a state party, irrespective of their nationality. Citizens of a non-state party can also apply to the ECHR against a State Party. The 16th Protocol to the ECHR, adopted in 2013, created the possibility for last-instance courts and constitutional courts of member states to request an opinion from the ECtHR on the interpretation of the ECHR in ongoing proceedings.

The ECtHR began operations in 1959, functioning within a two-tier dispute-settlement system consisting of the Court itself and the ECHR. Until 1998, individuals could not apply directly to the ECtHR, but only to the Commission. It was essentially up to the Commission and the states concerned to decide whether a case would be referred to the ECtHR after the Commission had completed its proceedings. The 11th Protocol to the ECHR, which came into force in 1998, fundamentally changed this system. It abolished the Commission and transformed the ECtHR into a permanent body of full-time judges. Additionally, it made it possible for individuals to submit complaints directly to the ECtHR. Not surprisingly, this change has led to a significant increase in the Court's workload. Proceedings became lengthy, and the backlog grew year by year. To ensure the functioning of the ECtHR and improve its capacity to manage the enormous number of applications, another major restructuring was undertaken through the 14th Protocol, which entered into force in 2010. This included the introduction of a single-judge formation and an additional admissibility requirement.

An individual application must meet several admissibility criteria to be considered by the ECtHR. These criteria are as follows: the applicant must first exhaust domestic remedies; the applicant must be affected by the violation; a four-month period (originally six months) must have elapsed since the final domestic decision; and the applicant must have suffered a significant disadvantage as a result of the violation (a new criterion since the entry into force of the 14th Protocol). The application must not concern a matter that has already been decided or submitted to another international body for decision-making, must not be manifestly unfounded or abusive, and must be compatible with the ECHR. This compatibility requires that the application relates to a situation that occurred after the ECHR's entry into force and is directed against a state party under whose jurisdiction the violation occurred. The substance of the application must be based on the ECHR.

30 The case law of the ECtHR can be best accessed via HUDOC: <https://www.echr.coe.int/hudoc-database>. (Accessed: 29 October 2024).

One of the most important requirements is the exhaustion of domestic remedies, as the central basis of the dispute settlement system established by the ECHR is the principle of subsidiarity. This principle is based on the idea that it is primarily the responsibility of states to guarantee the rights enshrined in the ECHR. If these rights are violated, it is up to the states to remedy the situation. Only if the national system fails, despite the complainant having exhausted all legal remedies, can a complaint be lodged with the ECtHR. Another consequence of the principle of subsidiarity is the concept of the margin of appreciation, which the ECHR allows states during the implementation of Convention rights. The extent of this margin depends on several factors, such as which right is being interfered with and how central it is to the applicant. It also considers the degree of intervention, sensitivity of the issue, and the level of agreement between the Convention states.³¹

The ECtHR has four different configurations: a single judge, committee (three judges), chamber (seven judges), and a grand chamber (17 judges). A single judge may make a final decision on inadmissibility, if possible, without further examination of the application. The committees of three judges primarily decide on admissibility and, in exceptional cases, on the merits if the case is based on established ECtHR case law. In other cases, the chambers of seven judges decide upon appeals.

The Grand Chamber, composed of 17 judges, hears cases that raise serious questions regarding the interpretation or application of the ECHR or are of general importance, as well as cases in which the decision may depart from a previous judgment of the ECtHR. If this is apparent at the time the application is lodged, the Chamber will refer the case to the Grand Chamber before reaching a decision. Any party may also request that a case be referred to the Grand Chamber within three months of the Chamber's judgment. The Committee of Ministers monitors the implementation of ECtHR judgments according to a system designed for this purpose. A case is closed when the measures taken by the Member State to comply with the judgment are approved by the Committee of Ministers.³²

6. Human rights and the European Union

Unlike other international organisations, the EU has a human rights protection system that is binding not only on Member States but also on the EU itself. It is also equipped with appropriate enforcement mechanisms. The central provision is Article

³¹ Molbaek-Steensig, 2023, pp. 83-107.

³² Simplified case-processing flow chart by judicial formation, European Court of Human Rights [Online]. Available at: https://www.echr.coe.int/documents/d/echr/case_processing_court_eng (Accessed: 29 October 2024).

6 of the Treaty of the European Union (TEU),³³ which makes the Charter of Fundamental Rights of the European Union³⁴ legally binding.

At the time of the founding of the European Communities in the 1950s, it was considered highly unlikely that this type of international organisation could violate the fundamental rights of the citizens of the member states. For this reason, the prevailing view at the time was that an organisation focused on economic integration did not need to include human rights guarantees. However, as the Communities' activities expanded and integration deepened, violations by the organisation itself – rather than its Member States – became more likely. In particular, the combination of the principles of direct effect and the primacy of EU law enabled the organisation to directly alter the legal position of individuals. However, by virtue of its primacy, Union law takes precedence over national law, including the constitutions of the Member States and their catalogues of fundamental rights.³⁵ At the same time, as an independent legal system, Union law cannot be measured against the standards of national law, meaning that the provisions of Union law cannot be repealed on the grounds that it violates national fundamental rights. Therefore, individuals can only be protected against the encroachment of EU law on their fundamental rights through the fundamental rights enshrined in EU law. It was only when the constitutional courts of the Member States, particularly those of Germany and Italy,³⁶ “threatened” to disregard the primacy of Union law for this reason that the Court of Justice of the European Union (CJEU) began to find creative solutions to this problem.

33 Article 6 of the TEU ‘1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title V of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, which set out the sources of those provisions. 2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties. 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law’.

34 Charter of Fundamental Rights of the European Union (2012/C 362/02), Official Journal of The European Union, 26.10.2012. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT> (Accessed: 29 October 2024).

35 The issue of primacy of EU law over national law was and still is a very much debated question. The number of related scientific publications is substantial, but this study does not aim to analyse the topic. As a starting point to the scientific debate see the paper of the former judge and Advocate General to the European Court of Justice, Trstenjak, 2013, pp. 71-76. See also the Report of the European Parliament on the implementation of the principle of primacy of EU law, 7.11.2023 – 2022/2143(INI), [Online]. Available at: https://www.europarl.europa.eu/doceo/document/A-9-2023-0341_EN.html (Accessed: 29 October 2024).

36 Hilpold, 2021, pp. 159-192.

In the *Stauder* case (1969),³⁷ the CJEU held that it was the Court's duty to ensure respect for the fundamental rights embodied in the general principles of the Community legal order. A year later, in *Internationale Handelsgesellschaft* (1970),³⁸ the Court confirmed this and stated that these fundamental rights were inspired by the common constitutional traditions of the Member States. In subsequent judgments, the CJEU noted that not only the national legal systems of Member States but also certain international treaties serve as sources of information, particularly emphasising the importance of the ECHR.

Building on the jurisprudence of the CJEU, fundamental rights have gradually become more important within the framework of EU law and have been more firmly enshrined with each treaty revision. Since the Treaty of Lisbon came into force, the EU's commitment to fundamental rights has been enshrined in Article 6 of the TEU. Article 6(1) makes the EU Charter of Fundamental Rights legally binding and explicitly grants it the status of primary law. Although it was proclaimed in 2000, it became legally binding only with the Treaty of Lisbon.³⁹ According to Article 6(3) of the TEU, the fundamental rights resulting from the ECHR and the common constitutional traditions of the Member States continue to apply as general legal principles in Union law. Article 6(2) of the TEU also provides for the accession of the EU to the ECHR, after which the ECHR will become binding on the EU under international law. This means that individuals will then be able to apply to the ECtHR regarding human rights violations within the EU. This would be the first time in the history of an international organisation that it submits to an international court for the protection of human rights.⁴⁰

Although the ECHR is not currently binding on the EU under international law, it occupies a special position in Union law. On the one hand, the ECHR is a source of inspiration for fundamental rights as general legal principles in Union law. On the other hand, the EU Charter of Fundamental Rights explicitly refers to the ECHR as a minimum standard, and stipulates that rights in the Charter that correspond to those in the ECHR should be given the same meaning.

Fundamental rights in the EU are primarily addressed by the EU institutions and bodies. However, according to Article 51 of the Charter, the rights contained in it are also binding on Member States when they implement Union law. This formulation has led to controversial views regarding the situations in which Member States must respect the EU's fundamental rights in practice. In the *Åkerberg Fransson* case⁴¹

37 Case 29/69 – *Erich Stauder vs. City of Ulm*, ECLI:EU:C:1969:57.

38 Case 11/70 – *Internationale Handelsgesellschaft*, ECLI:EU:C:1970:114.

39 See more about reform of the EU: Lenaerts and Van Nuffel and Corthaut, 2021, pp. 40-49.

40 For more about the EU accession to the ECHR, see Krommendijk, J., (2023) 'EU Accession to the ECHR: Completing the Complete System of EU Remedies?'; <https://dx.doi.org/10.2139/ssrn.4418811>. and actual information about this issue: Lecerf, Completion of EU Accession to the European Convention on Human Rights – Q1 2017, 20 January 2024. [Online]. Available at: <https://www.europarl.europa.eu/legislative-train/carriage/completion-of-eu-accession-to-the-echr/report?sid=7701> (Accessed: 29 October 2024).

41 Case C-617/10 – *Åklagaren vs. Hans Åkerberg Fransson*, ECLI:EU:C:2013:105.

(2013), the CJEU confirmed its broad interpretation of this wording by holding that EU fundamental rights apply whenever Union law is applicable.

7. Human rights and the African Union⁴²

The African Union, formerly known as the Organisation of African Unity, adopted the African Declaration on Human and Peoples' Rights in 1981.⁴³ The Declaration, also known as the Banjul Charter, came into force in 1986 and, as its name suggests, includes several group rights that represent the third generation of human rights. For enforcement purposes, there is a group complaint procedure and a state complaint procedure before the African Commission on Human and Peoples' Rights, based in Banjul. Since 2004, the African Court on Human and Peoples' Rights, based in Arusha, Tanzania, has operated within the African Union, to which 27 of its 54 member states belong. Applications can be submitted by the African Commission on Human and Peoples' Rights or by any state party. Some states, such as Tanzania, Rwanda, and Ghana, have declared that they will also accept complaints from individuals and NGOs that have observer status with the African Commission on Human and Peoples' Rights.

8. Human rights and the Organization of American States⁴⁴

The American Declaration of the Rights and Duties of Man was adopted in 1948 under the auspices of the Organization of American States.⁴⁵ The American Convention on Human Rights followed in 1969,⁴⁶ although the US and Canada abstained. This primarily contained fundamental civil and political rights. Basic economic, social, and cultural rights are included in the San Salvador Protocol. Additionally, several special human rights treaties exist.

42 For more information on the state of affairs in implementing human rights in Africa, see Anazor-Ugwu, (2018) 'Enforcement of Human Rights in Africa: A Case Study on the African Commission on Human and Peoples Rights'; <https://dx.doi.org/10.2139/ssrn.3407770> (Accessed: 29 October 2024).

43 Text of the document as well as details about the institutional background and recent news can be found at: <https://achpr.au.int/home> as well as at: <https://www.african-court.org/wpafc/> (Accessed: 29 October 2024).

44 Research sources to human rights in the Americas can be found at: Comparative Human Rights, Refugee, & Asylum Law: Human Rights in the Americas, Michigan Law Library University of Michigan [Online]. Available at: <https://libguides.law.umich.edu/c.php?g=38129&p=6423870> (Accessed: 29 October 2024).

45 See the full text: American Declaration of the Rights and Duties of Man, OAS [Online]. Available at: <https://www.oas.org/en/iachr/mandate/Basics/declaration.asp> (Accessed: 29 October 2024).

46 See the full text: American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), OAS [Online]. Available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (Accessed: 29 October 2024).

Within the OAS, two bodies are responsible for upholding human rights: the Inter-American Commission on Human Rights, based in Washington, D.C., and the Inter-American Court of Human Rights, based in San José.

The Inter-American Commission on Human Rights⁴⁷ was established in 1959 and has jurisdiction over individual complaints from the nationals of any state party to the American Convention on Human Rights. Regarding the San Salvador Protocol, individual complaints are only possible concerning the right to education and the right to form trade unions. Jurisdiction for non-state parties is limited to violations of the American Declaration of the Rights and Duties of Man and, in some cases, specific human rights treaties. Complaints by states are also permitted, provided that there is an explicit declaration of responsibility by the concerned state.

The Inter-American Court of Human Rights⁴⁸ was created in 1979 based on the American Convention on Human Rights. It has jurisdiction over complaints from States and cases brought by the Inter-American Commission on Human Rights. In both cases, an explicit justification for jurisdiction is required. Additionally, members of the OAS and OAS bodies may request advisory opinions. However, individual complaints addressed directly to the Court are not permitted.

47 For details about composition, mandate, and functions, see What is the IACHR? Inter-American Commission on Human Rights [Online]. Available at: <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp> (Accessed: 29 October 2024).

48 For details about composition and case law, see Inter-American Court of Human Rights [Online]. Available at: <https://www.corteidh.or.cr/index.cfm?lang=en> (Accessed: 29 October 2024).

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