

To what extent do regional human rights systems contribute to the promotion and protection of human rights globally?

Keywords: human rights, regional systems of human rights, Council of Europe, European Union, Organization for Security and Co-operation in Europe, OAS, AU, Arab Charter of Human Rights, ASEAN

Introduction. The regional arrangements for the promotion and protection of human rights

Regional human rights protection mechanisms, even varying from a very advanced to an emerging one, all play a significant role in today's world. They are important pillars without which the international system for the promotion and protection of human rights will not function properly. The need for regional human rights systems was noticed decades ago and stated in the General Assembly¹ Resolution²: *The General Assembly...*

1 The General Assembly is the main deliberative, policymaking and representative organ of the United Nations; see: <http://www.un.org/en/ga/> [accessed 22.05.2013].

2 See the document at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/32/127&Lang=E&Area=RESOLUTION [accessed 22.05.2013].

- *aware of the importance of encouraging regional co-operation for the promotion and protection of human rights and fundamental freedoms,*
- *appeals to States in areas where regional arrangements in the field of human rights do not yet exist to consider agreements with a view to the establishment within their respective regions of suitable regional machinery for the promotion and protection of human rights.*

At the current moment, we can distinguish several, with three key – European, American and African – regional human rights systems. They vary in dozen aspects, but all are important as contributing to the overall promotion and protection of human rights.

The European and Inter-American Systems of Human Rights Protection

These two systems are often taken as the best examples of effective human rights systems, on a very advanced level, established over the years.

I. The European System of Human Rights Protection

1. Council of Europe

Council of Europe is an international organization, based in Strasbourg. It was founded on 5 May 1949 by 10 countries³. At the current moment has 47 member states⁴ and is an entirely separate body from the European Union (EU), which has only 27 member states. *The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress.*

- *(commitment to) maintain and further realize human rights and fundamental freedoms⁵.*

a) The European Convention on Human Rights (ECHR)

3 Belgium, Denmark, France, The Netherlands, Ireland, Luxembourg, Norway, Sweden, Great Britain and Italy.

4 For further information: <http://hub.coe.int/> [accessed 22.05.2013].

5 Article 1 of the Statute of the Council of Europe, see the document at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=001&CM=1&CL=ENG> [accessed 22.05.2013].

The European Convention on Human Rights⁶ is an international treaty, which aim is to protect human rights and fundamental freedoms in Europe. Opened for signature in 1950 by the then newly formed Council of Europe, the Convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity⁷. It has several protocols which amend the convention framework. The Convention established the European Court of Human Rights (ECtHR). The most important provisions of the Convention are listed in articles: 2, 3, 6, 9 and 14⁸.

b) European Social Charter 1961 (ESC)

European Social Charter⁹ was adopted in 1961 and revised in 1996. The Revised Charter came into force in 1999 and is gradually replacing the initial 1961 treaty. The Charter sets out human rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States parties. The European Social Charter aims to create State obligations to guarantee and respect social and economic rights¹⁰.

c) Specialized human rights instruments

There are also several other instruments that support the protection of human rights in Europe, such as: The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), The European Charter for Regional and Minority Languages (1992), The European Framework Convention for the Protection of National Minorities (1995), Council of Europe Convention on Action against Trafficking in Human Beings (entered into force 2008).

6 http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C90149-16D7A/0/Convention_ENG.pdf [accessed 22.05.2013].

7 Resolution 1031 (1994) on the honouring of commitments entered into by member states when joining the Council of Europe, see at: <http://assembly.coe.int/Documents/AdoptedText/TA94/ERES1031.HTM> [accessed 22.05.2013].

8 Respectively: right to life; prohibition of torture; right to a fair trial; freedom of thought, conscience and religion; prohibition of discrimination.

9 <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm> [accessed 22.05.2013].

10 Right of housing, health, education, employment, social and legal protection, movement of persons and non-discrimination.

d) The European Court of Human Rights

The European Court of Human Rights is a court established by the European Convention on Human Rights, which aim is to verify States' compliance with it and hears complaints that a contracting state has violated the human rights enshrined in the Convention and its protocols.

Applications by individuals against contracting states, alleging that the state violates their rights under the European Convention on Human Rights, can be made by any person, non-governmental organisation or group of individuals.

e) The European Committee of Social Rights (ECSR)

The European Committee of Social Rights was established to monitor states' compliance with the European Social Charter. In respect of national reports, the Committee adopts conclusions, in respect of collective complaints, it adopts decisions.

f) Specialized organs

Various specialised organs have been set up to develop the Council's work in specific areas, such as The European Commissioner on Human Rights and European Commission against Racism and Intolerance (ECRI).

2. The European Union

The Treaty on the European Union, adopted in 1992 in Maastricht, provided that the EU must *respect fundamental rights as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States as general principles of Community law*.

a) Charter of Fundamental Rights of European Union

The now legally binding Charter is the most modern human rights document in Europe, which Preamble¹¹ confirms that *the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law*.

b) The Court of Justice of the European Union

The Court of Justice of the European Union is situated in Luxembourg and ensures that Union law is interpreted and applied equally throughout the Union. Union member states as well as

¹¹ See the whole document at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf [accessed 22.05.2013].

individuals¹² can bring a case before the Court. The Court also refers to the jurisprudence of the European Convention of Human Rights in its rulings and should be in a regular dialogue with the European Court of Human Rights¹³.

c) European Ombudsman

The European Ombudsman was established in 1995 by the Treaty of Maastricht.

Any citizen or resident of a member state can lodge a complaint. In addition, the Ombudsman can start an inquiry on his own initiative. In case of failure a special report can be made to the European Parliament¹⁴.

3) Organization for Security and Co-operation in Europe (OSCE)

Created during the Cold War era as an East-West forum, with 56 States from Europe, Central Asia and North America nowadays, the Organization for Security and Cooperation in Europe is the largest regional security organization in the world¹⁵.

One of the most important organs of the OSCE is The Office for Democratic Institutions and Human Rights, situated in Warsaw, Poland. It was established in 1990 to promote the fulfilment of the human dimension commitments.

4) Coordination within Europe

The Council of Europe, the European Union and the Organization for Security and Co-operation in Europe have gradually come closer. Joint actions for the promotion of human rights and democracy are financed by the EU.

II. The Inter-American System of Human Rights Protection

1. OAS

With the signing of the Charter of the Organization of American States, which was adopted on April, 30, 1948¹⁶, the American States

¹² See art. 263 of the Treaty on the Functioning of the European Union.

¹³ See Declaration on art. 6 (2) of the Treaty of Lisbon.

¹⁴ See the Statute of the European Ombudsman at: <http://www.ombudsman.europa.eu/en/resources/statute.faces> [accessed 22.05.2013].

¹⁵ <http://www.osce.org/about/19298.html> [accessed 22.05.2013].

¹⁶ The Charter was adopted at the Ninth International Conference of American States on 30 April 1948 and entered into force on 13 December 1951.

established the Organization of American States (OAS), with 35 members in 2011. The aim is promoting peace, security and democracy on the continent, and the eradication of poverty. By adopting a range of international instruments such as conventions and declarations, the American States have created the Inter-American system for the promotion and protection of human rights.

2. Key instruments

a) American Declaration on the Rights and Duties of Man

American Declaration on the Rights and Duties of Man¹⁷ was adopted by the American States on 30 April 1948, several months prior to the United Nations Universal Declaration of Human Rights. It was seen as a beginning of the regional system of human rights.

The 38 articles of the Declaration contain civil, political, economic, social and cultural rights.

The Declaration was not adopted as a legally binding treaty, however it is considered as a source of international obligations for the Member States of the OAS. This was also confirmed by the Inter-American Court of Human Rights¹⁸ and the General Assembly of the Organization, which has frequently recognized the binding character of the Declaration¹⁹.

b) American Convention on Human Rights

American Convention on Human Rights²⁰ was adopted on 22 November 1969²¹, extended the powers of the Inter-American Commission on Human Rights and created an Inter-American Court of Human Rights. The Convention has been ratified by 25 American

¹⁷ <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm> [accessed 22.05.2013].

¹⁸ See Inter-American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of art. 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, at paras. 46–47.

¹⁹ *Ibid.*, at paras. 42–43: ‘(...) Hence it may be said that by means of an authoritative interpretation, the Member States of the Organization have signalled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter (...)’.

²⁰ http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm [accessed 22.05.2013].

²¹ Pact of San Jose, adopted at the Inter-American Specialized Conference on Human Rights on 22 November 1969. The Convention entered into force on 18 July 1978.

States²². The rights and freedoms protected by the Convention are mainly civil and political rights (art. 3 to 25).

The Convention has been complemented by two additional Protocols: The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights and The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

3. Key bodies

a) The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights, which was established in 1959 and has its seat in Washington D.C., is one of the principal organs of the OAS. It represents all the Member States of the Organization. The Commission's main function is to promote the observance and protection of human rights²³.

b) The Inter-American Court of Human Rights

The Inter-American Court of Human Rights was established in 1979 to enforce and interpret the provisions of the American Convention on Human Rights. Its two main functions are adjudicatory – hears and rules on the specific cases of human rights violations referred to it, and advisory – issues opinions on matters of legal interpretation brought to its attention by member states or other OAS.

III The European and Inter-American Systems – summary

In Europe and the Americas effective regional human rights systems have been established over the years.

In Europe, the main human rights protection mechanism, the European Court of Human Rights is now struggling to remain efficient due to its workload. In the Inter-American system, the political weight of the Organization of American States, is being undermined by the diverting

22 For signatories and ratifications see Organization of American States, Department of International Law, <http://www.oas.org/juridico/English/sigs/b-32.html> [accessed 22.05.2013].

23 According to art. 1 para. 2 of the Commission's Statute, for the purposes of this statute, 'human rights are understood to be a) the rights set forth in the American Convention on Human Rights, in relation to the States Parties thereto; and b) the rights set forth in the American Declaration on the Rights and Duties of Man, in relation to the other Member States'.

political systems. This clearly shows that, rather advanced, both regional human rights protection systems suffer from a number of defects.

The African System of Human Rights Protection

Organization of African Unity, later (2001) African Union, was established in 1963 in Addis Ababa to promote unity, development and international cooperation, defend the sovereignty and territorial integrity of members and coordinating members' policies in various areas.

In 2001 the OAU was transformed into the African Union (AU). The vision of the African Union is that of: *An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena*²⁴. The African Union has currently 53 member states²⁵, only Morocco withdrew in 1984 because of the recognition of Western Sahara by the OAU.

1. Key instruments

a) African Charter on Human and Peoples' Rights

African Charter on Human and Peoples' Rights²⁶, also known as the Banjul Charter, is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. It is a legally binding convention and includes human as well as peoples' rights and a catalogue of duties of the individual/group to the state as well as for the state.

b) The African Human Rights Court Protocol

The African Human Rights Court Protocol²⁷ came into force 2004 and creates a Court to complete the work of the Commission with the authority to issue legally binding and enforceable decisions.

2. Key bodies

a) The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights is a quasi-judicial body, established directly by the African Charter on Human and Peoples' Rights, which aim is interpreting the African

24 See: <http://www.au.int/en/about/nutshell> [accessed 22.05.2013].

25 See also: http://www.au.int/en/member_states/countryprofiles [accessed 22.05.2013].

26 <http://www1.umn.edu/humanrts/instree/z1afchar.htm> [accessed 22.05.2013].

27 <http://www.achpr.org/instruments/court-establishment/#1> [accessed 22.05.2013].

Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter.

b) The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights is a regional court, located in Arusha (Tanzania), which aim is to make judgments on African Union states' compliance with the African Charter on Human and Peoples' Rights. The Court has many functions, such as ensuring protection of human and peoples' rights, interpreting all the provisions of the Charter, collecting documents and researches on human and peoples' rights matters in Africa.

c) The African System of human rights protection – summary

The African system of human rights protection is still developing and needs help from other systems. As the continent still struggles with pain, riots, poverty, hunger disease, cultural and tradition issues, it needs a strong support from outside to learn how to deal with today's world's problems.

What about others?

Other groups of States have chosen to demonstrate their commitment to universal human rights by adopting instruments enshrining the rights they profess to respect ... however none of these instruments are yet supported by effective implementation machinery (R. Smith)

Besides the three above-mentioned rights protection systems, there are two others – The Arab and The Asia Pacific – that suffer difficulties with effectiveness.

The Arab human rights protection mechanism is strongly linked to Islam as its dominant religion established. The main principles are the distinctive nature, heritage and unity of Arab nation. The Arab Charter of Human Rights (2004)²⁸ is in some parts inconsistent with international human rights and seems like a step back for human rights protection.

A region still without a regional human rights mechanism remains the Asia Pacific region. The main reasons seems lack of political will together

²⁸ <http://www.unhcr.org/refworld/docid/3ae6b38540.html> [accessed 22.05.2013].

with political and cultural diversity. The most practicable way of promoting and protecting human rights effectively in the Asia-Pacific region seem to be sub-regional mechanisms, such as ASEAN mechanism²⁹ with the ASEAN Intergovernmental Commission on Human Rights³⁰.

Final conclusions

Regional systems of human rights protection, as mentioned at the beginning, play a significant role in overall promotion and protection of human rights.

That variety does not undermine the universal character of human rights. By revealing various cultures, values and priorities, they facilitate the protection of human rights and put an emphasis on the important issues in different parts of the world.

As far as the regional systems of human rights protection are concerned, the fact that there are less states involved, it is much easier to reach a consensus, an agreement, than globally. A less diversity in terms of culture, history and tradition help to concentrate on the main priorities regionally. It is also important as states may be more inclined to be scrutinized and this means many benefits in terms of effectiveness of human rights protection.

The fact that in above-mentioned systems complaints can be brought by individuals ensures a fluent access to human rights protection mechanisms for everyone.

Currently regional human rights mechanisms vary from an advanced regional system of human rights protection – Europe and America, over a regional system requiring a strong support (Africa) and an emerging regional system in Arab Countries, to a region without a regional system of the human rights protection, where no such mechanisms could be established – Asia.

Bearing in mind differences between regional systems of human rights protection, several steps should be taken to improve the effectiveness of the protection globally.

29 For further information: <http://www.aseanhrmech.org/aboutus.html> [accessed 22.05.2013].

30 For further information: <http://aichr.org/about/> [accessed 22.05.2013].

Development of civilization and new technology could be used. Within it, spreading of human rights culture should be much easier globally. E-learning, websites, databases – all of them should be taken as an important tool.

Moreover, cooperation and exchange among regional systems, such as exchange of experience and information, sharing good practices, joint actions and discussing the relationship between universal and regional systems of human rights protection could be helpful with the promotion and improvement of human rights globally.

STRESZCZENIE

KATARZYNA PIĄTKOWSKA

W jakim stopniu regionalne systemy praw człowieka przyczyniają się do promocji i przestrzegania praw człowieka na świecie?

Powstanie regionalnych systemów ochrony praw człowieka to dowód na to, jak niezwykle ważny jest ten międzynarodowy system prawa. Zawity proces, który doprowadził do uznawania praw człowieka w sferze prawa międzynarodowego potwierdził, jak dużą rolę odgrywają regionalne systemy. Artykuł wykazuje wpływ systemów regionalnych: europejskiego, inter-amerykańskiego oraz afrykańskiego na promocję i ochronę praw człowieka na całym świecie.

