

§ 1 The Multi-level protection of human rights and the parallelism of human and fundamental rights regimes

I. Human and fundamental rights

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

II. 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 rules on the institutions monitoring compliance or enforcing it and the rules on the monitoring or enforcing procedures; the latter are also called *h.r. mechanisms*
- they are often complemented by *political mechanisms* (e.g. the action of h.r. commissioners without legal powers, h.r. funds and h.r. trainings programs) that mainly serve to raise h.r. awareness

III. The parallelism of human and fundamental rights regimes

1) The primary responsibility of the state for the effective protection of human rights

- a conclusive consequence of the sovereignty of the state

2) The plurality of human and fundamental rights regimes

- see *special overview* on the norms to bear in mind (from this course contribution in 2019)

3) The reasons for the plurality of human and fundamental rights regimes

- the recurring insufficiency of the national protection of human rights and the necessity of guarantees from outside the State
- international human rights treaties as instruments of "mutual insurance", operating like a *second safety net*
 - as such, geo-regional h.r. treaties *only* define *geo-regional minimum standards* considered imperative within the given (European, American, African, Arab...) civilisation
 - global h.r. treaties define *global minimum standards* considered imperative for any human community, without regard to its political, economical, cultural or ideological specifics
 - the *national standards* can and *must be higher*
- the necessity of particular fundamental rights regimes for supranational powers (→ EU)
- geo-regional human rights regimes as expressions of identity of civilisations (see infra, IV.)

4) General aspects of the parallelism of human and fundamental rights regimes

a) Intensified protection through cumulative requirements

- national and intern. rights do not compete or collide but complement each other

b) Parallel operation without correlation or interference

- while h.r. treaties set minimum standards, the national standards should be higher

c) Mutual influence of interpretation

d) Risk of conflicts in case of concepts obliging authorities to intervene

- e.g. prohibition clauses, rights with direct horizontal effect, duties of protection

IV. Geo-regional human rights regimes as expressions of identity of civilisations

- human rights are universal values but they can vary in detail in the different parts of the world
- the global absolute minimum standards in the global h.r. treaties are complemented by special or higher geo-regional standards that take into account geo-regional economic, social, cultural and ideological specifics (e.g. the more or less important role of the family or the local community)
 - some special rights may be unique to individual civilisations (e.g. peoples' rights in Africa)
- corresponding rights may have a different emphasis in different civilisations; this is expressed in different limitation clauses