

## § 3 American human rights law

### I. The role of the Organisation of American States (OAS) to promote human rights

- one of its missions (cf. art. 45 lit. a, 91 lit. f and 106 OAS Charter)
  - fundamental rights as *a common American fundamental value* (art. 3 lit. 1 OAS Charter)
- performed mainly (but not only) by a special OAS institution, the Inter-American Commission of Human Rights (IACHR)

### II. The American Convention on Human Rights (ACHR)

- signed 1969, in force since 1978

#### 1) The guaranteed rights

- essential civil and political rights
- some central elements of the rule of law anchored as human rights
  - e.g. right to a fair trial (art. 8), freedom from ex post facto laws (art. 9), right to judicial protection (art. 25)
- economic, social and cultural rights under Optional Protocol of 1988 ("Prot. of San Salvador")
  - including right to work (art.6), health (art. 10), social security (art. 9) and healthy environment (art. 11), rights of children, elderly and handicapped (art. 16 - 18)
  - for these right only obligation to adopt measures (art. 1); concession of the "progressive nature of the observance of the rights" (art. 19)
- prohibition of death penalty under Optional Protocol to Abolish the Death Penalty of 1990
  - allows reservations for wartimes (art. 2(1))
- obligation to criminalise propaganda for war and advocacy of national, racial, or religious hatred inciting to violence, as a limit to freedom of thought and expression (art. 13(5))
- IACtHR has declared national legislation, which violates the Convention, inapplicable

#### 2) The control mechanisms

- state reporting procedure (for Optional Protocol)
- state reports of the Commission
- opinions of the IACtHR on request of OAS member states or institutions (art. 64)
- interstate complaints (optional under art. 45, not yet in practice)
- *individual complaints* (art. 44)
  - by individuals, groups of persons or NGOs
  - first petition before the Commission, then examination and decision and, where appropriate, recommendations of the Commission (art. 51)
  - then, where appropriate, submission of the case to the Court by the Commission or a state (not by the citizen!) (art. 61), then decision by the court (art. 63)

### III. The Inter-American Commission of Human Rights

- both, an OAS institution (since 1959) and an ACHR treaty body with seat in Washington D.C.
  - legal basis: art. 53 lit. e, 106 OAS Charter, Chapter VII (art. 34 ff.) ACHR, IACtHR Statute
- 7 members with a 4 years term
- missions: to deal with individual complaints, monitor h.r. situation in the member states and work on priority thematic areas
- *thematic rapporteurships* for 10 different fields of human rights

#### IV. The Inter-American Court of Human Rights (IACtHR)

- an international court (and ACHR treaty body) with seat in San José, whose decisions are legally binding
  - legal basis: Chapter VIII (art. 52 ff.) ACHR, IACtHR Statute
  - jurisdiction only if state has recognized it (art. 62); some states have withdrawn
  - 7 part-time judges from any OAS member states, elected for a term of 6 years
  - has delivered *447 decisions and judgements* (until 02.2022)
- cases can only be submitted by the states and the Commission (art. 61(1))
- Court can adopt provisional measures (art. 63(2))
- in case of a violation of rights, Court *can order remedial action* or compensation (art. 63(1))
- no mechanism to enforce the execution of the judgements
  - but Court requires compliance reports of the states

#### V. American human rights treaties on special subjects

- *Inter-American Convention to Prevent and Punish Torture (IACPPT)* of 1985
  - with a broader definition of torture than in the CAT (art. 2)
- *Inter-American Convention on Forced Disappearance of Persons (IACFDP)* of 1994
  - allows individual complaints before Inter-American Commission and Court (art. XIII)
- *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)* of 1994
  - definition of violence, including psychological violence (art. 1, 2)
  - right to be valued and educated free of stereotyped patterns of behavior and social or cultural practices based on concepts of inferiority or subordination (art. 6 lit. b)
  - states obliged to introduce protection mechanisms and combatting violence even in the private sphere (art. 7)
  - allows *individual complaints* before Inter-American Commission (art. 12)
- *Inter-American Convention on the Elimination of all Forms of Discriminations against Persons with Disabilities* of 1999
- *Inter-American Conventions against all Forms of Discrimination and Intolerance* and against Racism, Racial Discrimination and Related Forms of Intolerance of 2013
- *Inter-American Convention on Protecting the Human Rights of Older Persons* of 2015
- no source of law but just "soft law": American Declaration of the Rights and Duties of Man of 1948