

Human Rights Protection Systems

Right and freedom. Subject of human rights.
Sources of human rights law

Human Rights Protection Systems
SSP II, winter semester 2018/2019
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Right to respect for private and family life

Right to liberty and security

Prohibition of inhuman or degrading treatment

Case study:

P. and S. v. Poland

ECtHR, October 30th, 2012

(application no. 57375/08)

Freedom



freedom of choice within the limits
of the designated law

The role of the state is:

- a) creating a system of guarantees
securing the enjoyment
of freedom,
- b) refraining from interference.

Right



legal right: entitlement
of an individual with which
the legal obligation to perform
certain behavior of another
entity (state) is correlated

Subject of constitutional freedoms and rights

- I. Human being as a natural subject of freedoms and rights
 - ▶ conditions for diversifying the scope of rights and freedoms in the light of the Constitution of the Republic of Poland (citizenship, age, sex, other)
- II. Legal persons as recipients of constitutional rights and freedoms

Sources of international human rights law

- international conventions (general or particular)
- international custom, as evidence of general practice accepted as law
- general principles of law recognised by civilised nations
- subsidiary means for the determination of rules of law

Universal convections: International Bill of Human Rights

- Universal Declaration of Human Rights [1948]
- Covenant on Civil and Political Rights (ICCPR) [1966]
- Covenant on Economic, Social and Cultural Rights (ICESCR) [1966]
- First Optional Protocol to the ICCPR (individual complaints procedure) [1966]
- Second Optional Protocol to the ICCPR (abolition of the death penalty) [1989]

Selected UN conventions

- Convention on the Prevention and Punishment of the Crime of Genocide [1948]
- Convention relating to the Status of Refugees [1951]
- UNESCO Convention against Discrimination in Education [1960]
- International Convention on the Elimination of All Forms of Racial Discrimination [1965]

Selected UN conventions

- International Convention on the Suppression and Punishment of the Crime of Apartheid [1973]
- Convention on the Elimination of All Forms of Discrimination Against Women [1979]
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984]
- Convention on the Rights of the Child [1989]

Selected UN conventions

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [1990]
- Convention on the Rights of Persons with Disabilities [2006]
- International Convention for the Protection of All Persons from Enforced Disappearance [2006]

Regional conventions – Council of Europe

- European Convention for the Protection of Human Rights and Fundamental Freedoms [1950]
- European Social Charter [1961]
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [1987]
- Framework Convention on National Minorities [1994]

Regional conventions – European Union

- Charter of Fundamental Rights of the European Union [2000]



Regional conventions – Organization of American States

- American Convention on Human Rights [1969]
- Protocol of San Salvador on economic, social and cultural rights [1988]
- Protocol to abolish the death penalty [1990]

Regional conventions – African Union

- African Charter on Human and Peoples' Rights [1981]
- Additional Protocol on the Establishment of the African Court on Human and Peoples' Rights [1998]
- Protocol on the Rights of Women in Africa [2003]
- Protocol on the Statute of the African Court of Justice and Human Rights [2008]

Regional conventions – League of Arab States

- Arab Charter on Human Rights [2004]

On Jan 24, 2008, the High Commissioner for Human Rights, Louise Arbour, has stressed that the Charter is incompatible with international standards for women's, children's and non-citizens' rights, and in that it continues to equate Zionism with racism.

<http://iheu.org/arab-charter-human-rights-incompatible-international-standards-louise-arbour/>

International custom

- general practice accepted as law
- *usus*: practice supported by broad consensus in terms of content and applicability
- *opinio iuris sive necessitatis*: belief that this practice is binding law

International custom

- General Comment 24 [1994] of the Human Rights Committee:

State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women and children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And [...] the right to a fair trial [...].

General principles of law – examples

- principle of proportionality
- principles of fairness and justice
- *lex retro non agit*
- good faith
- *res iudicata*
- impartiality of judges
- prohibition of abuse of rights

Subsidiary means for the determination of rules of law

- judicial decisions and the teachings of the most qualified publicists [Article 38 of the Statute of the International Court of Justice]

LITERATURE

Essentials:

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Extra:

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