

§ 5 The European human rights law compared to other human rights regimes

I. Focusing on the decisive aspect: the *effectiveness* of the system of institutions and procedures for the human rights protection *in the individual case*

1) No effective human rights protection without the remedy of individual complaint to a Court

- the need of remedies for the individual
- remedies to a court, not to a political institution
 - not politicians or experts but judges must decide
 - not in a political discourse but in legal proceedings
 - execution of the decision must be ensured

2) The individual complaint to the ECHR compared to those under universal, American and African human rights law

a) Access to a court

- not only to a treaty body

b) Direct access to the Court without filter

- no filtering by a Human Rights Commission
- consequently, a much higher number of adjudicated cases
 - made possible by a higher number of judges: 47 (ECHR) compared to 7 (IACHR) and 11 (ACHPR)
- complaint to the ECHR a *real option for everyone*

c) Binding force of the Court's decision

- judgements of the ECHR (but also of the IACHR and ACHPR) legally binding
- effective execution ensured by supervision by Council of Europe's Committee of Ministers

3) Other effective control mechanisms under specialised h.r. treaties

- effective torture prevention by ad hoc visits of places of detention by CPT delegations
- insufficient mechanisms to enforce social rights (no remedies to ECHR)

II. The dynamic of the development of human rights doctrine

- high number of cases has led to a sophisticated and differentiated h.r. doctrine far beyond the Convention's wording that adapts quickly to new challenges
- the European human rights doctrine as *common European heritage*

III. Classical human rights (in particular civil and political rights, justice)

- in the focus of the European and American Convention; less developed in Banjul Charta
- strong focus of the jurisprudence of the ECHR on those rights concretising elements of the rule of law
- equality between spouses as a human right (art. 5 Prot. 7)
- *absolute prohibition of Death Penalty* (Prot. 6, 13)

IV. Non-classical economic and cultural rights, social rights

- rather weak protection, mainly in the European Social Charter

V. Collective and other "third generation rights"

- limited protection concerning some individual aspects in a few specialised treaties prepared by the Council of Europe
- much stronger protection under the Banjul Charter, due to the different focus of the African concept of human rights