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Human rights in practice

In every state, citizens are being granted certain fundamental rights, such as freedom of speech, freedom of religion or the right to equality. However, its extent does vary from country to country and always depends highly on the respective political and social situation in the state.

But there are certain rights that equally apply to everyone: the so-called human rights. These include the right to life, the prohibition of torture and the prohibition of slavery for instance.

Back in time, the United Nations were founded to protect these human rights and now there is a total of 193 member states supporting this objective. In 1976 the International Covenant on Civil and Political Rights came into force and has since been ratified by 173 states. The UN Human Rights Committee is responsible for monitoring these rights. Thus, individual complaints against member states can be submitted thereto if there has been a violation of human rights. After reviewing this alleged violation, the Committee can make concrete recommendations to the states parties in order to prevent the human rights violations. However, these recommendations are often seen as non-binding on the states and therefore cannot be enforced. This also becomes clear when looking at the choice of words: instead of a "complaint", one submits a "communication", a "communication" rather than a "decision" is issued by the Committee. Although these recommendations of the UN Human Rights Committee certainly set the tone, they could become more of a symbolic appeal in the end and not binding on the member states.

In addition to the Human Rights Committee, there are other conventions to which victims of human rights violations can turn their complaint to. There is the UN Convention against Torture for example in the case of violations of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. But the communications of this convention are not binding either.



This notwithstanding, the decisions of these UN Committees are given effect in the relevant domestic legal systems, which is also compatible with the principle *pacta sunt servanda*: if the state parties have agreed to be bound by a Convention and the complaints' procedures before the relevant bodies, they should also, in good faith, follow such Conventions and the decisions of the Committees which interpret them in the scope of individual complaints' procedures.

However, the situation is different in Europe. The Council of Europe, consisting of 46 member states (including all 27 EU member states), plays a major role in the protection of human rights. To this end, the European Convention on Human Rights came into force in 1953. The European Court of Human Rights (ECtHR) in Strasbourg monitors the compliance with the Convention. And most decisively, its judgements must be recognised and enforced by the member states.

But how does one proceed if one wants to claim a human rights violation?

First, all legal remedies in one's own country must be exhausted before one is even allowed to turn to the "heavy guns" at the international level.

It is also important to remember that a violation of a particular human right, such as the prohibition of torture, cannot be brought before several international human rights institutions at the same time. This means that if a complaint concerning the prohibition of torture is already pending before the ECHR or is to be filed there in the future, an application cannot also be made to the UN human rights bodies at the same time. The only loophole would be a complaint to one of the so-called Special Rapporteurs, who are solely dedicated to investigating certain countries or issues, including the prohibition of torture. At the request of an individual, the Special Rapporteur can take action regardless of any other procedures, and regardless of the fact whether the state in question has ratified the Convention. But again, there will only be recommendations and not any binding judgements.



Therefore, when asserting human rights in Europe, the way via the ECtHR is generally more recommendable, since the Court will issue a binding judgement that the member states have to abide by. However, if 4 months have already passed since the final court decision in one's own country, a complaint to the ECHR is no longer admissible and one could alternatively resort to the legal remedies of the UN human rights bodies.

As can be seen, each case and each victim must therefore always be considered individually in order to find the appropriate course of action against the human rights violation.

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