

Rule of Law and Fair Trial



Federal Ministry
for Foreign Affairs
of Austria



“The rule of law is more than the formal use of legal instruments, it is also the Rule of Justice and of Protection for all members of society against excessive governmental power.”

International Commission of Jurists, 1986.

“Injustice anywhere is a threat to justice everywhere.”

Martin Luther King

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Art. 10, Universal Declaration of Human Rights

- ▶ Any democratic society which seeks to foster and promote human rights has to recognize the primacy of law as a fundamental principle.
- ▶ **The rule of law** cuts across various fields: political, constitutional, legal and human rights issues.
- ▶ **The right to a fair trial** is one of the cornerstones of a democratic society based on the rule of law.

- ▶ No consensus on its elements.
- ▶ The law has to be publicly known, equally applied and effectively enforced.
- ▶ Rule of law provides the foundation for the just management of relations between and among people.
- ▶ Rule of law is an essential pillar of the democratic process which ensures accountability and control of those in power through the law.

- ▶ **1066:** William the Conqueror.
- ▶ **1215:** Magna Carta Liberatum, granting certain rights.
- ▶ **1679:** Habeas Corpus Act.
- ▶ **17th/18th century:** Civil revolutions throughout Europe.
- ▶ **Today:** Rule of law is a core principle across the world.

- ▶ Fair Trial is a core element of the rule of law.
- ▶ It relates the administration of justice in both criminal and civil contexts.
- ▶ The state has to create institutions safeguarding the legal system (independent courts, independent prosecutors, police forces).
- ▶ All these institutions are bound by fundamental human rights guarantees laid down in universal and regional treaties such as the ICCPR, ECHR, ACHR, ACHPR.

Fair Trial Components

Equality before the law and before the court.

Independence and impartiality.

Public hearing.

Right to be presumed innocent.

Right to be tried without undue delay.

Right to adequate defence.

Right to be tried in one's own presence.

Right to call and to examine or to have the witnesses examined.

Right to free assistance of an interpreter.

Access to effective, fair judicial remedies.

The principle of “*nulla poena sine lege*”.

Right to bail.

► States need to...

...establish and maintain the institutional infrastructure necessary for the proper administration of justice.

...promulgate and implement new laws and regulations guaranteeing fair and just proceedings.

► **Problem:** although the principle is generally recognized, there are differences in its interpretation in different countries.

- ▶ Reporting system foreseen in a number of international documents.
- ▶ Individual complaint mechanisms in the Opt. Protocol to the ICCPR, ECHR (Art. 34), ACHR (Art. 44) or ACHPR (Art. 55).
- ▶ UN Special Rapporteur:
 - on extra-judicial, summary or arbitrary executions (since 1982).
 - on torture and other cruel, inhuman or degrading treatment or punishment (1985)
 - on the independence of judges and lawyers (1994).
 - on violence against women, its causes and consequences (1994)
 - on the situation of human rights defenders (2000)
 - on the promotion and protection of human rights while countering terrorism (2005).
- ▶ Working group of the HR Commission on arbitrary detention (1991).

- ▶ Specialized agencies are created such as the the Office for Democratic Institutions and Human Rights (ODIHR) within OSCE.
- ▶ International Tribunals provide for the end of impunity, as also victims have a right to a fair trial.
- ▶ Mediation and arbitration help to solve conflicts.
- ▶ (Re-) Establishing the rule of law has become a major concern in post-conflict and post-crisis reconstruction.

- 1948 Universal Declaration of Human Rights.
- 1948 American Declaration of the Rights and Duties of the Man, Arts. I, II, XVII, XVIII, XXVI.
- 1949 Geneva Convention (III) relative to the Treatment of POWs, Arts. 3(d), 17, 82, 83, 84, 85, 86, 87, 88.
- 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Arts. 3(d), 33, 64, 65, 66, 67, 70, 71, 72, 73, 74, 75, 76.
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, Arts. 5, 6, 7, 13.
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Arts. 5(a), 6.

- 1966 International Covenant on Civil and Political Rights, Arts. 9, 10, 14, 15, 16, 26.
- 1969 American Convention on Human Rights, Arts, 8, 9.
- 1977 Additional Protocol I to the Geneva Conventions, Arts. 44(4), 75.
- 1977 Additional Protocol II to the Geneva Conventions, Art. 6.
- 1979 Convention on the Elimination of All Forms of Discrimination Against Women, Art. 15.
- 1981 African Charter on Human and Peoples' Rights (Banjul Charter), Art. 7, 26.
- 1982 UN Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions.

- 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 15.
- 1984 Protocol No. 7 to the ECHR, Arts. 1, 2, 3, 4.
- 1984 General Comment No. 13 on Art. 14 ICCPR.
- 1985 UN Basic Principles on the Independence of the Judiciary.
- 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
- 1985 UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- 1989 Convention on the Rights of the Child, Arts. 37, 40.

- 1990 UN Basic Principles on the Role of Lawyers.
- 1990 UN Guidelines on the Role of Prosecutors.
- 1991 UN Working Group on Arbitrary Detention.
- 1993 Statute of the International Criminal Tribunal for the former Yugoslavia.
- 1994 Statute of the International Criminal Tribunal for Rwanda.
- 1994 UN Special Rapporteur on the Independence of Judges and Lawyers.
- 1994 UN Special Rapporteur on Violence against Women, its Causes and Consequences.

- 1998 Rome Statute of the International Criminal Court.
- 2000 UN Special Rapporteur on the Situation of Human Rights Defenders.
- 2004 Arab Charter on Human Rights, Arts. 12, 13, 15, 16, 17, 19.
- 2005 UN Special Rapporteur on the Promotion and Protection of Human Rights while countering Terrorism.
- 2006 Convention on the Rights of Persons with Disabilities, Arts. 5, 12, 13, 14.
- 2007 General Comment No. 32 on Art. 14 of the ICCPR.