

Law essays - international law



Explain and evaluate the role of International Law in the development of the concept of human rights.

A. Introduction

The need of co-operation and mutual development has led the countries of the international community to create a legislative net which would have as basic task the regulation of the relationships between them. At a next level, the bodies that were created to handle these provisions and to supervise their application faced the problem of the absence of a suitable legal environment that could guarantee and protect their operation. The only solution seemed to be the extension of the law provisions that regulated the relationships between the States to these international bodies. In this way, the international law was constructed and came into force for every issue that presented elements of international character.

We should notice that the international law is no longer restricted to the above described area, but it has been extended so that it can offer protection against criminal actions that are taken place against the humanity even if these actions are made by individuals. The judicial body that has the responsibility of this task is the International Criminal Court.

Although the protection of the human rights has always been a priority – as declared – both to the nationals and the international law, there are certain circumstances under which the application of the law is becoming difficult and sometimes it is finally avoided. This is often explicated as a result of a ‘precautionary politic’ that is necessary in order to protect the human rights of the majority of residents of a state. One of the recent measures that have

been applied towards this purpose is the detention of a person for reasons of safety of the public and with no relevant decision or order of a court.

According to R. K. M. Smith (2005, p. 240), the deprivation of a person's liberty can only be acceptable when there are serious reasons that impose the detention as the only suitable measure. In any case, the whole procedure has to be done in accordance with the relevant legal provisions.

There are also a series of human rights that are constantly threatened by the actions of states or individuals. Furthermore, there are a lot of cases that this threat has been developed into a violation due to the absence of specific authorities for such a task. The international bodies (authorized by the international law to manage its provisions and to guarantee the protection of the human rights for the international community) can only handle a small number of relevant reports based on the reports of the states on specific facts of violations (or threats) of human rights. The role of these bodies, although can be characterized as very important, is very limited and is being formulated under the pressures of the current economic and political powers. However, according to M. O' Flaherty (2002, p. 1-2) the reporting procedure to a non-governmental organization can help the State to clarify the problem (when constructing an analytical report for the case) and perhaps come to a solution without the interference of the NGO. In case that the State itself cannot resolve the problem, then it can report it to an international body and in this way it will have the support and the advice of a team of international experts.

Although it seems that the difficulties following the application of the international law tend to grow in strength and number, the efforts of the

international community have helped the creation of a legal basis for the protection of the human rights and, in some cases, have succeeded a satisfactory restoration of the damage caused by the rights' violations.

B. Legislation related with the protection of the human rights - national and international law

In UK the basic legislation concerning the Human Rights protection is the Human Rights Act of 1998 whilst a lot of other Acts have been signed in order to cover specific problems related to the recognition and the protection of the above rights. According to article 2 of the Human Rights Act of 1998 'Everyone's right to life shall be protected by the law' (article 2, par. 1). This article presents the general borders of the legislation aims and creates an obligation for the authorities and the individuals to respect a person's life and existence. The articles that follow this fundamental provision are being addressed towards particular rights and freedoms of a person, like the right to liberty and security (article 5), the right to a fair trial (article 6), the right to respect for private and family life (article 8), the freedom of thought, conscience and religion (article 9), the freedom of expression (article 10), the freedom of assembly and association (article 11), the right to an effective remedy (article 13) and so on (see 1580 [2004], R (on the application of Trailer and Marina (Levin) Ltd v Secretary of State for the Environment, Food and Rural Affairs and another, Court of Appeal, Civil Division, 19 [2005], R (on the application of Hoxha) v Secretary of State for the Home Department; R (on the application of B) v Secretary of State for the Home Department and 1658 [2004], R (on the application of Clays Lane Housing Co-Operative Limited) v The Housing Corporation, Court of Appeal, Civil Division, 1748 <https://assignbuster.com/law-essays-international-law/>

[2004], *Malcolm v Benedict Mackenzie (A firm) and Another*, Court of Appeal, Civil Division and 2866 [2004], *W v Westminster City Council and Others*, Queen's Bench Division.

There are also articles that do not offer a right but they impose a behaviour that have to be in accordance with the terms included in them. In this way, it is stated that the torture, the slavery and the forced labour are absolutely prohibited (articles 3, 4) whilst no punishment should take place without lawful authority (prerequisite for a punishment that the action made was recognized as a criminal one at the time that the crime was made, article 7). It is also stated that any discrimination and any restriction on political activity of aliens should be avoided (articles 14, 16). The above general Act has been interpreted and completed through other Acts that have been signed in order to provide sufficient protection of the rights in cases that are characterized by complexity and ambiguity. As an example we could mention the Prevention of Terrorism Act 2005, which introduces alterations to the right of the liberty of a person as it is described by article 5 of the Convention for the Human Rights, by permitting the detention of a person in cases when the existing evidence is enough to create the suspicion of a behaviour that could be a threat for the lives of other people (for the public). The very important element, which is introduced with the above Act, is that the existence of a relevant Court decision is not necessary. Other amendments to the Human Rights Act of 1998 are contained in the following Acts: the Constitutional Reform Act 2005, the Appropriation Act 2005 and the Asylum and Immigration Act 2004 (see 19 [2005], *R (on the application of*

Hoxha) v Secretary of State for the Home Department; R (on the application of B) v Secretary of State for the Home Department).

In the level of European Union, the basic legislation concerning the human rights is the European Convention for the Protection of Fundamental Rights and Freedoms of 1948. The above convention has been amended by a series of protocols (no. 4, 6, 7, 11 and 12) and it presents the basic rules on which the national legislations of the member states should be adapted. The article 2 of the above Convention recognizes the right to life for every person and the following articles are covering the rest of the human rights' areas of application, such as: the liberty (article 5), the private and family life (article 8), the thought, the conscience and the religion (article 9), the expression (article 10) and so on. Like the Human Rights Act of 1998 (UK) the European Convention, also imposes certain obligations regarding the application of the human rights, like the prohibition of torture (article 3), the prohibition of slavery and forced labour (article 4), the prohibition of discrimination (article 14), the prohibition of restrictions on political activity of aliens (article 16) and so on. The protocol No. 4 to the above Convention referred to specific areas of human rights, like the freedom of movement (article 2) and the right to keep the personal liberty in cases that there is a debt (prohibition of imprisonment for debt, article 1). The basic provision of the protocol No. 6 to the Convention is the abolition of the death penalty (article 1 of the protocol) whilst the protocol No. 7 to the Convention contained provisions that were related with the rights of a person facing a criminal punishment (articles 2-4) and with the - private law character - rights of the spouses (article 5). A series of relevant decisions have been published accordingly like: C-17/98,

Emesa Sugar (Free Zone) NV v. Aruba, C-112/98, Mannesmannrohren-Werke AG v. Commission of the European Communities, C-274/99, Bernard Connolly v. Commission of the European Communities and T-9/99, HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co KG and Others v. Commission of the European Communities.

In addition to the above provisions, the international community has actively participated in the protection of human rights by the creation of a legal environment that can guarantee the avoidance of extremely violations of the rights and an independent (to the measure that this is achievable) valuation of the problem in cases that are brought before the relevant Bodies through the states' reports.

C. Problems related with the recognition and the protection of Human Rights by the international law

Human Rights are by their nature a sensitive and transparent element of a person's life. Although there are a lot of legislative work made for their protection, the scope and the objectives of the relevant provisions have not been fulfilled. The victims of the violations of the human rights are by fact the persons that present a weakness, physical, mental, of gender, of colour, of nationality or of other kind. The first to be violated are usually the children who although suffering are by nature unable to stand for their right. The person who is responsible for their protection has not, in many cases, the strength or the means to achieve such a task and the violation can continue for a long time. Smith A. (2004) examines the types of the offences that occur against the children and refers to specific problem that of the

recruitment of children as soldiers. In her paper, she examines the legal aspects of the specific crime and presents the reasoning used by the Court to establish its decision in a specific case (Hinga Norman, 14/2004, Special Court for Sierra Leone). After careful consideration, the Court decided that the recruitment of children to work of such a kind could attract individual criminal responsibility for the persons that were involved to this activity. On the other hand there are many reasons that could explain the difficulties that occur to the application of the international law provisions that are referring to the children. Bhabha J. (2002) sees as a possible reason the general disadvantage of the children as a vulnerable and she argues that separated children can be accepted as an asylum seeker to a developed country but there are little guarantees for their safety at a next level. In a previous paper, Bhabha (Bhabha J., Young, W., 1999) had examined the conditions under which the children as unaccompanied asylum seekers are granted asylum according to the relevant U. S. guidelines. One of the most important development included in the new provisions, was the possibility of appointment of an individual as a guardian of a child until the relevant process is being finished.

Furthermore, the violation of women's rights (especially of their human rights) is constant and extended in multiple levels. Ankenbrand (2002) examined the position women seeking asylum under the German Law. He present the claims of women that are found in this position and he come to the conclusion that although the revision of the existing law has been admitted as necessary from the relevant legal bodies, there is not a positive activity to that direction.

The violation of the right of religion seems to have been extended and the main problem is that of the specific description of the conditions that constitute a 'religious practice'. Musalo (2004) argues that the prosecution for reasons of religious beliefs cannot be clearly defined today which comes in contrast to the simplicity of the relevant terms that the 1951 Convention had adopted.

A very important matter related to the protection of the human rights is that of the extension of the relevant provisions of the international law.

McGoldrick (2004) accepts that the International Covenant on Civil and Political Rights (ICCPR) should be characterized as the basic institutional body regarding the supervision on the application of the terms of the international treaties that have been signed for the human rights. As of the specific category of refugees, the protection of their rights in the interior of the States is guaranteed by the operation of special institutional bodies that are authorized to examine each case that is being reported to them and proceed to a solution in the legal frame that has been indicated from the law for the specific problems. As an example, Daley (K. Daley, N. Kelley, 2000) refers to the existing relevant bodies in Canada, which are the Immigration and Refugee Board (IRB), the Convention Refugee Determination Division (CRDD) and, of course, the higher courts of the state that have the jurisdiction to review the decisions of the CRDD.

The main problem related with the application of the international law in the area of human rights seems to be the extension of the phenomenon of violation of these rights. Due to the difficult and complex economic and political environment of many states around the world, the supervision of the

application of the Human Rights' provisions is usually impossible. The most common route for a problem to be put under examination and to be given a resolution is usually the report that a state submits regarding a specific fact of violation of rights. But the volume of work and the depth of the problem (which needs to be analyzed and examined in detail) prevent the permanent resolution of it and the solution that is been proposed to the state has usually a provisional character.

D. Conclusion

The recognition and the protection of the human rights have been the subject and the aim of a lot of legislative provisions both to the national and to the international area. The relevant laws have achieved to cover - at least from a scientific point of view - almost all the aspects of the problem. However, the weakness of the law - and mostly of the international one - seems to be the absence of stability regarding the procedures followed, the penalties that are imposed and the speed in providing a resolution at every case that is brought to the international institutional bodies. On the other hand, the existence of a series of authorities that are responsible for the application of the international law and their power to impose punishment when a violation occurs, create the image of a well-organized and powerful society, which can provide to its citizen the security and the protection they need to survey.