Seminární výuka mezinárodního práva veřejného v 8. semestru

V jarním semestru je výuka obecné části mezinárodního práva veřejného rozdělena do dílčích přednáškových bloků a tří seminářů. Oproti předchozím akademickým rokům, bude sjednoceno splnění zápočtového testu. Zápočtový test bude uspořádán ve velkých skupinách, kdy se posluchači budou na jednotlivé termíny přihlašovat přes IS. MUNI. Zamýšlený test nebude vázán na osobu vyučujícího semináře anebo přednášejícího. Na jeho přípravě a hodnocení se budou společně podílet učitelé a studenti doktorského studijního programu v oboru mezinárodního práva veřejného. Sledované změny soustředěně směřují k naplňování hodnot objektivity i spravedlivého hodnocení.

Změna zasahuje i do způsobu výuky mezinárodního práva veřejného. Učitelé a studenti doktorského studijního programu připravují osobitou výuku v tzv. *argumentačních seminářích*.
(**Předkládaná nabídka má oslovit studenty, kteří mají pronikavější i tvořivý zájem o mezinárodní právo veřejné, např. diplomanty oboru i katedry anebo absolventy právních klinik.**)

Strukturovaná představa a cíl:

V rámci povinných seminářů bude vytvořena jedna seminární skupina, kde výuka bude zaměřena na hlubší porozumění mezinárodnímu právu veřejnému. Z hlediska metodologického bude jako základní způsob předávání právních formací i informací použita případová metoda.

Zadání (úkoly) semináře bude obsahovat smyšlený nebo skutečný případ doložený faktografickou a právní dokumentací. Přičemž nejvlastnější smysl semináře utkví v argumentačním sváru, jehož protagonisty se mají stát zúčastnění posluchači.

Zvolený přístup ovšem klade podstatně vyšší nároky na individuální či kolektivní přípravu. Studenti budou rovněž studovat cizojazyčné podklady (ang.) i odbornou literaturu (srov. níže uvedený případ).

Na druhé straně posluchači nebudou podrobeni jinému režimu ověřování znalostí mezinárodního práva veřejného. Požadavky na zápočet se budou rovnat obecným podmínkám.

Požadavky

- Vůle (subjektivní požadavek) + schopnost (objektivní požadavek) pracovat s cizojazyčnými podklady.
- Touha zvědět nové a chápat získané poznatky.

Aby seminář mohl být vzkříšen, musí být známa odezva posluchačů, protože bez Vašeho zájmu je myšlenka neuskutečnitelná.
Argumentační seminář povede profesor Jílek ve spolupráci s doktorandy.

Posluchači, kteří mají předběžný zájem či nějaký dotaz, ať v brzké době napíší elektronickou zprávu.
Renata.kleckova@mybox.cz

S přáním hezkých vánoc
Prof. Dalibor Jílek
Renata Klečková

Práci v semináře ilustruje následující případ (tento byl řešen studenty 5. ročníku v rámci uprchlického práva).

Případ:

Situace: Pan X, muslim pocházející z Egypta, požádal ihned po překročení hranic v České republice o azyl. USA vede pana X na seznamu podezřelých osob, které spolupracují s teroristickou organizací al-Káida. Vzhledem k této skutečnosti vyvíjejí úřady USA velký tlak na ČR, aby neudělila panu X azyl a vydala ho bez dalšího do Egypta pro řádné vyšetřování (extradice). Organizace zabývající se lidskými právy přitom opakovaně poukazují na skutečnost, že osoby ve vazbě jsou v Egyptě často během výslechů vystavovány velmi špatnému zacházení, které může být v některých případech kvalifikováno jako nelidské; nedosahuje však intenzity mučení. Tato skutečnost platí dvojnásob u osob obviněných z účasti na teroristických aktivitách.

Otázky:

1) Může Česká republika podle Ženevské úmluvy z roku 1951 libovolně rozhodnout, zda-li použít vylučující klauzuli, tj. zamítnout na tomto základě žádost o azyl?
2) Předpokládejme, že OAMP MV ČR neshledá vylučující klauzuli aplikovatelnou. Může být pan X po následném negativním meritorním rozhodnutí vrácen do Egypta?
3) Jak by se změnila situace, kdyby pan X po překročení hranic ČR pobýval na jejím území 3 měsíce a žádost o azyl podal až poté, co ho bez platných dokladů zadržela cizinecká policie?
4) Lze na daný případ aplikovat i jiné mezinárodní smlouvy o lidských právech?
   a. Pokud ano, tak které?
   b. Poskytuje nějaká mezinárodní smlouva o lidských právech širší ochranu než Ženevská úmluva z roku 1951?
5) Pokud by jste zastupovali pana X před OAMP MV ČR, který z důvodů pronásledování by jste zvolili za základ Vaší argumentace?

Povinná literatura:

1) Příručka UNHCR, čl. 140-163. (http://www.unhcr.cz/publ_guides.htm)
2) ČEPELKA, C., JÍLEK, D., ŠTURMA, P.: Azyl a uprchlictví v mezinárodním právu. Brno, Masarykova univerzita, 1997, str. 122-128.

Doporučená literatura:

1) UNHCR: Summary of Conclusion -- Exclusion from Refugee Status, 2001. (http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+FwwBmef0dP_wwwwAwwwwwwwxFqzvxsqnwWx6mFqA72ZR0gRfZNhFqA72ZR0gRfZNtFqrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDzmxwwwwwww1FqmRbZ/opendoc.htm)
2) GILBERT, G.: Exclusion (Article 1F). In FELLER, E., TURK, V., NICHOLSON, F.: Refugee Protection in International Law,Cambridge, 2003, str. 425-490

Podklady pro studium

Obsah:

I. výňatky ze zprávy U.S.A o situaci v Egyptě

II. vzorový případ z rozhodovací praxe v Kanadě

III.odkaz na protiteroristické rezoluce

I.

U.S. Department of State - 25 February 2004

U.S. Department of State Country Report on Human Rights Practices 2003 - Egypt

Released by the Bureau of Democracy, Human Rights, and Labor>February 25, 2004

The Ministry of Interior controls the State Security Investigations Sector (SSIS), which conducts investigations and interrogates detainees, and the Central Security Force (CSF), which enforces curfews and bans on public demonstrations. Security forces continued to arrest and detain suspected members of terrorist groups. The President is the commander-in-chief of the military and the Government maintains effective control of the security forces. The security forces committed numerous, serious human rights abuses.

The Government's human rights record remained poor and many serious problems remain; however, there were improvements in a few areas. Citizens did not have the meaningful ability to change their government. The use of military courts and State Security Courts to try civilians continued to infringe on a defendant's Constitutional right to a fair trial before an independent judiciary. The 1981 Emergency law, extended in February for an additional 3 years, continued to restrict many basic rights. The security forces continued to mistreat and torture prisoners, arbitrarily arrest and detain persons, hold detainees in prolonged pretrial detention, and occasionally engaged in mass arrests. Local police killed, tortured, and otherwise abused both criminal suspects and other persons.

During the year, the Government prosecuted 13 police officers for abuse and torture of prisoners. The Government abolished State Security Courts but continued to use of State Security Emergency Courts. The Government enacted a law to abolish the hard labor penalty, and passed legislation establishing a National Council for Human Rights. The Government generally permitted human rights groups to operate openly.

RESPECT FOR HUMAN RIGHTS

1. Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary and Unlawful Deprivation of Life

There were no reports of political killings; however, during the year, human rights organizations and the press reported that at least 8 persons died in custody at police stations or prisons.

In April, the Egyptian Organization for Human Rights (EOHR) released a report called "Torture Should be Stopped." It documented five cases of alleged death due to torture which occurred in police stations and detention centers in 2002. The report also included 31 cases of torture, 9 of which the report states "are expected to end in death."

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits the infliction of "physical or moral harm" upon persons who have been arrested or detained; however, torture and abuse of detainees by police, security personnel, and prison guards remained common and persistent. The November, 2002 session of the U.N. Committee Against Torture noted a systematic pattern of torture by the security forces.

Police torture resulted in deaths during the year (see Section 1.a.).

Under the Penal Code, torture or giving orders to torture are felonies punishable by 3 to 10 years' imprisonment. In June, the Government abolished hard labor as a punishment; however, prior to June, some hard labor sentences were imposed.

If the victim dies under torture, the crime is one of intentional murder punishable by a life sentence. Arrest without due cause, threatening death, or using physical torture is punishable by imprisonment. Abuse of power to inflict cruelty against persons is punishable by imprisonment and fines. Victims may also bring a criminal or civil action for compensation against the responsible government agency. There is no statute of limitations in such cases. For example, on January 13, an Administrative Court in Alexandria ruled that the Ministry or Interior should pay $25,975 (120,000 LE) in compensation to citizen Ramadan Mohammed, who was detained illegally for 9 days and tortured in 1996.

Despite these legal safeguards, there were numerous, credible reports that security forces tortured and mistreated detainees. Human rights groups believed that the SSIS, police, and other Government entities continued to employ torture. Torture was used to extract information, coerce the victims to end their oppositionist activities, and to deter others from similar activities. Reports of torture and mistreatment at police stations remained frequent. While the Government investigated torture complaints in criminal cases and punished some offending officers, the punishments generally have not conformed to the seriousness of the offense.

Principal methods of torture reportedly employed by the police and the SSIS included victims being: stripped and blindfolded; suspended from a ceiling or doorframe with feet just touching the floor; beaten with fists, whips, metal rods, or other objects; subjected to electrical shocks; and doused with cold water. Victims frequently reported being subjected to threats and forced to sign blank papers for use against the victim or the victim's family in the future should the victim complain of abuse. Some victims, including male and female detainees and children reported that they were sexually assaulted or threatened with rape themselves or family members. The Emergency Law authorizes incommunicado detention for prolonged periods. Detentions under this law were frequently accompanied by allegations of torture (see Section 1.d.). While the law requires security authorities to keep written records of detentions, human rights groups reported that the lack of such records often effectively blocked investigation of complaints.

The Human Rights Center for the Assistance of Prisoners (HRCAP), in an October 2002, report entitled "The Truth," commended judicial efforts to try security officers for torture, but outlined current obstacles, including a vague legal definition of torture, and the inability of victims to sue perpetrators directly.

In November 2002, three domestic human rights associations, as well as two international organizations, presented their allegations and findings to the Committee Against Torture (CAT), a subcommittee of the U.N. Commission on Human Rights. The CAT report expressed concerns about: the continued implementation of the state of emergency; consistent reports of torture and ill treatment; abuse of juveniles and homosexuals; the continued use of administrative detention; the lack of access by victims of torture to the courts and lengthy proceedings; and disparities in the awarding of compensation.

The report included several recommendations: ending the state of emergency; the adoption of a clear legal definition of torture; the abolition of incommunicado detention; the review of military court decisions by a higher tribunal; the removal of ambiguities in the law that allow the prosecution of individuals for their sexual orientation; the acceptance of a visit by a U.N. Special Rapporteur on Torture; the establishment of rules and standards for victims; and to allow human rights organizations to pursue their activities unhindered. The Government maintained that the CAT's recommendations were under review at year's end.

Actions cited by the Government at the hearing include: the 2001 abolition of flogging in prisons; unannounced inspections of places of detention; court decisions that disregarded confessions obtained under duress; increased human rights training for police officials; and

the establishment of several human rights committees and departments within government ministries.

The Government did not permit a visit to the country by the U.N. Special Rapporteur on Torture during the year; however, while the Government declined requests for such a visit in the past, it asserted during the year that it "welcomes, in principle," such a visit.

Prison conditions remained poor and tuberculosis was widespread. Prisoners suffered from overcrowding of cells, the lack of proper hygiene, food, clean water, proper ventilation, and recreational activities, and medical care. Some prisons continued to be closed to the public.

The International Committee of the Red Cross (ICRC) and other domestic and international human rights monitors did not have access to prisons or to other places of detention.

d. Arbitrary Arrest, Detention, or Exile

The Constitution prohibits arbitrary arrest and detention; however, during the year, security forces conducted large-scale arrests and detained hundreds of individuals without charge. Police also at times arbitrarily arrested and detained persons. The Emergency Law provides that police may obtain an arrest warrant from the Ministry of Interior upon showing that an individual poses a danger to security and public order. This procedure nullified the constitutional requirement of showing that an individual likely has committed a specific crime to obtain a warrant from a judge or prosecutor.

The Emergency Law allows authorities to detain an individual without charge. After 30 days, a detainee has the right to demand a court hearing to challenge the legality of the detention order and may resubmit his motion for a hearing at 1-month intervals thereafter. There is no maximum limit to the length of detention if the judge continues to uphold the legality of the detention order or if the detainee fails to exercise his right to a hearing. Incommunicado detention is authorized for prolonged periods by internal prison regulations. Human rights groups and the CAT both expressed concern over the application of measures of solitary confinement.

In addition to the Emergency Law, the Penal Code also gives the State broad detention powers. Under the Penal Code, prosecutors must bring charges within 48 hours following detention or release the suspect. However, they may detain a suspect for a maximum of 6 months pending investigation. Arrests under the Penal Code occurred openly and with warrants issued by a district prosecutor or judge. There is a system of bail. The Penal Code contains several provisions to combat extremist violence, which broadly define terrorism to include the acts of "spreading panic" and "obstructing the work of authorities."

Hundreds, perhaps thousands, of persons have been detained administratively in recent years under the Emergency Law on suspicion of terrorist or political activity. Several thousand others have been convicted and serving sentences on similar charges (see Section 1.e.). The Human Rights Association for the Assistance of Prisoners estimated that the total figure of persons held in administrative detention was approximately 15,000.

On September 3, the Minister of Interior issued a decree ordering the release of 1,000 political detainees affiliated with the terrorist Islamic Group (IG) after they reportedly renounced violence. Most prominent among those released was former Islamic Group leader Karim Zohdy. HRAAP called the move "an effective and positive step," but called for the Ministry of Interior to release all political prisoners, especially those suffering from health problems, and urged that prisoners be moved to prisons in their home governorates to facilitate family visitation.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, under the Emergency Law, cases involving terrorism and national security may be tried in military, or State Security Emergency Courts, in which the accused does not receive all the normal constitutional protections of the civilian

judicial system. The authorities ignored judicial orders in some cases. The Government has used the Emergency Law, which was established to combat terrorism and grave threats to national security, to try cases with no obvious security angle.
In May, the Government formally abolished State Security Courts. The courts had been criticized for restricting the rights of defendants, particularly the right to appeal. A number of cases referred to the State Security Courts were transferred to regular criminal courts. However, skeptical observers of the legal system argued that as long as the Government retained and used Emergency Courts, the abolition of State Security Courts did not constitute a fundamental improvement.
In 1992, following a rise in extremist violence, the Government began trying cases of defendants accused of terrorism and membership in terrorist groups before military tribunals. In 1993, the Supreme Constitutional Court ruled that the President may invoke the Emergency Law to refer any crime to a military court. The 1993 ruling in effect removed hundreds of civilian defendants from the normal process of trial by a civilian judge. The Government defended the use of military courts as necessary to try terrorism cases, maintaining that trials in the civilian courts were protracted and that civilian judges and their families were vulnerable to terrorist threats. One case involving civilian defendants was referred to a military court during the year. On January 23, the Government referred 43 suspected members of the outlawed terrorist organization the Islamic Group to a military court on charges of planning to conduct terrorist operations against foreign interests.
Military verdicts were subject to a review by other military judges and confirmation by the President, who in practice usually delegated the review function to a senior military officer. Defense attorneys claimed that they were not given sufficient time to prepare defenses and that judges tended to rush cases involving a large number of defendants. Judges had guidelines for sentencing, defendants had the right to counsel, and statements of the charges against defendants were made public. Observers needed government permission to attend. Diplomats attended some military trials during the year. Human rights activists have attended, but only when acting as lawyers for one of the defendants.
According to local human rights organizations, there were approximately 13,000 to 16,000 persons detained without charge on suspicion of illegal terrorist or political activity (see Section 1.d.). In addition to several thousand others were convicted and were serving sentences on similar charges.
The Government did not permit access by international humanitarian organizations to political prisoners (see Section 1.c.). In 2002, an AI delegation was permitted to visit the country, but authorities denied the group's request to visit detainees. There were no prison visits during the year.

II.

reálný případ z Kanady, který částečně osvětluje některé aspekty problému:

SURESH v. CANADA

Facts: The appellant, a Convention refugee from Sri Lanka, applied for landed immigrant status. He was detained by the Canadian government in 1995 and deportation proceedings were begun based on security grounds. The Canadian Security Intelligence Service ("CSIS"), believed that he was a member and fundraiser of the Liberation Tigers of Tamil Eelam ("LTTE"), a terrorist
organization in Sri Lanka. Its members are also subject to torture in Sri Lanka. The Federal Court, Trial Division upheld as reasonable the s. 40.1 deportation certificate and, after a deportation hearing, an adjudicator held that the appellant should be deported. The Minister of Citizenship and

Immigration issued an opinion on the basis of an immigration officer's memorandum that the appellant was a danger to the security of Canada under s. 53(1)(b) of the Immigration Act, R.S.C. 1985, c. I-2, and concluded he should be deported.

Reasons: The trial judge found that the appellant had not shown that he personally would risk torture according to the "substantial grounds" test. This conflicts with the immigration officer's finding that "there is a risk to Mr. Suresh on his return to Sri Lanka". The officer concluded, however, that the risk was "counterbalanced by the serious terrorist activities to which he has been a party" and, on this basis, the Minister ordered the appellant deported. **The question is whether deportation "to a country where the person's life or freedom would be threatened" under s. 53 of the Act violates s. 7 of the Canadian Charter of Rights and Freedoms.**

……..The provisions of the Act, however, must also be considered in [*4] their international context: ….**There are three compelling indicia that the prohibition of torture by the international community is a peremptory norm: the great number of multilateral instruments that explicitly prohibit torture; no state has ever legalized torture or admitted to its deliberate practice; and a number of international authorities state that the prohibition on torture is an established peremptory norm. International law rejects deportation to torture, even where national security interests are at stake**.

Barring extraordinary circumstances, then, deportation to torture will generally violate the principles of fundamental justice protected by s. 7 of the Charter. Whether the risk to national security is sufficient to justify the appellant's deportation is a question of evaluation and judgment. It is necessary to take into account the degree of probability of prejudice to national security, the importance of the security interest at stake and the serious consequences of deportation for the deportee. The Minister should generally decline to deport [*5] refugees where, on the evidence, there is a substantial risk of torture.

……The terms "Danger to the Security of Canada" and "Terrorism", while difficult to define, are not unconstitutionally vague. Section 19, which permits Canada to refuse entry to persons who are or have been engaged in terrorism or who are or have been members of terrorist organizations is used in s. 53(1) to define the class of Convention refugees who may be deported because they constitute a danger to the security of Canada. The provisions fail to attract constitutional protection because it would be conduct associated with violent activity which is not protected by the Charter.

III.

Při řešení případu by jste měli zvážit i existenci rezolucí Rady bezpečnosti OSN k boji proti mezinárodnímu terorismu. A to:

2.1. Security Council resolution 1368 (2001)

http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement

2.2. Security Council resolution 1373 (2001)

http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement
Tato rezoluce je přeložena i do češtiny. Naleznete jí:
Šturma, Nováková, Bílková: *Mezinárodní a evropské instrumenty proti terorismu a organizovanému zločinu,* C.H. Beck, Praha, 2003, str. 205-207
(tato kniha je ve studovně)