

Ph.D. Thesis ABSTRACT

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Position of victims of human rights violations in international law

with focus on victims of serious violations of human rights and international humanitarian law

This work focuses within the broad theme of „ *Position of the victims of the human rights violations in international law*“ on victims of serious human rights violations and serious violations of international humanitarian law (hereinafter only serious violations). The author decided to focus on the victims of serious violations because the research revealed that while the rights of victims of human rights violations are in general relatively settled in theory as well in practice of international law, the rights of the victims of serious violations is an area, which raises several doctrinal questions, encountered rapid development in recent years and continues to develop. Analysis of the rights of the victims of serious violations necessary must be based on the rights of the victims of human rights violations in general, which serves as a baseline for the analysis of the rights of the victims of serious violations. Only in comparison with the general rights of the victims of human rights violations the specificities of the rights of the victims of serious violations stand up.

First the work clarifies the terms “*serious violations of human rights and international humanitarian law*” in light of the issue of hierarchy of norms of international law. After clarifying what is meant for the purposes of this work by the term “*serious violations of human rights and international humanitarian law*”, the work defines victims of such violations. The first part of the work concludes with information about what are the needs of victims of such violations, which should be ideally reflected in the legislation.

The second part of work points out the specifics of the serious human rights violations and violations of international humanitarian law and their victims and why therefore such violations and their victims should be specific category and should be paid special attention in international law.

The work contains short historical excursion into development of the rights of serious violations of human rights and international human rights law.

International standards on rights of the victims of crime providing guidelines to the states on the rights of the victims of national level, influence the rights of the victims in international law and are therefore included into the work for comparison as well as because the rights of victims of serious violations are often realized on the national level, which makes these standards relevant for these victims as well.

Finally the next part of the work addresses the rights of the victims of violations in international law. The rights of the victims of serious human rights violations are divided in this work into four basic groups: right to effective remedy and access to justice, right to protection, right to participation in proceedings and right to know the truth. The right to effective remedy than includes right that the continuing violation is terminated, establishing judicial and/or administrative mechanism addressing alleged violations, investigation of alleged violation, prosecution of individuals responsible for the violation, adequate, effective and prompt reparation of the harm suffered, adopting measures to prevent repetition of the violations, in some cases also right to have preliminary measures adopted. This part presents against the background of rights of victims of human rights violations in general specific rights of victims of serious violations. Specific rights of victims of serious violations require also special mechanisms for their realization. Last chapter is devoted to such mechanisms.

Recently many interesting concepts has emerged in the area of serious violations of human rights and international humanitarian law, concerning which no clear standards exist and which are subject of academic discussions. Despite such concepts do not directly regulate rights of victims of serious violations, they are closely related to realization of such rights. These institutes are examples of how

international law and practice react to specifics of the serious and especially mass violations. The work first addresses relatively new institute of pilot judgment of the European Court of Human Rights. Exemption from exhausting national remedies allows victims to file a complaint to international bodies monitoring compliance with human rights norms in situations, when state fails to provide effective remedy, which is common in cases of human rights violations, when state participates in the violations. International criminal law is important mechanism for victims of serious violations exactly because the state is unwilling or unable to prosecute violations. Therefore part of this work is devoted to international criminal law. International law establishes obligations of the states to cooperate with each other in investigation, prosecution and sentencing of the perpetrators of some crimes under international law. Obligation of the states to cooperate on fighting impunity is considered by some authors to be a norm of international customary law. Considering importance of this obligation for the rights of the victims, this work pays attention to this institute. Finally effective realization of victim rights would be effectively enhanced by universal jurisdiction as it allows any state to prosecute perpetrators of serious violations if the state of territorial or personal jurisdiction, does not fulfill its international obligation to launch investigation and prosecute crimes under international law. Conditions for exercising the universal jurisdiction are not absolutely clear in international law and therefore it is not often exercised in practice. Universal jurisdiction is often confused with the obligation of the state to prosecute or extradite (*aut dedere aut judicare*). Finally because serious violations are often committed by state officials, this work addresses the issue of their immunity from prosecution for crimes under international law.

The author has reached conclusions that serious violations of human rights and international humanitarian law should be specific category under international law as well as their victims, that is being partially reality. International law grants victims of serious violations some specific rights and creates specific mechanisms and institutes for victims to enable them realization of their rights.

Nevertheless international law faces much doctrinal ambiguousness concerning rights and position of victims of these violations and requires systematization and firm theoretical basis so that these rights are realistic on one hand and on the other hand do not lower standards applicable in cases of “ordinary” violations.