

The Legal Standing of Human Rights Nongovernmental Organizations in International Judicial Process



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Introduction

In contemporary times, when we are faced with many cases of violence and violation of the basic norms of human rights, there are international nongovernmental organizations whose most important goal is to support those human rights norms. One of the main and pivotal features of such international human rights nongovernmental organizations is their voluntary nature. These organizations cannot act on the basis of the power of law or the executive power, which is special to governments. Therefore, those tools, which are available to such human rights institutions, are different from what is used within the government structure. In general, the main goals of the international human rights nongovernmental organizations can be put into six categories, which include: 1. providing advisory services, 2. education, 3. mediation, 4. participation in governments' activities, 5. acting as catalyst for governments' human rights measures; and in some cases 6. restricting certain measures taken by governments. Therefore, one can claim that human rights nongovernmental organizations influence governments for the purpose of promoting and supporting human rights norms and preventing human rights violations. Human rights institutions, which are subject of this discussion, are those institutions, which make their effect on governments and international system through fact-finding missions, publicity and other measures that they take. Therefore, information provided by such nongovernmental organizations is also used by other human rights and international law organs to bring transparency and clarity to a specific situation as a balancing weight against government's claims about the existing realities. Therefore, presence of the human rights nongovernmental organizations in this structure can be determining. A role that such organizations can play is in international courts, because it is the place where providing a clear definition of the reality as well as verification of various aspects of a human rights violation case are of the utmost importance. Under usual circumstances, a government or an official in the government is one party to such cases while the other party is a person or persons whose basic rights have been violated. It must be noted that when a case is under consideration, reports and



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information provided by a human rights nongovernmental organization play an important role. However, the issue that must be clear here is to what extent human rights nongovernmental organizations play a role in hearing a human rights violation case and when their information and documents can be relied upon?

Part one: Role of human rights nongovernmental organizations in international judicial process

In many international courts, including the European Court of Human Rights, the Inter-American Court of Human Rights, and so forth, nongovernmental organizations are known as the “friend of the court.”² In this position, such organizations can start a case or even be a party to it, or be present as a party in the judicial process taken to discover the facts in a case or when legal issues are under discussion. They can even act as a witness by bearing witness at the court.³

For example, On July 14 and 17, 2014, the European Court of Human Rights decided three cases, one against Romania concerning the death of a mentally disabled and HIV-positive young Roma and two other cases against Poland concerning the detention and transfer of terrorist suspects who were subjected to torture. As will be demonstrated hereunder, these cases would not have been decided – or decided with that information at hand – if there had not been civil society organizations caring to denounce and document the human rights violations at stake.⁴

The case of “Center for Legal Resources on Behalf of Valentin Câmpeanu v. Romania” was one of the above three. Shortly before dying alone at the hospital, Valentin Câmpeanu was visited by staff of the Center for Legal Resources (CLR), as a Romanian nongovernmental organization, which, among other activities, monitors residential centers for persons with disabilities. When made aware of the young man’s death, the nongovernmental organization took various steps and lodged complaints requesting criminal investigations on the circumstances of the death of Câmpeanu. The CLR, acting on behalf of Câmpeanu, complained before the European Court of Human Rights that he had been unlawfully deprived of his life. Many human rights institutions, including Human Rights Watch, argued that the application by the CLR should be admitted by highlighting the highly problematic access to justice for people with disabilities. Therefore, they argued, granting nongovernmental organizations legal standing would be in line with the case law of many other tribunals and would avoid impunity.⁵

The court’s decision read as such: “Against the above background, the Court is satisfied that in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, it should be open to the CLR to act as a representative of Mr. Câmpeanu, notwithstanding the fact that it had no power of attorney to act on his behalf and that he died before the application was lodged under the Convention.⁶⁷” In this way, the court rejected a claim by the government of Romania that CLR could play no part in the judicial process. This case was just a small example of the role played by a nongovernmental organization at an international court.

Another issue facing various courts is related to evidence and documents that a human rights organization can provide in order to affect the decision of the court in a specific case.

Part two: Legal standing of reports and instrumental evidence provided by human rights nongovernmental organizations in judicial process

The International Criminal Court is an international institution, which hears cases of international crimes by heads of state in accordance with Article 5 of its Statute, known as the Rome Statute. War crimes, crimes against humanity, the crime of genocide and the crime of aggression fall within subject-matter jurisdiction of this court. Therefore, the main goal of this court is to fight against impunity with regard to violations of human rights and international humanitarian law by leaders of a given state.

According to Paragraph 4, Article 69 of the court’s Statute as well as articles 63 and 64 of the court’s Rules of Procedure, “the Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence...”⁷⁰ For example, in the case of the Prosecutor v. Thomas Lubanga Dyilo and also in the case of



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William Samoei Ruto and others, the court announced that the probative value of the evidence must be assessed on a case by case basis.

The notable point is that the International Criminal Court has considered reports by governmental and nongovernmental organizations as well as media reports as “indirect evidence” in its judicial procedure. The court has noted in its Rule of Procedure that such indirect evidence is usually of lower probative value. Of course, the court does not ignore such evidence, but exercises caution when using it to justify its decisions. With regard to indirect evidence, the court emphasizes that such evidence cannot provide a reliable ground for

court's decision and must be considered in parallel to other developments. When assessing the probative value of the evidence, the Special Tribunal for Lebanon in its decision on the admissibility of documents published on the Wikileaks website considered several factors for assessing the probative value of the evidence, which included reliability, authenticity and accuracy.

In the case of the US Embassy staff in China, the International Court of Justice noted that extensive information received from various sources could only be used as complementary evidence if various parts of that information are compatible, or at least in line with the existing realities, not when they reject or deny those realities.

As said before, the presence as well as information and evidence provided by nongovernmental organizations, including human rights institutions, are generally of importance to international courts and tribunals.

Sources

Human rights nongovernmental organizations are among those institutions and legal tools, which are considered as very important in the current international law. These organizations have gradually become an integral part of the international judicial system and accompany a court when a case is being heard. Introduction of such terms as “the friend of the court” or reliance on reports presented by such human rights organizations as Human Rights Watch, underline their effective presence on the opposite side of states.

The main factors, which increase credibility of such organizations and encourage courts to rely on documents and evidence provided by them through the judicial process, are the type of their activity and its framework. In view of the above examples, that organization will be held as credible, which is first of all, known for its impartiality, an example of which is the International Committee of the Red Cross. The next factor is that a nongovernmental organization must collect correct information and assess their accuracy and validity in every case. When reports provided by a nongovernmental organization are frequently cited and relied upon by the international system, it could be a sign of credibility and reliability of those documents.

On the whole, at the present time, international courts and tribunals, especially those, which are focused on supporting human rights norms, are willing to take advantage of the evidence and instruments made available to them by human rights nongovernmental organization, which play an effective role in country-level and international judicial systems. Such organizations can make it possible for violated human rights norms to be correctly identified and compensated.

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¹. Martin Dixon and Robert McCorquodale

². amici curiae

³. Dinah Shelton

⁴. <https://strasbourgoobservers.com/2014/08/04/the-multifaceted-and-crucial-role-played-by-ngos-at-the-european-court-of-human-rights/>

⁵. Ibid

⁶. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-145577"\]}](https://hudoc.echr.coe.int/eng#{)

⁷. http://legal.un.org/icc/statute/99_corr/cstatute.htm