**CASE FOR THE SOUTH EAST EUROPE REGIONAL MOOT COURT 2012**

* 1 Ruretania is a country situated in northern Europe. It has signed and ratified the European Convention on the protection on fundamental rights and freedoms including (the European Convention) all the optional protocols, and has also implemented the European Convention as national law (the 1990 Human Rights Law). It is one of the founding states of the European Union.
* 2 The state of Mistral lies in northern Africa and is hence not a party to the European Convention. In the late 1800-hundreds Mistral was a colony of Ruretania, but today very little of this historical link remains besides the fact that the two countries still retain close ties regarding the tourism industry and in the fact that there in Ruretania lives a fairly large population of people with ancestral roots in Mistral. Mistral has over the last hundred years had a fairly stable economical development, and under the rule of President Toke from the 70ies until present, social advances were made.
* 3 However, in the aftermaths of the terrorist attacks of September 11th in 2001 Mistral began to experience national instability. Rival ethnic groups became confrontational and the weakened government (President Tokes health was deteriorating) seemed reluctant and unable to handle the issues. As a consequence, in the years between 2002-2007 internal tension continuously rose to severe levels including clashes between the population and large-scale criminality, including drug and weapon trafficking. The national police and military failed to handle the situation and the state was becoming fragmented with powerful clans having actual control of certain regions. In mid 2008 the United Nations Security Council started discussions over how to address the situation that now also included issues of terrorism. Unsubstantiated claims of terrorist training camps and the planning of terrorist attacks from rogue regions in Mistral were raised from several neighbouring states.
* 4 After months of discussions the UN Security Council was still not able to agree on a resolution for military engagement or embargos against Mistral. Meanwhile the situation continued to deteriorate including alarming reports from international human rights organizations regarding the increasingly dangerous situation of specifically women and children.
* 5 Discussions within Ruretania concerned the possibility of a unilateral military engagement in order stop the human rights abuse and the possible terrorist activities. Strong voiced human rights movements with ties to Mistral within Ruretania claimed that it was appalling to stand passive when civilians were living in utmost despair and fear. The UN:s inability or unwillingness to handle the issue caused Prime minister Wake of Ruretania to turn directly to President Toke. Ruretania offered its help and proposed to deploy military troops in Mistral. Consent was given from President Toke for Ruretania to send military troops to Mistral in order to assist in securing a safe and secure environment for the suffering civilian population.
* 6 In the beginning of November of 2008 Ruretania quickly deployed 5 000 army soldiers to the most unstable region of Paska in the north east of Mistral. In Paska the government for the last 6 months had very little control. Criminal activity was high – ranging from looting, robbery to ethnic based murders. The Ruretanian troops, called Paska Stabilisation Force (PSF) was from President Toke given responsibility for maintaining security and supporting the civil administration. Among the PSF’s security tasks were: patrols, arrests, anti-terrorist operations, policing of civil demonstrations, protection of essential utilities and infrastructure and protecting police stations. Effectually, for the time being, PSF was tasked with many of the governmental functions in Paska. Furthermore, within the PSF camp premises a detention facility was constructed and this was already after a few months full with individuals suspected of criminal offences (such as illegal possession of weapons, threats or acts of aggression towards PSF).
* 7 The population was in general very hostile towards the PSF. The commander of the PSF complained early on to the Ruretanian government that they were understaffed for the tasks at hand given the severe security situation, and that they had not had time for adequate pre-deployment training for what was turning out to be mostly policing duties. They needed support of military police units and experienced soldiers especially trained in handling civilian detentions if they were in reality to execute the PSF’s security tasks. No enforcement was sent, since Ruretanias´ military engagements were stretched due to participation in other international military operations and tight financial times. Hence, the situation for the PSF was continuously complicated.
* 8 On the 15th of June 2009 a unit called Alfa was ordered to oversee a demonstration against President Toke in the major town of List in Paska. The demonstration was organized under the heading of “No more Toke. He´s a joke” and was a result of built up frustration over the central governments´ passive position in trying to stop the violence and criminality in Paska and that the human rights situation was deteriorating. Key organiser of the demonstration was the well-known poet/singer Mr Pacem who claimed to have had sought permission to demonstrate at the List old police office. Already before the demonstration had began unit Alfa called in unit Bravo as back-up and started to disband the demonstration in fear of it leading to an uncontrollable situation for the outnumbered military troops if it were to become aggressive. This decision caused anger with the demonstrators and they began throwing rocks at unit Alfa, and did not disperse peacefully. They claimed a right to organize peaceful demonstrations and freedom of speech. In the turbulence shots were fired (unclear if they were from demonstrators or other individuals) and one soldier from unit Bravo was killed.
* 9 Later that day all available military units were ordered out on patrol in the town. Tension was high in the PSF troops due to the death a fellow soldier. During the night unit Alfa came across two men whom they recognized from the riot earlier the same day, and one soldier said that he thought he saw them carrying machine guns. The commander, lieutenant Sarah Chifata, of the unit called out “Stop and drop your weapons, or we will shoot”. The two men then started running and the unit pursued them down an alley. In the dark and in the confusion the unit could not exactly determine into which house the two men had entered, so they began searching several houses for the men. At one house they did not manage to kick open the door, so lieutenant Sarah Chifata shot the wooden door in order to break it down. After entering the house they immediately saw a young girl lying dead on the floor behind the door. She had been killed by gunfire.
* 10 The two men that had been pursued were apparently the girls´ father and older brother. No weapons were found in the house.
* 11 The father, Mr Lund, stated that the reason for them running away in the ally was that they had not understood what was shouted at them and by whom, and that they were scared they were to be robbed of the valuable copper pipes that they were carrying. They were mending some broken pipes if the kitchen. However, Mr Lund did admit that he had taken part in the demonstrations earlier that day. Being an old friend of Mr Pacem he had been asked to speak at the demonstration and present the central ideas in his newly published book “We have the right to human rights – a political manifest”.
* 12 This tragic incident caused an outcry in Mistral and hostilities against PSF increased. Strong voices were raised in Paska that these foreign forces of occupation should be thrown out, since they acted brutally and with out regard of rule of law. Also, President Toke was putting pressure on Ruretania to make sure that such incidents did not occur in the future.
* 13 The outcry also stirred up international criticism. The UN Security Council and the EU were becoming critical to the unilateral military engagement of Ruretania and that, despite the consent from Mistral, it could possibly threaten international peace and security if the engagement was not handled extremely well and with full respect of applicable law. This prompted the Ruretanian Ministry of Defence to order for an internal military investigation in September of 2009 of the June incident to be conducted.
* 14 Lieutenant Sarah Chifata was sent back to Ruretania and questioned in relation to the events of 15th of June. After two months the military investigation came to the conclusion that the situation was a tragic case of collateral damage in a lawful military operation and that lieutenant Sarah Chifata had acted in accordance with applicable Rules of Engagements and Standard military operational procedures. The use of force had been proportional and necessary. Hence the case was not handed over to court since no criminal offence could be identified.
* 15 In distress Mr Lund turned to Ruretanian courts in December of 2009 and filed a lawsuit against Ruretania under the 1990 Human Rights Law seeking compensation for the amount of 200 000 EUR, for breaches of rights given by the law that lead to the death of his daughter and that had unlawfully infringed his right to demonstrate.
* 16 Mr Lund’s claims were rejected in both the District Court and Court of Appeals. With reference to the reasoning and conclusion in the military investigation the courts stated that Ruretania was neither responsible for, nor negligent in, the events that lead up to the death of Mr Lund’s daughter. With regard to the claims against Ruretania for breaches in Mr Lund’s right to demonstrate the courts found that the decision to cancel the demonstration was a lawful and logical consequence of the execution of the PSF’s security tasks, specifically the overall task of maintaining security in the volatile region of Paska. The Supreme Court of Ruretania dismissed the appeal in November of 2010.
* 17 Mr Lund was utterly distressed by these verdicts and as a final resort turned to the European Court of Human Rights in March of 2011. He claimed that Ruretania had jurisdiction in accordance with Article 1 of the Convention given the effective control they exercised in Mistral, or at least in Parka. Accordingly Ruretania was responsible for breaches of its obligations under Article 2 (right to life) of the Convention due to incompetence and negligence in the planning of the patrol, pursuit of Mr Lund and his son, and gunfire on the evening of 15th of June 2009 that ultimately lead to the death of his daughter. Mr Lund also claimed that the death was a result of a disproportionate use of force by the Ruretanian soldiers. Furthermore, he also claimed that Ruretania was responsible for breaches of its obligations under Article 11 (freedom of assembly) by preventing the peaceful demonstration and, as a consequence, also breaches of Article 10 (freedom of expression) since Mr Lund had been hindered from talking about his book and the political ideas therein. In total he sought for 200 000 EUR in compensation.
* 18 Ruretania’s counter argument stated that it is normally only required to apply the European Convention within its own territory. It further argued that the alleged events did not fall within Ruretania’s jurisdiction under Article 1 of the Convention, since they did not exercise effective control over neither individuals nor territory in Paska. However, if jurisdiction was found to have existed, Ruretania also objected on the formal merits of the case stating that preventing a demonstration is lawfully permitted in accordance with article 15 of the European Convention and that the use of force was absolutely necessary and proportional given the security assessment in the area. The use of force was also an immediate result of the tasks PSF were ordered to execute in Paska. They also compiled with all applicable mission specific military Rules of Engagements.
* 19 The European Court of Human Rights decides in January of 2012 in that there are legal conditions to try the case and asks the applicant and the State to develop their grounds and arguments further in writing. The parties are not bound by the articles that so far have been evoked, and are free to expand on or reduce their grounds as they see fit.

**ADDENDUM**

Relevant excerpts from the Ruretanian 1990 Human Rights Law

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This law gives further effect to rights and freedoms guaranteed under the European Convention on Human Right.

**Introduction**

**1.— The Convention Rights.**

(1) In this Law “the Convention rights” means the rights and fundamental freedoms set out in the European Convention on the protection on fundamental rights and freedoms including all its optional protocols.

**2.— Interpretation of Convention rights.**

(1) A court or tribunal determining a question, which has arisen in connection with a Convention right, must take into account any—

(a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,

(b) opinion of the Commission given in a report adopted under Article 31 of the Convention,

(c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or

(d) decision of the Committee of Ministers taken under Article 46 of the Convention, whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules of the court.

**3.— Interpretation of legislation.**

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

**4.— Acts of public authorities.**

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) In this section “public authority” includes—

* (a)  a court or tribunal, and
* (b)  any person certain of whose functions are functions of a public nature.

**5.— Proceedings.**

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 4(1) may bring proceedings against the authority under this Act in the appropriate court or tribunal.

(2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceedings.

(3) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

**6.— Judicial remedies.**

(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.