

The Telders International Law Moot Court Case 2006: *Case Concerning Treatment of Humana (Arcadia v. Utopia)**

The case put before the teams this year combines legal issues in various fields of international law including diplomatic protection.

- 1 Humana is a dual national of Arcadia and Utopia. She was born in Utopia, which confers nationality on grounds of birth (*jus soli*), of a Utopian mother and Arcadian father. At the time of Humana's birth her parents were living in Utopia. They continued to live in Utopia until Humana was 20 years of age, when they relocated to Arcadia. Humana, who speaks both Utopian and Arcadian, acquired Arcadian nationality by descent (*jus sanguinis*) through her father. On her arrival in Arcadia Humana studied human rights law at the University of Arcadia. After completing her studies she returned to Utopia, where she lectured in human rights law at the University of Utopia. There she met Petrus, a Utopian national. They marry and one child is born in Utopia. Humana then returns to Arcadia with her family. They let the house which they own in Utopia. Humana and Petrus have two more children, both born in Arcadia. At home the family speaks both Arcadian and Utopian. Humana holds both Arcadian and Utopian passports. She uses her Arcadian passport for travel to all states except Utopia (where she uses her Utopian passport).
- 2 Ten years after Humana's return to Arcadia the political situation in Utopia undergoes major changes. Utopian trade unions make heavy demands on both employers and the government of Utopia to increase wages and improve working conditions. In 1998 the Parliament of Utopia responds by enacting a severe security law which permits 20 days' detention without trial. Under this law a considerable number of trade unionists are arrested in the following months. Reports begin to circulate of torture of detainees.
- 3 Humana, now aged 40, is persuaded by a group of ten friends, all Arcadian nationals, to concern herself directly with the human rights situation in Utopia. Together they decide to establish a human rights monitoring group in Utopia known as Human Rights for All (HRA). Humana's participation is seen to be crucial to this endeavour because she is a dual Utopian/Arcadian national. The group believes that this will make it easier to establish such a monitoring group in Utopia.
- 4 Humana requests the government of Utopia to allow HRA to establish itself in Utopia. The government of Utopia agrees on condition that HRA registers itself as a non-profit-making legal person under the law of Utopia. Under Utopian law

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such a legal person has a legal personality distinct from its members. In order to register such a legal person, at least six persons must sign the application for registration. At least one of such persons must be a Utopian national. HRA is duly registered on the application of the ten friends from Arcadia, including Humana. In the application for registration Humana describes herself as a Utopian national and provides only her Utopian passport number.

- 5 HRA purchases a building in Utopia, in its own name, for the purpose of carrying on its task of human rights monitoring. For 18 months it researches human rights violations, particularly under the 1998 security law, and publishes its findings. During this period Humana regularly stays in Utopia. The government of Utopia tolerates HRA's monitoring and indeed on occasion responds positively to its criticisms. In 2000 HRA publishes a highly critical report in which it claims that the government of Utopia authorizes the use of torture on detainees held under the 1998 security law. In response the government of Utopia confiscates, without any compensation whatsoever, all property belonging to HRA (including its building), departs to their state of nationality all members of HRA working in Utopia who are foreign nationals, and detains under the 1998 security law all HRA employees, including Humana, who are Utopian nationals. While in detention Humana and other members of HRA are subjected to physical torture.
- 6 Under the laws of Utopia a Special Tribunal is established to consider complaints relating to
 - a. the confiscation of property without compensation; and
 - b. the treatment of detainees.

The Special Tribunal, which comprises independent High Court judges, has the power to order compensation for the confiscation of property and compensation for injuries suffered in detention. Utopian law provides that the complainant must present her or his complaint in person before the Special Tribunal. Legal representation is not permitted.

- 7 In order to protect members of the Utopian security forces against the complaints of torture, a vigilante group known as 'Utopian Patriots', comprising ex-police officers, is formed. They kill several former detainees who have brought complaints of torture before the Special Tribunal.
- 8 Humana is released from detention. Fearing that she will be killed by Utopian Patriots, she flees to Arcadia. She refuses to appeal to the Special Tribunal as she is afraid of staying in Utopia. Members of the HRA refuse to appeal before the Special Tribunal for the same reason.
- 9 Members of HRA in Arcadia, including Humana, all of whom are Arcadian nationals, request the government of Arcadia to exercise diplomatic protection on their behalf and to claim compensation from the government of Utopia for the property of HRA confiscated in Utopia. Humana also requests the government of Arcadia to claim compensation on her behalf arising out of the injuries she suffered while in detention in Utopia. The government of Arcadia agrees to these requests.

- 10 Both Arcadia and Utopia are members of the United Nations. Both accept the compulsory jurisdiction of the International Court of Justice under Article 36(2) of the Court's Statute.
- 11 Arcadia requests Utopia to compensate HRA for the loss of its property in Utopia and to compensate Humana for injuries she suffered in detention in Utopia. Utopia refuses on the ground that both HRA and Humana are Utopian nationals and that in any event local remedies have not been exhausted.
- 12 Arcadia institutes proceedings against Utopia before the International Court of Justice in which it asks the Court to adjudge and declare that
 - a. the Utopian government is obliged to pay compensation in the sum of €3,000,000 to Arcadia arising out of the confiscation without compensation of property owned by nationals of Arcadia, members of HRA in Utopia; and
 - b. the Utopian government is obliged to pay compensation in the sum of €1,000,000 to Arcadia arising out of the injuries suffered by Humana while she was in detention in Utopia.
- 13 After the presentation of Arcadia's claim Humana is divorced and marries Johannes, a national of Ruritania. Under Ruritanian law a wife automatically becomes a national of Ruritania on marriage and ceases to be a national of any other state. Humana therefore becomes a national of Ruritania. However, under Arcadian law she retains her Arcadian nationality.
- 14 Utopia raises preliminary objections to the admissibility of Arcadia's claims based on
 - a. the nationality of HRA;
 - b. the nationality of Humana; and
 - c. the failure to exhaust remedies in Utopia.