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THE ADVOCATE

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Article 3 of the ECHR: how do we protect a substantively undecided right?

Freddie-Nicolle Brace

Article 3 is one of, if not the, most well-known and important articles of the European Convention on Human Rights but strikingly this is not to say that it is applied coherently and consistently in all cases.

In fact, over the years there has been a huge amount of debate over when and how the article is to be applied and it is disheartening to know that this debate has, as yet, been to no international avail.

This seems unsatisfactory considering that the right to protection from torture and inhuman treatment is such a pressing issue, especially as the world has seen a spout of terrorist activity in recent years and has in response become very suspicious of certain ethnicities.

One cannot help but wonder why this article is so short in comparison to others; the entire article consists of the following one sentence: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

One answer has been that it is an absolute right and so one assumes that the writers of the Convention must have been working on the assumption that no further instructions were necessary. Unfortunately, if this is the case, it seems that they could not have been more wrong.

The first issue is that of uniformity, it is surprising that the Convention has left it primarily to national courts to decide what amounts to torture or inhuman or degrading treatment since this is essentially the complete substance of the right. Of course liberals and patriots may take the opposite view, considering

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The evolution of devolution

"The beginning of a new era for the governance of Wales"



Welsh flags, St David's Day 2009 / Baner Cymru, Dydd Gŵyl Dewi 2009' National Assembly For Wales / Cynulliad Cymru
<http://www.flickr.com/photos/nationalassemblyforwales/3678627344/>

Megan Jones

On 12th November 2012, in an unremarkable briefing room in the Welsh Assembly's offices in Cardiff, a small piece of Welsh legal history was made. For the first time in over six centuries a piece of legislation was passed which was created wholly in Wales.

The ceremony itself was brief and devoid of any of the pomp and pageantry that would be expected of such a historical event. In fact, the landmark occasion was concluded in little more than a couple of minutes, as Carwyn Jones, the First Minister of Wales, used a press to apply the Welsh Assembly's seal to the National Assembly for Wales (Official Languages) Bill. As the document was handed to Claire Clancy, the Assembly's Chief Executive and Clerk, the bill became law.

Despite the lack of fanfare and fuss, the occasion was an important milestone for the development of the powers of the Welsh Assembly, as well as being a further step on the

path towards creating a possible separate Welsh legal system in the future. After all, this development must be viewed in the context of the slow, but steady progress of the Welsh Assembly's law-making powers.

When the Welsh Assembly was established in 1999, it did not have any primary legislative powers. The Welsh Assembly was only capable of passing secondary legislation in certain devolved areas, primary law-making powers were reserved for the UK Parliament. In certain cases, the Welsh Assembly could use secondary legislation to amend primary legislation, but this was in very limited circumstances.

Following the passage of the Government of Wales Act 2006, the Welsh Assembly acquired limited primary law-making powers. These powers related to the twenty specific fields within the legislative competence of the Welsh Assembly as defined by the Government of Wales Act 2006. These fields include cul-

ture, education, health, social welfare and matters relating to the Welsh language. However, in order to pass legislation relating to previously un-devolved areas within these fields, this would require the passing of an Act by the UK Parliament or a Legislative Competence Order approved by the UK Parliament. This effectively meant that outside the strictly defined areas of competence as stated in the Government of Wales Act 2006, the UK Parliament retained the power to limit the legislative competence of the Welsh Assembly and curtail any attempts to broaden its primary law-making powers.

However, this changed as a consequence of the 'yes' vote in last year's referendum on giving further law-making powers to the Welsh Assembly. As a result, the Welsh Assembly has, since March 2011, direct primary law-making powers without having to consult the UK Parliament. This gives Assembly members

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NEWS BRIEFS

■ Keir Starmer has vowed, with the help of "the doctor with a suspicion", "the police officer investigating" and "prosecutor taking a charging decision", that the Crown Prosecution Service will seek to crack down on female genital mutilation. Having been made an offence since 1985, there have only been three cases referred to the CPS, none of which have made it to court. The director of public prosecutions now insists, "the impunity with which these offenders have acted will end".

■ Secret courts: The Justice and Security Bill attempts to introduce an extension of secret courts, known as closed material procedures, into the civil courts in England and Wales. The legislation is to enable judges to hear various national security cases but has provoked discussion and anxiety among politicians and lawyers who fear that the legislation will breach principles of fairness and open justice. The Equalities and Human Rights Commission has previously warned that the bill could indeed be incompatible with the Human Rights Act 1998.

■ UK to keep the ban on prisoner voting: The government's draft bill, The Voting Eligibility Prisoners Act 2012, is undoubtedly controversial. The bill offers three "options for reform" on prisoners' voting rights. Schedule 1 and 2 are, in the opinion of the government, "on balance" compatible with the human rights convention. The government is however "unable to say" that Schedule 3, which re-enacts the current general ban on prisoner voting with minor changes, is compatible with human rights. If the bill is passed, the government could be in breach of human rights and the rule of law.

■ Travers Smith was awarded the coveted Law Firm of the Year title at the recent British Legal Awards. The award for Chambers of the Year was awarded to Thirty Nine Essex Street.

MORE NEWS BRIEFS
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The Advocate is a student-run legal newspaper delivering up-to-date legal news and comment. Established in 2004 and sponsored by the Queen Mary Student Pro Bono Group, The Advocate provides a platform for students to express their views on current legal issues.

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NOTE FROM THE EDITOR

Welcome to Issue VI of The Advocate. This issue is full of some truly fascinating articles exploring current legal matters. If you are interested in writing for The Advocate we are currently looking for contributors for the next issue, so email your contributions to theadvocate.qmspbg@gmail.com.

Happy reading!

Lauren Stone, Editor-in-Chief

FEATURED CHARITY

Homeless not hopeless



Homeless group with dog. Franco Folini, <http://www.flickr.com/photos/lutemure/256941993/>

Arlinda Bala

75,000 young people are made homeless every year. As part of the organisation Team V, I am aiming to raise awareness on this issue and also to showcase the talents of these young people. This issue is becoming more prominent as the years go by, especially seeing as the current government have cut housing benefits, which naturally will make finding a home harder. The run up to Christmas is also the hardest on young people and help would be greatly valued.

Sofa surfing, which is where loads of young people move from a friends couch onto another friends couch and so on, is also a major issue. There are a number of major reasons as to why young people become homeless in the first place, the main ones being unemployment

and family conflict/break-down. Everyone knows someone who is homeless so please put yourself in their shoes and make the change you want to see in the world. I am looking for more volunteers to help with this campaign so if you're interested or would like some more information on the cause please don't hesitate to contact me.

I am also looking for any young people who are currently homeless or used to be homeless who love creating paintings, making short films or writing poems and stories to help with the campaign. Again, if you fit this category or know anyone who does, please contact me. Remember that we have the power to make the changes we wish to see in this world.

If you would like to get involved contact **Arlinda Bala** at: teamvarlinda@gmail.com.

Recession: are we in harmony or out of sync?



"European Union flag" YanniKouts <http://www.flickr.com/photos/ykoutsomitis/6861702519/>

Sarupe K Uppal

There have been attempts by legal organisations to harmonise countries through the European Union (EU) as well as specific worldwide conventions like the Contracts for International Sales of Goods (CISG). The question of whether or not these measures are helping or hindering our chances of getting out of the recession remains.

Clifford Chance has recently commented that if we are to enter a double dip recession, the legal profession is no longer recession proof. It has been somewhat grudgingly

stated by other professions that the legal profession is largely immune from the recession. This is because when there is a boom, lawyers are needed for deals and when we hit a crisis lawyers are needed to clear things up! But "Lawyers rely on activity," explained Tony Williams, the former managing partner of Clifford Chance, to the Guardian newspaper.

If we are to stay stagnant in a double dip recession this may hit the legal profession hard. Moreover, through law firms' races to growth many have decided to merge with international companies, with

the notable exception of firms like Travers Smith. It is therefore now more important than ever that the legal world helps our country out of the recession.

The basic way a country gets out of a recession is to spend. When a recession hits it is like a snowball effect; housing prices fall, unemployment rises and debts increase. To get out of a recession countries must borrow to spend money and this is why countries like Greece and Spain have been receiving bailout funds. Now why do we care if Greece's economy deteriorates? If we were in the 19th Century we largely would not, but through the harmonisation between different countries we are now affected in a much greater scale by the crisis of another country, and through mechanisms like trade and multinational co-operations we have become interdependent.

Euro-sceptics would argue that this highlights the way in which membership to the EU hinders the development of the UK through the removal of trade barriers. However harmonisation and awareness of other countries affects how

people, and as a result government, inherently think. Switch on your television, go to your laptop and you will have up to date news on developments from around the world.

But this interdependency between states has caused a recession on a much wider scale and arguably will be harder to get out of. But what is the alternative? Do we go back to trading with the next-door neighbour or a businessman from another town? The world has largely moved on from this, and this can be seen by the CISG, which is ratified by nearly 80 countries.

It would in my opinion be simpler if we were in this recession without the weight of failing countries as well as our own. But this is no longer an option, as we benefitted in the boom from EU legislation that allowed free movement of goods, capital services and persons, as this increased companies' consumers and workforce.

We prospered from conventions like the CISG, which allowed commercial trade between borders regardless of language barriers or differences in legislation, and now

we must bear the burden.

Perhaps this is a case of Doctor Faustus; have we sold our soul and now have to pay the price of eternal damnation to an interdependent economy?

I think this is an exaggeration, however the deficits of countries have been seen to be and will continue to be substantial and it will be a grueling process to lift countries out of recession. But this will happen, the economy works as a cycle and there will once again be a boom. World-wide organisations will once again try and sync countries further in line to ease international barriers, as this will largely benefit countries through trade, and it will be welcomed with wide arms as a breath of fresh air leaving behind the recession as a distant memory.

Therefore harmonisation is a double-edged sword. In a recession it is a hindrance, as a crisis of one country will directly affect another. But during a boom, or even the recovery stages, an economy will benefit from harmonisation between different countries as it produces capital and therefore aids the growth of a country.

New Cannabis laws no breath of fresh air for US

With citizen votes enabling the decriminalisation of marijuana possession in Washington and Colorado states, the American federal government is now faced with the final say.

Tracy Senjule

It is perhaps the most provocative drug-related issue to concern the law in the United States of America since the legalisation of marijuana for medicinal purposes. Both Washington and Colorado took the matter to ballot, the votes in each culminating to the same end: the possession of marijuana by an adult is no longer a criminal offence under the law. This new development is subject to condition, of course. Before any cannabis enthusiasts can breathe a sigh of relief, the federal government must decide to either approve or dispel of the

laws that are a clear contravention of the nationwide Controlled Substances Act.

In the meantime, prosecutors throughout Washington have thrown out all pending cases regarding marijuana possession, while their counterparts in Colorado are contemplating whether to follow suit. If the law garners federal approval, adults will be permitted to carry up to an ounce of the substance as early as 6th December 2012. Similar law in Colorado stipulates decriminalisation will come into effect in January of 2013. In addition to being permitted to possess an ounce or less of cannabis, adults are also allowed to

own up to six marijuana plants each.

While the laws appear at



miss.libertine <http://www.flickr.com/photos/8364994@N02/4834872285/>

first glance to be quite lenient they are subject to limitations. Commercial sale in both states is still prohibited, although it is expected to be

permissible by 2014. Colorado has also stressed that driving while impaired and using in public places continue to be illegal acts. Ultimately, the decision is one of the federal government. With Obama having just secured his second term in office, while it is a hot topic in the relevant states, possession laws may not be at the top of the President's agenda.

In the event that both Colorado and Washington secure legitimacy of the new laws with the federal stamp, this would undoubtedly have serious implications on the law in America. Considered to be the most conservative nation when addressing

controlled substances and alcohol, this move is not only precedent setting but also indicative of a more liberal state.

The UK has also put significant pressure on the government in the past. Many believe the legislative regulation of cannabis to be one answer to a failing war on drugs. If controlled like alcohol, perhaps the crime associated with this area would fall. The opposite too can be said, however.

Only time will tell in which direction this area of the law will go. For now, the fate of cannabis in America and the UK overall remains hazy.

Qatari Poet: A "Prisoner of Conscience"



Ajami detained over comments about Sheikh Hamad Bin Khalifa Al Thani (above) World Economic Forum <http://www.flickr.com/photos/worldeconomicforum/4654906589/>

Stacey Smith

Although arguably the richest country on earth due to its gas reserves, Qatar lacks one of the most basic human rights; freedom of expression.

This is evidenced by the arrest of poet Mohamed Ibn al-Dheeb al-Ajami who has been imprisoned since 16th November 2011.

The charges against him, which have not been clarified by the authorities, are said to relate to "inciting the overthrow of the ruling regime". Such an offence carries the death penalty under article 130 of the Penal Code of Qatar, and "insulting the Emir" can lead to 5 years imprisonment under article 134.

In his poem 'Tunisian Jasmine' Ajami expressed his

support for the Arab Spring and said, "we are all Tunisia in the face of repressive coteries" and he criticises "all Arab governments" as "indiscriminate thieves". Ajami both recited this poem and uploaded it to the internet. Passages insulting the Emir of Qatar Sheikh Hamad bin Khalifa Al Thani also appeared online in a poem he wrote in August 2010.

Amnesty International claim Ajami is a "prisoner of conscience" who merely gave "peaceful criticism". They also allege that he has been detained in isolation and was held incommunicado for months before being allowed family visits.

It is believed that he is being detained in Doha's Central Prison and facing a secret

trial in further violation of his rights. Amnesty International claim that, "his lawyer reportedly had to provide a written defence of his client after being barred from attending one of the court sessions".

According to Human Rights Watch, Ajami's court hearing has been postponed four times, with the next trial date having been scheduled for November 29th 2012.

The right to free expression is a fundamental human right enshrined in the Universal Declaration of Human Rights, adopted in 1938 by the United Nations General Assembly. Article 19 stipulates:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Although Qatar has not ratified the International Convention on Civil and Political Rights, Human Rights Watch has said that the United Nations Human Rights Committee has made it clear that, "insulting a public figure does not justify penalties" and that all public figures, "including those exercising the highest political authority such as heads of state and government" can justifiably be subject to criticism.

Furthermore, article 47 of Qatar's constitution guarantees freedom of expression

and opinion "in accordance with the conditions and circumstances set forth in the law."

Qatar is also a party to the Arab Charter on Human Rights and has pledged to respect the right to free expression under article 32 of the Charter. Article 14 of the Charter highlights the right to a trial within a reasonable time as well as the principle that pre-trial detention should be the exception not the rule.

Article 13 of the ACHR stipulates that where there are no grounds for the trial to be held in private, it should be held publicly.

Joe Stork, Deputy Director of Middle East and North Africa Human Rights Watch division, has implored the state prosecutor to respect international standards on due process, the right to a fair trial and to refrain from prosecuting Ajami solely for exercising his right to free expression.

Ironically, Jan Keulen, director of the Doha Centre for Media Freedom has said that Qatar "has been in the front line worldwide regarding the defence of safety of journalists and freedom of the media". The popular television news network Al Jazeera set up in 1996 is based in Qatar and has been the voice of the Arab world. In 2008 Qatar altered its media law with the implementation of the Doha Centre for Media Freedom was created to promote press

freedom and quality journalism in Qatar and the region.

In June of this year Qatar's Shura Council approved a draft media law, which, according to Keulen, still does not meet international standards. This is because, whilst it calls for the abolishment of the criminal penalties for journalists, article 53 prohibits publishing information that would "throw relations between the state and the Arab and friendly states into confusion" or "abuse the regime or offend the ruling family or cause serious harm to the national or higher interests of the state." Journalists who fail to comply could be fined as much as 1 million Qatari riyals (US\$ 275,000).

The draft media law would force Qatar-based journalists to practice the self-censorship that plagues the state of journalism in many countries in the Gulf region and has led to a rise in citizen journalism.

As stated by Philip Luther, Amnesty International's Director for the Middle East and North Africa, Qatar needs to lighten its regulations on freedom of expression so as to guarantee that "poets, bloggers, journalists and everyone else can express their thoughts without fear of arrest, secret trials or other harsh repercussions."

In the meantime however, the world watches and hopes for the best, not only for Ajami, but the future of the Qatar.