

# EXTRATERRITORIAL APPLICATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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The paper focuses on the specificity of extraterritorial applicability of the International Covenant on Civil and Political Rights. It states that throughout practice of judicial and quasi-judicial bodies extraterritorial application of the Covenant is expanding, depending on the special character of power over the enjoyment of human rights, which is exercised by State Parties outside national territory. This expansion is clearly shown in the paper, giving a coherent view on the issue and determining key problem areas.

**Key words:** human rights; extraterritorial application of treaties; civil and political rights; jurisdiction; international obligations; effective control; power

Under international law strict territorial scope of treaties is recognized. Article 29 of Vienna Convention on the law of treaties states that «treaty is binding upon each party in respect of its entire territory», «unless a different intention appears from the treaty or is otherwise established» [1].

Technically, scope of the International Covenant on Civil and Political Rights (hereinafter – the ICCPR, the Covenant) goes in line with that provision: article 2 of the Covenant recognizes, that obligations under the Covenant are owed «to all individuals within [state] territory and subject to its jurisdiction» [2]. Indeed, ordinary meaning of conjunctive «and» applies for cumulative use of two criteria: territory and jurisdiction. However, criteria of territory and jurisdiction under article 2 are to be considered as alternative, which is supported by International Court of Justice and Human Rights Committee practice. Both International Court of Justice [3, 108–110] [4, 216] and Human Rights Committee [5, 12.1–12.3] [6, 10.1–10.3] [7] have stated that state parties should be bound to comply with its provisions outside national territory.

Criterion of jurisdiction is to be considered as met in cases of occupation or effective control over a citizen. Accordingly, in the Wall Advisory Opinion, International Court of Justice recognized that jurisdiction is exercised outside the national territory in cases of military occupation. The Court observed that, considering the object and purpose of the ICCPR, it would seem natural that States parties to the Covenant should be bound to comply with its provisions outside the national territory as it was intended to be according to travaux préparatoire. [3, 109–110].

Cases of effective control were dealt with by Human Rights Committee: the Committee has stated, that the Covenant is applicable where the State ex-

ercises its jurisdiction on foreign territory, as in cases of arrests carried out by Uruguayan agents in Brazil or Argentina (*Lopez Burgos v. Uruguay* [5, 12.1–13]; *Celiberti v. Uruguay* [6, 10.1–11]).

Generally, this approach is not disputable in international law, yet, unfortunately, the United States and the United Kingdom have maintained that human rights treaties do not apply beyond their territorial borders [8]. Particular human rights violations that have been committed by these two states can only be remedied if treaties are applicable extraterritorially [9].

Extraterritorial application of ICCPR goes further. Human Rights Committee confirmed the existence of extraterritorial obligations of the USA, regardless of the exercise of jurisdiction over nationals, when there has been a surveillance activity - situation of control over a private data, which made possible violation of the right to privacy [10].

Human Rights Committee in *Munaf v. Romania* also affirmed that «State party may be responsible for extra-territorial violations of the Covenant, if its actions on its own territory have «indirect extraterritorial effect» and «if it is a link in a causal chain that would make possible violations in another jurisdiction» [7].

Moreover, paying attention to General Comment 31 of Human Rights Committee [11, 10], there is a requirement for State Party to respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party.

The definition of «power» is not specified, yet practice of Human Rights Committee reflects that «power» in that case is to be interpreted as military or physical power. We fully agree with that approach, since ordinary interpretation of «power» as «the ability to influence the behavior of others» [12] would imply for excessive obligations of a state under treaty.

In Latest General Comment 36 (on Article 6 – Right to life) Human Rights Committee established, that obligations are owed to all persons subject to state jurisdiction and that is to «all persons over whose enjoyment of the right to life it exercises power or effective control». This includes persons whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner [13, 63]. Formally, this approach is taken with respect to the right to life only, however we submit that it can be taken in respect to other rights recognized in the Covenant, since it would be in line with previous findings of Human Rights Committee.

We can conclude that in light of object and purpose of ICCPR, obligations of states under the treaty should have extraterritorial application. Criterion of jurisdiction is to be interpreted wide enough to preclude human rights violations abroad. Thus, cases of occupation, power and effective control over a

territory, a citizen or even over the enjoyment of human rights should be considered as to satisfy the jurisdictional criterion.

On case-by-case basis it should be decided whether a power of a state was exercised in a manner that can give rise to its obligations and whether there is a causal link between state actions and alleged violations.

Certainly, there is a need to further develop the notion of extraterritorial application of the ICCPR, including, for example, adoption of General Comment on the nature of the general legal obligation imposed on States Parties, which would explicitly the legal basis and nature of extraterritorial obligations under ICCPR.

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