



### THE CASE HASSAN V. UK

The essay deals with the recent judgement of the Grand Chamber of the European Court of human rights on the case *Hassan vs. The United Kingdom*.

In particular, it shows the new theory of the Court regarding the relationships between ECHR and international humanitarian law, with specific reference to article 5 of the Convention. Moreover it analyzes the problem of the possible co-application of international law of human rights and international humanitarian law in the light of article 15 of the ECHR, which provides the rules for the state of emergency in the European context.

After describing the facts which have led to the recourse to the European Court by the brother of the victim and after providing some brief considerations about the application-field of the treaty at issue (and, in particular, about the so-called “jurisdiction criterion”), the essay will try to explain the relationship between the Convention and international humanitarian law, in the light of the “harmonizing interpretation” developed by the Court. According to such a theory, indeed, in case of apparent conflict between human rights norms and humanitarian ones, the latter should be applied, even though it is necessary to point out that the Court, while developing its opinion, has never explicitly resorted to the *lex specialis* principle, employed by the International Court of Justice in similar cases.

Afterwards, the essay will show, on the one hand, the criticisms about this theory developed in the dissenting opinion formulated by Judge Spano and, on the other, several critical profiles of this harmonizing interpretation, such as the unjustifiable *deminutio* of the protection of fundamental rights below the *minimum* threshold guaranteed by conventional provisions and the supposed obsolescence of the mechanism of suspension of guarantees defined by art. 15 ECHR.

Finally, and in order to find out a possible legal solution to the apparent conflict between the European Convention and international humanitarian law, the essay will deal with the principle stipulated in article 53 ECHR, according to which conventional provisions do not impair the wider and deeper protection of fundamental human rights already guaranteed at the domestic constitutional level or by other international norms regarding the State concerned.