

The non-refoulement principle and the sovereignty of state

Abstract

This master thesis deals with the relationship between the principle of non-refoulement and the sovereignty of state as fundamental principles of refugee and international law respectively. The thesis is primarily devoted to the interpretation and application of these principles in a European context. The text of the thesis is divided into three chapters. The first chapter describes the concept of non-refoulement. First, it is given here in what legal sources the principle of non-refoulement can be found. Then it is set out what the purpose of this principle is, when and under what conditions it applies, who is bound by it and which people it protects. Attention is also paid to different forms the principle of non-refoulement takes in various subsystems of international law and its nature in terms of international law sources. The second chapter focuses on the sovereignty of state. A brief historical development of this concept is presented in the introduction of the chapter. Subsequently, the current perception of sovereignty is laid out. The chapter focuses in more detail first on the basic definition of sovereignty, then on the differences between the views held by doctrine, states themselves and international courts. In the third, final chapter, the relationship of the two described principles is analyzed. The relationship of the principle of non-refoulement and sovereignty is subsumed under the broader relationship between state and individual. Separate subchapters study the limitation of sovereignty by an international treaty and the relationship between sovereignty and human rights. What follows is a brief excursus into European Union law, namely the Dublin system, focusing on the so-called sovereignty clause. The case law of the courts, in particular the ECtHR, on this subject is also considered in the third chapter. In this context, the thesis concludes that the relationship of the examined terms can be described as a compromise. Sovereignty as an interest of the state and non-refoulement as a principle accepted in order to protect the interests of the individual must be balanced, within specific circumstances, as equal.