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“Endorsing Accountability: Reapproaching Neglected Urgencies”

GA6 – Legal

Seeking means to eliminate the unethical exploitation of qualified immunity

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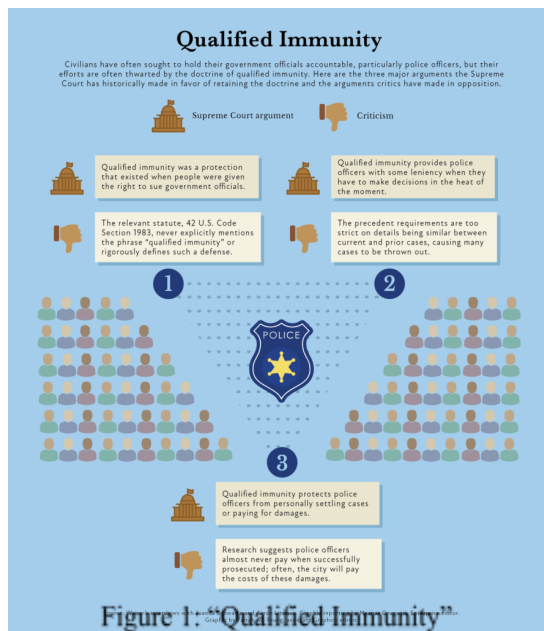
Forum: Legal Committee (GA6)

Issue: Seeking means to eliminate the unethical exploitation of qualified immunity

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Introduction

Qualified immunity is defined as the judicial doctrine that protects public officials from individual liability for constitutional violations unless it is a “clearly established” right. Many Member States include qualified immunity to government officials in their constitutions to preserve the officials like police officers or congressmen. The U.S. Supreme Court justifies the need for qualified immunity by claiming this doctrine to be “balanc[ing] two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably” (Brummel). While qualified immunity enables public officials to fulfill their duties without being afraid of being sued, it also discourages government officials from using their power neglectfully. Even though the Member States aim to persevere these interests by giving qualified immunity to public officials, this right can easily be abused.



Qualified immunity is only applied if the law violated by the public officials is not “clearly established.” This definition permits the unethical exploitation of qualified immunity because it brings the obligation to the violation to be clear enough to be understood as unconstitutional by every reasonable official. This ambiguous and varying definition of “clearly established” allows government officials to manipulate their right of qualified immunity which creates unethical situations. The manipulation of the right to qualified immunity results in impunity of the public officials in the cases of constitutional violations. This allows human rights violations to stay unpunished which eventually leads to the collapse of the law enforcement system of the countries. Hence, the unethical exploitation of qualified immunity can cause further violations made by the government officials and it needs to be eliminated by the collaborative efforts of the Member States.

The issue of the unethical exploitation of qualified immunity is one of the neglected urgencies of the world and it has come to the global agenda after the death of George Floyd in 2020. This problem is directly connected to human rights; hence, neglecting this issue creates a major threat to the assurance of human rights. Therefore, all Member States must take the necessary precautions to provide a solution to the unethical exploitation of qualified immunity in order to prevent further impacts.

Definition of Key Terms

Qualified Immunity: Qualified immunity is a judicial doctrine that protects public officials from individual liability for constitutional violations unless it is a “clearly established” right. Even though it may differ from one state to another, many executive branch officials, including police officers and congressmen, get this type of immunity.

Impunity: Impunity is defined as the state of being free from punishment in cases of law violations and it is generally caused by qualified immunity. Impunity allows human rights violations to stay unpunished which eventually leads to the collapse of the law enforcement system of the countries.

Individual Liability: Individual or personal liability refers to a person being legally accountable for their actions, including law violations. Qualified immunity eradicates this situation by protecting individuals from personal liability.

Accountability: Accountability is the “processes, norms, and structures that hold the population and public officials legally responsible for their actions and that impose sanctions if they violate the law” (“Accountability to the Law”). Accountability requires individual liability of the government officials if they violate the law; however, the doctrine of qualified immunity endangers the accountability because it allows the impunity of the public officials.

General Overview

In 2020, the death of George Floyd brought the question of qualified immunity to the top of the world’s agenda. The decision of the U.S. Supreme Court of qualified immunity to the police officers has created questions about whether the murderer of George Floyd would get immunity because he did not violate a “clearly established law.” Even though qualified immunity was not granted to Mr. Chauvin in the case of George Floyd, the neglected issue of the unethical exploitation of qualified immunity has come into the spotlight.

Qualified immunity is defined as the judicial doctrine that protects public officials from individual liability for constitutional violations unless it is a “clearly established” right. The doctrine of qualified immunity aims to enable government officials to perform their duties properly by protecting them from shielding in cases they exert the power of their position. Qualified immunity eliminates the concept of individual liability by protecting them from being sued. Hence, it aims to provide impunity to the public officials in the situations to do their duties reasonably and if it is implemented morally, it can even be beneficial to encourage public officials to exercise their power responsibly. Thus, some countries include qualified immunity to public officials in their constitutions.

Although the purpose of qualified immunity is to balance two important interests as the U.S. Supreme Court claims, qualified immunity is vulnerable to unethical exploitation due to its definition. Qualified immunity is granted to public officials unless they violate a “clearly established” law while they are carrying out their missions. In order for a law to be clearly established, it must be understood by every reasonable official as an unconstitutional violation of a right. Hence, this definition leaves the result of the

case to the discretion of the judge of the case to decide whether the violated law is clearly established or not. Because there is no certainty about a law being clearly established or not, the situations, in which qualified immunity is granted to public officials, can easily be manipulated to favor the public officials. Many public officials can benefit from qualified immunity even though they violate the law by claiming it was not clearly established. This conflict creates the issue of unethical exploitation to qualified immunity and due to this standard of the law to be clearly established, “courts have granted qualified immunity for allegedly egregious acts of excessive force, including siccing a dog on a homeless man who had surrendered to police, wrestling a man to the ground in his own home, even though he ‘posed no immediate threat,’ and kneeling a man in the eye ‘twenty or thirty times...after he was subdued and restrained’” (Sibilla).

Furthermore, the U.S. Constitution requires the existence of a “clearly established precedent” for excluding police officers from qualified immunity. In order to be a clearly established precedent, there has to be a previous and similar case(s) in which it is proven that the police officers violated the law. This requirement makes it even more difficult for a plaintiff to object to qualified immunity because it expects the previous and the current case to match. Hence, it provides a legal basis for a judge to guarantee qualified immunity to police officers by emphasizing that there is no “clearly established precedent.” Even though the U.S. Supreme Court insisted that it does not strictly require facts to exact match with the previous case, it generally makes it nearly impossible for plaintiffs to prove the morals of the police officers were compromised without a prior case. Therefore, this requirement contributes to the unethical exploitation of qualified immunity.

Particularly, in the U.S., qualified immunity for police officers raises an issue. For past years, many unarmed African Americans have been killed by police officers and they went unpunished due to the existence of qualified immunity. Especially after 2014, the concern regarding the moral standards of qualified immunity has increased with the death of Eric Garner who has lost his consciousness after exclaiming “I can’t breathe” (Hodge). Even though the death of Eric Garner has started national protests, the case was dropped and the police officer who was responsible for the death of Eric Garner went unpunished. This situation has increased the reactions towards qualified immunity. Moreover, the recent death of George Floyd heated the debates on the function of qualified immunity. Black Lives Matter protests also supported the abolishment of qualified immunity. Many civil rights advocates work for ending the qualified immunity to initiate police reform in the U.S. However, many American congressmen argued the necessity of having qualified immunity to encourage people to become police officers and prevent redundant allegations towards the police officers.

As the situation in the U.S. indicates, qualified immunity also allows discrimination by protecting the government officials in their discriminatory acts. Neglecting this issue of qualified immunity later can result in worse cases of discrimination. Hence, Member States should collaborate to end unethical exploitation of the qualified immunity to avoid further obstacles.

Major Parties Involved and Their Views

United States of America:

The U.S. is one of the countries that is affected by this issue the most. The U.S. Supreme Court established the qualified immunity doctrine in 1967 and qualified immunity to public officials has been implemented since then. Even though qualified immunity is a right owned by public officials, its main aim was to protect the police officers and the Supreme Court justified the necessity of qualified immunity to police officers by claiming “[a] policeman’s lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does” (Brummel). Hence, the reason behind the qualified immunity in the U.S. was enabling police officers to perform their duties without the fear of being sued.

Because “plaintiffs must meet a demanding standard to prove that the defendant police officers violated their clearly established constitutional rights” in order for the defendant police officers to not receive qualified immunity, many police officers benefit from qualified immunity even though they use excessive force (Brummel). Also, this requirement brought by the Supreme Court allows the discriminatory actions by the police officers towards African American people because they get qualified immunity in many cases. Hence, the qualified immunity of the police officers causes protests and many civil rights activists aim to end qualified immunity in the U.S. Moreover, after the death of George Floyd, Ending Qualified Immunity Act was introduced by the United States representatives. Besides this act, some of the U.S. States also proposed bills to end qualified immunity.

European Union:

European Union’s policy aims to combat impunity to assure accountability. EU Action Plan on Human Rights and Democracy works for ensuring human rights that are established by the Universal Declaration of Human Rights and it includes articles to combat impunity in cases of human rights violations. Hence, the policy of the European Union contradicts with unethical exploitation of qualified immunity since qualified immunity facilitates impunity.

Treaties and Events

[Ending Qualified Immunity Act](#): This act was proposed by Justin Amash of Michigan and Ayanna Pressley of Massachusetts to end qualified immunity in 2020 after the death of George Floyd. This bill amends the U.S. constitution to eradicate the parts that defend qualified immunity. The purpose of this bill is to remove the qualified immunity doctrine from the U.S. constitution.

[Updated Set of principles for the protection and promotion of human rights through action to combat impunity \(E/CN.4/2005/102/Add.1\)](#): This resolution of the Economic and Social Council aims to reset principles for the protection and promotion of human rights by eliminating impunity. This resolution points out the need for legislation to prevent abuse of qualified immunity which will foster impunity.

Strengthening the rule of law and accountability for human rights violations: The management plan of the United Nations Office of the High Commissioner for Human Rights (OHCHR) aims to end impunity to implement the rule of law and ensure accountability. The OHCHR's purpose is to eliminate impunity in cases of human rights violations to be able to assure human rights and this plan gives OHCHR's steps for establishing accountability.

Evaluation of Previous Attempts to Resolve the Issue

Even though some countries have worked for a solution to the issue, they were all individual attempts to solve the problem. For example, the Ending Qualified Immunity Act was proposed by the United States representatives to end qualified immunity in the U.S. in 2020. However, this bill was not implemented due to opposition opinions. Moreover, some of the U.S. States proposed individual bills to eliminate the qualified immunity to police officers and Colorado was successful to pass the bill. However, this could not be a global solution to the issue since it was only implemented in Colorado. Therefore, individual actions by the Member States only solved a small portion of the problem in small areas.

Moreover, the OHCHR was working on the solution of the issue for years by attempting to eliminate the impunity. Even though the OHCHR's efforts of strengthening accountability were effective to some extent, it could not bring a complete solution to the problem. One of the reasons for the OHCHR's efforts not being completely sufficient was the approach of the OHCHR. The OHCHR's attempts were not directly to solve the unethical exploitation of qualified immunity rather it was towards the solution of the impunity.

Possible Solutions

One of the biggest problems that create the issue of the unethical exploitation of qualified immunity is the definition of qualified immunity. Therefore, it is important to redefine qualified immunity and who will receive this immunity. This definition should not include ambiguous expressions such as "clearly established" law or it should also define the criteria to be considered as "clearly established." These established criteria for receiving qualified immunity must be agreed upon by every Member State and inserted in their constitutions to avoid any unethical exploitation. Additionally, removing the requirement for a clearly established precedent will be a step for solving the issue since this requirement contributes to the unethical exploitation of qualified immunity.

Furthermore, abolishment of the qualified immunity doctrine for some groups of public officials can be considered. Especially, qualified immunity to the police officers creates many conflicts due to the unethical exploitation of this immunity. Hence, the qualified immunity of police officers can be completely abolished and some other incentives might be given to this occupation group rather than qualified immunity.

Lastly, rather than providing qualified immunity to public officials, indemnification can be a way of incentivizing the officials. Qualified immunity aims to protect public officials from individual liability;

however, the payments can be paid through indemnification which also protects the government officials from individual payments. Hence, the financial liability of the cases can be removed by indemnification.

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