

THE HUMAN RIGHTS AND THE EMERGENCY FOR THE PROTECTION OF LIFE

Gladiola Mita, Phd Candidate
European University of Tirana
Tirana, ALBANIA

ABSTRACT

Post communism and the inexhaustible wave of emigration. The difficult transition in Eastern Europe and the economic refugees. The dictatorships and war homes that encourage immigration, the abandonment of the territories of the regions and filling of the queues to western countries of asylum. Analysis of the situation on the ground where different religious, ethnic groups, isolated communities and people are threatened for certain motives and are obligated to take the path towards open skies of hope. The measures in emergency situations and the difficulties in terrain situations. The temporary measures in institutions and their intention, in anticipation of the international judicial process. The emergency in the internal proceedings for the human rights. The urgent appeals and judicial matters related to detention, expulsion and extradition, etc. The loyalty and sensitivity that must be demonstrated the ICJ (International Court of Justice) to take the necessary measures in the interest of the people-aspects of the suspension of the ban on the removal of asylum to influence the protection of the threatened individual's life. Respecting the temporary measures. The necessary protective measures supported in the obedience and justification of the importance of the rights that must be protected. The flexibility, the legality of temporary measures and coherence in the clear reasoning and their use. The position of international and domestic courts, international judges and the local one. The role of lawyers to make decisions in urgent judicial matters. The implementation in the domestic law of the European Convention on Human Rights and the decisions of the European Court of Human Rights. The legal measures and political measures to avoid the risk, preventing any irreparable damage and to protect life.

Keywords: Human rights, international law, temporary measures, emergency, emigration, EU, global crisis.

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Introduction

The collapse of communism in Central and Eastern Europe and the entry of these countries in transition brought the moment when issues the human rights come out more strongly because the deep political, economic, social and social crises where these countries came from had held through isolated dictatorship every aspect related to the fundamental rights and freedoms. This moment that marked the beginning of the historical turning required serious assessment of the situation and intensification of the work of institutions to improve all the elements of human rights in these countries.

The dictatorships of Stalinist type in Central and Eastern Europe; especially in Albania, where it interfered fatally the dictatorship with the total isolation, the extreme poverty with the totalitarian oppression, the denial of religion, private property and movements abroad, where the resistance against the rule was ruthlessly destroyed and the families and individuals were interned, jailed or sacrificed like cattle; brought an Eastern Europe which when came

out of the democratic revolutions was seen clearly seen the denaturalization that they had made to the man. This alarming situation caused the huge displacement of the population of these former socialist countries in collapse, towards western democracies, to countries of the European Union.

The emigration was seen as the way of the quick overcoming of situation where the man as a human was-isolated from the dictatorship, without any rights and that shifting in a democratic country quickly facilitated from the shoulders the historical burden of the past period; but at the same time guaranteed the freedom and the possibility of providing material goods for living to the individual and the family.

In the countries they left behind, the difficult inheritance of the past of dictatorship did not immediately flee because were missing institutions that would meet all the links of establishing real democracies, -independent courts with the democratic laws, free media opinion and organizations protecting human rights. Thus and in the transition period, especially in its first phase continued to occur violations of human rights, restrictions of freedom of expression and demonstrations and manipulated judicial system accompanied with police arbitrariness.

The Western developed countries, the European Union, which were interested even earlier for the true democracy and development in these countries were found near their the involvement programs, development projects, helping to overcome the collapse. As for the other backward countries and for Albania the EU integration was the only way for the development and progress. Initially the bridge connecting the developed and democratic Europe put the massive emigration of the population, the main phenomenon of post-communist transition. The European countries emerging from the dictatorship enter the path of democracy, free economy, freedom and human rights of the strengthening of the legal state. The large influx of people, groups, communities these past 25 years to developed EU countries not only from the former communist countries but also from poor countries of other regions and continents, from the regions of conflicts and war, from countries under dictatorship, revealed the need that the Western European countries often discuss the possibilities of common policies for emigration.

The emigration policies often in emigrants' communities cause fear the European limitation attempting to obstruct further emigration and to set aside the rights of the emigrants that have come to these places. The estimation to these restrictive policies is not fully mature, but it seems that the EU states want the restriction of emigration, but could not avoid completely the illegal emigration. It should be taken into account that immigrants are not a homogenous group, but their composition is such that the groups have nothing in common, nor ethnic, neither cultural or with different confrontations in their daily lives to find themselves in the new society. Their differences cause rivalries, serious violent conflicts but also approximations as a result of common terms.

The measures in for the emergency situations

Today in some areas close to us take place armed conflicts such as in Ukraine, Syria, Iraq, Yemen, etc. where among enclaves have been trapped different communities especially social vulnerable and impossible groups that fall prey to ethnic, religious or economic conflict.

The analytical overview of the terrain in hot areas shows that communities threatened through difficulties and fire of the war take the path of escape from their homes and properties to other countries, mainly to EU countries. The paths and ways that bring them into borders and the territory of the EU are the ways and manner of the traffic of human beings, where the persons who are moving are under threat in the area of the hostilities as well as the hard journey of trafficking towards Western countries.

More than a clash of major interest, confrontation in armed conflicts in the Middle East and beyond, especially in Iraq, Syria, Kurdistan, Yemen, are clashes for domination of one group over another, of a religious community over another, of a mafia over another mafia group to benefit, rob and putting under tus one group the ither one. And from this great a mix of problems is caused the destruction of habitats, destruction of civilizations, inhibition of life and its total depravity; economic ruin, extreme violence and terror, many innocent victims among the population, isolation, exploitation, rape, trafficking, benefit, shifting of populations, looting of assets and material goods, domination of the terrain in most cases from the ordinary elements without noble or civilization purposes, but only with momentary interests, not serious, hacking, without vision and without future. The greatest evil that happens in these spaces is that life is killed; the life is declared the great illegal, as the great punished.

The civilized world that aims the development, democracy and progress has ready plans in the drawer for the extraction from the situation, extinguishing the fire hotbeds of war and crisis mitigation. But when conflicts are underway or at their peak it is difficult to separate the good from the evil, the victim from the victim-maker because the front there is much mixed and confused and also during the path to Europe is through the crowds of the people, emigrating and theterrorist, jihadist, ISIS fighter and you cannot so easily discern one from the other. The terrain causes serious difficulties for taking action in emergency situations to save the lives on the ground because it happens that intervention not at the right moment and in the right place and not in the proper manner results in added victims in the front but especially among the trapped population.

Illustrating the case of Kosovo, the Racak massacre in January 1999 conducted by the Serbs where they slaughtered dozens of men, old men and children, established by Mr. Walker, Ambassador of the OSCE in Kosovo, brought not only the historic turnaround for the salvation of a trapped and oppressed people by the Serbian military state for territorial, ethnic and religious motives; but it was marked a turnaround even in the mode of action of the international law and the exercise of force in the terrain by the international organizations led by the UNO, USA and EU against a sovereign state-Serbian- Yugoslavian, in favor of stopping the ethnic cleansing and genocide on the ethnic Albanians in their thousand year lands.

During the exercise of force by NATO, aerial bombing, the Serbian military and paramilitaries army intensified the collective massacres, burns, disasters, rapes, robberies, kidnappings of Albanians. The civilized world became solidar in defense of a people and the life in Kosovo and with the endless convoys of refugees ... of over one million displaced persons (of the total population two million, i.e. half moved) by force, fire and iron from homes to the birthplace. The large military repression and the systematic collective massacre brought the international intervention, NATO; so it was intervened in the terrain, at the source of the risk, to save innocent lives, to bring security, to stop the bloodshed, protect innocent people, to destroy the war-creator and the front of the war, to stop the displacement

of the population and emmigration chaos, of the convoys of hope, to stop the full destruction of social and individual assets, to reduce human trafficking and congestion in major cities of Europe.

It was urgent NATO intervention and it was considered legitimate even necessary, even why were abstained two permanent members of SC of UNO- Russia and China; and the intervention was called that it took place without UN mandate, but had USA support- the most democratic state and the most powerful in the world, it had the support of the EU and the world opinion-, so NATO intervention it was stopped the massacre and humanitarian disaster. In Kosovo, the international organizations approached the terrain with their efforts in the interest of peace and innocent people which were martyred under the exercise of the Serbian violence and their exxpansion for territories, to achieve the protection of the population, protection of life; the situation in Kosovo was far beyond the requirement to protect the human rights.

The temporary measures in institutions

The situation in armed conflict in most times is unpredictable and many things you cannot see and even more _ check out in the war front of what happens and what macabre crimes are committed during the offensives, during the night, during the explosions and heavy weapons bombardment. Taking of measures in an urgent situation in institutions can get from the close extradition or expulsion; detention and the threats to health and dignity of the person; aggressiveness and threat (threatening) against defenders of the human rights; displaced community groups, attacks against persons with disabilities and impossible, but also the peoples of the Amazon, of the indogenous people that are endangered of losing their territory and the historical culture, the traditional way of living, as a result of environmental destruction, cutting of forests, etc..

When it comes to urgent situation within the institutions in cases where it is expected the international judicial process, monitoring institutions, courts of the human rights, implementers and the treaties negotiators, often use means of temporary measures. The use of temporary measures depends on the form which corresponds to such emergencies. e.g. urgent appeal required by the UN through its mechanisms and their internal implementation.

Urgent judicial matters that display interest in the EU

In certain, particular cases when the individual is at risk and his physical, personal integrity is undermined, as a result of a presence and exposure in a situation at risk, the judicial matters must take urgent progress. The litigation matters relating to detention, deportation or extradition in Europe today are viewed or present a particular interest. Trials related to these problems need to be developed quickly and the court for such judicial matters with flexibility to act quickly, because of the risk on the person, to provide its assistance in an accelerated procedural way, the court itself, to avoid any irreparable damage, so as to avoid loss of life. The same problem doesn't have much difference when it happens to the International Court and in the court of a country.

The problem of acceleration because of exposure to risk while in a judicial case is not only open for the judicial administration and the judicial process itself in the technical aspect and for the entire body of the court process - the judges, legal assistants, judicial secretaries, legal

counselors or defenders of the human rights, judicial jury etc. all from their points of reference to influence to avoid the risk from exposure, to avoid the irreparable damage.

The emergency in the internal proceedings for the human rights

It represents interest even of how the country courts treat the urgent aspect of the human rights in general or other rights, and not the prohibition of torture or the right to life. Today in the European countries an urgent judicial matter which often occurs is the prohibition of the removal of asylum, based on the reason or motive of personal physical integrity and the life of the individual is at risk and removal of asylum and its removal would have consequences for the life. The temporary measures are used not only for the asylum seekers, common emigrants but also for the criminals, for example the extradition has been contained if it is shown the reason of the risk for the life in the country where they would be extradited, or it is to be improved the unfavorable situation of detention etc.. The International Court of Justice has used temporary measures and it has even expressed sensitivity for the individuals and their protection as human beings. The cozy position gives the opportunity to the international judge to follow the situation of respecting or not of the temporary measures and the reasons why they are respected or why they are not!

If provisional measures are given, they should be respected as they are important for what they were awarded and it is created the conviction that they serve to the protection of the rights with the temporary measures and the specific measures of the necessary defense, it is created the opinion for the rights which must be protected. And in the case of the temporary measures the international law takes precedence over domestic law and the decision of the international court must rule the determined state to take temporary measures for the protection of the rights and avoid the risk for life. The states must respect the temporary measures based on the importance of the rights in danger, the right to life, the prohibition of cruel treatment and torture. But it can be even other reasons that make the state and that often not respect the provisional measures, the court's decision that determines these measures but also consider them unnecessary to take temporary measures.

The International Law even the political-judicial measures should sanction the saving of lives in every state and country independently from the political system and its legal regime. The legitimacy of the temporary measures is seen as a link between acceptance and the accepted standard rules. The legitimacy of the temporary measures and their use is confronted and is taken in doubt in international meetings and conferences for the human rights, for the reforms in the European Court of Human Rights, in the organization of the American states etc. The legitimacy and the flexibility of temporary measures should be coherent and compatible with the argument and even the transparency to influence in decision making. The flexibility of provisional measures given by the independent courts or independent judge speaks for the their favorable position, ensuring the legitimacy of funds, the courts, the judges and even the opportunity to contribute for the prevention of the irreparable harm.

The courts and their receipt with emergency for temporary measures

Taking the temporary measures already has an extension generally in the international and regional system of the human rights. But numerous developments regarding the provisional measures reveal before the trial about how the court should be taken urgently to the international level and in the national level?! It also rose the problem of how will it impose to the state the obligation to respect and accept the temporary measure in certain stages of

introducing risk cases. It is in the benefit of the developments and the review of the best opportunity of the independent international judge to help in the prevention of the irreparable harm to the individual.

The studies for the urgent situation highlight, but even require in continuity the evaluation and classification in a way of the cases of temporary measures. They are seen with interest and are subject in the study the processes in institutions that may be associated with urgent situation" extradition, expulsion, detention and the conditions under the threat of death, the execution but also the guarantee of the right to life, the fundamental rights to life.

Their assessment is of interest as for the international context- of the role of the international and also of the national court. There are assessments even in the international context, while it should be casted more light on the role of domestic courts, of implementation in the domestic law of the international law for the human rights, where now the role of the internal court is increasing the competences and focusing on these aspects. The increasingly extension of the international law and in domestic law increases the processes of international or supranational character which must assess the internal law (domestic court) also even for implementation issues of the temporary measures taken with emergency , as well as for other international aspects.

Taking as an example Kosovo, the priority of the international law in the domestic law is more easily accomplished not only because it is expressed in all the laws that have been approved but also for the reason that even practically it is expressed in the presence of the legal system of the Republic of Kosovo of international specialists from many countries and from EU - judges, prosecutors, investigators, legal and military experts, defense experts and lawyers, ground observers, analysts, etc.. Also a few months ago the Parliament of the Republic of Kosovo approved the establishment of the special court for Kosovo (as an international court in overlapping of the domestic law) which shall judge possible cases from the war of the years 1998-1999 and the headquarters shall be in Hague.

Focusing to see the functioning of the actions of the judge and judges of a country in case of an emergency situation, and we see the impact or the operation of international law over domestic law in the daily realizing in the justice system in the Republic of Kosovo. Everything in Kosovo (after the year 1999) and the justice system were built in such a way as to be in full function with the democratic principles and where the international law is expressed and set in the laws of the Republic of Kosovo and wins priority in the domestic law. This to take temporary measures initiated by the international law (the court, international judge) and for the implementation of the international obligation in the cases of urgency.

Noteworthy is the moment of assessment and the the display through individual cases and collective cases or the entire other cases for a community or a large group of individuals; to make estimates, predictions for the laying of emergencies under the law with effective juridical means, in the domestic law, for example. in the case of pending litigation. As an important aspect which requires assessment to have an impact on the growth is the position and role of the internal judicial system when it comes to emergency cases. When it is required a growing influence of the judiciary, certainly it is required even the redimensioning of the role of the lawyer and his influence in making decisions on urgent judicial problems for a greater impact in the judicial process and a more consolidated position in the judicial system.

Not every time the temporary measures are applicable in cases of prevention of violations of the right to life, prohibition of torture and other cruel treatment, primarily those given in the cases that are considered urgent and which are aimed at preventing the irreparable harm to the individual. The international and functional law clearly established in the judicial affairs of a country (national) not only expresses the continuity of connections for the same treatment as in international and national context of the problem; but also ensures the implementation in the domestic law and the correct decisionmaking.

In the countries currently seeking adherence to EU, the European law is being extended in a more functional and contiguous manner as a result of the collaboration and cooperation of the EU working groups - candidate country, to concrete the cooperation with bilateral and multilateral agreements, while revising the paragraphs amended and adapted to domestic law under the European Law and International Law in general.

CONCLUSIONS

The addition of problems and cases of violations of the human rights of the recent decades came as a result of huge emigration of populations from countries under dictatorship, former communist countries; from poor countries in a situation of war, towards the Western developed countries, towards EU countries. On the ground the individual or the community is threatened, at risk of life as in the war zone as well as during the trafficking - execution extinction opportunity while traveling or drowning in the sea with the ships of death. And it is difficult the intervention on the ground for many reasons-,it must be planned and well organized. The case of Kosovo changed the history with the intervention of NATO, USA and EU's determination to save the lives of people.

Taking temporary measures and their implementation depends on the form which responds to urgent situations. The temporary measures should be taken urgently when the individual is at risk of exposure, the threat of the judicial processes must be accelerated with high security, as for international courts as well as national courts; international court's decision takes precedence over domestic ones and imposes it. The developments of the last decades show that the essential aspect of international law as a legal system created for the countries, of the states themselves is not only a close concept while it is seen the international law with importance not only for the community problems but also of the individual, as a tool to give justice to use the international law towards sovereign states that do excessive actions and not human and civilized ones, regardless that the international law does not give a full response and even complete actions. It is required a prevention of the violations of the human rights in the framework of one state but also in international situations.

The International law and the political-juridical measures should sanction saving lives in every state and country despite the political system and its legal regime. In an international context, the role of international courts and independent judges is more evident and appreciated, whereas it must be focused on the role of domestic law, of the interior court which is growing and redimensioning and must be evaluated the role of the internal judicial system for the emergency cases. In the countries that are in the process of EU integration there is an achieved mixture of international law with the domestic law and the institutions and the action gears are more complete after being adapted the laws as well as the structures in favor of the protection of human rights in the interest of preserving the human life. We are in the middle of a global crisis, but also regional economic, but even political that is characterized by all the elements of the living crisis in different areas-economy,

environment, public safety, massive emigration, religion, culture and education; crisis emerged a few years with deep roots which will bring unpredictable consequences, with irreparable flaws in the global balances, in the regional and international security, in the moral crisis of the identity that will leave other consequences in human rights and the life of the individual, family and society.

REFERENCES

- 1-Allot, P.—Eunomia.new Order for a New World, first edition (Oxford University, Press 1990).
- 2-Barjami, Arsim— Constitutional System of the Republic of Kosovo-Pristine 2011.
- 3-Constitution of the Republic of Albania.
- 4-Constitution of the Republic of Kosovo.
- 5-Gomien Donna—Guide Background European Convention on Human Rights, Council of Europe publication (third edition) 2005.
- 6-Higgins- The human rights at the International Court of Justice -2007.
- 7- The Constitutional Framework for the Provisional Self-Government in Kosovo. Pristine 2001.
- 8- The community and ethnic relations in Europe-Report. The Council of Europe. Tirana 1995.
- 9-Papa, Kostaq PhDC— The Independent Kosovo is the only solution for peace and integration of the Balkans, political journalism-Tirana 2006.
- 10-Papa,KostaPhDc &Muharemi, Merita PhDc—Post communism in the Former Yugoslavia. Kosovo political and Difficult Transition to the New State of Europe that Seeks EU.-International Conference. 27-29.3.2015, Dubrovnik, Croatia.
- 11-Puto, Arben—Public International law, Tirana 2003.
- 12-Rieter, Eva— The prevention of irreparable harm, temporary measures in international adjudication of the human rights. Intersentia 2010.
- 13-Saccucci, Andrea—Le misure provvisorie nella Protezione Internazionale dei diritti Umani, Torino 2006.
- 14- The human rights. A permanent challenge for the Council of Europe. Publication of the Albanian Helsinki Committee. Tirana 1996.
- 15-The human rights in pos-komunist Albania, human Right Watch/ Helsinki—New York, May 10, 1996.
- 16-The immigrant right. Migratin International Organizatin (IOM), Tirana Albania 2012.
- 17-<http://www.ila-hq.org/en/committees/index.cfm/cid/1027>
- 18-<http://www.ijrcenter.org/2010/09/21/book-revieë-preventing-irreparable-harm-provisional-measures-in-international-human-rights-adjudication/>