ПРАВЕН ДИЈАЛОГ

БР. 18

Институт за човекови права

Content

February, 2019

Competence of the Prosecutor General's Office of the Republic of Belarus in the sphere of declaring persons on the international wanted list and extradition

Andrey Hursevich
Senior Prosecutor of the International Legal Department
of the Prosecutor General's Office of the Republic of Belarus

Annotation: the article studies the procedure of declaring by the Prosecutor General's Office of the Republic of Belarus on the international wanted list of persons who have committed crimes; provides the information regarding the treaty base of the Republic of Belarus in the field of extradition; examines the questions of sending by the Prosecutor General's Office of the Republic of Belarus the request for the extradition of a wanted persons to the central authority of a foreign state, competent in extradition matters; describes how the Prosecutor General's Office of the Republic of Belarus considers the legal issues regarding detention and arrest in the territory of Belarus of a person who is on the international wanted list for the purpose of extradition to the foreign country.

Keywords: criminal prosecution, extradition, international wanted list, Prosecutor General's Office of the Republic of Belarus, the principle of reciprocity, treaty on extradition.

In accordance with the Belarusian legislation, the Prosecutor General's Office of the Republic of Belarus participates in the declaring on the international wanted list of persons who have committed crimes and hide from the bodies of preliminary investigation or from the court. To this end, the Prosecutor General's Office of the Republic of Belarus examines the documents and criminal cases in relation to these persons and then decides whether there are grounds for declaring those accused or convicted on international wanted list. If there are such grounds, the Prosecutor General's Office of the Republic of Belarus orders the Interpol National Central Bureau of the Republic of Belarus to send through Interpol channels a request to locate, detain and arrest the wanted person before receiving the request for extradition.

It should be noted that, in accordance with the Belarusian legislation, legal relations in the field of extradition are the exclusive competence of the Prosecutor General's Office of the Republic of Belarus. Legal cooperation of the Republic of Belarus in the field of extradition is based on international treaties, and in case of their absence, on the principle of reciprocity.

The treaty base of the Republic of Belarus in the field of extradition consists of bilateral treaties on extradition, concluded with Bulgaria, Poland, Lithuania, Latvia, the Czech Republic, Slovakia, Hungary, India, China, Vietnam, Cuba, Syria, Turkey, the United Arab Emirates, Cyprus and Egypt. The Republic of Belarus is also a party to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed on January 22, 1993 in Minsk (hereinafter - the Minsk Convention) and the Convention on Legal

Assistance and Legal Relations in Civil, Family and Criminal Matters, signed on October 7, 2002 (hereinafter - Chisinau Convention). The Minsk and Chisinau conventions are widely used by the Prosecutor General's Office of the Republic of Belarus as legal instruments for the extradition of persons hiding in the territories of Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

In addition, the Republic of Belarus is a state party to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 12, 1988, the International Convention for the Suppression of the Financing of Terrorism of December 9, 1999, the UN Convention against Transnational Organized Crime of November 15, 2000, UN Convention against Corruption of October 31, 2003, and the Council of Europe Criminal Law Convention on Corruption of January 27, 1999. These conventions may also be the legal basis for extradition, when there is no agreement on extradition, and the legislation of a state determines the possibility of extradition by the existence of such an agreement.

In the event that a person who is on the international wanted list is detained in the territory of a foreign state for the purpose of extradition to Belarus, the law-enforcement authorities of the foreign state inform through the Interpol channels the Interpol National Central Bureau of the Republic of Belarus about this. In turn, the Interpol National Central Bureau of the Republic of Belarus notifies the Prosecutor General's Office of the Republic of Belarus about this. Further, the Prosecutor General's Office of the Republic of Belarus sends a request to the authority conducting the criminal proceedings to prepare a package of documents necessary for the extradition of the wanted person to Belarus. The list of these documents, as well as the requirements for their content, are determined by the existing international treaties of the Republic of Belarus in the field of extradition and the Criminal Procedure Code of the Republic of Belarus. Depending on the presence or absence of an international treaty, the request for extradition is prepared by the Prosecutor General's Office of the Republic of Belarus or by the authority handling the criminal case against the wanted person. After examining the documents received, the Prosecutor General's Office of the Republic of Belarus decides whether to send or not through diplomatic channels and (or) other channels a request for the extradition of a wanted person to the central authority of a foreign state, competent in extradition matters (as a rule, these are the Prosecutor's Office or the Ministry of Justice).

As for the detention in the territory of Belarus of a person who is on the international wanted list for the purpose of extradition to the foreign country, the following should be noted. The detention and arrest of a person who is on the international wanted list are regulated by the Criminal Procedure Code of the Republic of Belarus. Detention is made, as a rule, by the Belarusian police. A police officer explains to the detained person his or her rights and obligations. Further, the wanted person detained by the police is delivered to the district prosecutor, who conducts a thorough check of a set of issues related to extradition. First of all, this is a question of the lack of Belarusian citizenship of a detained person, since according to the Constitution of the Republic of Belarus a citizen of Belarus cannot be

extradited to a foreign state, unless otherwise provided by international treaties. Other circumstances that may exclude the extradition of a person are also checked by the district prosecutor at the same time. In the absence of such circumstances, arrest shall be applied to a person who is on the international wanted list. The district prosecutor notifies that the person has been arrested the Prosecutor General's Office of the Republic of Belarus, the Interpol National Central Bureau of the Republic of Belarus and the Ministry of Foreign Affairs of the Republic of Belarus, as well as relatives of the persecuted person if they live in the Republic of Belarus. In turn, the Prosecutor General's Office of the Republic of Belarus through diplomatic channels and through the Interpol National Central Bureau of the Republic of Belarus informs the central authority of a foreign state, competent in extradition matters, about the need to submit a request for extradition within an established time period for the person who is on the international wanted list. If a request for extradition with the necessary documents is not received within the time specified by the Criminal Procedure Code of the Republic of Belarus or by international treaty of the Republic of Belarus, the Prosecutor General's Office of the Republic of Belarus instructs the subordinate district or regional prosecutor to release the wanted person and after the execution of the order informs the central authority of a foreign state, competent in extradition matters, about this.

If the request for extradition is received in a timely manner from central authority of a foreign state, competent in extradition matters, then the Prosecutor General's Office of the Republic of Belarus is studying the possibility of granting the request for the extradition of an internationally wanted person to a foreign state. Requirements for the request for extradition and the documents attached to it are determined by an international treaty regulating the issues of extradition between the Republic of Belarus and the requesting foreign state, and in the absence of a treaty - by the Criminal Procedure Code of the Republic of Belarus. Along with the general requirements for a request for extradition, an integral element of a request made on the basis of the principle of reciprocity is the obligation of the central authority of a foreign state, competent in extradition matters, given on behalf of a foreign state to provide similar international legal assistance. According to the Belarusian legislation, the extradition of a person for criminal prosecution or execution of a sentence is made for such acts which, according to the laws of a foreign state requesting extradition, and the laws of the Belarusian state considering this request, are punishable (the principle of double punishability of the wrongdoing). In addition, for the commission of this crime, respectively, the punishment is imprisonment for at least one year or more severe punishment or the person was sentenced to imprisonment for at least six months or more severe punishment. In the event that the request for extradition and the materials attached to it comply with the requirements of an international treaty or the Criminal Procedure Code of the Republic of Belarus, and there are no grounds for refusing extradition, the Prosecutor General of the Republic of Belarus or his deputy grant the extradition requests. The competent authority of the foreign state that sent the request for extradition is informed about this. After that the Ministry of Internal Affairs of the Republic of Belarus is instructed by Prosecutor General's Office of the Republic of Belarus to transfer the internationally wanted person to the law enforcement agency of the foreign state. If a criminal case on the

territory of Belarus is being investigated with regard to the person whose extradition is requested, then the Prosecutor General's Office of the Republic of Belarus decides to postpone his or her extradition, about what the central authority of the requesting foreign state are notified. After the cessation of criminal prosecution in the territory of the Republic of Belarus, such a person, on the instructions of the Prosecutor General's Office of the Republic of Belarus, is arrested for the purpose of extradition and transferred to a foreign state requesting extradition. If the delay in extradition may cause damage to the investigation of a crime in the territory of a foreign state, the person whose extradition is requested may be extradited temporarily (usually for three months, but the term can be extended). To this end, the competent authorities of a foreign state must send to the Prosecutor General's Office of the Republic of Belarus a relevant request for the temporary extradition of a person for criminal prosecution. The temporarily extradited person must be returned to the Republic of Belarus after the completion of the procedural actions in the criminal case for which he was transferred to a foreign country. If the extradition of a person to a foreign state is impossible due to the fact that he or she has Belarusian citizenship, the possibility of bringing such person to criminal responsibility in the territory of the Republic of Belarus for the crime that caused the request for extradition remains (the principle "extradite or judge"). In this case, the competent authority of a foreign state should send to the Prosecutor General's Office of the Republic of Belarus a relevant request for the criminal prosecution of this person.

List of Sources:

1. Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed on January 22, 1993.
2. Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, signed on October 7, 2002.
3. Council of Europe Criminal Law Convention on Corruption of January 27, 1999.
4. Criminal Procedure Code of the Republic of Belarus.
5. International Convention for the Suppression of the Financing of Terrorism of December 9, 1999.
6. UN Convention against Corruption of October 31, 2003.
7. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substancesof December 12, 1988.
8. UN Convention against Transnational Organized Crime of November 15, 2000.
9. http://www.prokuratura.gov.by/en.

Transparency of Construction Permit Issuing Procedure - Overview of Legislation and Practice on the Example of Georgia

Davit Churghulia
Deputy Head
Tbilisi city hall
Georgia

Georgia has implemented number of successful reforms over the past two decades. The implemented or ongoing reforms became a major creator of international image of the country, facilitating the presence of Georgia among the leading countries in the region. The remarkable example of the mentioned is the World Bank's 2018 rating, which states that the country takes the sixth position in the world on its ease of doing business.[1]

The significant achievements of the reforms implemented in Georgia are development of many fields and their approximation with modern standards. One of the most prominent places among such progressive destinations is construction activities. That is why the process of renewing and improving the legislative acts regulating the construction sphere is of particular importance.

When it comes to building legislation, its Europeanization, improvement and development, it will necessarily include the issues related to issuing construction permits - the main institute of construction law and transparency of its procedure. One of the most important issues in this regard, which requires more efficiency, is the issue of fair conduction of the construction permit process, involvement of all interested persons or authorized entities in the appropriate administrative proceeding according to the complexity of the acceptable resolution, possibility of realizing the rights of the participants. To the end, all the mentioned is directed towards transparency and lawfulness of the issuance of the construction permit.

For a complete presentation of the issue, it is necessary to have a brief analysis of the reforms implemented in this direction. However, this is a continuous process and implemented reform is a conditional concept in this case. In fact, along with the development of the construction sector, it is necessary for the legislation regulating this specific field to achieve the appropriate level in order to create a successful model for the development of legislation and its development, which will be the basis for sustainable development of the country.

Georgia's current legislation, which regulates the issuance of construction permits, in the main line is based on European values and principles,[2] that are the cornerstone of a democratic state. The Georgian legislation is consistent with the international legal acts and the supreme law of the country - the Constitution of Georgia.

According to the applicable legislation of Georgia, the rule and terms of issuing a construction permit are regulated by the Law of Georgia on “Licenses and Permits”, as well as the Decree #57 of March 24, 2009 of the Government of Georgia on "Rules of Issuance of Construction Permit and Permit Conditions". However, it is important to note one significant

novelty, in particular on July 20, 2018 the "Georgian Space Planning, Architectural and Construction Activity Code" was adopted and it will be launched from June 3, 2019. The adoption of the mentioned Code, the uniform standard act has become a crown of legislative reform, and it further enhances the process of approximating this sphere to the European standards.

All of these legislative acts serve the following principles:

- Life and health safety;
- Ensuring safe environment;
- Protection and maintenance of cultural heritage;
- Protection and realization of ownership rights;
- Publicity
- Principle of Responsibility.

As seen above, the legislation regulating the construction permit issuance is based on universally recognized principles and fundamental human rights. In practical terms, however, their realization is a major challenge. It is particularly noteworthy the issues such as lawfulness of the activities of the issuing authorities, complete, objective and comprehensive study of the issues raised in the permit issuance process, protection of the rights of all the persons, who may become a subject to a direct or indirect form of damage by the decision made or may be faced such danger. Therefore, the main objective of this field (construction sector) is to ensure maximum transparency of the issuance of permit documentation and the protection of lawfulness. As long as these issues are to be discussed in details, a brief overview of the permit issuance process is necessary.

Under the applicable legislation of Georgia, construction permit is a permit of a special hierarchy and is issued in three stages: I stage - establishment of urban construction conditions (approval of the terms of use of a land plot for construction), II stage - agreement of the architectural-construction project, III stage - issuing construction permit.[3] As regards the permit issuing authorities, this function is granted to local self-government bodies (City Hall, Municipality). However, there are exceptional cases, namely, industrial facilities of strategic designation, such as metro, aerodrome, harbors, tunnels, etc. The permits for these facilities are issued by the relevant structural unit of the executive body of the country.

The activation of construction activities in Georgia in recent years is associated with the growth of investments. The construction industry has become attractive both for local business operators and foreign companies. According to the data of the National Statistics Office of Georgia, in 2008-2018, the number of direct foreign investments in the construction sector amounted to 1 billion 445.7 million US dollars[4]. Consequently, the need to meet the increased demands raised the necessity of improvement of the legislation and implementation of modern standards. That is why the root reform was undertaken in this

direction and completely innovative approaches were introduced. First of all, the whole process of issuing construction permits has become electronic.

The introduction of this model began with the Tbilisi City Hall, which created the electronic platform was created in 2011, introduced online services and as a result, all the procedures related to construction permits became flexible and public for any interested person. This was naturally preceded by the adoption of new legislative acts and significant updates of existing acts, as well as reforming of relevant service(s) and retraining of individuals employed there. Following successful implementation of this model, similar electronic web pages were created in other big cities of Georgia - Kutaisi (2016) and Batumi (2017).

With the digitalization of the procedures for issuing the construction permit, a complete basis was created in order to make all the documents submitted to the concerned person public. The mechanism of publicity of information on the planned construction, such as the obligation of placing the information banner on the visible location of the construction plot before the construction permit, has been regulated on a legislative level.[5]

Deployment of the documents necessary for permit issuing authority to make decision on the electronic platform has minimized the volume of inquiry of the design documentation, submitted to the administrative body by a construction customer in a material form (construction project planning, architectural and constructional part); the bureaucracy has been reduced to the minimum; accelerated services have been improved and introduced at the legislative level, thereby decreasing the risks of corruption related to the timing of the issue, the involvement of citizens in the administrative process has been increased, which ultimately promotes the publicity of the process. All of the above achievements have been positively reflected on the construction sector.

However, the challenges and problematic issues are still remained in this direction. In this regard, the main challenge is the lack of full involvement of a concerned person in the process of issuing the construction permit. This is related to the protection of the rights of owners of the neighboring property of planned construction. In particular, there is a danger of a possible restriction of full realization of the property rights of the neighboring property owner. Transparency of the permit issuance process cannot guarantee the minimization of the risks and elimination of a damage that may be incurred to the property owner.

Though the openness of the process is a guarantee that the interested person has information about the design documentation, the presumable function of the planned construction, its dimensions, its location, the use of the land plot and the mentioned should be obviously considered to be the achievement, but more work in this direction is required both in legislative and practical context. The main outcome to be achieved should be not only the formal transparency of the process, but the examination of all the information on the planned construction in appropriate manner. Finally, the issue of a construction permit must be based on the principle of legality and publicity, as well as the protection of universally recognized rights. There is a lot more work in this direction.

Georgia's course, the pursuit of development and implementation of the obligations undertaken under the EU Association Agreement[6], as well as sharing the experience of European countries, along with other important issues will hopefully bring positive changes to the construction sector, which will contribute to the effective protection of rights of the persons involved in the construction activities or related to it on the one hand and the irreversible and sustainable development of the country on the other hand.

[1] See: http://www.doingbusiness.org/en/rankings

[2] See details: K. Kalichava, Europäisierung des georgischen Verwaltungsrechts – Die Transformation des modernen georgischen Verwaltungsrechts, DÖV, 2018, 389 ff.

[3] Decree #57 of 2009 of the GoG on "Rules of Issuance of Construction Permit and Permit Conditions". Article 19, 27.03.2009.

[4] http://www.geostat.ge/index.php?action=page&p_id=2231&lang=eng

[5] Decree #57 of 2009 of the GoG on "Rules of Issuance of Construction Permit and Permit Conditions". Article 39-40, 27.03.2009.

[6] According to the Georgia and EU Association Agreement of June 27, 2014, Georgia, along with other obligations has undertaken the obligation to cooperate with the EU in reforming the legislation and improving the state services

The Public Administration Reform as priority for Albania integration in EU

Enriko Kapiti
Specialist
Department of Public Administration
Albania

The future of countries in the Western Balkans (WB) is the European Union. The EU, is the light in the end of the tunel, as part of the Stabilization and Association Process that has raised very high expextations for new change and prespective in the region. One of the WB countries that is continuing to implement the Stabilisation and Association Agreement, is Albania. Since 9 November 2016, the Commission recommended the launch of negotiations for Albania as proof and support of the path taken so far and mostly in the progress of -the implementation of public administration reform and the justice reform[1].

The focus of this article is the public administration reform during the years in Albania as one of the key priorities for the integration in the EU family.

The development of Albania Public Administration, in years.

The official Albanian administration history started long time ago with the independence in 1912, because before as part of the Ottoman Empire there was no freedom to develop and implement there own, public administration policy. Then after 1912, the Albanian public administration came across many challenges and difficulties to follow the best practice of good governance in public administration field in Europe.

Then comes the communist decade and the hiring procedures changed. Meyer-Sahling said, officials career paths did not merely involve a gradual rising through the ranks of the bureaucratic hierarchy. Instead, a common feature of the nomenclature system was the interweaving of individual career paths in the party, the state administration and the economy. Before reaching the senior ranks of the ministerial bureaucracy, officials commonly had gained experience in the headquarters of the ruling communist party and, subsequently, their careers could progress to posts in government, the economy or organisations outside the core structure of the state. The end of communist rule and the introduction of multiparty democracy inevitably brought this mode of politicisation to an end. The abolition of the power monopoly of the communist party, the privatisation of state assets and the disentanglement of the state, the party and societal organisations such as trade unions implied that a single party in government could no longer control bureaucratic career paths in as encompassing a way as the communist party had done before the change of regime[2].

This is what has also happened in Albania less or more. In November 1998, the new Constitution[3] was adopted by the Parliament and in popular referendum. The creation of a professional and independent public administration was not among the priorities during the regime change in Albania,(like in many other transition countries, it has been forgotten that market economy and pluralistic political system do not function without a well-functioning state and its administration), until the very end of the Democratic Party's first term in office Albania has not adopted a general law on organization and functioning of public administration. Each administrative body functioned separately. This is one of the main reasons for policy incoherence and lack of coordination among different administrative bodies[4]. For that reasons was urge to modern and implement two main pillars of modern administration: a law regulating the civil service[5], and another one regulating general administrative procedure. As we know because of many problems among which the lack of political will and the necessaty of secondary legislation to be implemented, the Civil Service Law of 1996 was never implemented properly. More information are below, in the second part.

The Public Administration Modernization Reform[6] in Albania, as one of the conditions for opening accession negotiations.

The EU and in particular the Commission has continued to monitor thoroughly the developments in the context of the Five Key Priorities[7]:

Key Priority 1: Albania was requested to reform the public administration with a view to enhancing its professionalism and de-politicisation. The relevant legal and strategic frameworks are now in place. Implementation of public administration reform has continued consistently, following the adoption of the civil service legislation, advancing further towards a professional and merit-based civil service. The transparency and quality of merit-based recruitment and selection procedures for public posts were enhanced, particularly for the central level of governance, the capacity of the institutions responsible for management and monitoring of the civil service was strengthened, the operational infrastructure of service delivery was improved through one-stop-shops and further implementation of the territorial administrative reform[8].

New chapter started in 2013 with the new Public Administration Reform to fulfill the obligation on EU integration. That has always been one of the main priorities of political reforms in Albania. A competent and efficient public administration is paramount for improving the quality of governance, the services received by citizens and the quality of life in general. However, not all governments are able to live up to this challenge. Albania started a public administration reform in 2013 by adopting a new law on civil servant[9].

Concretely Albania (as it mentioned in Commission Staff Working Document, Albania 2018 Report) is moderately prepared with the reform of its public administration. Some progress has been made, especially in improving the efficiency and transparency of public services

delivery, training civil servants, establishing more transparent recruitment procedures and strengthening the administration's capacity to undertake merit-based recruitment. Implementation of the public administration reform and public financial management reform strategies are being continued, although for the past few months some steps in the process have been on hold, following the general elections and central government restructuring. Any further reorganisation of the public administration needs to be carried out in a consistent and evidenced-based manner[10].

So lots of work has been done through those years by Albanian Governments and especially by Department of Public Administration (DoPA) and Albania School of Public Administration. They have many challenges and are working in new projects that have in focus the energization of employees and the creation of motivated of employees teams engaged in work to improve the quality of public services and to fulfill the obligations from EU process of integration.

[1] Note_ The process of screening of professional, integrity and wealthy part of judges and prosecutors named (vetting).

[2] http://meyer-sahling.eu/papers/Meyer-Sahling-2008-EJPR-Published-Version.pdf

[3] Albania Constitution 1998, approved by Law no.8417 date 21.10.1998.

[4] https://pdfs.semanticscholar.org _Public Administrative reform, in a fragile institutional framework: The case of Albania_Mihovil Škarica

[5] Note_The first attempt to create a modern civil service happened in 1996, when the first Civil Service Law was passed. Until its adoption, the working status of all public employees had been regulated by the temporary revisions of the pre-transition Labour Act.(https://pdfs.semanticscholar.org/24f5/718f1739f21fe25ab211fb6401d71a7f64ac.pdf)

[6] Note_Public administration reform (PAR) is one of the most important horizontal reform areas in each country because it provides the framework for implementing other policies. It is equally important for European Union (EU) member countries, candidate countries and potential candidates, as it makes it possible to build systems that are a sound basis for implementing the EU acquis. http://www.sigmaweb.org/byexpertise/strategicframeworkofpublicadministrationreform/Principles-of-Public-Administration_Edition-2017_ENG.pdf

[7] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf

Note_The other keys prioritys-Key Priority 2: Albania was requested to take further action to reinforce the independence, efficiency and accountability of judicial institutions. Key Priority 3: Albania was requested to make further determined efforts in the fight against corruption, including towards establishing a solid track record of proactive investigations, prosecutions and convictions. Key Priority 4: Albania was requested to make further determined efforts in the fight against organised crime, including towards establishing a solid track record of proactive investigations, prosecutions and convictions. Key Priority 5: Albania was requested to take effective measures to reinforce the protection of human rights, including of Roma, and anti-discrimination policies, as well as implementing property rights.

[8] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf

[9] http://www.lexferenda.al/en/services/public-administration-reform/ for more see The Civil Servants Law No.152/2013

[10] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf

Irregular migration and readmission in Montenegro

Jelena Nedovikj
Independent Advisor
Institution of Human Rights and Freedoms of Montenegro - Ombudsman
Montenegro

Irregular migration is a problem that arose from the signing of the Schengen Agreement and the creation of an "unlimited border" of the member states of the European Union. In order to create a freedom of movement for EU citizens, irregular migration has occurred due to economic and other reasons, so Member States had to make various regulations and strengthen border crossings in order to solve the problem of irregular migration. Based on the above, Montenegro, as a future EU Member State, must have the same rules in this area as the EU that emphasizes security within the member states, and thus will itself solve the problems of irregular migration. It can be said that Montenegro's "aspiration" towards the EU is a positive step and a great driving force for the creation of a Space of Justice, Freedom and Security, but the most important thing that Montenegro needs as a state is to create the rule of law and preserve its own borders, but not in a way that only regulations are passed, but that they are imputed in an adequate way. The fight against irregular migration is one of Montenegro's important priorities in the path of EU accession, therefore cooperation and exchange of information is necessary both at the national, regional and international level. It should be noted that irregular migration in Montenegro has the character of transit through the territory of the Republic of Montenegro through the Republic of Croatia and Bosnia and Herzegovina towards the EU countries and these are mostly economic migrants whose goal is to provide better life and better conditions for their families and their families which will illegally cross the state borders of countries through which they can reach the countries that are economically prosperous and stable the shortest way. Statistics confirm that the unstable state of political and economic opportunities continues to increase the number of illegal migrants from the Afro-Asian countries. Irregular migrants, most often through the territories of Turkey, Greece, Macedonia, Albania or Kosovo, are coming to Montenegro, where they have been applying for asylum in significant numbers or continuing to the European Union lately.

Regarding the readmission of irregular migrants, or when we talking about the voluntary or forced return of persons who are unjustly resident in the territory of a state in their countries of origin, in a huge number of cases, they are denied asylum seekers but also others.

These include the cases of persons who have expired: they are primarily subject to deportations that are carried out in a different (and country of origin with less binding) procedure. Apart from asylum seekers, the readmission includes stateless persons, but it is only about those persons who are undoubtedly establishes some kind of connection with Montenegro.

"The agreement between the EU and Montenegro on the readmission of persons who are illegally staying", as is precisely referred to as the agreement defining the readmission process, defines in detail the rights and obligations of the signatory states. It is said to sign "with the desire to establish a rapid and an effective identification procedure and the safe and orderly return of persons who do not meet the conditions of entry, stay or residence in the territory of Montenegro or some of the Member States of the European Union, as well as facilitating the transit of these persons in the community. "Rights and obligations apply equally to both contractual "faltering" and underlining the "spirit of cooperation" speaks about the fact that the authorities of Montenegro have been respected and informed from the first to the last moment of readmission, which will be said directly involved. Prior to all other of our services, first of all, the Ministry of interior of Montenegro (MI) and this institution definitely has the best insight into the readmission process from all other institutions.

The readmission procedure is, in short, the following: the police of the country of requesting (the definition under the agreement of the country of residence of the person subject to readmission) starts the procedure of confirming the citizenship of the person whose residence or residence requirement in that country is denied: the Ministry of Interior of Montenegro receives a request for confirmation of identity, and then, on the basis of the signed Agreement (which is binding), sends a positive response to the request for the readmission of the police of the requesting State. Within three working days, the embassy or consular mission of Montenegro in that country shall issue a travel document for the return of the person to be taken over by Montenegro. At the same time, the prayer country gives deadline to returnees for readmission, usually three months, to leave the country themselves. If they opt for voluntary departure, they get money for the trip and one-time financial assistance. Voluntary departure is always the best decision, because returnees can prepare for the trip, preserve their movable property, and most importantly, it is possible to obtain certificates of completion of schooling for children, thus avoiding many later problems.

The unfortunate side of voluntary returns is that the returnees often lose track of every trace: although the readmission process has been in place since 1996 (if we keep up with the war processes of the nineties, not earlier emigration), very indicative data on the number of returnees is mentioned. If this is a reluctant return, there are many problems for returnees and, as demonstrated by the practice so far, a space for serious human rights violations opens.

So far, no similar violations of human rights of irregular migrants have been recorded in Montenegro. However, there is no official report of the Institution of the Protector of Human Rights and Freedoms of Montenegro, which would indicate that (no) there is a violation of human rights in dealing with these persons. Namely, the new Law of foreigners, which was adopted in Montenegro in 2018, prescribes that the Protector of Human Rights and Freedoms monitors the enforcement of forced removal and the taking of measures for the protection of human rights and freedoms of a foreigner who is forcibly removed. Also, in

accordance with the Foreigners Act, the police is obliged to submit to the Protector of Human Rights and Freedoms a notice on the time, place and manner of forced eviction of the alien and the act on the basis of which the forcible removal of a foreigner is carried out; at the request of the Protector, make available all information within the competence of the police, provide direct insight into the official records, documents and data, and submit a copy of the requested documents and documents, regardless of the degree of secrecy; to allow free access to all premises where the forgings are forced to move away. One of the essential clauses of this law is that it allows, or gives right to foreigners to address the Protector of Human Rights and Freedoms. Namely, any foreigner who believes that he is subjected to torture or other cruel, inhuman or degrading treatment or punishment by staff or other detainees at the shelter can address the Protector of Human Rights and Freedoms.

Namely, the Law on Foreigners clearly defines the conditions for expulsion of a foreigner who resides illegally in Montenegro. Apart from the Law, the procedures for returning persons are prescribed by Readmission Agreements and their implementation protocols.

Montenegro has signed Redemption Agreements with the European Union, the Republic of Croatia, Bosnia and Herzegovina, the Republic of Albania, the Kingdom of Norway, the Swiss Confederation, the Republic of Kosovo, the Republic of Macedonia, the Republic of Moldova, the Republic of Serbia, the Republic of Turkey and the Republic of Moldova.

On the basis of the signed Agreements, Montenegro is obliged to accept and safely return not only citizens of Montenegro, but also every third citizen and / or stateless person who does not fulfill the conditions for entering, staying or residing in a certain territory of the state of the requesting State, if the conditions set forth in the Agreement are fulfilled. On the other hand, the Contracting States undertake to act in the same way, in accordance with the provisions of the Agreement and when Montenegro is declared as a State of prayer. In addition to return and acceptance, the Agreement defines the modality of transfers and the mode of transport and the protection of personal data.

The goals of the Redemption Agreement are to create the conditions for better organized, reciprocal and institutionalized acceptance of nationals of the Contracting Parties, third countries and stateless persons who do not have the right to enter, stay or reside in a particular country, as well as to transit them.

At all stages of readmission, the human rights of irregular migrants must be respected and protected. This especially when it comes to vulnerable groups.

Montenegro has adopted the Reintegration Strategy for persons returned under the readmission agreement for the period 2016-2018, as well as the Action Plan for Implementation of the Reintegration Strategy for Persons Returned under the Readmission Agreement for the period 2016-2020. years.

However, apart from the need for harmonization of the Montenegro regulations with EU regulations, there is an emphasized need for the people, that is, there is not enough police force in the Montenegro to answer the problem of (irregular) migration. Montenegro's

migration authorities are expected to function on standards that sometimes represent completely new concepts and require additional skills and resources. Human resource development appears to be fairly low on the list of priorities for most migration bodies, which can lead to a situation where ineffective recruitment procedures, selection, and lack of staff improvements reduce the overall capacity of these authorities.

Namely, it can be concluded that Montenegro brings a large number of legal regulations in these areas, but does not fully apply them. Also, Montenegro, regardless of the fact that it is in the process of adopting and applying all regulations in order to comply with the acquis, and Montenegro must strengthen the role of its authorities in the areas that comprise the Area of Justice, Freedom and Security, to which they belong and migration.

Fight against Terrorism and Human Rights in Bosnia and Herzegovina

Nermina Nalic
Rule of Law Monitor - OSCE
Bosnia and Herzegovina

Today, terrorism is perceived as one of the biggest security threats in the world, especially after several severe terrorist attacks in Europe and the United States. As there is no universally accepted definition of terrorism, in general it is understood that it means use of violent actions or threats which invoke fear, executed in order to achieve political, religious or ideological goals. Often the direct target of violence is not the main target, and attacks are used as means to pass the message. Attacks are a message to the public as a main target, and these messages spread fear or pose demands, depending on the main goal of terrorists – intimidation, violence or propaganda.

Terrorism is a threat for international peace and security, causing not only loss of people's lives, but also destabilizing governments, undermine economic and social progress. The fight against terrorism is very difficult due to the complex nature of terrorism and the fact that ways the terrorist act are constantly changing, they are crossing borders thus forcing governments to cooperate. However, this fight is causing a rapid deterioration of situation regarding human rights, particularly the right to life, prohibition of torture, private and family life and freedom of movement.

It is obvious that the fight against terrorism has a direct impact on human rights, first and foremost as a consequence to the right to life, freedom and physical integrity of victims of attacks, and on the other side is violation of rights of the suspects and the accused in criminal cases. The states are obliged to protect the lives of their citizens and to prosecute perpetrators, but some measures introduced by some countries are questioning the rule of law and human rights protection as a fundamental pillar of a civilized country. Measures supporting torture and inhumane behavior became a standard part of the fight against terrorism, and protection and monitoring of the state of the rights of the accused or suspects are completely neglected. More and more human rights protectors, journalists etc. are raising their voices in an effort to change this.

Bosnia and Herzegovina and fight against terrorism

Legislation in BiH is basing the incrimination of the acts based on the definition of terrorism from the Council Framework Decision of 13 June 2002 on combating terrorism 2002/475/JHA as amended by Council Framework Decision 2008/919/JHA of 28 November 2008.

The criminal offence of terrorism has two essential elements: means of execution and a goal. Means of execution are defined and listed in Article 201 Para 4 of the BiH Criminal Code. Means of execution are itemized in the law, and a necessary element is the intent (a clearly set goal) for the desired consequence to be achieved. The rights of the accused/suspects are guaranteed in accordance with Article 6 of the European Convention on Human Rights (ECHR), and it is article with the highest number of complaints noted in the work of the Strasbourg Court.

The situation in Bosnia and Herzegovina (BiH) is a reflection of global trends and environment. Although the European Convention on Human Rights takes precedence over all other laws according to BiH constitutions, and international standards of protection of the rights of accused and defendants are very well defined and guaranteed in respective laws, the implementation is problematic in some cases.

Derogation of human rights is a known institute, and used quite often in the last decade by many governments, including democratic EU countries and USA, in which some terrorist attacks occurred. But derogation has to be limited, necessary and proportional, legally grounded and regularly reviewed. In no way any of these measures should interfere with the normal functioning of a democratic society. Also, some rights, as the prohibition of torture, freedom of thought, right to life, as non- derogable. The fear arisen following terrorist attacks lead to a situation in which the governments used all means they considered necessary to achieve their goal. The general public did not object limitation of their rights, accepting the context presented as 'us versus them', as the limitation was seen as a necessary tool to save lives and freedom.

In the context of Bosnia and Herzegovina, an infamous case of so called 'Algerian Group', stirred a social debate and concerns, following a blatant violation of human rights.

Algerian Group Case

The Algerian Group is the commonly used name for the case against six persons originating from Algeria from BiH, and five of them had dual citizenship. These persons were imprisoned in Guantanamo Bay US Army camp in Cuba since January 2002. They were accused of conspiracy, for planning to plant explosives in the US Embassy in Sarajevo, but also for their alleged connections with international terrorist organizations, including Al Qaeda. The members of the group are: Bensayah Belkacem, Hadj Boudella, Lakhdar Boumediene, Sabir Mahfouz Lahmar, Mustafa Ait Idr, Mohammed Nechle.

The members of this group were detained in 2001 in BiH, because the US intelligence had some suspicion about their activities. The Supreme Court of the Federation of BiH concluded there is no enough evidence for these persons to be indicted, they were released and immediately illegally turned to the US intelligence officers, who deported them to Guantanamo.

Wolfgang Petritsch, the UN diplomat and the former High Representative in BiH said the US Government was basically blackmailing the UN threatening they will withdraw their troops from BiH if they object deportation of this group outside BiH. "It is my considered opinion that if the US threat would be carried out, the Bosnian peace process would have been seriously jeopardized with likely renewed civil strife as a consequence [...] to my knowledge the US never provided any evidence that could have justified the arrest of the six and their removal from Bosnia," Petritsch said in a September2008 statement to the defense team[1].

Already in October 2002, (now unfortunately abolished institutions) Human Rights Chamber of BiH was deciding on the appeal of the Applicants in this case, in two questions – weather there were legal grounds for revoking their Bosnian citizenship they obtained in 1995 and 1997, which was revoked after they were arrested for suspicion of planning terrorist attacks in 2001, and weather their rights guaranteed by the ECHR in Article 3 – prohibition of torture, Article 5 – the right to liberty and security of person, Article 6 – the right to a fair trial, Article 8 – the right to family life.

The Chamber found the BiH and the Federation of BiH responsible for the violations, since the consequences that the Applicants suffered came out of the actions undertaken by their institutions, including the decision to revoke their residence permits and to extradite them to the US agents. Also, it was established that the Applicants could not exhaust the existing legal remedies because of the situation they were in, or that even that exhausting would change the Applicants' situation in the USA, as they did not receive a binding decision of the Federation Supreme Court on their appeal on citizenship revocation. The Chamber did not find the right from Article 5 – the right to liberty and security was violated at the moment they were placed in custody, since all the elements proving grounds for suspicion were provided and the custody was legally determined.

The Chamber also found that the BiH and Federation where obliged to verify the legality of the custody that would be obviously imposed by the American army forces against the Applicants, because they were informed by the US Embassy in Sarajevo these persons would be put under control, the obligation of the institutions was to prevent this.

The Chamber also concluded the rights from the Article 6 of the ECHR – more specifically the presumption of innocence was violated, since the grounds for revocation of the citizenship was suspicion of committed criminal offence, and the fact that a report on committed offence was submitted. The grounds for deciding can be determined only following a binding court verdict on guilt, not mere suspicion regarding certain facts.

When deciding on the alleged violations from Article 2 and 3 of the ECHR, the Chamber considered the practices and jurisprudence of the European Court on Human Rights related to human rights in terms of deportation, and claims of the Applicants they would risk lives if deported, as well as possible torture and inhumane treatment. The Chamber especially considered weather the rights to life and prohibition of torture would be respected in the

country of destination, in accordance with the European Convention on Extradition (ECE). The Chamber concluded that BiH and Federation of BiH failed to meet the conditions from the ECE, in a way that they did not obtain an indictment confirming the grounds for suspicion of committed criminal offence, and they did not request any guarantees that the death penalty in case the Applicants are found guilty, will not be imposed, having in mind that in 31 states in the USA the death penalty is still imposed. However, the Chamber did not find violations of the Article 3, since it did not consider sufficient evidence of ill treatment journalist reports.

After the US Supreme Court issued was deciding in the case Boumediene v. Bush in 2008, recognizing the right for the prisoners and foreign citizen can file complaints for habeas corpus[2] the District Court ordered for 5 BiH citizens to be liberated, because the review of the case established not sufficient evidence was provide. The Applicants appealed that the Military Commission Act of 2006 was unconstitutional, according to habeas corpus suspension clause[3] since in the first instance proceedings the District Court decided the habeas corpus act shall not be applied to the army military bases abroad. The Supreme Court issued an opinion that this Act is in fact unconstitutional, and that the Applicants had the right to writ of habeas corpus, since there were no adequate replacements for the rights entailed in habeas corpus. The Court concluded that it is the fact that the United States, by virtue of its complete jurisdiction and control, maintained de facto sovereignty over the territory of Guantanamo, to hold that the foreigners detained as enemy combatants on that territory were entitled to the writ of habeas corpus protected in Article I, Section 9 of the U.S. Constitution.

The US released these five persons in 2008, while Lakhdar Boumediene had to wait for 2009 and getting the asylum in France, because the US refused to send him to BiH, and he was afraid to go to Algeria where he could face a death penalty.

So, in this case we see that serious violations were confirmed by different judicial authorities, and the case itself can be used as a paradigm of the current environment and the state of human rights. 5 persons were illegally extradited, detained for 7 years without any evidence in the name of fight against terrorism and promised better world. Guantanamo still functioning, people still blacklisted without a proper complaint mechanism in place, and a better world still not in sight….

[1] Center for Security Studies, Anes Alic, Damir Kaletovic, 'The Algerian Group Standoff', http://www.css.ethz.ch/en/services/digital-library/articles/article.html/93863/pdf, of 15.12.2018

[2][2] Gerald L. Neuman, The Extraterritorial Constitution after Boumediene v. Bush, Harvard Law School, Harvard Public Law Working Paper no 08-39

[3] John C. Harrison, The Original Meaning of the Habeas Corpus Suspension Clause, Virginia Public Law and Legal Theory Research Paper No. 2018-47

Israel's Unlawful Exploitation of Water in the Occupied Palestinian Territory

Olga Bimbashi
Diplomat and Junior legal consultant
Ministry of Foreign Affairs and Expatriates
State of Palestine

Palestine is rich with natural resources, ranging from fertile land and plentiful water to stone quarries and mineral-rich shores of the Dead Sea and the Mediterranean coast. However, Israel's 51 years military occupation and natural resource exploitation continue to hamper social and economic development in the Occupied Palestinian Territory (OPT).

This briefing paper highlights Israel's violation of international law-including international humanitarian law, international human rights law, and international criminal law- in relation to the protection of natural resources mainly: water.

Whereby, Israel's illegal occupation and settlement regime continue to perpetuate the exploitation of Palestinian natural resources and threaten the right of the Palestinian people to self-determination- to freely pursue economic, social, cultural development, and hinders on the enjoyment of human rights of the Palestinian people, particularly the right to health, adequate standards of living, food, water, and property.

Water

Inaccessibility, illegal exploitation or misuse of territorial natural resources can be detrimental to national development and can violate fundamental social and economic rights including the right to self-determination. Thus, the Occupied Palestinian Territories OPT (West Bank and Gaza Strip) suffer from structural scarcity of water, amongst other forms of scarcity, given the inequality in the distribution of the shared resources and the discrimination against the Palestinians in use of water resources is obvious, where the majority of water resources are concentrated in the hands of Israel, while the Palestinian population endures significant water deficits. The construction of the separation Wall in the West Bank, has significantly drew apart people from each other, people from their land, and people from their water sources, jeopardizing their entire livelihoods.

Moreover, Water shortages and poor sanitation services in the OPT affect all sectors of the Palestinian population and especially the poorest and most vulnerable communities, those living in isolated rural areas and in overcrowded refugee camps. Consequently, water shortages and amid deepening poverty have led many Palestinians to resort to drilling unlicensed wells, while others have connected to the water network illegally, and many have stopped paying their water bills; these practices have further compounded the problem.

According to the records of 2014, the magnitude of renewable groundwater resources in the OPT varied from 640-750 Mcm/year (590-690 Mcm/year in the West Bank and 50-60 Mcm/year in Gaza). The Jordan River, which accounts for the bulk of the available surface water in the OPT, is not yet accessible to Palestinians. Furthermore, Israel has been continuously depleting the surface water resources since the mid '50s, especially the headwaters of the Jordan River. They diverted water from Lake Tiberias in the north to the Negev desert in the south, through the so-called National Water Carrier. This diversion has caused severe water problems and massive reduction of the Jordan River's flow.

Israel has managed to violate Palestinians´ water rights systematically. After the 1967 war, followed by the annexation of the Golan Heights and the occupation of the West Bank, all major Arab water resources, including the Jordan River basin as well as those in the West Bank and Gaza Strip fell under Israel's control.[1]

There are different forms and consequences to Israel's violations of the Palestinians´ water rights; such as:

Settlers & Settlements

The construction of new Israeli colonies and the expansion of existing ones is further reducing the quantity of water that should be allocated to Palestinians, whereby each settler uses 4 times more water than a Palestinian.[2] Furthermore, Israeli settlers in the West Bank are confiscating local water sources (especially natural springs) that Palestinians have used for ages, blocking them from using them. This has not only affected the overall well-being of the Palestinian people, it also makes it more difficult to access water resources for household use, irrigation and other economic activities.[3]

A survey carried out by OCHA identified a total of 56 water springs in the vicinity of Israeli settlements throughout the West Bank, the large majority of which are located in Area C on land parcels recorded by the Israeli Civil Administration as privately owned by Palestinians. Thirty of these springs were found to be under full settler control, with no Palestinian access to the area. Israeli settlers, through acts of intimidation, threats and violence, have deterred Palestinians from accessing at least 22 of those springs. Hence, the remaining eight springs are under full settlers' control, and Palestinians have been prevented to access the springs by physical obstacles, including the fencing of the spring area, its de facto annexation to the settlement (four cases), the isolation of the area from the rest of the West Bank by the Wall and its subsequent designation as a closed military zone (four cases).[4]

The Wall

The consequences of the separation Wall on the ground are catastrophic. The western section of the Wall cuts off and confiscates more than 1000 km2 from the West Bank's most fertile land and water-richest area. It seizes more than 28 groundwater wells that produce

4.5 Mcm per year and supply irrigation water for hundreds of dunums in the agricultural areas in Tulkarem and Qalqilia districts.[5]

Restrictions on Water and Sanitation Sector in Area C

All water and sanitation projects in Palestine must be approved by the Joint Water Committee (JWC)[6], and as a result the approval process lengthy and complicated. While water and sanitation projects and infrastructure within Area C requires an official permit from the JWC, development in Area C also requires a permit from the Israeli Civil Administration in Bet El. This is a long, bureaucratic procedure and often results in permission being denied, even if the project is approved by the JWC. Projects executed without prior approval are demolished by the Israeli military. Between 2011 – 2013 Israel rejected 97% of applications for building permits in Area C, including applications for developing related water and sanitation projects.[7]

The Fourth Geneva Convention prevents the destruction of such facilities, which are considered as protected civilian objects under the laws of war. However, the Israeli military authorities and Israeli settlers target the water structures for destruction, in violation to Israel's obligation to respect the right to water and of the Israeli-Palestinian Joint Water Committee' declaration (Joint Declaration for Keeping the Water Infrastructure out of the Cycle of Violence), signed in 2001.[8] Some of these structures were demolished under the pretext that they were constructed without obtaining the relevant Israeli permit; but most were in fact demolished without any reason.

Agricultural Sector

The shrinkage in the quantity of water over the past five decades compared to the growing water needs, has affected the agricultural sector as a whole, leading to a general decline in irrigated land. Moreover, in some places, Palestinian farmers have been forced to purchase water at high prices from the water sources controlled by the Israeli Water Company. This has led to increased production costs for agricultural crops, thus affecting the ability of Palestinian farmers to compete with the heavily subsidized Israeli agriculture, leading to substantial economic losses at farmer and national levels.[9]

Access to piped water

While all Israeli settlements in the West Bank are connected to piped water, an estimated 220 communities in the Occupied Palestinian Territories are not serviced through the water network - that is, approximately 15% of the population. Approximately, 24.3% and 27.6% of the households in the West Bank use water tankers and domestic wells respectively, to complement water supplied by networks.[10] The reason why so many communities are not

connected to the water supply network is that Israel have always been denied their connection. This injustice and inequity of access to water supply has always been a source of tension, especially when Palestinian villagers see how the pipe leading to an Israeli colony passes through their land without supplying their village with water.[11]

During summertime in the West Bank, water supply is sometimes reduced by up to 70% in certain places. Some cities, towns and villages may have water only once a week or even once a month. Moreover, the water losses through leaking pipes and illegal connections are high; in 2013 the overall loss was estimated to vary between 14% in Ramallah and Al Bireh Governorate to 49% in Jerusalem governorate.[12]

In 2015, 65.4% of the households in Gaza depended on water tankers and 24.9% depended on bottled water. During the last Israeli assault against Gaza in the summer of 2014, most of the population did not receive water through the water network for weeks. The network distribution system in Gaza Strip is characterized with a low efficiency, as the water losses were estimated at range of 59% in the year 2014.[13]

Reductions in available water quantities and pollution caused by Israeli colonial settlements to the land and local water sources and the aggression of Israeli settlers on local sources have all contributed further to the deterioration of social and economic conditions of the Palestinian communities.

Wastewater Infrastructure and Treatment

Serious public health risks arise from the spread of diseases due to contamination of food, water, air, and soil. The absence of sufficient wastewater infrastructure and limited number of wastewater treatment plants in the West Bank to deal with the generated wastewater, have converted most Valleys in those areas, into wastewater streams. This has been causing hazardous results in the forms of polluting the surrounding environment, leaching contaminants into groundwater, and increasing the health risks of waterborne diseases. Among the major wastewater streams in the West Bank are: Wadi Al Zomar, (Nablus), Wadi Suriq (Ramallah), Wadi Al Samen (Hebron) and Wadi Al-Nar (Bethlehem).[14]

The cost associated with the Water treatment Plants is charged to the Palestinian Water Authority (PWA) and deducted annually by Israel from Palestinian tax revenues. According to the Water Sector Regulatory Council, Israel deducted approximately over 82 million NIS from the Palestinian tax revenues in 2015 for the treatment of the Wastewater produced in the West Bank. Israel's unilateral decision to build a wastewater treatment plant in the Palestinian Lands of Al-Nabi Musa (to treat Wadi Al-Nar wastewater stream), without the joint water committee approval, is a clear example of Israel violation whereby the construction of this wastewater treatment plant by Israel, can result in making Palestinians pay to Israel fees as wastewater treatment concept, when at the same time treated effluent is expected to serve Israeli agriculture activities in the area.[15] This will have a negative

effect on the development of the Palestinian agriculture sector in the Dead Sea area, and thus limits the availability of new job opportunities for Palestinians.

In Gaza, the existing wastewater treatment plants are overloaded and are highly inefficient and hardly functioning. The treatment inefficiencies had been attributed to lack of proper operation and maintenance; unreliable electric supply, and difficulties in the availability of spare parts as result of the Israeli blockade on the Gaza Strip.[16]

Israel has not only failed to support Palestinian attempts to advance solutions for wastewater treatment, it has delayed them. As a result, most donors are discouraged from investing in the sanitation sector within Palestine due to the bureaucratic constraints of the JWC system.[17]

Palestinians' right to access their full Exclusive Economic Zone (EEZ) was violated by the 1994 Gaza-Jericho agreement signed by Israel and the PLO, which outlines a Maritime Activity Zone extending only 37 km from Gaza's shore, and the 2005 Bertini Commitment, which supports a fishing zone of 22.2 km from shore. Israel, however, has failed to respect even those fishing zones demarcated by these agreements, enforcing fishing boundaries as close as 5.5 km from shore that it regularly changes at will. Moreover, during periods of conflict between Israel and Gaza all fishing is prohibited, as Israel often adjusts the fishing range in a punitive manner, as a form of collective punishment against the entire population of Gaza, which is in contravention to Article 33 of the Fourth Geneva Convention. The imposed limits on fishing zones are enforced through almost daily illegal attacks on Gaza's fishermen by the Israeli navy, including attacks on fishermen who are not in violation of the demarcated boundary, with 113 fishermen arrests and 48 boat confiscations made in 2016 alone. Some fishermen are able to recover their boats after paying a heavy 500 shekel fee (roughly $135), but the majority are denied the chance to do so.

Israel's restrictions are also derived by its desire to protect its own gas fields, one of which is 24 km from the Gaza shore.

Relevant Legal provisions

Environmental degradation also constitutes a crime against humanity in accordance with Article 7 of the Statute. It professes that a widespread or systematic attack against the civilian population, includes pollution of drinking water or destruction of food sources or other natural resources, is a crime against humanity. In addition, persecution or the international deprivation of fundamental rights because of the identity of the group is a crime against humanity, [18] of which Israel, the Occupying Power, continues to commit against the Palestinian people.

Military Order 92 (1967) granted complete authority over all water related issues in the OPT to the Israeli army and the Order Concerning the Investment of Natural Resources (West

Bank) (No. 389) transferred the sovereign rights of the West Bank's natural resources to a 'competent authority' appointed by the military commander.

The Oslo Accords include numerous provisions regarding the use of and access to natural resources, as well as the provision of services connected to these natural resources. Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs, and Annex IV, Protocol on Israeli-Palestinian Cooperation Concerning Regional Development Programs, of the 1993 Oslo Accords addresses cooperation in the fields of water, electricity, energy, and other resources.

Pertaining to the OPT, United Nations General Assembly Resolution 72/240 expresses its concern about the exploitation by Israel, the Occupying Power, of the natural resources of the OPT, including East Jerusalem, and other Arab territories occupied by Israel since 1967. It also clarifies its concern about the extensive destruction of agricultural land and orchards in the OPT, including the uprooting of a vast number of fruit-bearing trees and the destruction of farms and greenhouses. It stresses the grave environmental and economic impact of Israel's exploitation of natural resources on the Palestinian people and gives consideration for the 2014 war on the Gaza Strip, which, "inter alia, has polluted the environment and which negatively affects the functioning of water and sanitation systems and the water supply and other natural resources of the Palestinian people."[19]

The State of Palestine, in its latest referral to the International Criminal Court (ICC), specifically identifies crimes "involving the unlawful appropriation and destruction of private and public properties, including land, houses and buildings, as well as natural resources" of crimes as being core to the Court's investigation of Israel's crimes in the OPT. Therefore, the ICC has jurisdiction over crimes committed in the OPT since June 2014 following the signing of the Rome Statute by the Palestinian Authority in January 2015.[20]

According to the International Court of Justice (ICJ) on the request for the Indication of Provisional Measures, the Occupying Power cannot however, exploit the natural resources, including water, in an occupied territory to increase its own material wealth, or for the benefit of the colonizers residing in the territory. These acts would amount to the crime of pillage – extensive exploitation – which is prohibited under international law.[21]

Access to services is essential to actualize the fundamental human rights and a derogation of the provision of any such services presents a de facto risk of violating basic human rights. The Committee on Economic, Social and Cultural Rights, which monitors the compliance of state parties to the ICESCR, considers that the availability of services and infrastructure are among the factors necessary for the provision of adequate housing which is broadly interpreted as the right to live somewhere in security, peace and dignity. Whereas, any form of discrimination in the enjoyment of these rights as well as other fundamental freedoms encompassed in the ICESCR and the ICCPR is prohibited.

International Humanitarian Law (IHL) - the applicable legal framework in situations of occupation - places specific binding obligations on Israel with respect to the administration

and development of natural resources and the provision of services in the OPT. Specifically, the 1949 Fourth Geneva Convention (GCIV), the Hague Regulations of 1907, and customary international law are relevant. Additionally, the jurisprudence of the ICJ has concluded that the applicability of IHL in a territory under occupation does not cease the application of human rights law instruments. Therefore, international human rights law (IHRL) instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also applicable. Both aforementioned legal instruments are binding on Israel; accordingly, its administration of the OPT must adhere to both IHL and IHRL standards.

Article 47 of the Fourth Geneva Convention reaffirms that: "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power."

Remedies

Whereby the "right to a healthy environment" actually exists at the regional level, courts and tribunals have recognized this right, such as in the cases decided by the African Commission on Human and Peoples Rights based on Article 24 of the African Charter, which states that all peoples have the right to a general satisfactory environment. Moreover, both human rights law and environmental law recognize collective rights implicated by environmental degradation, such as rights held by indigenous peoples. Hence, the Palestinian people seek the following remedies:

1. Enforcement of environmental laws and water law, and strengthening the legal instruments of enforcement, particularly the usage of civil penalties and criminal proceedings.
2. The limited capacity of the region's water resources is of paramount importance to all Palestinians. Therefore, any solution to the water conflict will have to consider equitable allocation and joint management between all the riparian of all trans-boundary water resources.
3. The encroachment by Israeli settlers on Palestinian water resources shall stop.
4. Improving the sewage collection infrastructure is a crucial component of the wastewater sector and a prerequisite for an integrated system that includes treatment and reuse.
5. For the rehabilitation of the water and sanitation infrastructure in Gaza, immediate humanitarian interventions are needed to repair the damaged water supply and wastewater and desalination facilities, provide potable water for domestic use and sanitary installations for displaced population, increasing the coverage of sewerage network, and initiating the reuse of treated wastewater for agriculture, and provide fuel, generators and equipment to operate facilities.

6. The implementation of the PWA proposed water tariff policy (PNA, 2013) which has been endorsed by the Palestinian Council of Ministers.

Therefore, water sources must be protected and pollution sources eliminated, especially those caused by the Israeli colonies.

[1] Rabi, Ayman, Water injustice in Palestine: a limiting factor for social and economic development, March 2014, Page 4, Available at: https://www.foei.org/wp-content/uploads/2014/08/Water-injustice-in-Palestine.pdf

[2] https://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf

[3] Rabi, Ayman, Water injustice in Palestine: a limiting factor for social and economic development, March 2014, Page 5, Available at: https://www.foei.org/wp-content/uploads/2014/08/Water-injustice-in-Palestine.pdf

[4] Publications of the Applied Research Institute – Jerusalem (ARIJ), STATUS OF THE ENVIRONMENT IN THE STATE OF PALESTINE, December 2015, page 77. Available at: https://www.arij.org/files/arijadmin/2016/SOER_2015_final.pdf

[5] Ibid, Page 79.

[6] An Israeli-Palestinian Joint Water Committee (JWC) was formed to implement the Water Supply and Sewerage Issues in the 1995 Interim Agreement (hereinafter the "Water Agreement".

[7] Publications of the Applied Research Institute – Jerusalem (ARIJ), STATUS OF THE ENVIRONMENT IN THE STATE OF PALESTINE, December 2015, page 75. Available at: https://www.arij.org/files/arijadmin/2016/SOER_2015_final.pdf

[8] https://www.internationalwaterlaw.org/documents/regionaldocs/israel-palest-jwc1.html

[9] Publications of the Applied Research Institute – Jerusalem (ARIJ), STATUS OF THE ENVIRONMENT IN THE STATE OF PALESTINE, December 2015, page 78. Available at: https://www.arij.org/files/arijadmin/2016/SOER_2015_final.pdf

[10] Ibid, page 46.

[11] Ibid.

[12] Publications of the Applied Research Institute – Jerusalem (ARIJ), STATUS OF THE ENVIRONMENT IN THE STATE OF PALESTINE, December 2015, page 46. Available at: https://www.arij.org/files/arijadmin/2016/SOER_2015_final.pdf

[13] Ibid, page 47.

[14] Ibid, page 66.

[15] Ibid, page 69.

[16] Ibid, page 71.

[17] Ibid, page 79.

[18] Article 6, Rome Statute.

[19] UNGA 72/240 (2017).

[20] Badil Resource Center, Forced Population Transfer: The Case of Palestine & Denial of Access to Natural Resources and Services, Working Paper No. 20, September 2017. Available at: http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp20-DANRS.pdf

[21] Ibid.

International experience in criminal proceedings under armed aggression in the territory of Ukraine

Svitlana Yakovlieva
Judge-speaker of the Cassation Criminal Court of the Supreme Court in Ukraine

&

Mykhailo Vainagii
Participant of the Intensive Program in European Law and Economics (Riga, 2018), staff member of the Supreme Court in Ukraine

One of the basic functions of judicial proceedings in criminal justice is observance of human rights and freedoms. Herewith, a court is entrusted with responsibility to ensure the rights of the crime victim as well as the rights of the suspect, the accused, the convict.

Starting from 2014, the state Ukraine faced unprecedented challenges in legal system connected with temporary occupation of a part of the territory of Ukraine, particularly, the Autonomous Republic of Crimea and the City of Sevastopol. Therewith, it was started and it is being continued till now the occupation of separate regions in Donetsk and Luhansk oblasts by terroristic organizations. It caused the antiterrorist operation in 2014-2018 and Joint Forces Operation in these territories.

Mentioned circumstances caused adoption of special legislation, in particular the Law of Ukraine "On administration of justice and criminal proceedings in view of antiterrorist operation", the Law of Ukraine "On ensuring the rights and freedoms of citizens and legal regime in temporarily occupied territory of Ukraine" as well as adoption of the Statement by the Verkhovna Rada of Ukraine (Parliament) in 2015 "On Departure of Ukraine from separate obligations determined by the International Covenant on Civil and Political rights and the Convention for the Protection of Human Rights and Fundamental Rights". Due to this Statement separate rights and freedoms are restricted to prevent violation of national and civil security, to support public order, to prevent commitment of crimes and to protect human rights and freedoms of other people.

For example, in 2014 the article 176 of the Criminal Procedure Code of Ukraine was amended with the fifth paragraph. It was established that preventive measures in the form of personal recognizance, personal surety, home arrest and bail can not be used in regard to persons being suspected or accused in commitment of crimes related to terrorism (the articles 258 – 2585 of the Criminal Code of Ukraine) as well as those which trench on national security (the articles 109 – 1141 of the Criminal Code of Ukraine). If preventive measures are applied in such cases, only detention in custody should be applied as a preventive measure. It is necessary to point out that complying of this provision with the Constitution of Ukraine is now under consideration of the Constitutional Court of Ukraine.

Determination of a procedure to examine criminal proceedings which files are lost in temporarily occupied territories, to provide their recovery and adjudication of a case with

ensuring the principle of legality, the right to defence and the right to a fair trial is another important issue of concern which appeared before legal system and is not finally solved at present legislatively. So, pursuant to the third paragraph of the article 1 of the Law of Ukraine "On administration of justice and criminal proceedings in view of antiterrorist operation" it was established that cases which are not adjudicated till the end and which are in proceedings in local, appeal courts located in the area of antiterrorist operation, where it is impossible to administer justice, they are transferred to other courts accordingly the established jurisdiction.

If it is impossible to transfer a case file pursuant to a jurisdiction established by the Law, necessary procedural actions are performed by a court which is entitled due to jurisdiction. It is made in accordance with documents and materials, submitted by participants of judicial process, under the condition that such documents and materials are sufficient to take corresponding judicial decision. Another Law defined a jurisdiction for adjudication of cases which during occupation were in courts of the Autonomous Republic of Crimea and the City of Sevastopol.

Absence of a possibility to transfer such cases to courts located outside of the temporarily occupied territories resulted in the existence of many criminal proceedings where, in fact, it is impossible to finish the trial and to take the final judicial decision.

It creates a necessity of additional legislative provision of the procedural order for recovery of lost criminal proceedings, adjudication of criminal cases and enforcement of judgments in such cases, taking into account a fact that it is not always possible to recover lost materials to the full extent.

There were several draft laws (#2930 and # 3343) in the Parliament of Ukraine for the period from 2015 to 2018 aimed to eliminate these issues of concern. Moreover, some of these draft laws were analyzed in the judgment of the European Court of Human Rights from 25 July 2017 in the Case of Khlebik v. Ukraine as measures aimed to solve issues of concern in criminal proceedings if part of a case file remains unavailable for courts and participants of criminal proceedings (paragraphs 47, 48, 80 of the Judgement).

In view of above mentioned, the urgent legislative regulation is necessary to adjust a procedure for recovery of lost materials in criminal cases and criminal proceedings, adjudication of such cases and enforcement of judgments when materials of criminal proceedings have been lost after the sentence has entered into legal force and has been submitted to be enforced.

Separate attention should be paid to the definition of procedural mechanisms to consider issues which arise when executing the sentence regarding persons who have served sentences in penitentiary institutions in the temporarily occupied territory and are released from such institutions with further move to the territory under the control of the state authorities.

Solution of these issues of concern requires an analysis and consideration of peculiarities how to ensure human rights and freedoms in the field of criminal justice in conditions of armed conflict and occupation of the part of the territory, which involves taking into account the experience of other states that faced similar problems, for example, the experience of Croatia.

Besides, the practice of the European Court of Human Rights, formulated by results of adjudicating the cases against other states under similar circumstances, should be taken into account. It is made in order to ensure the administration of criminal proceedings under given conditions in accordance with the requirements imposed on the state as a member of the Council of Europe and the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950.

Bibliography:

1. Constitution of Ukraine from 28 June 1996 as amended https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
2. Criminal Code of Ukraine from 5 April 2001 # 2341-III https://zakon.rada.gov.ua/laws/show/2341-14
3. Criminal Procedure Code of Ukraine from 13 April 2012 # 4651-VI https://zakon.rada.gov.ua/laws/show/4651-17
4. The Law of Ukraine "On ensuring the rights and freedoms of citizens and legal regime in temporarily occupied territory of Ukraine" from 15 April 2014 # 1207-VII https://zakon.rada.gov.ua/laws/show/1207-18
5. The Law of Ukraine "On administration of justice and criminal proceedings in view of antiterrorist operation" from 12 August 2014 # 1632-VII https://zakon.rada.gov.ua/laws/show/1632-18
6. The Statement of the Verkhovna Rada of Ukraine (Parliament) "On Departure of Ukraine from separate obligations determined by the International Covenant on Civil and Political rights and the Convention for the Protection of Human Rights and Fundamental Rights" from 21 May 2015 # 462-VIII https://zakon.rada.gov.ua/laws/show/462-19
7. Judgement of the European Court of Human Rights from 25 July 2017. Case of Khlebik v. Ukraine (Application no. 2945/16) https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22\%22CASE%20OF%20KHLEBIK%20v.%20UKRAINE\%22%22],%22documentcollectionid2%22:[%22CHAMBER%22],%22itemid%22:[%22001-175656%22]}