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WHEN DEPORTATION IS A DEATH SENTENCE

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Summary. *The research concerns the widespread distribution of deportation cases across the globe and the continued use of death penalties in numerous states. By exploring the cultural, ethical, and legal sides of this complicated issue, this thorough analysis seeks to highlight their numerous aspects and tasks` set. The article provides an advanced knowledge of the broad consequences, difficulties, and moral issues involved in these matters through extensive research and a wide range of views. Major concerns regarding fairness are raised by the widespread use of collective expulsion in deportation proceedings. In order to advocate for a fair and just decision that takes into account the individual circumstances of each person involved in the deportation process, it is crucial to emphasize the importance of performing individual assessments for each case.*

Key words: *deportation, death sentence, genocide, death penalty, non-refoulement principle.*

Introduction

In a reality of increased global migration, deportation has emerged as a major source of concern. Regardless of international efforts to address human rights violations, in certain circumstances, when asylum seekers are deported, they suffer torture or even death sentence. Amnesty International publishes a report each year detailing the application of the death sentence worldwide during the preceding year. Amnesty International recorded 883 executions in 20 countries in 2022, marking a 53% increase from 579 recorded in 2021 (Amnesty international, 2022). This figure represents the highest number of executions that Amnesty International has recorded in the past five years.

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The number of immigrants deported from European Union member states increased by 29% in the second quarter of 2023, mostly from France and Germany, according to statistics agency Eurostat. 26,600 of the 105,865 non-EU nationals who were given orders to leave one EU nation were deported to another nation; this is a 29% increase from the same period last year.

China, Iran, Belarus, Afghanistan, Saudi Arabia, Bangladesh, Egypt, Sudan, USA, Yemen, Belize, Iraq, and Syria are among the nations that have the death sentence.

The aim of the research is to carry out a thorough scientific analysis of the difficult legal, moral, and ethical issues, surrounding deportation cases, particularly those involving a possibility of torture or death penalties. Through analysis and examination of relevant case law and international legal frameworks, the article seeks to demonstrate the challenges and consequences associated with deportation decisions.

In order to achieve this aim, the authors have established the following tasks:

1. Analyze the legal framework for the issues as a deportation when it comes to a death sentence or torture based on case-law.
2. Discover the issue of the collective expulsion and non-refoulement principle concerning the refugee status.

The following research methods are applied in the article: The theological method for the understanding of the EU and international law; the method of systematic analysis was applied to sort out the case law; the interdisciplinary method was used to analyze practical situations and to highlight the ethical, cultural, legal and moral challenges in the deportation cases. Also in the article the comparative research method was used that aims to make comparisons across different counties and cultures.

The level of the research: Scientific investigations related to the question of the deportation when it comes to the death sentence were carried out by such scientists as A. Kunzli, A. Susanto, M. Akbar Nursasmita, B. K. Wilson, A. Burnstan, C. Calderon, T. J. Csodas, P. Pillai and others. Unsolved problems before concerning the deportation when it comes to the death sentence have been investigated by a wealth of scientists, but this nutrition is deprived of the actual and subject of scientific research of current scientists. The contribution to the problem of the research is necessity of the binding rules indicated in the European Convention on Human Rights and International Covenant on Civil and Political Rights in order to deal with the difficulties that deportation laws present, overcoming obstacles of the current issues regarding the state guarantee to not apply the death sentence and also the consequences of the use of collective expulsion and deportation of people who seek for a temporary protection.

The main problems of the research:

1. Given the importance of topics like torture and the death sentence, a stronger strategy would require the creation of an enforceable law that adequately

regulates this relevant area. For example, International Covenant on Civil and Political Rights (ICCPR) provides an optionalprovision about the deportation when it comes to the death sentence. Looking more closely at the cases from the European Court demonstrates a clear preference for particular rights. It is crucial to recognize that these decisions are in the scope of soft law, which gives member states plenty of freedom in how they carry them out.

2. The problematic question also arises even if the requesting state provides guarantees not to apply the death penalty because it does not work in general, but only for a specific crime. Since the list of charges is determined by the requesting country, it is possible to manipulate the application of the death penalty against a person on other charges. After extradition, a person may be notified of suspicion of committing another crime for which guarantees were not granted.
3. There is one more legal issue that needs to be addressed directly relates to the lack of appreciation of the legal principle of non-refoulement of refugees or asylum seekers.
4. The problem of the widespread use of collective expulsion in deportation proceedings. The collective expulsion is prohibited by the international law but we still have the numerous of the cases where it is used. It is crucially important to take into account the individual circumstances of each person involved in the deportation process.

Novelty of the research:

The problem of necessity of the legally binding instrument was developed to address the complexity that surrounds deportation circumstances. The question of an absolute guarantee from the government to not apply the death penalty has been arised. The issue of separability of the government and judicial decisions in the guarantee question has been developed.

1. Legal background based on deportation cases:

The European Convention on Human Rights was established in 1953 as a legally binding international treaty. According to the article 2 of the Convention Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law (European Convention on Human Rights, art. 2). As we see from this article, the death penalty was not erased, which means that it is up to the national legislation. But as we go further we can see that the European Convention has an Optional Protocol № 6 which excludes and forbids a death penalty in the time of peace. This protocol has arisen only in 1985 and was ratified by all Council of Europe member states with an exception of Russia. It has to be noted that in 2003 The Protocol № 13 was entered into force which forbids a death penalty under

all circumstances. This protocol has been ratified by all Council of Europe member states with an exception of Armenia, Azerbaijan and Russia.

Regarding the International Covenant on civil and political rights, this Covenant has some similarity with the Convention. In article 6 of the Covenant the death penalty is also not ruled out by the provision on the right to life. It is written that every human being has the inherent right to life, this right shall be protected by law and no one shall be arbitrarily deprived of his life (International Covenant on Civil and political rights, art. 6). But still in some countries which have not abolished the death penalty, sentences of death may be imposed but only for the most serious crimes and in accordance with the law. The death penalty is also abolished under Second Optional Protocol which does not have a mandatory provision which makes the understanding of the right to life much more complicated as it is not absolute right. It shall be noted that the difference between ECHR and ICCPR is the provision on the right to life under art. 6 of ICCPR includes more detailed standards when the death penalty is applicable, for example only for the most serious crimes, more elaborate procedural requirements, certain personal characteristics of people to whom the death penalty could not be applied such as young age or pregnancy. According to Article 13 of International Covenant on Civil and Political rights, An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority. It shall be taken into account that states` obligations can be different according to their legal frameworks. National laws usually list among ground for non-extradition risk of a death sentence abroad.

2. Case law when deportation comes to death sentence:

2.1. Cross-Border extradition challenges:

It is obvious that most often the problem of not applying the death penalty is connected only with the crime for which extradition is requested. Thus, the requesting state provides guarantees not to apply the death penalty not in general, but only for a specific crime. Since the list of charges is determined by the requesting country, it is possible to manipulate the application of the death penalty against a person on other charges. After extradition, a person may be notified of suspicion of committing another crime for which guarantees were not granted.

Conflicts in the interpretation of the grounds for extradition do not provide a clear legal conclusion on the legitimacy of such a decision based on the government's

guarantees that the death penalty will not be used, since the state government has no influence on the judiciary.

In this regard, it is advisable to refer to the position of the European Court of Human Rights. The judgment in the case of Soering v. United Kingdom of 7 July 1989 indicated the elements that should be relied upon in order to justify an extradition decision. The circumstances of the case were as follows: the applicant, Mr. Jens Soering, a German citizen, moved to the United States with his parents at the age of 11. At the age of 18, he committed the murder of his girlfriend's parents in their home in Bedford County (Virginia). On July 31, 1986, the US government sent a request for Soering's extradition under the terms of the Extradition Treaty between the United States and Great Britain. Difficulties with extradition were due to the fact that in the USA the accused, as the main perpetrator of the crime, was threatened with the death penalty, which had already been abolished in Great Britain. March 11, 1987 the government of the Federal Republic of Germany also requested Soering's extradition so that he could stand trial for the murder as a German citizen (where the death penalty is also abolished). The USA substantiated the feasibility of extraditing Sering to the USA.

The Virginia State Attorney, whose duties included the prosecution of Soering, said that if Soering is found guilty of aggravated murder, the judge will be presented with a motion on behalf of the United Kingdom not to impose the death penalty penalties or non-execution of such sentence. At the same time, the prosecutor confirmed his intentions to seek the death sentence in the Soering case. Despite the fact that Soering provided the court with the conclusions of psychiatrists that he suffered from mental disorders at the time of the crime, which significantly affected his ability to control his own actions, the court concluded that there were sufficient grounds for extradition. The appeal was denied as well and the Minister of Internal Affairs signed an order to extradite Soering to the United States. However, based on Soering's appeal to the European Court of Human Rights, the extradition was delayed.

In the complaint, Soering claimed a violation of Art. 3 of the Convention, as the British authorities had not refused his extradition to the US, where he could have been sentenced to death, and, pending possible extradition, he would have suffered from death row syndrome, which is inhumane treatment. In his opinion, paragraph 3 of the article 6 of the Convention was also violated because in the case of extradition, he would not receive the necessary legal assistance in the state of Virginia.

In its decision, the European Court noted that the Convention does not protect the right not to be extradited as such. At the same time, to the extent that the decision on extradition entails negative consequences for the exercise of the right granted by the Convention, it may, if these consequences are not too remote in nature, cause the obligation of the state party to the Convention to provide an appropriate guarantee.

Article 1 of the Convention defines the territorial limits of its effect. In particular, the obligations of the participants of the Convention are limited to ensuring the

rights and freedoms of persons under their jurisdiction. The convention does not regulate the activities of states that are not its participants. It does not intend that member states seek to impose the norms established in the Convention on other states. The Court said that article 1 cannot be interpreted as containing a general principle according to which a State Party may not extradite a person unless it is satisfied that the conditions awaiting the person in question in the requesting country are in full compliance with all the guarantees provided for in the Convention. Indeed, as the British government correctly emphasizes, when determining the limits of application of the Convention and Art. 3 cannot ignore the good purpose of extradition, which is to prevent a criminal in hiding from escaping justice. According to the Court, the state party to the Convention is responsible for Art. 3 in the case of extradition of a criminal who is hiding from justice to another state where he will be a victim or with a greater degree of probability may become a victim of torture or inhuman treatment and punishment.

The search for a fair balance between the requirement to ensure the general interests of society and protect basic human rights is inherent in the Convention. As the process of moving people around the world becomes easier, crime becomes increasingly international, it is in the interests of all states that it is imperative that suspected criminals who are absconding abroad be brought to justice. Conversely, the creation of safe havens for such persons is not only dangerous for the states that hide them, but also undermines the foundations of the institution of extradition. These considerations should be included in the range of factors that should be taken into account when interpreting and applying the concept of inhuman and degrading treatment and punishment. The decision of the state to extradite may be a violation of Art. 3, and, as a result, incur the responsibility of the state if the extradited person faces a real threat of torture or inhuman treatment and punishment in the country requesting his extradition. In order to impose such responsibility, it is necessary to assess the conditions in this country for compliance with the requirements of Art. 3 of the Convention. At the same time, the question of the responsibility of the country to which the extradition is carried out does not arise either on the basis of international law or on the basis of the Convention. Under the Convention, only the extraditing state can be held liable if the person has been ill-treated by its action.

The ECtHR came to the conclusion that if the minister's decision to extradite the applicant to the US is implemented, there will be a violation of Art. 3. Extradition of the applicant to the United States could only be lawful if the United States gave absolute guarantees that the applicant would not be executed if convicted of the crime charged. It should be recognized that the US Federal Government cannot assume responsibility for what decision may or may not be made, and what steps may be taken by the courts and other authorities of the State of Virginia (Soering v United Kingdom, 1989).

In this case, the attorney confirmed his intention to seek the death penalty, and therefore there is no doubt that extradition of the applicant to the United States would violate his right to life.

2.2. Responsibilities of issuing country:

Some cases address issues related to the government's discretion in granting rights of individuals, seeking asylum. In this respect, the case "Chitat Ng v. Canada", considered by the Human Rights Committee, is indicative. Chitat, who was a British citizen, was convicted in 1985 in Calgary, Alberta. Chitat was charged with attempted shoplifting and the murder of a security guard. In February 1987, the United States requested Canada's extradition to prosecute him. Chitata was accused of committing 19 crimes (kidnapping, murder), and if found guilty and convicted, he could be sentenced to death. The defendant appealed to the Committee with a complaint that the decision to extradite him to the United States violates Art. 6 and 7 of the Covenant. The Committee established that in accordance with Art. 2 of the Covenant, each state party undertakes to respect and ensure to everyone within its territory and under its jurisdiction the rights recognized in the Covenant.

In the case of extradition, the issuing state is not responsible for violations of the individual's rights that may occur in the receiving state. The participating state, which carried out the extradition, is not obliged to ensure the rights of persons within the jurisdiction of other states. However, if a decision is taken against a person under the jurisdiction of a State Party, and the inevitable and foreseeable consequence of this is a violation of rights guaranteed by the Covenant within the jurisdiction of another State, the State Party itself may violate the Covenant, for example, by extraditing the person to another State where possible be tortured. In the process of considering the case, the Committee took into account each execution of the death sentence, according to the content of Art. 7 of the Covenant, must be considered as cruel and inhuman treatment. Part 2 of Art. 6 of the Covenant allows the death penalty for the most serious crimes. However, the Committee reaffirmed its statement made in the General Comment to Art. 7, that in the event of a death sentence, its execution must be carried out in such a way as to ensure the least degree of physical and mental suffering. That is, although the Committee did not find a violation of Art. 6 of the Covenant, however, came to the conclusion that if the applicant were sentenced to death, there would be a violation of Art. 7 of the Covenant.

Accordingly, Canada, which provide that if the applicant is sentenced to death, he will be executed in a manner that violates the requirements of art. 7, failed to fulfill its obligations under the Covenant, since it did not demand guarantees that, in case of extradition, the person would not be sentenced to the punishment in question (Chitat Ng v. Canada, 1993).

2.3. State measures to reduce the risk of death penalty:

Human rights have to be respected in case of war conflicts as well. It is not allowed to extradite a person where there is a risk of unfair prosecution due to the armed conflicts. For example, "Al-Saadoon and Mufdhi v. the United Kingdom" concerns a complaint by two Iraqi nationals that the British authorities in Iraq had transferred them to Iraqi custody in breach of an interim measure indicated by the European Court under Rule 39 of the Rules of Court, so putting them at genuine risk of an unfair trial taken after by execution by hanging. The applicants were arrested by British powers in 2003 following the attack of Iraq by a Multi-National Force. In 2006 the cases were at that point transferred to Basra Criminal Court, which decided that the charges against the applicants constituted war crimes triable by the Iraqi High Tribunal, which had control to force the death penalty.

The European Court found that, given the total and exclusive de facto, and along these lines moreover de jure, control exercised by the United Kingdom authorities over the detainment offices in Basra, the applicants had been within the United Kingdom's jurisdiction until their physical transfer to the custody of the Iraqi authorities on 31 December 2008.

The death penalty has evolved toward completely de facto and de jure prohibition inside all of the Council of Europe's member states, despite the fact that it was not viewed as infringe of international principles at the time the Convention was drafted. As a result, the United Kingdom had ratified both of the Convention's Protocols, which abolished the death sentence under all circumstances (Protocol No. 13) and in times of war (Protocol No. 6). Protocol No. 13 had been signed by all but two member states, and all but three of those states had ratified it.

The Court was unaware that a secure of Iraqi sovereignty was necessary in order to protect the applicants' rights under the Convention. It didn't seem that any serious attempts had been made to participate in negotiations with the Iraqi government in order to reduce the possibility of the death penalty. For instance, despite the fact that the evidence indicated that the Iraqi prosecutors had first been "cold feet" about taking the cases on their own due to the "high profile" nature of the case, it does not appear that the opportunity was taken to request the approval of the Iraqi government for an alternate strategy that would have involved the applicants being tried in a British court, either in Iraq or in the United Kingdom. No official request for a legally-binding guarantee that the applicants would not face the death penalty had been made to the Iraqi government prior to the decision to refer the applicants' cases to the Iraqi courts. It was true that no such guarantee had ever been received.

The referral of the applicants' cases to the Iraqi courts and the reality of their physical transfer to the custody of the Iraqi authorities had not appropriately considered the United Kingdom's obligations under Articles 2 and 3 of the Convention and Ar-

ticle 1 of Protocol No. 13 in the absence of such an assurance. Because of their fear of being executed by the Iraqi authorities, the applicants had been subjected to inhumane treatment from at least May 2006, even though the outcome of their cases before the Iraqi High Tribunal remained undetermined.

Finally, there was a violation of Article 6. The Court upheld the national courts' conclusion that there was insufficient evidence to determine whether the applicants stood the risk of an egregiously unfair prosecution before the Iraqi High Tribunal at the time of their transfer to the Iraqi authorities. Furthermore, there was no evidence in front of the court to challenge that determination now that the trial was concluded (Al-Saadoon and Mufdhi v. the United Kingdom, 2010).

2.4. The relevance of proofs in the extradition process:

According to some cases,even when a state excluded a death penalty from the law, there is a possibilityof inhuman or ill-treatment which are also absolutely prohibited. For example, inthe case of The European Court of Human Rights regarding the Kaboulov v. Ukraine, the Court held that Ukraine would violate the article 3 of an absolute prohibition of torture of the European Convention on Human Rights if it extradited Amir DamirovichKaboulov to Kazakhstan. The Court also said that the applicant had been unlawfully detained by the Ukrainian authorities since 2004 because he could not appeal his further detention. The Court also said that there was no violation of Article 2 of the Convention which means a risk of a death penalty due to the extradition because Kazakhstan had applied a moratorium of the death penalty.

Regarding the death penalty the Court came to the conclusion that Kazakhstan's moratorium on all death penalties excludes the risk of death in case of the extradition. However, if we are talking about inhuman or ill-treatment, there were found some official reports as the evidences such as made by the U.S. Department of State, Amnesty International, and the International Helsinki Federation for Human Rights which had noted permanent and broadened ill-treatment, including torture and other cruel behavior, inhuman, or degrading treatment and punishment, in Kazakhstan.

The Court decided that such proofs can be applicable to say that there is a violation of article 3 of the Convention in case if the applicant is going to be extradited to Kazakhstan (Kaboulov v. Ukraine, 2009).

3. Extradition cases of minority groups.

3.1.State power and cultural identity:

The case, that highlights human rights violations and the treatment of prisoners, is "Ocalan v Turkey". On 15 February 1999 Abdullah Ocalan was deprived of his

liberty by the Turkish government because he was accused in the leadership of the terrorist group of the Kurdistan Workers` Party. He was sentenced to a death penalty and has been suffering because of the fear of being unlawfully killed as he concluded that there was no fair trial and his human rights have been violated by the Turkish authorities. ECtHR actually decided that there was a violation of art. 4, 5 (3), 5(4), 6(1), 6(3)(b), and 6(3)(c) as the applicant was not able to appeal the lawfulness of his detention, the terms of the fair trial were not followed in his case and he was a subject of inhuman treatment because of the death sentence after unfair trial (Ocalan v Turkey, 2005).

In 1924 Turkey banned the freedom of expression towards Kurdish cultural identity. Ocalan was the one who tried to protect the freedom of Kurdish society and he decided to implement an independence of Kurdish state and as a purpose of that he used the way of terrorism to reach that point. The answer was obvious as it has failed to respect basic human rights of the Kurdish minority. As a result of the Turkish ban the applicant has been arrested in Kenya by the Turkish authorities. Ocalan of course complained about those actions because it was illegal to arrest him in Kenya as Turkey has no jurisdiction there. The deportation was also unlawful as Ocalan had no way to appeal that. In addition to the mentioned above, he did not consider himself as a terrorist because he saw himself as a leader of the organization the purpose of which was the protection of the rights for existence and recognition of the Kurdish minority (Kunzli, 2004, p. 142-143).

The main question in that case is if the Convention is applicable because the arrest of the applicant was outside of Turkey and it is supposed to have no jurisdiction. To research that question we can refer to the Loizidou case. In that case the Court made some exceptions and held that Turkey has liability for the violation of the Convention in Northern Cyprus.

The Court decided that the Convention is applicable as well. The Court described its argument as such that Turkey did not interfere in the territorial sovereignty of Kenya since both countries had some kind of agreement between them. We can notice the cooperation in the fact that Kenyan authorities brought Ocalan to the plane to Turkey where the Turkish officials were waiting for him and picked him up from the plane. And also even in the argumentation of the defendant part of the Turkish government they said that the procedure of the extradition was lawful on their point of view since the states have some cooperation between them to restrict the terrorism. Thus, the case is significant that the Court used the extraterritorial application of the Convention and as a result applied a violation of those articles of the Convention towards the applicant (Loizidou v Turkey, 1995).

Sometimes a person can not be deported even if there is no risk of a death sentence but still a person has the possibility to face a death due to military aggression or the war in the state of the residence. We are talking about the refugees or the asy-

lum seekers. In International Humanitarian Law there is a non-refoulement principle which protects such refugees and asylum seekers. This principle is described in art. 33 of the 1951 Refugee Convention. According to that article no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality.

Ship of a particular social group or political opinion unless such refugee is a danger to the security of the country what is proved by reasonable grounds and if the person is already convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country (Refugee Convention, art. 33).

The same provision we can find in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In accordance with article 3 of the Convention state party has no right to return a person who can be a subject of torture in the country of his origin and if its proved by reasoned grounds (Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3).

This principle is also prescribed in article 16 of the International Convention for the protection of all persons from enforced disappearance. This article protects persons who could not be returned to the place of their domicile in case they can be the subjects of the enforced disappearance. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law (International Convention for the protection of all persons from enforced disappearance, art. 16).

3.2. Legal challenges of refugee families:

The rights of asylum seekers are important even in conflicts. In the case "Sufi and Elmi v. the United Kingdom", the two candidates were citizens of Somalia. Upon arriving in the UK in 2003, Mr. Sufi—the initial applicant—filed for asylum on the grounds that he belonged to a minority clan that was being persecuted by security forces, who had killed his father and sister and critically injured him. Due to the lack of authenticity in the information he provided, his application was denied and his appeal was dismissed. He was identified as having post-traumatic stress disorder in 2008. The second candidate, Mr. Elmi, belongs to the Isaaq clan, which is the majority. After arriving in the UK in 1988, he was given permission to stay as a refugee. Both candidates received deportation orders after being found guilty of several major crimes. They made an unsuccessful appeal. The applicants claimed in their submissions to the European Court that if they were sent back to Somalia, they may suffer ill-treatment (Sufi and Elmi v. the United Kingdom, 2011).

In an expulsion case, the only question to be answered was whether, under all the circumstances, there had been significant evidence demonstrated to support the belief that the applicant would, after return, be subject to treatment, that would infringe Article 3. For the purpose of determining the intensity of an a dispute, the relevant criteria was important: whether the parties were directly targeting civilians or using warfare tactics and methods that increased the risk of civilian deaths; whether these tactics and methods were widely used among the parties; whether the fighting was localized or widespread; and, lastly, the number of civilians who were killed, injured, and displaced as a result of the conflict.

The planned point of return, Mogadishu, faced massive shelling, military attacks regular and not expected violence. There were a significant amount of homeless people and deaths among civilians.

Regarding the applicants' individual situations, the first applicant would face real danger of torture if he decided to stay in Mogadishu. He came to live in the UK in 2003, at the age of sixteen, and his only close family connections were in a town under al-Shabaab's control, so there was a genuine risk of maltreatment if he tried to move there. It was therefore potential that he would end up in an IDP or refugee camp where conditions were bad enough to meet the requirements of Article 3, and the first applicant would be especially vulnerable because of his mental health issues.

If the second applicant stayed in Mogadishu, he would be in actual danger of being tortured. While it was acknowledged that he belonged to the dominant Isaaq clan, the Court did not view this as proof of ties strong enough to protect him. He had come in the United Kingdom in 1988 at the age of nineteen, and had no prior experience living under the oppressive rule of al-Shabaab. Furthermore, there was no proof that he had any close familial ties in southern or central Somalia. For this reason, whenever he seeks asylum in an area under al-Shabaab's control, he would be seriously in danger. Likewise, in the event that he sought safety in an IDP or refugee camp. Finally, the government's claim that he would be allowed to enter Somaliland seemed to be at odds with the reality that he had been given removal instructions to Mogadishu rather than Hargeisa. To sum up, deportation would be against the law.

3.3. Refugee status and religious beliefs:

Regarding asylum claims based on a recognized general risk, the States' obligations under Articles 2 and 3 in expulsion cases required the authorities to conduct an independent assessment of that risk when information about it was easily accessible from a variety of sources. On the other hand, it must be the asylum seeker's responsibility to rely upon and verify any personal risk in order for their claim to be granted. In the case "F.G. v. Sweden [GC]", the applicant, an Iranian native, requested refuge in Sweden claiming his association with known opponents of the Iranian government

and his arrest and detention by the authorities on three distinct occasions between 2007 and 2009, primarily related to his online publishing activities. He had become a Christian after coming to Sweden, which he said put him in danger of being executed for immorality if he returned to Iran. The Swedish government denied his request for refuge and issued an order to have him removed.

By a vote of four to three, a Chamber of the Court ruled on January 16, 2014, that the applicant would not be in violation of Articles 2 or 3 of the Convention if the expulsion order was implemented. It concluded that there was no evidence to support the applicant's political involvement or activities having been more than incidental. He had made it clear to the domestic authorities that he did not want to use his conversion to Christianity as justification for asylum because he considered this to be a personal matter and there was no evidence that the Iranian authorities were aware of his conversion. In summary, the applicant was unable to provide evidence of a substantial and actual risk of receiving prohibited treatment if he were sent back to Iran (F.G. v. Sweden [GC], 2016).

A popular example of the deportation of asylum seekers and refugees happened in Malaysia towards Myanmar society. The non-refoulement principle is binding, however Malaysian authorities without a ruling to check the current situation in Myanmar have violated such non-refoulement principle. The departed people who included illegal immigrants and asylum seekers, whose actions were incompatible with the article 12 of International Covenant on Civil and Political Rights which provides a freedom of movement within the territory if the person stays there lawfully, were expelled without careful consideration of each individual (International Covenant on Civil and Political Rights, art. 12).

The point is that protection towards foreigners shall be provided even if they are illegal immigrants. It is unlawful to depart people without checking their situation individually (Susanto et al., 2023, p. 195). Moreover, collective expulsion of aliens is prohibited under article 4 of Protocol № 4 of the European Convention on Human Rights.

3.4. The significance of individual case examination:

The collective expulsion is prohibited, especially when people are staying in the country due to humanitarian reasons. For instance, in the case "Conca v Belgium", the European Court of Human Rights decided that Belgium failed to examine the specific situation of each individual prior the expulsion. The applicants, who were Slovakian nationals of Romany origin, said that they had fled from Slovakia where they had been subjected to racist assaults with the police refusing to intervene. On 3 March 1999 their applications for asylum were declared inadmissible. The decisions refusing them permission to remain were accompanied by other decisions refusing

them permission to enter the territory and an order to leave the territory within five days. On 5 March 1999 the applicants lodged an appeal against those decisions with the Commissioner General for Refugees and Stateless Persons under the urgent-applications procedure. On 18 June 1999 the Commissioner-General's Office upheld the decision refusing the applicants permission to remain and stated that time had begun to run again for the purposes of the five-day time-limit. It was unlawful, first of all, to force everyone of the community to leave the territory without checking the individual situation of everyone as there is obviously proven that applicants were seeking for the protection and they felt a fear to come back to Slovakia due to possible inhuman treatment based on racist ground, and in second, they had no time to appeal their deportation because of the short terms during which they had to leave the country. The deportation can be applicable only after all remedies which the applicant thinks to be useful to use against the decision of the authorities. Belgium had to give each of them a right for argumentation why they wanted to stay and to not go back to Slovakia (Conca v Belgium, 2002).

Thus, the Court decided that there is also violation of article 5 (4) which means that everyone shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful (European Convention on Human Rights, art. 5 (4)).

In addition to that, the Court considered that there is a violation of article 13 of The Convention which means everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity (European Convention on Human Rights, art. 13).

3.5. Non-refoulement principle:

Nor can we pass by the tragic genocide and ethnic cleansing of Muslim Indo-Aryan ethic group in Myanmar. Rohingyas were faced with mass persecution by the Buddhist majority. And now we see the decision of the Government of India to deport approximately 40,000 Rohingya estimated to be living across India, back to Myanmar. The Supreme Court of India on 8 April 2021, refused to grant relief to a group of Rohingya, detained in preparation for deportation to Myanmar (Mohammad Salimullah v Union of India, 2021).

The first legal issue that needs to be addressed directly relates to the lack of appreciation of the legal principle of non-refoulement by the court. The court glibly notes that India has not signed the 1951 Refugee Convention and protocol, inferring that this is sufficient for the non-applicability of the principle of non-refoulement (Pillai, 2021).

It shall be noted that first of all, the non-refoulement principle is applicable in this situation because it's also written in other international treaties except of The Refugee

Convention, and second, such principle became customary international law and it is still applicable despite of the ratification of the certain treaty or not.

In relation to the first point, India has signed and ratified the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. These conventions provide for non-refoulement by virtue of their general provisions, reiterated by the treaty bodies that interpret these conventions, and by case law.

In addition to that,the Committee on the Rights of the Child in its General Comment No. 6 on the "Treatment of unaccompanied and separated children outside their country of origin" provides the obligation under article 39 of the Convention on the Rights of the Child sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts (General Comment No. 6, 2005).

India has also signed, but not ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. These treaties have a clear provision of the principle of non-refoulement as it was mentioned earlier. But still even if these documents were not ratified, the signature also means to not withdraw from the content of the treaties. Also India has signed and ratified the Genocide Convention. This means the Genocide Convention is binding on India, which include the obligations to prevent and punish genocide (Convention on the Prevention and Punishment of the crime of Genocide, art. 1).In other terms, to prevent genocide, in our opinion, also means to not extradite people to a county where they can face genocide on them.

It has to be noticed that here is the question of who decides to depart a person, authorities, court or someone else. If the court does not decide, here is an issue. For example, as we mentioned earlier, if the government of the country of the person's origin gave a guaranty to another state to not apply a death sentence it will not work because the judicial branch works separately and if the death penalty is applicable in particular case the guaranty promise still does not exclude that. Also here is an example of the asylum seeker from Cameroon by the name Fred who came to the USA for humanitarian reasons and the court decided to give him asylum but before that he faced some kind of inhuman treatment in the USA. He tried to get medical care but later he was refused to continue the treatment by the detention officers who replied that the US government did not want to continue paying for his medical expenses. Fred was driven to a bus station near the border, where he was told to get out: "They just released me at the roadside. They took off my chains and my cuffs and said, 'You have to go.' But I was like, 'But where do I go? I don't know where to go.' And they

said 'Well, that's not our problem', and they drove off." Thus, Fred was abandoned in the desert with nothing but his letter from the immigration court, essentially leaving him to fend for himself in getting the potentially life-saving final round of medication (Wilson et al., 2023, p. 4). But do the detention officers have a right to decide if a person can be refused asylum or not? The answer is no. He had the letter from the court which had power to decide and was going to figure it out. In our opinion, the detention officers acted beyond their authority and have to be responsible for that.

4. National security and health conditions:

Mental health conditions play a crucial role in the asylum-seeking process. The case - "Aswat v. the United Kingdom" After the United States requested the applicant's immediate arrest with regard to his criminal prosecution for planning to construct a jihad training camp, the applicant was arrested in the United Kingdom on the basis of an arrest warrant. The Secretary of State issued an extradition order for him in March 2006. According to the mental health laws of the United Kingdom, the applicant was eligible for custody and was moved to a high security mental health institution in March 2008. After reviewing the applicant's case in November 2011, the First-Tier Tribunal Mental Health determined that the applicant had paranoid schizophrenia and that, for his own protection and well-being, he needed to stay liable to detention in a medical facility (Aswat v. the United Kingdom, 2013).

Whether or not the applicant's extradition to the United States would breach Article 3 of the Convention very much depended upon the conditions in which he would be detained and the medical services available to him there. The inability to figure out with any kind of belief whether prison or institutions the applicant would be detained in, either before or after trial, made it difficult to analyze those conditions of treatment. This was particularly relevant with regard to the pre-trial phase, concerning which scant details had been given. Although it had advised that if he consented to the United States' authorities receiving his medical records upon extradition, they would be able to consider his mental health concerns when determining where to house him while on remand, the US Department of Justice had not indicated where the applicant would or could be held.

It was also questionable how long the applicant would be expected to wait for trial while on remand. In the event that the applicant was extradited, his attorneys could argue that, due to his mental illness, he was not competent to stand trial in the United States. The applicant would then have to have his competency evaluated by a district court, and if the judge determined that he was competent, he would have the opportunity to appeal to the Court of Appeals. The length of any potential competency evaluation or appeals process was not disclosed to the Court, but it was reasonable to presume that if the applicant asserted these rights, the pre-trial deten-

tion period would be extended. Lastly, the Court expressed worry over the lack of any information regarding the applicant's repercussions in the event that the district court determined that he was not competent to stand trial.

If found innocent, there was no guarantee he would not end himself at ADX Florence, subject to a "highly restrictive" regime and extended periods of social seclusion. There was nothing to suggest how long he would stay at ADX Florence. The applicant's case might be classified due to the severity of his mental condition, even though the court in Babar Ahmad had not acknowledged that the conditions in ADX Florence met the Article 3 criterion for those in good health or with less severe mental health difficulties. In conclusion, extradition would constitute a violation.

Conclusions:

1. This article considered the problem of not applying a death penalty only for that crime for which the extradition was requested in case of the guarantee by the state which requires for the extradition. It should be noted that only the extraditing state can be liable for the extradition in case if that state did not take a guarantee. But even if the guarantee takes place, it does not mean that the person will not face the death penalty because the state can charge for another crime for which was not any guarantee, that is why it is important if guarantee is going to be interpreted in law as a guarantee in general to not apply a death sentence in any case.
2. The collective expulsion of aliens is prohibited and it can not exist without the checking of the individual situation of the person separately. In international law there should be a more clear provision that each person from the group has a right to protect the reasons why he or she wants to stay and only after all of the remedies the person can be extradited if all remedies are exhausted and the court decided that. It also should be noted that any officials have no right to decide to extradite a person except of the court, and the responsibilities for the actions beyond their authority should be clearly written in international acts.
3. The non-refoulement principle has to be binding even if the state did not ratify the conventions where this provision is clearly written because refugees and asylum seekers can face deportation issues in some counties.
4. The state executing deportation, should engage in negotiations with the relevant authorities in the receiving country to avoid the potential imposition of the death penalty. This approach demonstrates a dedication to maintaining fundamental values of justice and human rights while attempting to prevent any infringement of the right to life.
5. When deporting asylum seekers who have converted to another religion, the deporting country must examine the risks associated with this change. In some states, such conversions might result in persecution, torture, or even deaths. As a

result, prior to making decisions, the deporting country must consider the individual's safety and well-being in regard to their religious convictions.

6. When an asylum seeker has a mental disorder, it is critical to examine the substantial danger that their extradition to a different, potentially hostile prison environment in the country of origin may result in a severe deterioration in their mental and physical health. Such situations could violate Article 3 of the European Convention on Human Rights (ECHR), which forbids torture, inhumane, or degrading treatment. To guarantee compliance with human rights norms, special attention must be given to the individual's mental health requirements as well as the conditions they can face if they are deported.

A list of references

Legal acts:

International conventions, recommendations:

1. European Convention on Human Rights (1950). [1953] 213 UNTS 221
2. Covenant on Civil and Political Rights (1966). [1976] 999 UNTS 171.
3. Convention relation to the status of refugees (1951). [1954] 189 U.N.T.S. 150.
4. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). [1987] 1465 U.N.T.S. 85
5. International Convention for the Protection of All Persons from Enforced Disappearance (2006). [2010] 2716 U.N.T.S. 3
6. General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin. CRC/GC/2005/6
7. Convention on the Prevention and Punishment of Genocide (1948). [1948-12-09] 78 U.N.T.S. 277

Special literature:

Articles in electronic scientific journals:

8. A. Kunzli (2004). Öcalan v. Turkey: Some Comments. Leiden Journal of International Law, 17(1), 141-154. Available at: doi:10.1017/S0922156504001645
9. A. Susanto, YasniarRachmawati Majid, Ikaningtyas, M. Akbar Nursasmita (2023). How deportation becomes illegal deportation? (The case of deportation of Myanmar Nationals by Malaysia). Padjadjaran Journal of International law, 7 (2), 193-214. Available at: DOI: https://doi.org/10.23920/pjil.v7i2.1370
10. B. K. Wilson, A. Burnstan, C. Calderon, T. J. Csordas (2023). "Letting die" by design: Asylum seekers` lived experience of postcolonial necropolitics. Social Science and Medicine, 320. Available at: DOI: https://doi.org/10.1016/j.socscimed.2023.115714

Electronic publications:

Websites:

11. P. Pillai (2021). Intenational Law Omissions: Rohingya deportation order of the Supreme Court of India. Available at: http://opiniojuris.org/2021/04/19/international-law-omissions-rohingya-deportation-order-of-the-supreme-court-of-india/
12. Amnesty international (2022). The death penalty around the world. Availbale at: https://amnesty.org.nz/death-penalty-2022-stats

Court practice:

Decisions of European Court of Human Rights:

13. Soering v United Kingdom [ECHR], № 14038/88, [07.07.1989]. ECLI:CE:ECHR:1989:-0707JUD001403888
14. Kaboulov v Ukraine [ECHR], № 41015/04, [19.11.2009]. ECLI:CE:ECHR:2009:-1119JUD004101504
15. Ocalan v Turkey [ECHR], № 46221/99, [12.05.2005]. ECLI:CE:ECHR:2005:-0512JUD004622199
16. Loizidou v TUrkey [ECHR], № 15318/89, [23.03.1995].ECLI:CE:ECHR:1995:-0323JUD001531889
17. Conca v Belgium [ECHR], № 51564/99, [05.02.2002]. ECLI:CE:ECHR:2002:-0205JUD005156499
18. Al-Saadoon and Mufdhi v the United Kingdom [ECHR], № 61498/08, [02.03.2010]. ECLI:CE:ECHR:2010:0302JUD006149808
19. Sufi and Elmi v the United Kingdom [ECHR], № 8319/07, [28.06.2011]. ECLI:CE:ECHR:2011:0628JUD000831907
20. Aswat v. the United Kingdom [ECHR], № 17299/12, [16.04.2013]. ECLI:CE:ECHR:2013:-0416JUD001729912
21. F.G. v. Sweden [GC] [ECHR], № 43611/11, [23.03.2016]. ECLI:CE:ECHR:2016:-0323JUD004361111

Decisions of the Human Rights Committee:

22. Chitat Ng v. Canada, № 469/1991, [05.11.1993]. CCPR/ C/49/D/469/1991. Available at: URL: http://hrlibrary.umn.edu/undocs/html/dec469.htm

Jurisprudence of the courts of general competence:

23. Mohammad Salimullah v Union of India [The Supreme Court of India], № 38048 of 2021 in Writ petition (civil) № 793 of 2017, [08.04.2021].