



Human rights, their meaning and importance in the case of Kosovo

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Abstract

For the rule of law to function, freedoms and human rights must be respected. But in Kosovo this did not happen during the years 1945-1999, although freedoms and human rights were developed in the word. Important international and regional documents defended the human rights of the United Nation Charter, The Helsinki Final Act, ect.

From Nacertanja to the Memorandum of the Serbian Academy in 1986, plans were made by the Serbs which violated the legal and historical rights of the Kosovo Albanians. Serbian projects went from theory to practice by Slobodan Milosevic in 1989-1999.

Keywords: human rights, the rule of law, magna carta, bill of rights, Kosovo, nacertanja, jus cogens, the united nation charter, the helsinki final act, bill clinton

Introduction

A brief look at the evolution of human rights.

For the rule of law to work, it must treat its citizens fairly, avoiding inequalities. From antiquity, Aristotle said: "The main reason for constitutional instability and revolution is the dissatisfaction that arises from inequality" (IAIN Mc Lean, 2001: 25) ^[10]. Cicero argued that "the basis of government is justice and harmony among the people" (IAIN Mc Lean, 2001: 65) ^[10]. The rule of law must respect human rights and freedoms. The protection of human rights dates back to the Magna Carta in 1215. According to her: "No one who is free can be captured, imprisoned, expropriated, unjustly outlawed, or in any way demolished, ... except by lawful trial of his equals or of the country..." (IAIN Mc Lean, 2001: 78-79) ^[10].

People set up state institutions to protect their natural rights so that no one could violate them. Human rights were addressed when the Bill of Rights was passed by the English Parliament on 13 February 1689, the Declaration of 4 July 1776, and then when 10 amendments to the United States Constitution, also known as the Bill of Rights, were ratified. (September 25, 1789) and when the Declaration of Human and Citizenship Rights was justified (26/27 August 1789) during the French Revolution. International treaties were then developed that established "the most essential rules of human rights, such as the prohibition of genocide, slavery, torture, discrimination and apartheid, crimes against humanity and war crimes, have a special legal status in the international system" (Marc Weller, 2011: 50) ^[16].

2. Understanding and importance of human rights in the case of Kosovo.

But it happened differently with the Serbian state, because from Ilce Garashanini's Nacertanja in 1844, until the Memorandum of the Serbian Academy in 1986, Serbian projects were born, developed, reworked, where their essence was the same (failure to provide no rights for Kosovo Albanians and their departure from Kosovo), denying them all their national-ethnic and individual-state rights. In the case of Kosovo, what is obvious and should be

emphasized is the fact that the continuous and widespread violations of human rights took place under the direction of official state policy. Discrimination against Albanians, beatings, imprisonment, expropriation, displacement, extermination, etc., were discriminatory policies of the Belgrade authorities openly reflected in Serbian legislation.

Albanians were treated unequally and unfairly, compared to the rights enjoyed by other ethnicities in Yugoslavia. Although the former Yugoslavia was a signatory to several universal human rights conventions (for example, the 1966 Civil and Political Rights Convention, as well as the conventions against genocide, torture, the rights of the child and the elimination of racial discrimination...), etc (Marc Weller, 2011:114) ^[16]. Civil servants and state institutions in Yugoslavia and Serbia obeyed orders, which often of ten had no basis in the state and the rule of law.

The stay of Albanians within the former Yugoslavia until 1999 did not enable them to achieve the freedoms and rights that belonged to them. Kosovo Albanians never relinquished their rights. "To renounce freedom means to renounce being human" (Jean Jacques Rousseau, 1950: 9). Human rights cannot be alienated and belong equally to every person for the very fact that he is a human being, regardless of race, nationality or belonging to a group of given social" (IAIN Mc Lean, 2001: 110) ^[10]. These human rights "are based on general international law, universal conventions and multilateral and bilateral regional treaties" (Marc Weller, 2011: 113) ^[16]. "The most basic and fundamental human rights obligations are part of the substantive law of the international Constitution (jus cogens)" (Marc Weller, 2011: 113, 540) ^[16].

The obligations of international law apply to all states "whether they have specifically agreed to them or not. "States can never waive or suspend these rights, even in times of armed conflict or other emergencies" (See more: Marc Weller, 2011: 114) ^[16]. During the twentieth century, the assimilation and discrimination of the Albanian population took place in Kosovo. By assimilation we mean the process of "cultural and social fusion of groups with different identities..." (Michael Houghes, Carolyn J.

Kroehler, James W. Vander Zanden, 1999: 222-224) ^[17] losing their autonomy and uniqueness.

The United Nation Charter "which in the first article states that the purpose of the United Nations is to develop 'friendly relations between nations, based on the observance of the principle of equal rights" (Fehmi Agani, 1994: 18) ^[4]. Many other United Nation documents also protect the independence of peoples and the freedoms and human rights.

Another important document related to the respect of human rights and freedoms is the Helsinki Final Act of the Conference on Security and Co-operation in Europe. This act should have been implemented in Kosovo as well, as Yugoslavia was part of this act, and obliged them to respect and efficiently implement in practice, fundamental freedoms and human rights, as these rights are universal, and affect the justice of national and international prosperity.

According to the Memorandum of the Serbian Academy of Sciences and Arts, 1986, it was stated that: "The modern era begins with the affirmation of human rights ... Yugoslavia is also a signatory to the Helsinki Agreement and all documents of this nature" (Rexhep Qosja, 2005: 243) ^[19].

Serbia did not properly respect the international agreements binding on it, as the constitutional amendments violated constitutional and international rights. The denial of rights by Serbs, and the lack of improvement in life in Kosovo, made Albanians demand change. "Kosovo's unilateral declaration of independence in 1991 was a response to Serbia's unilateral action to annul Kosovo's autonomy" (Howard Clark, 2000: 136-137) ^[9]. It should be noted that "especially the case of Kosovo, as a region of the greatest abuses and violations of freedoms and human rights in Europe,...", (Gazmend Zajmi, 1997: 69) ^[6] showed that international law was not being implemented.

Internationals in the early 1990s pointed out that freedoms and human rights were being violated, and that Europe needed to take action to implement these rights. Since 1992, High Commissioner Sadako Ogata has stated: there is no doubt that Europe is at a crossroads. United Nations institutions have concluded that in 1996 and 1998, human rights and freedoms were violated, and there was racial discrimination. "The committee concluded that ethnic Albanians were being discriminated against - to the extent that - they were being denied the enjoyment of the most fundamental rights enshrined in the convention" (Marc Weller, 2011: 121) ^[16].

Kosovo Albanians during the years 1990-1999, the Albanian diaspora helped a lot in their cause, which contributes to the internationalization of the issue. Also, great assistance to Kosovo during 1992-93, was given by the US and Presidents Bush and Clinton. On December 27, 1992, the President of the United States of America, George W. Bush, declared and promised that: "The United States will not allow Kosovo to become a Second Bosnia. Clinton reaffirmed this in February 1993" (Howard Clark, 2000: 89) ^[9]. This means that democracy, freedom, justice, the rule of law, freedoms and human rights must have paved the way for extreme nationalism in Yugoslavia during the Milosevic era. It should be noted that extreme nationalization is not the solution but "democracy is the only way that enables a moral rationalization of politics" (B. Mirkine-Guetzevitch, 1931: 46; Jacques Maritain, 2000: 91) ^[3, 11]. Serbia's actions against Kosovo clearly showed that "persistent and widespread human rights violations were taking place under

the auspices of official state policy. In fact, the discriminatory practices of the Belgrade authorities were explicitly reflected in Serbian legislation. "Also, there was constant intimidation of the Albanian population, including arbitrary imprisonment, beatings and similar acts" (Marc Weller, 2011: 52) ^[16].

"In June 1992, Amnesty International presented a report with 15 illustrative cases of how Serbian police mistreated Kosovo Albanians. Helsinki Watch (later called Human Rights Watch) published reports in 1992 and 1994." (See more: Howard Clark, 2000: 79) ^[9]. There have been acts or behaviors against Albanians that harm others physically, mentally, emotionally, etc. "Aggressive actions can range from verbal expressions and nonverbal gestures to physical violence" (Clyde W Franklin II, 1982: 18; Ali Pajaziti, 2017: 22) ^[5, 1]. The United Nations Development Program (UNDP), in a 1994 statement, defined human security as, "... a state in which individuals are relieved of traumas surrounding human development or where these traumas are completely absent" (Arnold Wolfers, 1994: 482; Kasem Saliyasi, 2012: 20) ^[2, 15].

Natasha Kandic in her January 1997 report stated that: "Human rights will not be respected in Belgrade as long as the terror in Kosovo lasts. It is the same police force. "In Kosovo, it defends the regime by beating people ... Civil resistance in Kosovo is everywhere, and beatings and the use of force are becoming the norm in the relationship between the state and the individual" (See more: Howard Clark, 2000: 126-127) ^[9]. Serbian state institutions, not respecting the rule of law but the orders of the political power, were increasingly leading the situation in Kosovo to a dead end, where only the intervention of the international community and the Kosovo Liberation Army liberation war managed to avoid leaving. full of Albanians from Kosovo.

In Kosovo, human rights were increasingly violated, until very serious crimes were committed by police and military interventions. "-In February 1998, Serbian security forces escalated operations against Kosovo Albanians suspected of involvement in the Kosovo Liberation Army ... In mid-January 1999, Serbian forces massacred 45 Kosovo Albanians in Raçak." In the Tadić case, the Appeals Chamber of the Hague Tribunal (established by the United Nations Security Council) in 1995 stated that: "It will be considered a war crime, not only a violation of the rules of war in an international conflict, but also in an internal conflict" (See more: Jola Xhafo, 2008: 70) ^[13].

Serbia in an attempt to extend all-round power in Kosovo, provoked the resistance of the Albanians, but this brought great consequences as the violence and war became massive. "Efforts to achieve the goal of Serb rule in Kosovo became increasingly ineffective in the face of growing opposition from the ethnic Albanian majority, leading to war in 1999 and the commission of serious inhumane crimes against civilians" (Nevanka Tromp, 2021: 341) ^[18]. The Albanians did not obey Milosević's rule, and the latter realized that only with the submission of the Albanians could he control Kosovo. This goal is clearly evidenced by the mass deportations that took place during the war in Kosovo, as well as other arbitrary actions of the Serbian government in Kosovo. This strategy is clarified in the Milosevic trial. "According to the indictment regarding Kosovo, from January 1, 1999 to June 20, 1999, Milosevic participated in a joint criminal enterprise, with the aim of expelling from Kosovo a large number of Kosovo

Albanians, with the aim of consolidating Serbian control in this province" (Nevanka Tromp, 2021: 341)^[18].

There were also problems between Yugoslav Serb lawmakers and bureaucrats, and Albanians. Many laws and administrative and judicial decisions were adopted without questioning Kosovo Albanians, and were not in the service of their individual and public interests and rights. Serbian law and Serbian police actions fueled discontent and peaceful resistance initially, but later created the Liberation Army. Not only the Constitution and the law, but also the Yugoslav-Serbian institutions, were not sanctioning and establishing a realization of human rights in practice, for the Albanians in Kosovo. Another consequence of the war in Kosovo was the mass exodus of refugees, where the rights of refugees were violated, as provided by the UN Refugee Convention of 1951. Many people left Kosovo, the problem was not to cause another major humanitarian crisis, that of Kosovo Albanian refugees in the world. Albanians would be granted refugee status due to fleeing Kosovo after their basic human rights and freedoms were violated. "The civilian population is often forced to relocate from the ruling government with enormous human suffering and severe social consequences" (Gene Sharp, 2012: 19)^[7].

Albanians were forced by the Serbian state to leave Kosovo, according to state plans defined as the Patkoi Plan, just because they were Albanians, and not Serbs, this was the reason according to Serbs that Albanians could not stay in Kosovo. It has often been stated that acts of genocide have been committed in Kosovo. By genocide we mean: "Deliberate extermination, coordinated by the state and justified by special racial claims, of a population selected on the basis of cultural criteria,..." (IAN Mc Lean, 2001: 173)^[10]. Cases that occurred in Kosovo during the war in 1998-1999, show ethnic violence, genocide, ethnic cleansing, discrimination, etc.

From what we said above, it is noticed that civilians have been killed, mass crimes have been committed according to premeditated goals and well-defined by the state, with the sole reason that they are Albanians, and violence has been used for mass evictions. On March 20, 1999, the President of the United States of America Bill Clinton stated that: "If we and the allies do not have the will to intervene, there will be other massacres in Kosovo" (Sulejman Dida, 2014: 252)^[20].

The Albanians left Kosovo not because of the North Atlantic Treaty Organization bombing, "but because of the actions of the Yugoslav army forces,..." (See more: Nevanka Tromp, 2021: 398)^[18]. Everything that happened in Kosovo regarding the relentless violation of human rights was done with the support of official state policy. This states that the actions were carried out and repeated with illegal state orders, by the respective superiors, who were aware of the crimes committed and repeated in Kosovo, against its entire population, which was at war, where only the international presence of the North Atlantic Treaty Organization and the Kosovo Liberation Army managed to save the Kosovo Albanian population, so that their rights would no longer be massively and systematically violated by state bodies, which had the task of protecting freedoms and human rights from violations illegal.

Conclusion

In conclusion, we can say that the Yugoslav and Serbian states did not respect international agreements, nor the

freedoms and rights of their citizens. In democratic countries it is inconceivable that the state uses the police and army against its citizens to enforce illegal orders. Kosovo Albanians after a long peaceful resistance, were forced in the late 90s of the twentieth century, to make armed resistance, in defense of the rights that belong to them, because respect for freedoms and human rights is one of essential and necessary conditions for the functioning of the rule of law. Until 1999 this operation did not take place in Kosovo. Kosovo Albanians could not obey the illegal orders of the institutions of other states (Serbia), which they had not elected and created with their free and democratic will. A state can not claim rights and law enforcement over its citizens if it does not fulfill its obligations to these citizens. Although Albanians were the majority population in Kosovo, they did not enjoy the right to political participation and income distribution as is the case in democratic countries. According to internationals, many crimes were committed in Kosovo, which could be described as genocide, crimes against humanity or war crimes.

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