THE POPULIST RHETORIC AS A THREAT TO HUMAN RIGHTS IN EUROPE: STANCE OF THE SUPRANATIONAL INSTITUTIONS[1]

La retórica populista como amenaza a los derechos humanos en Europa: Posicionamiento de las instituciones supranacionales

Elena Avilés Hernández
Universidad de Málaga
elenaavileshernandez@uma.es

http://dx.doi.org/10.18543/ed-67(2)-2019pp147-161

Recibido: 27.10.2019
Aceptado: 21.11.2019

Abstract

The populist rhetoric taken place in Europe not long ago has only accentuated the social divisions and segregation of certain minority groups who saw their rights violated in favour of a new concept of security. The main victims of this situation are foreigners and ethnic minorities, groups perceived as a threat to social cohesion and order; a perception radicalised through the media and social networks. This situation is part of a context of growing tensions, religious extremism and violent radicalism used, in some cases, by the government elite itself to support legislative changes or justify arbitrary interventions. The result is a restriction of fundamental rights legitimized by governments themselves.

[1] This work is part of Project DER2015-67512-P: " La influencia de la jurisprudencia del Tribunal Europeo de Derechos Humanos en las decisiones del Tribunal Constitucional", of the Ministry of Economy and Competitiveness. Main researcher: Octavio García Pérez. It is also part of the project «Inmigración y Derecho: retos actuales desde un enfoque interdisciplinar» (PPIT.UMA.B1.2018/04), of the University of Malaga. Main researcher: Carmen Rocío Fernández Díaz.

Keywords

Human Rights, Migration, Terrorism, Nationalism, ECtHR

Resumen

La retórica populista acontecida desde hace no mucho tiempo en Europa, solo ha acentuado las divisiones sociales y la segregación de ciertos grupos minoritarios que han visto cómo se vulneraban sus derechos a favor de un nuevo concepto de seguridad. Las principales víctimas de esta situación son extranjeros y minorías étnicas, grupos percibidos como una amenaza para la cohesión y el orden social; una percepción que se ha radicalizado a través de los medios y las redes sociales. Esta situación es parte de un contexto de crecientes tensiones, extremismo religioso y radicalismo violento que, en algunos casos, es utilizado por la propia élite gubernamental para apoyar cambios legislativos o justificar intervenciones arbitrarias. El resultado: una restricción de derechos fundamentales legitimada por los propios gobiernos.

Palabras clave

Derechos Humanos, Migración, Terrorismo, Nacionalismo, TEDH

I. INTRODUCTION

At times, some of the leaders who should govern for their citizens only generate a populist discourse that threatens human rights. Sometimes this discourse is nothing more than a distortion of reality, sometimes it is even a lie, but the stems generally goes against the most vulnerable people, in this case, migrants[2]. One of the clearest examples is the speech of the Hungarian Prime Minister, Viktor Orbán, who stated the following: "They [Europeans] have a clear will, they do not want to live under the threat of terrorism, they want security, they want their borders to be protected"(Schultheis 2018). At the same time as showing himself to be one of his country's most fervent defenders, he is planting the seed of fear of the unknown. Without proper management, this fear will probably turn into hatred towards 'the other'. Thus, in making a more exhaustive analysis of this issue, it is essential to highlight the existence of some factors that, although at first glance seem to be unrelated to each other, can generate a significant violation of human rights if we do not approach them from a comprehensive perspective.

In particular, I am referring to the global migratory context, the perception of insecurity associated with the rise of transnational terrorism and the increase of certain discourses associated with extreme populism, aspects that

[2] The term "migrant" is an umbrella term not defined under international law. By its common use, it means any person who moves away from his or her habitual place of residence, either within a country or across an international border, temporarily or permanently, and for a variety of reasons. This term includes several well-defined legal categories of persons, such as migrant workers; persons whose particular form of transfer is legally defined, such as smuggled migrants; as well as persons whose status or means of transfer is not expressly defined under international law, such as international students. Specifically, this definition was developed by IOM for its purposes and does not presuppose or establish the existence of a new legal category (International Organization for Migration 2019, 130).

I will briefly develop below. The confluence of these elements will allow us to set the basis on which the European Court of Human Rights - hereinafter ECtHR - will build its legal argument to curb this situation in favour of guaranteeing the human rights of this population group.

II. CONTEXT OF HISTORICAL MIGRATORY FLOWS

Taking into account the figures collected by international organizations, it is clear that we are facing one of the most important migratory flows in the whole history: The United Nations estimates that in 2013, there were around 234 million international migrants in the world (United Nations Department of Economic and Social Affairs 2013, 17), which is equivalent to 3.3% of the world's population. About 50% of these migrants were located in the main cities of ten different countries, including four on the European continent: Germany, Spain, France and the United Kingdom (International Organization for Migration 2015, 17). However, this is only the tip of the iceberg, as the vast majority of the world's people do not migrate across borders, but within their own countries, with an estimated 740 million internal migrations in 2009 (United Nations Development Program 2009, 21). The fact is that approximately one in seven people in the world is a migrant, including not only international but also internal migrants (Thompson 2015, 30).

Nevertheless, as I mentioned previously, the concept of "migrant" is a generic term that leads to a confusion with great legal repercussions: While some people move voluntarily because they just want to improve their quality of life or their economic conditions due to poverty, instability, marginalization or exclusion, or they only want to study or work abroad, there is another population group that has to move by force[3] due, among other things, to geopolitical events in their territory. This is the case of those who fled - and continue to flee

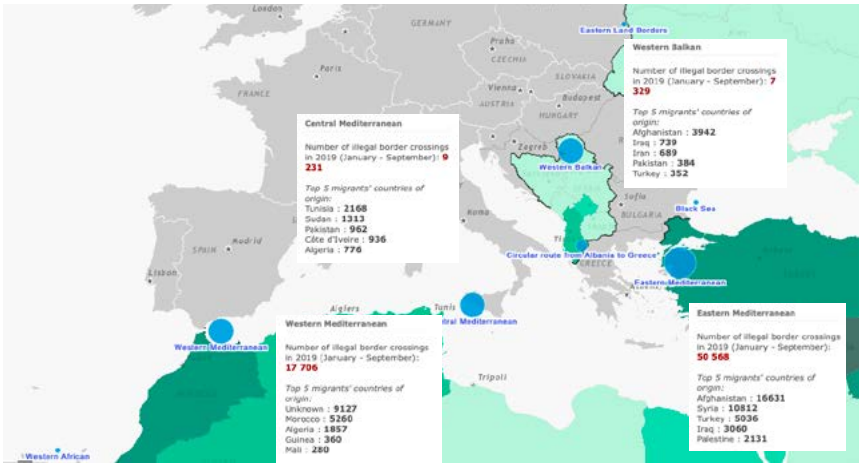
[3] The United Nations General Assembly, in the Introduction to the New York Declaration on Refugees and Migrants of 19 September 2016 (A/RES/71/1) , sought to lay the groundwork for how the international community should respond to the growing global phenomenon of large movements of refugees and migrants by stating the following: We are witnessing in today's world an unprecedented level of human mobility. More people than ever before live in a country other than the one in which they were born. Migrants are present in all countries in the world. Most of them move without incident. In 2015, their number surpassed 244 million, growing at a rate faster than the world's population. However, there are roughly 65 million forcibly displaced persons, including over 21 million refugees, 3 million asylum seekers and over 40 million internally displaced persons. (…) Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities, including in the context of large movements" (United Nations General Assembly 2016, 1–2).

- from the Syrian war or the Iraq conflict, and who cannot or do not want to return to their country of origin[4]. The problem often lies in differentiating them, especially when the country of origin is in conflict and is also a place of economic problems (Ortega Giménez 2016, 115–40). If we consider those migrants who have been forced to move due to the situation they had to confront in their country of origin, we find even more relevant data. Once again, Europe is one of the regions most affected by this phenomenon:

Between 2015 and 2016, the European Agency for Border and Coast Guard - hereinafter FRONTEX - detected that almost 2.3 million people crossed the EU border illegally. It is important to point out that 764.033 people crossed the western Balkan route in 2015 and 885.386 people crossed the eastern Mediterranean route, i.e. 33.21% and 38.5% respectively of the total. This shows the great migratory crisis suffered in Europe at that time.

Although the figures have now fallen compared to previous years, as a result of the implementation of the EU-Turkey statement on March 2016 and due to the border closure policies in Italy or Hungary, the Mediterranean still remains the main migration route for people from Africa and the Middle East, as can be seen below:

Figure 1. **Migratory map in 2019**

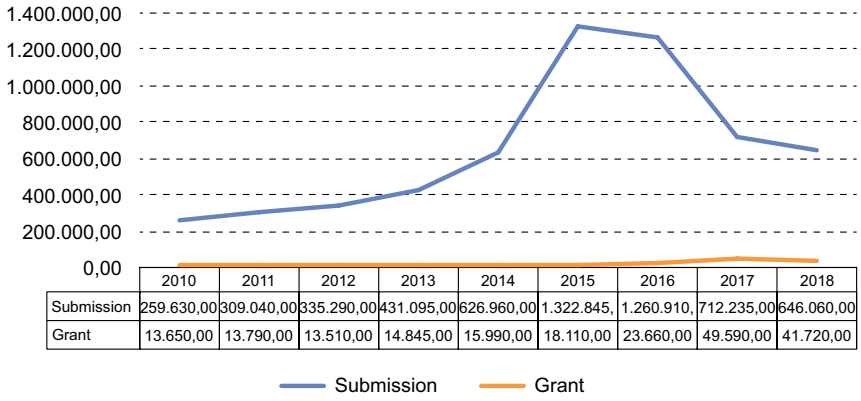


Source: Frontex 2019.

[4] The UNHCR highlight the distinction between migrant and refugee and stresses that the tendency to confuse refugees and migrants, or refer to refugees as a subcategory of migrants, may involve serious consequences for the lives and safety of people fleeing persecution or conflict (Edwards 2016).

For the last decade, more than 2.5 million people applied for international protection, yet only a tiny fraction of the proposed applications were accepted. This situation can be appreciated in the following table:

Table 1. **Asylum requests submitted and granted between 2010 and 2018**



	2010	2011	2012	2013	2014	2015	2016	2017	2018
Submission	259.630,00	309.040,00	335.290,00	431.095,00	626.960,00	1.322.845,	1.260.910,	712.235,00	646.060,00
Grant	13.650,00	13.790,00	13.510,00	14.845,00	15.990,00	18.110,00	23.660,00	49.590,00	41.720,00

Source: Compiled by the author based on data submitted by EUROSTAT, 2019.

Some countries, such as Poland, Italy, the Czech Republic or Austria, did not agree with the quota established by the Dublin System, which further increased tensions between the Member States. Moreover, some of them, namely Hungary and Slovakia, even resorted to refugee quotas, although their proposal did not go through. In one way or another, this system revealed a structural problem on the continent, because the real numbers are not even close to what the countries agreed.

As established by the Spanish Commission for Refugee Aid - hereinafter CEAR - in 2015:

> The 28 EU countries dealt with 1,321,600 asylum seekers, but they took in very unequal shares: Germany alone took care of 476,510, while Spain, for example, broke its paltry annual record with 15,000, barely 1% of the total. The asylum policies of other countries such as Hungary took on a xenophobic, authoritarian attitude. (…) By the end of May 2016, only 1,716 of the 180,000 people had been relocated as agreed on the previous summer, and of these only 105 were in Spain (CEAR 2016, 8).

This situation highlighted the deficiencies of the European migration system, which was characterised by a lack of intergovernmental coordination and widespread disagreement between the Member States. However, throughout this period, the EU tried to implement a series of policies to

Estudios de Deusto
© Universidad de Deusto • ISSN 0423-4847 • ISSN-e 2386-9062, Vol. 67/2, julio-diciembre 2019, págs. 147-161
http://dx.doi.org/10.18543/ed-62(1)-2019pp147-161 • http://www.revista-estudios.deusto.es/

alleviate both its objective deficiencies and its perception, although the results were not entirely satisfactory:

Firstly, the Common European Asylum System, also known as CEAS, was created and the existing legislative framework[5] was improved. Its aim was not only to achieve a system which determines the responsibility of a State to examine an application for protection[6], but also the establishment of uniform asylum status, a common procedure for granting or withdrawing asylum and a common system of temporary protection (Machimbarrena 2018, 3). In addition, the database of the EU asylum fingerprints system was updated through the Eurodac Regulation[7].

[5] A new EU legislative package is agreed. It sets common rules and strengthens cooperation procedures to ensure equal treatment irrespective of where the application is made. In particular, the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013), which replaces Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (OJ L 326, 13.12.2005), has as its main purpose the setting of standards for any asylum procedure, regardless of the place of application; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013), which replaces Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003), framed the reception conditions for applicants for international protection in order to guarantee them a dignified life and to grant them the same conditions in all Member States; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011), replacing Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004). It contains, on the one hand, the list of grounds on which a person may be considered eligible for protection and, on the other hand, the content of that protection, as well as the rights which he enjoys.

[6] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013). This Regulation replaces Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003).

[7] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mech-

The second measure was the strengthening of EU border control and the management of irregular immigration. This was undertaken through the delivery of large budget lines to neighbouring countries as a way of containing the massive influx of illegal immigrants.

The actions implemented, while palliative, have not solved the situation to the moment. Even though the inflows of massive flows of immigrants have decreased; it has not been due to the proper management of these flows, but rather to the contrary, the radical policies of closing the borders of some states such as Hungary or Italy have generated a search for alternative entry methods. Furthermore, as we have seen in the graph above, there has been no significant increase in asylum requests, despite its drastic reduction. This is indicative of either mismanagement of the process or a lack of interest on the part of the Member States.

III. CONTEXT OF INSECURITY ASSOCIATED WITH THE RISE OF TRANSNATIONAL TERRORISM

Unlike national terrorism, which was individually regulated under each domestic law, transnational terrorism as a "concept" was not included in one of the EU's most important instruments in this field, the Rome Statute. This is due to the lack of a unified definition of terrorism. Although many authors defend the existence of common elements and some Security Council resolutions[8] try to develop minimum standards, even today there is still no basic concept from which a joint response can be developed.

In this regards, the European Union, based on the crimes included in national regulations, tried to draw up a closed list of those crimes that could be classified as terrorist crimes, if the perpetrator commits them for:

– Seriously intimidating a population;
– unduly compelling public authorities or an international organization to perform or refrain from performing an act or

anisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013). It replaces Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000).

[8] See Resolution 1373 (2001) Adopted by the Security Council at its 4385th meeting, on 28 September 2001 (S/RES/1373), and, more specifically, Resolution 1566 (2004) Adopted by the Security Council at its 5053rd meeting, on 8 October 2004 (S/RES/1566).

– seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation[9].

However, the adoption of a unified definition is fundamental for States, when acting, to have greater legal certainty when it comes to classifying acts of terrorism and differentiating them from others relating to Humanitarian Criminal Law (García Sánchez 2018, 96–98). Nevertheless, that this situation has become progressively more complicated; not only because European countries have had to deal with a problem so far unknown, but also because they are still reluctant to make an international pact at the expense of losing their sovereignty by ceding competences to supranational bodies.

It is clear that after 11-S attacks, the strategy of responding this threat has jeopardised the fulfilment of guarantees relating to individual rights and freedoms for a greater security; risks which also affect international humanitarian law itself: exceptional measures of application have been standardised, completely undermining their ultimate purpose; I mean, the limitation of their application over time and their instrumental use to restore normality. The European Union, in an effort to avoid this trend and to guarantee fundamental rights, has included in both Council Framework Decision 2002/475/JHA of 13 June 2002 and the subsequent Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 a paragraph specifying that these texts do not exempt from the obligation to respect fundamental rights and fundamental legal principles contained in Article 6 of the Treaty on European Union[10].

IV. POPULISM ASSOCIATED TO A NATIONALISM THAT SUPPORTS AN IDENTITY IT CONSIDERS IN DANGER, FOCUSING A HATE SPEECH TOWARDS THE INVADING FOREIGNER.

As mentioned at the beginning, the main strategy of some countries was to spread fear and hatred against the migrant as a way of preserving the

[9] Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002) is considered to be the cornerstone of the criminal justice response of the Member States in the fight against terrorism. Article 1 contains a closed list of those acts which, being criminalised under national law, may be considered terrorist when committed for a specific purpose specified in the Article. This article has been incorporated into Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 (OJ L 88, 31.3.2017).

[10] See Art. 1.2 Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002) and Art. 23.1 of Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 (OJ L 88, 31.3.2017).

country. This strategy, although supposedly justified under the right to freedom of expression, in many cases goes beyond the limits, generating not only the rejection of the foreigner but also, the violation of some of his fundamental rights.

The problem becomes even more serious when this discourse has political and legal repercussions reflected in the legislation of the country. Two of the most striking - and alarming - cases are the cases of Hungary and Italy:

On 15 March 2019, Viktor Orbán, the Hungarian Prime Minister, in his speech in honour of the 171st anniversary of the 1848-49 Revolution, in addition to talking about Hungarian national unity and the "renaissance of Central Europe", stated that "Without the protection of our Christian culture, we are going to lose Europe and Europe will no longer belong to Europeans". This is an example of the many discourses advocated in recent times. The problem is its repercussions have not remained there; those speeches were accompanied by a series of actions and measures that violate not only the rights of immigrants but also of those whose sole aim is to help them; I am referring specifically to the Stop Soros law, the new legislation adopted in June 2018. It punishes with imprisonment lawyers and organisations that help migrants. The repeated warnings and the opening of a procedure by the European Commission have not urged Orbán to redefine the approach to this extreme nationalist tendency that still characterises his policies.

Months after the implementation of the Hungarian measures, Matteo Salvini, the Italian Minister of the Interior, saw how the decree bearing his name succeed with the support of the country's Council of Ministers. It implies legislative changes on immigration insofar as it tightens conditions for asylum seekers, limits the protection of vulnerable immigrants and facilitates their expulsion.

V. CONSEQUENCES: THE DETRIMENT OF HUMAN RIGHTS UNDERWAY

As I said at the beginning of my speech, the three above-mentioned factors do not - or at least should not - generate per se a violation of fundamental rights. However, extreme nationalist discourses that seek to defend one's own identity from "the enemy" in a historical context of unprecedented migrations since the IIG.M. and with a perception of insecurity after the rise of transnational terrorism, are leading not only to greater social rejection of immigrants, but also to legislative reforms that violate the basic principles and values of the European Union. In this way, it could be argued that this situation contributes to the violation of certain rights at three differentiated levels:

Estudios de Deusto
© Universidad de Deusto • ISSN 0423-4847 • ISSN-e 2386-9062, Vol. 67/2, julio-diciembre 2019, págs. 147-161
http://dx.doi.org/10.18543/ed-62(1)-2019pp147-161 • http://www.revista-estudios.deusto.es/

At the social level, what is taking place is stigmatisation of immigrants even greater than existed before. In Spain, for example, especially during the economic crisis of 2008, the general perception of the immigrant was negative insofar as it " deprived the Spaniards of their jobs". Now a further step has been taken place and the population groups - especially from sub-Saharan Africa and the Middle East - are seen as dangerous immigrants, criminals or even quasi-terrorists, even though objective data show the opposite.

However, the issue is not only about social perception but is already transcending at the legal level (both nationally and internationally). In domestic law, as illustrated by the case of Italy or Hungary, certain countries are including a series of reforms in which not only irregular immigrants are penalized, but also all those persons or organizations that try to help them. They are criminalizing civil society organizations that carry out search and rescue operations and charging them, among other crimes, with trafficking in persons or, as in the case of Spain, with a crime against the rights of foreign citizens under art. 318 bis of the Criminal Code[11]. But the detriment of fundamental rights does not end here. Any imposition of obstacles for an immigrant or refugee to have access to a country other than their country of origin generates, also, the violation of international humanitarian law due to the impossibility of exercising the right to seek asylum and, therefore, the possibility of being identified as victims of human trafficking.

VI. STANCE ADOPTED BY SUPRANATIONAL INSTITUTIONS

The main concern of supranational entities after happened in recent years has been to find a balance between respect for the sovereignty of states to legislate on a specific matter and the protection of human rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms - hereinafter ECHR-. To this end, the ECtHR in its judgments has focused on protecting immigrants through three articles of

[11] Article 318 bis of the Criminal Code introduced in the 2015 (BOE nº 77, 31.03.2015) reform provides as follows: "1. Anyone who intentionally assists a person who is not a national of a Member State of the European Union to enter Spanish territory or to transit through it in a manner that violates the legislation on the entry or transit of foreigners shall be punished by a fine of three to twelve months or imprisonment of three months to one year. If the acts were committed for profit, the penalty shall be in the upper half of the range. 2. Anyone who intentionally helps, for-profit, a person who is not a national of a Member State of the European Union to remain in Spain, in contravention of the legislation on the stay of foreigners, shall be punished by a fine of three to twelve months or imprisonment of three months to one year.

the ECHR: 3[12] and 13[13] of the Convention and Article 4 of Protocol 4 of 16 September, 1963[14].

The application of these articles is reflected in some of the Court's judgments in this field:

1. *Case HIRSI JAMAA AND OTHERS v. ITALY, 23 February 2012*

In this case, the Tribunal was responding to the request of 24 individuals in a group of more than two hundred Somalis who were intercepted at sea, forcing them to return to Libya, from where they had departed.

The relevance of this judgement lies in the fact that it is the first time that the ECtHR has recognized the violation of Article 4 of Protocol 4 by acts carried out outside the territory of a State party to the Convention, since the return took place on the high seas, applying in an "extraterritorial" way the aforementioned precept[15]. The court interpreted the article in a teleological way, to guarantee respect for human rights. In doing so, the Court found that the violation of article 3 had occurred from a twofold perspective: on the one hand because of the danger of being returned to Libya, in the light of the situation in the country regarding allegations of ill-treatment of illegal immigrants; on the other hand, because of the risk of being repatriated to Somalia and Eritrea. Under this latter criterion, the Court reiterated the State party's obligation to ascertain that there were sufficient guarantees to prevent the persons concerned from being subjected to arbitrary return to their countries of origin where they [may] be subjected to ill-treatment contrary to article 3 (De Castro Sánchez 2013, 1129).

Also, the Court considered the violation of Article 13 of the Convention concerning Article 3 and Article 4 of Protocol No. 4 to the Convention.

[12] Article 3 to the ECHR (ETS No.005, 04/11/1950) prohibits torture by stating that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

[13] Article 13 to the ECHR (ETS No.005, 04/11/1950) determines the right to an effective remedy by stating: "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".

[14] Article 4 of Protocol No. 4 to ECHR (ETS No.046, 16/09/1963) prohibits the collective expulsion of aliens.

[15] This is the argument outlined by Italy to oppose the application of Art. 4 of Protocol No. 4 to ECHR. It asserts that what has occurred is a refusal of entry of aliens into its territory, not a presumption of the expulsion of aliens as long as they are not within the borders of the country.

Estudios de Deusto
© Universidad de Deusto • ISSN 0423-4847 • ISSN-e 2386-9062, Vol. 67/2, julio-diciembre 2019, págs. 147-161
http://dx.doi.org/10.18543/ed-62(1)-2019pp147-161 • http://www.revista-estudios.deusto.es/

2. *Case N.D. and N.T. v. SPAIN, 3 October 2017*

I consider this sentence particularly relevant as it condemned Spain for the "hot expulsions" on the Melilla fence in August 2013. The applicants argued that they were deprived of the right of being subject to an individualised administrative procedure before being returned to their country of origin, once they had been detained by Spanish security forces after crossing the Melilla fence. This situation, not only infringed the right to an effective remedy under Article 13 ECHR, but also led to a collective expulsion prohibited by Article 4 of Protocol No. 4 to ECHR. In this case, the ECtHR agreed with them and condemned Spain for it.

Another response from supranational bodies was generated by the European Parliament on September 2018, which voted in favour of unprecedented disciplinary action against Hungary for violating the values on which the EU was founded through Article 7 of the Treaty on European Union[16]: Article 7 sanctions can only be imposed on an EU member that violates the values of "human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities"[17].

VII. NOW THE QUESTION IS: WHAT WILL HAPPEN FROM NOW ON?

We still have to fight for the protection of human rights, not only from the political or legal sphere but from a multi-level approach in which society is the backbone of that response. Only in this way, we will be able to give a comprehensive approach to the problem that we are trying to address.

At the European level, I believe that the challenge now is to address the emergence of nationalist parties and to analyse the possible impact that their way of thinking might have on subsequent European legislation. Some of the politically significant events of this year, such as the European elections on 26 May, the situation with the Open Arms boat or the governmental changes in Italy, further reaffirm the belief that the ultimate objective of the European Union must be to legislate to guarantee the fundamental rights of the most vulnerable people; only in this way will it be possible to respect the essence for which it was created.

[16] Article 7 of the Consolidated Version of the Treaty on European Union (OJ C 202, 7.6.2016) aims to ensure that all EU countries respect the common values of the European Union. It provides for a preventive mechanism in case of a "clear risk of a serious breach" and a sanction mechanism in case of a "serious and persistent breach by a Member State" of the values stipulated in Article 2.

[17] Article 2 of the Consolidated Version of the Treaty on European Union (OJ C 202, 7.6.2016).

REFERENCES

CEAR. 2016. «Situation of Refugees in Spain and Europe. Executive Summary». Comisión Española de Ayuda al Refugiado. https://www.cear.es/wp-content/uploads/2013/05/Executive-Summary-2016-Report-CEAR.pdf.

De Castro Sánchez, Claribel. 2013. «TEDH-Sentencia de 23.02.2012, Hirsi Jamaa e.a.c. Italia, 27765/09. Artículos 3 y 13 Del CEDH; Artículo 4 Del Protocolo No 4- Tortura y Tratos Inhumanos y Degradantes; Derecho a Un Recurso Efectivo; Prohibición de Las Expulsiones Colectivas de Extranjeros». *Revista de Derecho Comunitario Europeo* 46 (September): 1119–1135.

Edwards, Adrian. 2016. «UNHCR Viewpoint: "Refugee" or "Migrant" – Which Is Right?» UNHCR. 11 July 2016. https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html.

García Sánchez, Beatriz. 2018. «Instrumentos Internacionales En La Lucha Contra El Terrorismo (ONU) ». In *El Terrorismo En La Actualidad: Un Nuevo Enfoque Político Criminal*, edited by Ana Isabel Pérez Cepeda, 75-104. Tirant Monografías. Valencia: Tirant lo Blanch.

International Organization for Migration, ed. 2015. *Migrants and Cities: New Partnerships to Manage Mobility*. World Migration Report. Geneva: International Organization for Migration (IOM).

——, ed. 2019. *Glossary on Migration*. International Migration Law 34. Geneva: International Organization for Migration (IOM). http://publications.iom.int/books/international-migration-law-ndeg34-glossary-migration.

Machimbarrena, María Granados. 2018. «La cuestión del asilo y el principio de non- refoulement: el Tribunal Europeo de Derechos Humanos y sus repercusiones en la UE». *Universidad de Navarra*, 25.

Ortega Giménez, Alfonso. 2016. «¿Qué diferencias existen entre "refugiados" e "inmigrantes"?» In *Migración y asilo: nuevos retos y oportunidades para Europa*, edited by Belén Becerril Atienza, José Parejo Gámir, and Blanca Sánchez Alonso, 1st ed., 115–140. Estudios. Navarra: Thomson Reuters Aranzadi.

Schultheis, Emily. 2018. «Viktor Orbán: Europe Will Restore "the Will of the People" on Migration in 2018». *POLITICO*, 5 January 2018. https://www.politico.eu/article/viktor-orban-refugees-europe-will-restore-the-will-of-the-people-on-migration-in-2018/.

Thompson, Laura. 2015. «Migración en Europa: tendencias actuales y retos emergentes». In *Flujos cambiantes, atonía institucional. Anuario de la Inmigración en España 2014 (edición 2015)*, 28-52. Anuario CIDOB de la Inmigración. Edicions Bellaterra. http://www.cidob.org/es/publicaciones/serie_de_publicacion/anuario_cidob_de_la_inmigracion/flujos_cambiantes_atonia_institucional_anuario_de_la_inmigracion_en_espana_2014_edicion_2015.

United Nations Department of Economic and Social Affairs. 2013. «International Migration Report 2013». United Nations. https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2013.pdf.

United Nations Development Program, ed. 2009. *Overcoming Barriers: Human Mobility and Development*. Human Development Report 2009. New York: Palgrave Macmillan.

United Nations General Assembly. 2016. *New York Declaration for Refugees and Migrants, Resolution Adopted in the Seventy-First Session*. *A/RES/71/1*. https://www.unhcr.org/events/conferences/57e39d987/new-york-declaration-refugees-migrants.html.

THE POPULIST RHETORIC AS A THREAT TO HUMAN RIGHTS IN EUROPE: STANCE OF THE SUPRANATIONAL INSTITUTIONS[1]

La retórica populista como amenaza a los derechos humanos en Europa: Posicionamiento de las instituciones supranacionales

Elena Avilés Hernández
Universidad de Málaga
elenaavileshernandez@uma.es

http://dx.doi.org/10.18543/ed-67(2)-2019pp147-161