2. Conflict of duties and competition of duties can be considered as supra-legal circumstances that exclude wrongdoing, which are not regulated by the Code.

3. When separating the competition of duties from the collision of duties, it is necessary to focus on the content of the duties. In the event of a conflict of duties, we are dealing with an equal amount of duty, while in a competition, these duties are unequal.

4. The existence of unequal responsibilities in the competition of duties relating to the function of a legal guarantor or to liability gives rise to a different legal assessment.

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Andrei Pântea
PhD in law, Associate Professor,
Head of Public Law Department,
University of European Studies of Moldova

REFLECTIONS ON INTERNATIONAL LEGAL COOPERATION IN CRIMINAL MATTERS: THE RIGHT TO LIFE UNDER THE PROCEDURAL LIMB

The right to life is one of the most important ones, being enshrined in international human rights treaties, including the European convention on human

rights. When it comes to the procedural limb of the obligation to protect the right to life in a multiple jurisdiction context, the international cooperation in criminal matters is of particular importance, especially because usually offenders try to resist law enforcement bodies and judicial authorities, to evade or to exploit territorial and/or bilateral relationships vulnerabilities. Applying the concept of extraterritoriality of jurisdiction and the instruments of judicial cooperation in criminal matters with States exercising effective control over territories within the meaning of the ECHR, and therefore committed under international human rights framework to comply with their positive procedural obligations, is the solution we have identified and further suggest.

In its latest case-law Jestcov against the Republic of Moldova and Russian Federation [1], the European Court for Human Rights (hereinafter ECtHR, European Court) held that there has been a violation of article 2 of the Convention by the Republic of Moldova and that no violation was found with respect to the Russian Federation. These developments fit the context of paradigm shifts when it comes to „gray zones and areas" over which normal government jurisdiction in its internationally recognized borders is not being exercised, a matter that we anticipated and previously addressed [2, p. 144].

The paper examines legal instruments and reasonings that were identified when researching case-law involving territories outside the effective control of the states that formally claim them, classified as „gray areas" by the international community, especially those that are known as Transnistria and the Turkish Republic of Northern Cyprus – (hereinafter MRT and TRNC) as a matter of sample, but noting as well that there are countries and territories around the world with similar features, and the issues will be deepen in the difficult regional context we are facing, in the south and east of Ukraine.

Abstaining from the causes and conditions that determined the current state of affairs and the chronology of events, but without diminishing their importance, we note that the impunity of perpetrators affects first of all the legitimacy of public authorities, diminishes the preventive nature of legal liability, alters the rule of law and may undermine the regional or international security because these territories are not only a destination to evade and abscond from criminal liability and justice, but can also be the crime scene or certain steps of the criminal activity can be conducted there, often having as perpetrators, or with the direct implications of those who assume the prerogatives of legal public power in this unrecognized „quasi/proto state" entities.

However, there are opinions that argue that, in order to ensure respect for fundamental rights and freedoms or to combat impunity, it would be necessary first of all for a formalized interaction with unrecognized bodies, or a decisive political

involvement, which in our opinion not only contradicts truth and legal reasoning, but it is harmful in all the aspects.

On the contrary, as long as this kind of situations actually fits the interests of some state actors, or for obvious reasons – „political" figures, especially obscure and criminal economic interests, we argue that those interests do not correspond in any way with those of the people.

We believe that, in order to ensure effective investigations and respect for the fundamental rights and freedoms of individuals, systemic interpretation of the judgments of ECtHR is appropriate. In these regards, we argue that four cases that have been heard before the court, namely Jestcov, Rantsev, Mozer and Güzelyurtlu can be of a particular interest for the purposes of ensuring effective protection for right to life under its procedural limb.

Should be noted preliminarily that, it is of notoriety that historically, the *de facto* situation in MRT when it comes to prosecution and indictment of offenders is a great issue and challenge for judicial authorities and law enforcement bodies, both for the cases when criminal activity is in part or fully conducted in this territory, when criminals abscond from the trial, or even when the criminal activity is conducted in MRT and after that criminals flee to Moldova, due to non-recognition of the „court" decisions, or due to *de facto* double jeopardy *(ne bis in idem).*

We further note that the European Court constantly states that its judgments serve not only to decide individual cases, but more generally, to elucidate, guarantee and develop the rules established by the Convention in compliance with the commitments entered into and involving even territories effectively controlled by another Contracting Party, such as through a subordinate local government [3, §136].

Thus, while the main purpose of the ECHR Convention system is to provide an individual remedy, its mission is also to establish the issue of public policy in the common interest, thus raising the general standards of human rights protection and extending this jurisprudence throughout the Community, in all the states that are parties to the Convention [4, §197]. The interpretation must consider the special nature of the Convention as a treaty for the collective application of human rights and fundamental freedoms which, in specific circumstances, that may involve the duty of Contracting States to act jointly and to cooperate to protect human rights and the freedoms which they have undertaken to secure in their jurisdiction [6, §232].

Therefore, the special character of the Convention as an instrument of European public policy (public order) for the protection of individual human beings, has been aimed at ensuring that the rights of the Convention are protected in the territory of all Contracting Parties [6, §193] being therefore applicable in the general context of the exercise of extraterritorial jurisdiction even in unrecognized entities.

There is few case-law with regard to the extension of the procedural obligation laid down in Article 2 of the ECHR in a cross-border or transnational context and

whether this has included an obligation to cooperate with other States [see 6, §181, 222]. There are even fewer cases concerning the obligation to cooperate that would result from other conventional safeguards or commitments than the right to life. However, the examination of the case concerning trafficking in human beings [see 4, §201] suggests that the creative jurisprudence of the European Court will go beyond the currently known limits, as it is currently the procedural limb of the right to life in the context of multiple jurisdictions, evolving into a separate and autonomous obligation, capable of binding the state even when the death occurred outside its jurisdiction [6, §189].

It is true that from the international public law point of view, and usually in terms of criminal legal status-quo, the jurisdiction of a State is primarily territorial and is normally exercised throughout the territory [3, §97], therefore the control of the owned territory and exercise of jurisdiction is the presumption. Thus, the competence of a State to exercise its jurisdiction over its own nationals abroad is subordinated, for instance, to the territorial jurisdiction of another State, and it cannot generally exercise its own jurisdiction without the consent, invitation or consent of the State concerned. In the same context, Article 1 of the Convention must be regarded as reflecting the ordinary and essentially territorial notion of jurisdiction [4, §206]. However, the presumption may be limited in exceptional circumstances, in particular where a State is prevented from exercising its authority in a part of its territory as a result of the involvement of a foreign State supporting the establishment of a separatist state [3, §97]. The European Court has also recognized, in exceptional cases, the exercise of jurisdiction under Article 1 by a Contracting State outside its territorial limits [6, §178].

In this sense, it is beyond any doubt that, over the temporary territory not controlled by the constitutional authorities of the Republic of Moldova on the left bank of the Dniester River for instance, in the sense set out in Mozer [3, §110-112, 147, 217] effective control is exercised by the Russian Federation. A similar issue concerns the TRNC and the effective control exercised by the Republic of Turkey.

It should be noted as well that, what makes the situation of the Republic of Moldova special in relation to Turkey's relationship with the TRNC and the Republic of Cyprus [see for example 6, §171, 193, 237] or any other territory, is the lack of publicly expressed reservations or oppositions to the recognition of the Republic of Moldova in its internationally recognized borders and its *de jure* territorial integrity, even on the part of the Russian Federation, which, as we mentioned before, exercises effective and *de facto* control over a part of the territory within the meaning of the Convention and with respect to the jurisprudence of ECtHR.

However, this situation cannot last forever because, as we have seen, the High Court examines the facts and circumstances regularly and at relatively equal intervals, and as we observed before, gradually changing the jurisprudence with the

variables of deductive reasoning is inevitable, for i.e. in the part concerning the economic integration of private companies from the left bank of the Dniester River, strengthening control and joint patrol at the common border with Ukraine, etc.

A certain shift was observed in Jestcov, a case where the applicant argued that both respondent States were responsible for the failure to enforce the custodial sentence in respect of a Russian national because the states had jurisdiction over the MRT, to which it was believed that the offender had absconded.

According to the case findings, the Government of the Republic of Moldova argued that they were discharged of their procedural obligations under Article 2 of the Convention by identifying, convicting, and searching for the perpetrator. Once the offender had been traced to the Russian Federation in 2015, it had not been possible to carry out the extradition to Moldova because of her Russian nationality. It was added that they subsequently submitted information about the recognition of the custodial sentence and the initiation of enforcement proceedings in the Russian Federation in 2020. On another side, the Russian government argued that it was incumbent on the Moldovan authorities to take all the reasonable measures to enforce the custodial sentence in respect of the offender, while the Russian authorities did not have any obligation to act on their own motion. When the Moldovan authorities requested legal assistance, the Russian authorities swiftly traced the perpetrator and cooperated for the recognition and enforcement of the custodial sentence. For this reason, the Russian Government contended that they had fulfilled all procedural obligations of cooperation.

The above-mentioned reasonings, together with the delays in the enforcement of the judicial decision, was recognized by the ECtHR entirely attributable to the Moldovan authorities, so that in those circumstances the measures taken couldn’t be regarded as reasonable, and were not in conformity with the obligation under article 2 of the Convention, irrespective of whether the offender had absconded after conviction.

Moreover, the procedural limb of art. 2 of the Convention requires some form of formal and effective investigation even in suspicious circumstances not attributable to State agents. As the ECtHR has observed, the authorities must act *ex officio* once the matter has come to their attention, and they cannot leave it to the victim's relatives to file a formal complaint, or to take responsibility for conducting any investigative proceedings [6, §232]. On the other hand, when there is a partial or total failure to act, the task is to determine to what extent a minimum effort was nevertheless possible [6, §97].

Therefore, the course of action and the efforts of the Moldovan authorities in Pisari against the Republic of Moldova and Russian Federation [5] seems opportune and correct, “the General Prosecutor's Office of Moldova recognized the applicants as victims in the ongoing criminal proceedings and informed them that an international

arrest warrant has been issued for the Russian soldier suspected of shooting Vadim Pisari" [5, §18]. The reaction of the Moldovan authorities in this case, even though it did not have a logical outcome, seemed to be the appropriate argument for the applicants' waiver to further maintain any claims against the Republic of Moldova and the subsequent accountability of the Russian Federation recognized by the European Court.

The ECtHR considers that the corollary of the obligation of the investigating State to obtain evidence located in other jurisdictions on its own initiative [6, §230] is the correlative obligation of the State in which the evidence is to provide any assistance within its competence and the means at its disposal in a request for legal assistance [4, §245]. Although the Court initially held that there was no obligation to provide evidence in the absence of such a request and no breach of the conventional procedural obligation was committed, it later clarified in Güzelyurtlu that whereas, there are cross-border elements of an incident of unlawful violence resulting in loss of life, there is an obligation for the authorities of the State in which the perpetrators escaped and where evidence of the crime could be located to take effective action, if necessary *ex officio* [6, §182].

Furthermore, the European Court did not consider that it should define *in abstracto* which „special features" trigger a jurisdictional link in relation to the procedural obligation to investigate under Article 2, as these features depend „necessarily on the particular circumstances of each case" and can vary considerably from case to case [6, §190].

As a result of the efforts, according to the findings in Güzelyurtlu, international arrest warrants were issued and communicated by the Republic of Cyprus through diplomatic channels to the Turkish Ministry of Justice [6, §52, 54, 57] which resulted in the fact that the Turkish Ministry of Internal Affairs informed the TRCN police in Nicosia [6, §80] about that, so *de facto* „police" cooperation was found between the TRNC and the Turkish authorities, even after the initiation of proceedings in the European Court (ex. the exchange of criminal record information, photography and fingerprints) [see 6, §86, 102].

The European Court also held that the fact that the alleged perpetrators of the crime were in the jurisdiction of Turkey, either in the TRNC or in mainland Turkey, that the Turkish authorities and the TRNC were informed about the crime, and that the TRNC authorities initiated their own criminal investigation, engaged Turkey's positive obligation under the procedural limb of Article 2, and a derogation from the general approach based on territoriality was justified [6, §171], ultimately leading to Turkey's liability before the court.

To conclude, the suggested solution is to apply the concept of extraterritoriality of jurisdiction and the judicial cooperation in criminal matters with States exercising effective control of those territories within the meaning of the Convention and

therefore committing them to comply with their positive procedural obligations under the Convention and ECtHR jurisprudence.

At the legislative level, we believe that legal systems should move away from the narrow territorial approach when it comes to international judicial cooperation in criminal matters, and for the purposes of criminal evidence and proceedings, it is first and most important that certified documents and evidence reach the judicial authorities under the responsibility and liability of a state and legally constituted body.

We argue that the above-mentioned approach could lead to improvements for the following immediate purposes: (a) the effective protection of fundamental human rights and freedoms and effective investigations in all jurisdictions of the Member States to the ECHR; (b) reducing impunity in territories and circumstances when the perpetrator's that try to evade to „gray areas" and criminal liability.

Finally, the ECtHR case Jestcov, as well as other mentioned cases illustrate that the States and law enforcement should act proactively when it comes to the right to life, appropriate and concrete steps should be taken with respect to cooperation in criminal matters to reduce impunity.

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