

# **ENSURING THE RIGHT TO LIBERTY AND SECURITY OF PERSON IN UKRAINE AND CAMEROON: A COMPARATIVE ANALYSIS IN THE AREA OF CRIMINAL JUSTICE**

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## **ABSTRACT**

This article seeks in highlighting the fact that, the right to liberty and security of persons articulated in relevant human right and criminal law dispositions has given responsibilities to the State of Cameroon and Ukraine in ensuring the respect of this fundamental right. There is a need for these States in enacting relevant legal mechanisms and institutions aimed at protecting those presumed criminally liable of crime commission their security in all areas of the criminal proceedings. The article also indicates that, the application of this right by these two countries will go a long way in conforming with the dispositions and provisions put in place by International Standards for Human Right implementation. These standards set in guaranteeing and safeguarding the protection and enforcement of this right by member States who are signatories and parties to the relevant conventions in question. Cameroon, unlike Ukraine has enacted and put in place credible laws and institutions in ensuring the proper implementation of this right through its law enforcement officers who has shown laudable efforts in ensuring that this right is guaranteed and secured. Even though with all these efforts put in place, protection continue to be of questionable character as rampant violations of this fundamental right are experienced in both countries.

**Keywords:** Ensuring Right to Liberty and Security, Ukraine, Cameroon-Comparative Analysis

## INTRODUCTION

As noted and stipulated in the Preamble of the Constitution of the Republic of Cameroon: «...we constitute one and the same Nation, bound by the, same destiny, and assert our firm, determination to build the Cameroonian Fatherland on the basis of the ideals of fraternity, justice and progress ... [...] ... while maintaining peaceful and brotherly relations with the other nations of the World, in accordance with the principles enshrined in the Charter of the United Nations ...».<sup>i</sup> At the same time, according to international human rights organizations reports (Cameroon Country Report, 2012), Cameroon is not a democracy, but at best a hybrid regime with many authoritarian features. The main reason for this is that the ruling elite in Cameroon are not committed to democratic institutions. Deficiencies in participation, the rule of law, efficiency, the inclusion of population groups and social justice precludes the country from being considered democratic. Decades of authoritarian rule have proven that the government is not committed to substantial democratization of the political scene. Although most actors in Cameroon agree that democracy are the goals of reform and that it is for the interest of the people and enjoying all the advantages accruing from the fruit of this fundamental principle encourage by the international community. It is thus the responsibility of States practicing democracy in all its ramifications in ensuring that everyone irrespective of status or position should exert their rights in which that of liberty is not an exception.<sup>ii</sup> International human rights law in its aim of upholding the standard of human protection and safety has stipulated and proscribes that any aspect of arbitrary arrest and detention of persons presumed of crime commission should be questionable and authorize in its entirety. With the putting in place the inexplicable human right covenant on Civil and Political Right especially in its credible article 9, condemning all practices and acts of arrest that are not in conformity with the rule or dispositions of the law. The Section provide that it is the right of those arrested to be provided with accurate knowledge of their arrest. Under no circumstances should someone be arrested arbitrarily even though sufficient evidence shows the commission of the offence. The fact that arrest is a legal basis stipulated in criminal texts, the manner in which it is carried out should be able in respecting the fundamental human right the person arrested especially at the level of their treatment during the detention process awaiting trial. Laudable efforts have been of prime discussion and interest to both the State of Cameroon in ensuring that anyone charged with a criminal offence shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and entitled to be trialed within a reasonable time or release in situation of no case submission."<sup>iii</sup> This right

concerned is applicable at all times and gives individuals the right to challenge their detention if they believe it is unlawful or unfounded, and have not comply with the due process of the law.

In turn, Ukraine is trying to move towards the development of democratic, legal foundations, introducing international legal standards in the field of protection of human rights and freedoms and improving national legislation taking into account the rule of law principle. Undoubtedly, the commitment of this direction is directly reflected in Article 1 of the Constitution of Ukraine, which declares that Ukraine is a sovereign and independent, democratic, social and rule of law state. And according to Article 3 of the Constitution “human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State.

The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State. And this must be recognized as an important step towards protection of person’s rights and freedoms, because wars that the world has experienced have forced humanity to rethink the significance and importance of fundamental rights and freedoms. In this regard, the issue of human right protection is a fundamental concept that has attracted the international community for their safety and livelihood. This human right protection has been encouraged in all dimensions and domains when issues of liberty and security is concerned. The security in question extends to aspects of criminal responsibility and protection of persons. Those arrested and detain possesses some fundamental rights that need to be respected and secured as provided in relevant human rights instruments laying emphasis on security and guarantees of those in detention.<sup>iv</sup> It is one thing in stipulated and making provisions of relevant human right texts aimed at guaranteeing the protection and right of those in detention, and the another in ensuring these right and protection. The legal texts are beautiful and appetizing in decorating their contents with human right elaboration, but it will be no essence or importance if such rights are not given utmost consideration at its application phase for it to uphold and maintain its primary objective, being that of applicability.

## **THE PLACE OF CAMEROON AND UKRAINE NATIONAL LEGAL DISPOSITIONS IN THE PROTECTION OF THE RIGHT TO LIBERTY AND SECURITY**

There is no denial that Ukraine and Cameroon have ratified international legal instruments in the field of the protection of human rights and freedoms, by committing themselves in ensuring that fundamental rights and freedoms guaranteed by the relevant international instruments, including the right to liberty and security of person should be respected at all levels. The problem is in examining whether these two States has respected the commitments and engagements they accepting in ensuring that this fundamental human right as to liberty and security are respected. Does the accused or suspect treated in a manner where his rights are being respected during his stay in detention?

As States of law bound by relevant legal dispositions with the constitution considered as the grudnorm of the country, enormous efforts have been meted by these countries in ensuring this fundamental right. A laudable initiative is recognised in its preamble by providing that;

*“every person has the right to life, physical and moral integrity and to humane treatment in every circumstances. That under no circumstances shall someone be subject to torture, inhumane and degrading treatment”<sup>v</sup>.*

The constitution continues by affirming that the attachment of the people of Cameroon to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto. Article 45 of the Constitution provides that;

*“duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement”<sup>vi</sup>*

The country Constitution of 2 June 1972, revised by Law no 96/06 of 18 January 1996 was not an exception in the recognition and determination of this right where it provides every steps in condemning all aspects of torture and cruel, inhuman or degrading punishment and treatment in conformity with the Covenant on Civil and Political Right by providing that;

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation"*<sup>vii</sup>.

The act of subjecting a suspect to torture and treating him humanely are also enshrined in Article 121(2) of the Code of Criminal Procedure. Even though with all these laws put in place, those who were supposed to guarantee persons in police custody and detention continue in experiencing aspects of torture, harassment, and other forms of human right abuses. Even at the level of pre-trial of prisoners the situation continues to be questionable and deplorable as element of prolonged pre-trial detention is poses a serious problem and threat. It is of great relevance that Article 221 of Criminal Procedure Code 2005 provides the time limit for detention pending an investigation which cannot exceed six months and can only be extended by an order from a judge giving grounds by 12 months for serious crimes and six months for lesser crimes. When this time limit expires, the suspect must immediately be released.

The Cameroon's Constitution<sup>viii</sup>, Penal Code<sup>ix</sup>, and the Criminal Procedure Code<sup>x</sup> forbids the use of torture and other treatment that violates human dignity and integrity.

Beautifully and knowledgeable aspect about the Cameroon' Penal Code is that it criminalizes the use of torture<sup>xi</sup> in inducing a person to confess to an offense or to offer statements or related information against his or her consent.<sup>xii</sup> The objective of the law here is in ensuring that aspect of implementing security should be of fundamental interest to the law enforcement officers of the country. There is that need in ensuring security and safety of everyone irrespective of the crime committed. The commission of an offence by someone does not in any way deprived the person of his or her fundamental human right, and such right should be exercised in respecting the person dignity, integrity and personal security. Making provision of the law as to security of person in all aspects of life is one thing, ensuring that this security should be guaranteed is another. The State of Cameroon owes its citizens that obligation especially those under detention, pre-trial, and even trial humane treatment by respecting relevant human right instruments and even national dispositions.

As for Ukraine, for the effective protection of human rights and freedoms, including the right to liberty and security of person, the Verkhovna Rada of Ukraine ratified fundamental

international instruments such as the Universal Declaration of Human Rights of 10 December 1948,<sup>xiii</sup> the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,<sup>xiv</sup> the International Covenant on Civil and Political Rights of 16 December 1966,<sup>xv</sup> all with the primary aim being that of the protection of fundamental human right.

We are sure that the ratification of international instruments in the field of protection of human rights and freedoms has had a positive impact on the improvement of national legislation both in Ukraine and Cameroon. First of all, this is proved by the provisions of the Constitutions of the two states, to which the relevant requirements on ensuring the right to liberty and security of person have been applied. And this is important, since the Constitution of any country determines the path of development and life of society. Therefore, when interpreting and applying a particular provision of the Constitution, on the basis of a particular situation, state bodies and officials have no right to violate the normal life and development of society.

In turn, in Article 29 of the Constitution of Ukraine states as follows:

*“Everyone has the right to freedom and security of person. No one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by law. Everyone arrested or detained shall be informed without delay of the reasons for his or her arrest or detention, apprised of his or her rights, and from the moment of detention shall be given the opportunity to personally defend himself or herself, or to have the legal assistance of a defender. Everyone detained has the right to challenge his or her detention in court at any time. Relatives of an arrested or detained person shall be informed immediately of his or her arrest or detention”.*

For the practical implementation of these requirements, the norms of Article 68 of the Constitution of Ukraine are very important, which states that everyone is obliged to strictly abide by the Constitution of Ukraine and the laws of Ukraine, and not to encroach upon the rights and freedoms, honour and dignity of other persons. In this regard, everyone should understand that ignorance of the law does not exempt them from legal liability. Therefore, the above constitutional provisions meet the requirements set out in international legal acts regarding the possible restriction of the right to liberty and security of person. Therefore, it should be understood that the right to liberty and security of person is not absolute, as it may

be restricted in the manner prescribed by law. And this is not a violation of the requirements of international legal acts, which allow cases of lawful restriction of the said law. About this, Article 29(2) of the Constitution of Ukraine states:

*"In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately, if he or she has not been provided, within seventy-two hours from the moment of detention, with a substantiated court decision in regard to the holding in custody."*

### ***Questioning the Detention Condition in Ensuring Detainees Security***

Really, it's an applaudable platform that the constitutional provisions of both countries meet the requirements of international legal acts in guaranteeing the right to liberty and security of persons. The affirmation posed testify that, in every normal detention environment, there is the need to always ensure that right of those detained are safeguarded and secured. This has been the laudable effort so far for the criminal atmosphere in Cameroon. **Section 263** of the **Cameroon Criminal Procedure Code** provides that:

- "1) Any person who has been illegally detained may, when the proceedings end in a no-case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a particularly serious nature as a result of such detention.*
- 2) Illegal detention within the context in subsection (1) above shall mean:*
  - a) detention by the Judicial Police Officer in disrespect of the provisions of sections 119 to 126 of this Code;*
  - b) detention by the State Counsel or the Examining Magistrate in disrespect of the provisions of sections 218 to 235, 258 and 262 of this Code.*
- 3) The compensation shall be paid by the State which may recover same from the Judicial Police Officer, the State Counsel or the Examining Magistrate at fault".*

*The general and acceptable principle is that, any person deprived of his or her liberty retains human rights and fundamental freedoms<sup>xvi</sup>, except for restrictions required by the very fact of*

their imprisonment. **Section 122** of the Cameroonian Criminal Procedure Code also provides that "the suspect shall be treated humanely both morally and materially."<sup>xvii</sup> To this effect, it is an obligation that the State of Cameroon should ensure the right to the highest attainable standard of physical and mental health <sup>xviii</sup>of everyone, including those persons in custody. It has been the responsibility of the Cameroon government in collaboration with law enforcement officers in taking all measures for prisoners or those in detention should not be deprived of their liberty. These persons in question should have access to necessities and services that satisfy their basic needs, including adequate and appropriate food, washing and sanitary facilities, and communication with others. The government has ensured that all inmates are provided with free and adequate medical care in conformity with international standards.

The right to security of person must protect individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained, and when officials of States parties violate this right by inflicting unjustifiably bodily injury, sanctions must be meted on them. The right obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily. With all these put in place and most of the time the State of Cameroon has not upheld this standard, one starts posing some queries or question whether there exists fair trial when issues of such nature occur and how it has been handled by the Cameroon State. This aspect of fair trial is extended to everyone when those in pre-trial or detention.

#### ***The place of the European Court on Human Right in Securing Liberty in Ukraine***

Of great importance and relevant here is the position or provision of Article 3 of the Declaration, which states: "Everyone has the right to life, liberty and security of person"; Article 9, which guarantees that: "No one shall be subjected to arbitrary arrest, detention or exile". This is an essential disposition when issues of human right protection are concerned. Protecting the security and liberty of everyone is the rationale of the law, and such protection has no limits in its functioning and applicability. In confirming this legal placement and explanation, Article 5 of the same law states that "1. Everyone has the right to liberty and security of person, and no one shall be deprived of his liberty except in cases and position prescribed by law which include;

- (a) *the lawful detention of a person after conviction by a competent court;*

- (b) *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”.*

Regarding this Convention and of relevance are the judgment of the European Court that of<sup>xix</sup>, Winterwerp v. the Netherlands, McKay v. the United Kingdom Grabowski v. Poland. That right is of primary importance in a “democratic society” within the meaning of the Convention. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5(1) is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty.

It is worth taking into account the fact that the European Court in their decisions notes at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is precisely for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been affected in conformity with the

substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness.<sup>xx</sup>

The necessity to introduce in national legislation both guarantees of the right to liberty and security of person, and legal cases of his or her restriction, first of all, is due to the fact that without the use of procedural coercion, it is not always possible to solve a crime, to identify the person who committed it and bring him or her to justice. At the same time, in practice, the restriction of the right to liberty and security of person is connected with the problem of lawfulness, legality and prohibition of arbitrariness from the public authorities. This is due to the compulsory fulfilment of the restriction of the said right, since this takes place against the will and desire of the person.

There is no doubt that in the field of criminal justice, the rights and freedoms of a person may be subject to considerable restrictions and the right to liberty and security of person is no exception. And as the well-known scientist-proceduralist P. S. Elkind rightly pointed out, no matter how great the power of social influence as a legal conviction, as long as there is a right, there is a need to apply state coercion to persons who do not wish to abide by legal rules<sup>xxi</sup>. That is why, in order to ensure a legitimate intrusion into personal freedom and restrict the security of person, criminal restrictive mechanisms should be enshrined in criminal procedural legislation.

## **GUARANTEES AND LEGITIMATE CONDITIONS FOR RESTRICTION OF THE RIGHT TO LIBERTY AND SECURITY OF PERSON AS PROVIDED FOR BY CRIMINAL PROCEDURAL LAW**

It is a general and succinct principle that Ukraine and Cameroon criminal procedural activities are governed by a single systematic normative document; the Criminal Procedure Code (CPC). In Ukraine, the current CPC was adopted and entered into force in 2013, and in Cameroon, it was adopted in 2005 and entered into force in 2007<sup>xxii</sup>, harmonizing the criminal procedural law of the Anglophone and Francophone regions. It was expected that the CPC would complement existing legislation on, and herald a new era for, the protection of human rights. However, Cameroon's record on human rights protection remains poor as the right to personal

liberty continues to be violated with impunity.<sup>xxiii</sup> The Criminal Procedure Code of Ukraine of 2012 is not an exception when issues of guaranteeing human right to liberty and security are concerned. its ideology was based on the priority of the protection of the individual, protection of rights, freedoms and legitimate interests of participants in criminal proceedings. Introducing the current CPC of Ukraine, the legislature tried to embody the competitive process in the best possible way, where the defense and prosecution are given equal rights to gather evidence, defend their own position in court. In order to guarantee and ensure the mentioned general principles of criminal proceedings, the basic requirements on which all criminal procedural activity should be based, have been introduced to the CPC of Ukraine. One of these principles is to ensure the right to liberty and security of person (Article 12 of the CPC). The systematic analysis of this article shows that it complies with the above constitutional norms and requirements of international legal acts, which guarantee the right to liberty and security of person.

However, as already noted this right is not absolute and may be restricted in the manner prescribed by law. But in each case, it should be born in mind that personal liberty is a fundamental condition, which everyone should generally enjoy. Its deprivation is something that is also likely to have a direct and adverse effect on the enjoyment of many of the other rights, ranging from the right to family and private life, through the right to freedom of assembly, association and expression to the right to freedom of movement. In order for the guarantee of liberty to be meaningful, any deprivation of it should always be exceptional, objectively justified and of no longer duration than absolutely necessary.<sup>xxiv</sup>

#### ***Legitimizing the Restriction as to the Right to Security and Liberty under Cameroonian Laws***

The constitution in its preamble prohibits arbitrary arrest and detention and provides the possibility of those arrested arbitrarily in challenging the lawfulness in court of an arrest or detention. The Cameroon Criminal Procedure code in its **Section 118(2)** is to the effect that, except in the case of an individual discovered in the act of committing a felony or misdemeanour, the officials undertaking the arrest shall disclose their identity and inform the person arrested of the reason of his or her arrest. Failure in respecting prescribed provision, qualifies the act as illegal and void. The Code also provides that persons arrested on a warrant shall be brought immediately before the examining magistrate or the president of the trial court who issued the warrant, and that the accused persons shall be given reasonable access to contact

their family, obtain legal advice, and arrange for their defence. The law provides that any person who has been illegally detained by the police, the state counsel, or the examining magistrate may receive compensation in case of injured incurred as a result of the illegality caused. On several occasions the government did not respect these provisions. The situation has really become worrisome and devastating when the police, gendarmes, military soldiers, and government authorities are reportedly in continuing to arrest and detain persons arbitrarily, often holding them for prolonged periods without charge or trial and at times incommunicado. There are several reports and cases that police or gendarmes arrested persons without warrants on circumstantial evidence alone, often following instructions from influential persons to settle personal scores.

The United Nations Principles on the treatment of Prisoners has provided in its principle that;

*“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”<sup>xxv</sup>*

This is not the case of the liberty of prisoner in the Cameroonian prisons. Prisoners in the country are found in dilapidated, colonial-era prisons, where the number of inmates was as much as five times the intended capacity. The general rule is that when matters of prisoners are concerned, and for the sake of security, there should be separate wards for men, women, and children. The case becomes precarious as authorities often held detainees in pre-trial detention and convicted prisoners together. In many prisons, toilets were nothing more than common pits. In most of the cases, women and children are supposed to benefit from better living conditions which include improved toilet facilities and less crowded living quarters. The women in most of the prison centres in Cameroon are not taking care of, most of them are exposed to protracted diseases which affects their safety and security.

Even when in detention, the law requires that everyone should be in possession of quality food, access to potable water, sanitation, heating; ventilation, lighting, and medical care were inadequate<sup>xxvi</sup>. As a result, those in detention condition always experienced serious illnesses such as malnutrition, tuberculosis, bronchitis, malaria, hepatitis, scabies, and numerous other untreated conditions, including infections, parasites, dehydration, and lots of others. What about the situation of abuses encountered? There is physical abuse by prison guards on prisoners; even cases of sexual violence on women are encountered.

### ***The Position of the European Court on Human Rights***

And such a statement is quite correct, since the relevant criteria for interference with human rights and freedoms are set out in the ECHR, and the European Court has stated in its case-law that: «... the Convention reinforced the individual's protection against arbitrary deprivation of liberty by guaranteeing a corpus of substantive rights which are intended to minimize the risks of arbitrariness by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act. ...» (paragraph 123 of the judgment of 25 May 1998 in the case of *Kurt v. Turkey*).<sup>xxvii</sup>

At present, the requirements of the ECHR and the case-law of the ECtHR are important for both Ukrainian legislation in general and the criminal process in particular. This is explained by the following interrelated circumstances.

*Firstly*, according to Article 9 of the Constitution of Ukraine, the current international treaties, the consent of which is provided by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. As already noted, Ukraine has ratified the ECHR, so it must strictly respect the human rights and freedoms guaranteed by it.

*Secondly*, according to Part 1 of Article 2 of the Law of Ukraine "On Enforcement of Decisions and Application of the Practice of the European Court of Human Rights" of 23.02.2006 No. 3477-IV the decision of this Court is binding by Ukraine in accordance with Article 46 of the Convention. In addition, in Article 17 of this Law it is enshrined that the courts use the Convention and the case-law of the Court as a source of law when considering cases.

*Thirdly*, according to Part 2 of Article 8 of the Criminal Procedure Code of Ukraine, the principle of the rule of law in criminal proceeding is applied taking into account the case-law of the ECtHR, and in accordance with Part 5 of Article 9 of the CPC of Ukraine the criminal procedural legislation of Ukraine is applied taking into account the case-law of the European Court of Human Rights.

Having observed the historical aspects of the creation European Court, one can see that its functioning is connected with the evolution of the international system of protection of human

rights and freedoms. In this regard, there was a need to form a uniform case-law on the setting of parameters both for the protection of fundamental rights and freedoms and for their legitimate restriction. Therefore, the ECtHR, as the highest autonomous international court, should promote the proper understanding and interpretation of the rules of the ECHR, which guarantee the inviolability of human rights and freedoms. And every State party that has ratified the ECHR must strictly comply with its requirements and apply the case-law of the ECtHR.

Accordingly, it could be affirmed that the ECHR acts as the principal interpreter and defender of human rights and freedoms enshrined in the ECHR. That's why, in order to implement such a task effectively, the ECtHR, within its authority, aims to determine in practice whether there has been the violation of the right, either individually or in relation to others. However, if the limits of permissible restrictions have been violated, and even more minimized, then no right, and therefore democracy, is out of the question. In this context, maximizing protection of human rights and freedoms faces the Government of every democratic, rule of law state.

In this context, the analysis of the criteria that, according to the ECHR and the case-law of the ECtHR, are permissible and reasonable to interfere and restrict human rights and freedoms, including the right to liberty and security of person is of interest.

Thus, in accordance with the requirements of the ECHR and the established case-law of the European Court, any interference with the field of human rights and freedoms should:

- 1) be "statutory";
- 2) pursue a legitimate goal;
- 3) be "necessary in a democratic society" to achieve the goals.

Regarding the first criterion, we note the following. In a number of its decisions (see *Larissis and Others v. Greece*; *Hashman and Harrup v. the United Kingdom*; *Metropolitan Church of Bessarabia and Others v. Moldova*; *Maestri v. Italy*), the Court has focused on the fact that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question.

In the Court's opinion (see *The Sunday Times v. the United Kingdom* (no. 1), § 49)<sup>xxviii</sup>, the following are two of the requirements that flow from the expression "prescribed by law". Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see *Hasan and Chaush v. Bulgaria; N.F. v. Italy*). The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Hashman and Harrup*).

## **ACCESSING THE VIOLATIONS OF THIS FUNDAMENTAL RIGHT IN CAMEROON AND UKRAINE**

Ensuring the legitimate restriction of the right to liberty and security of person at the legislative level, the grounds, purpose and procedure of the appropriate measure during which the interference with that right may take place must be clearly stated, as well as effective guarantees for the control and verification of the lawfulness of the actions of competent bodies. For every aspect of right to amount to restriction of liberty, such act taking by the authority in question must be subject to the rule of law or juridical control. It is of no doubt that the Cameroon

constitution in its Article 3 provide that all activities of the State must be in accordance with law of the country. Its penal code continues in enumerating in its Section 17 that all acts must be backed by the law. These provisions apply in all circumstances and that as to liberty and security is not an exception. The question one need in posing here is in ascertaining whether the law enforcement officers in the course of enforcing its functions can violate this right as to liberty and security? The answer is in the affirmative as far as the operating within the ambit and respect of the rule of law, then their actions will be justifiable.

Another situation of legitimizing restriction can be examined at the level where the restriction in question is for a legitimate purpose. According to Part 2 of Article 8 of the ECHR, the legitimate purpose takes place when the interference is carried out in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

On a number of occasions, the Court has stated its understanding of the phrase "necessary in a democratic society", the nature of its functions in the examination of issues turning on that phrase and the manner in which it will perform those functions. In particular, this applies to such general principles:<sup>xxix</sup>

- (a) *the adjective "necessary" is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable";*
- (b) *the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention;*
- (c) *the phrase "necessary in a democratic society" means that, to be compatible with the Convention, the interference must, inter alia, correspond to a "pressing social need" and be "proportionate to the legitimate aim pursued";*
- (d) *those paragraphs of Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly interpreted.*

As we can see, the case-law of the ECtHR has now formulated and interpreted the criteria under which the restrictions of human rights and freedoms guaranteed by the ECHR can be considered justified. Instead, non-compliance with the current criminal procedural legislation by the law enforcement and judicial bodies, its imperfection and inconsistency of certain provisions leads to violations of the right to liberty and security of person. As a result, the ECtHR does not rule in Ukraine's favor and awards appropriate compensation for the applicants. This situation took place both under the previous CPC of 1960 and the current CPC of 2012, indicating that legislative gaps are unresolved.

Thus, during the CPC of 1960, the ECtHR repeatedly found violations of the right to liberty and security of person in criminal proceedings. For example, in a judgment of 18 February 2010 (which became final on 15 May 2010) in the case of *Garkavyy v. Ukraine*<sup>xxx</sup>, the European Court found a violation of paragraph 1 of Article 5 of the Convention, as the detention of the applicant was not justified by law properly.

In turn, in the judgments in the case of 17.10.2013 in the case of *Taran v. Ukraine*<sup>xxxi</sup> and of 07.11.2013 in the case of *Belousov v. Ukraine*<sup>xxxii</sup>, the European Court found violations of paragraphs 1, 3, 4 of Article 5 of the ECHR, as there was an unlawful detention of a person for a period exceeding 72 hours, in view of the fact that such detention was carried out without a proper court decision. Moreover, in the judgment of *Belousov v. Ukraine*, the ECtHR stated that the applicant's actual detention was more than 30 hours without a corresponding documentary recording of such detention. Moreover, in the case of *Belousov v. Ukraine*, the ECtHR stated that the applicant's actual detention lasted for more than 30 hours without a corresponding documentary recording of such detention.

Thus, despite the importance of judicial control in criminal proceedings, national courts were not able to ensure verification of the legality and reasonableness of the detention of a person.

Moreover, it is not uncommon when the European Court of Justice finds a formal approach taken by a court in the election of precautionary measures in the form of detention and its continuation, which was excessive (see, among others, *Kharchenko v. Ukraine*, *Taran v. Ukraine*, *Gerashchenko v. Ukraine*, etc.). Thus, the root cause of the violations was that the decisions of the national courts had been decided without proper justification or at the lack of

any motivation regarding the need to hold the person in custody. In particular, the prosecutors and the courts did not advance any grounds whatsoever for maintaining the applicant's detention, simply stating that the previously chosen preventive measure was correct. However, Article 5(3) of the European Convention of Human Right requires that after a certain lapse of time the persistence of a reasonable suspicion does not in itself justify deprivation of liberty, and the judicial authorities should give other grounds for continued detention. Those grounds, moreover, should be expressly mentioned by the domestic courts (see, among others, Yeloyev v. Ukraine, Kharchenko v. Ukraine).

In doing so, government officials should have taken into account that the ECtHR in its case-law reiterates that the issue of whether a period of detention is reasonable cannot be assessed in abstracto. This must be assessed in each case according to its special features, the reasons given in the domestic decisions and the well-documented matters referred to by the applicant in his applications for release. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among others, Labita v. Italy, Kharchenko v. Ukraine).

The adoption in 2012 of the current Criminal Procedure Code of Ukraine was marked by the further implementation of international standards of criminal justice. For example, the ECtHR's case-law introduced a requirement that one of the grounds for taking precautionary measures is a reasonable suspicion of committing a criminal offense.

At the same time, despite the positive changes regarding legislative provision of guarantees for the protection of the rights to liberty and security of person, there are still facts of violation of this right in the practical activity of law enforcement agencies. First of all, let us turn to the decision of 9 October 2014 in the case of Chanyev v. Ukraine<sup>xxxiii</sup>, in which, since the adoption of the CPC of 2012, the ECtHR, for the first time, concluded that there was a systemic problem regarding the choice of preventive measures, since Article 315 of the CPC does not clearly and precisely resolve the issue of detention in the period when the pre-trial investigation was over and prior to the trial. A similar problem was stated in the decision of 15.12.2016 in the case of Ignatov v. Ukraine<sup>xxxiv</sup>. The decision of the Constitutional Court of Ukraine of 23 November 2017<sup>xxxv</sup>, by which provisions of the third sentence of Part 3 of Article 315 of the CPC of

Ukraine declare that it does not comply with the Constitution of Ukraine (is unconstitutional), contributed to the elimination of such problems. Therefore, no criminal prosecution measure can be extended automatically during pre-trial proceedings today.

One of the last indicative decisions where violations during arrests have led to a decision not in favor of Ukraine is the decision of 4 July 2019 in the case of Korban v. Ukraine<sup>xxxvi</sup>. In particular, the ECtHR pointed out the violation of Article 5 (1) (unlawful arrest) in the apartment and after being released in the courtroom, as well as Article 5 (3, 5) of the Convention regarding not being brought to justice for a long time to decide on the issue of arrest.

### ***Accessing the Detention and Arbitrarily Conditions of those Arrested***

Despite commitments made by the Cameroonian authorities to respect national law and international human rights standards in their operations, the evidence witness is that arbitrary arrests and detentions continue on a large scale in Cameroon, and even the basic legal safeguards relating to arrest and detention are rarely respected. This arbitrary arrest means that hundreds of people have been deprived of their liberty without any evidence that they have committed a crime. Even those found in detention have also been made to live in overcrowded and unhygienic conditions, which have seriously, pose a threat to their health. The country prison conditions in most cases are considered to be harsh and even life threatening. The aspect of overcrowding in these prisons remained a significant problem especially in major urban centers. The United Nations Principles on the treatment of Prisoners has provided in its principle one that;

*“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”<sup>xxxvii</sup>*

This is not the case of the liberty of prisoner in the Cameroonian prisons. Prisoners in the country are found in dilapidated, colonial-era prisons, where the number of inmates was as much as five times the intended capacity. The general rule is that when matters of prisoners are concerned, and for the sake of security, there should be separate wards for men, women, and children. The case becomes precarious as authorities often held detainees in pre-trial detention and convicted prisoners together. In many prisons, toilets were nothing more than common pits. In most of the cases, women and children are supposed to benefit from better living

conditions which include improved toilet facilities and less crowded living quarters. The women in most of the prison centres in Cameroon are not taken care of, most of them are exposed to protracted diseases which affects their safety and security.

The case of arbitrary arrest and detention is more precarious and devastating. The constitution in its preamble prohibits arbitrary arrest and detention and provides the possibility of those arrested arbitrarily to challenge the lawfulness in court of an arrest or detention. The Cameroon Criminal Procedure code in its **Section 118(2)** is to the effect that, except in the case of an individual discovered in the act of committing a felony or misdemeanour, the officials undertaking the arrest shall disclose their identity and inform the person arrested of the reason, and if the said procedure is not respected, then the said act will be characterized illegal. The Code also provides that persons arrested on a warrant shall be brought immediately before the examining magistrate or the president of the trial court who issued the warrant, and that the accused persons shall be given reasonable access to contact their family, obtain legal advice, and arrange for their defence.

The law provides that any person who has been illegally detained by the police, the state counsel, or the examining magistrate may receive compensation. On several occasions the government did not respect these provisions. The situation has really become worrisome and devastating when the police, gendarmes, military soldiers, and government authorities are reportedly continuing to arrest and detain persons arbitrarily, often holding them for prolonged periods without charge or trial and at times incommunicado.

#### ***Harassment of Law Enforcement Authorities in Handling cases of Detention***

There are several reports and cases that police or gendarmes arrested persons without warrants on circumstantial evidence alone, often following instructions from influential persons to settle personal scores. Whether at the International, Regional, or National, the State of Cameroon is obliged to ensure that those who are arrested immediately should be informed of the reasons for the arrest and any charges brought against them must be qualified with an access to a lawyer of their choice, before promptly brought before a judicial body on the basis of a reasonable information that the person is presumed of committing the crime in question. In most instances as spelled out the country Criminal Procedure Code, criminal acts must reflects international and regional standards, although the anti-terror law promulgated in December 2014 allows

suspects to be held without charge for a period of 15 days, renewable indefinitely, which would exceed international standards regarding the length of detention prior to being brought before a judicial body.<sup>73</sup> **Section 30** of the Criminal Procedure Code has lots in stimulating by providing that there should be "*no bodily or psychological harm shall be caused to the person arrested.*"<sup>xxxviii</sup> This situation regarded to arbitrary arrest and treatment is appalling for we experienced a significant number of cases in which both international human rights standards and national law were violated in relation to arbitrary arrest and detention. The report of Amnesty International of 2014 is to the effect that between 2014 and September 2015, more than 1,000 people had been arrested on suspicion of supporting Boko Haram, including through the use of 'cordon-and-search' operations leading to the arrests of dozens and in one case, hundreds of people at a time, often based on little or no evidence and without arrest warrants.<sup>xxxix</sup>

## CONCLUSION

Summarizing the study, it can be argued that the interference and restriction of human rights and freedoms would be violation of requirements provided under the Cameroon Constitution and the Criminal Procedure Code and the ECHR, which guarantees the corresponding right as to liberty and security if it: 1) has not been "statutory"; 2) did not pursue one or more legitimate goals; 3) was not "necessary in a democratic society" to achieve the goals.

At present, the main problems with both system of laws that is Cameroon and Ukraine lies in the fact that we always experienced violations of the requirements of the various legal dispositions enacted by both in terms of the protection of the right to liberty and security of person are the shortcomings of the legislative and the case-law, which lead to the detention and holding in custody of a person without proper legal basis.

The primary and priority way one can address these issues is that the State of Cameroon and Ukraine should be able in complying and conforming with their current criminal procedural legislations of in conformity with the requirements of the ECHR and African Charter, and even extends the practice of the European Court and African Court on Human Right regarding the

right to liberty and security of person by the pre-trial investigation bodies, prosecutors and judges.

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5. Nana Charles Nguindip (2018), The Right to Freedom of Movement and the Protection of Refugees in Cameroon: What Prospect for Implementation? Volume 1, Issue 2 *Journal of Human Rights Law and Practice* Page 37-45, at 37.
6. P. S. Elkind (1967), Interpretation and application of the rules of criminal procedure law. Moscow: Judicial Literature.

## ENDNOTES

- <sup>i</sup> Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, available at <<http://confinder.richmond.edu/admin/docs/Cameroun.pdf>>.
- <sup>ii</sup> Bertelsmann Stiftung "Bertelsmann transformation index 2012: Cameroon country report" (2012), available at <[https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2012/pdf/BTI\\_2012\\_Cameroon.pdf](https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2012/pdf/BTI_2012_Cameroon.pdf)>.
- <sup>iii</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, Article 9.
- <sup>iv</sup> Nana Charles Nguindip, The Right to Freedom of Movement and the Protection of Refugees in Cameroon: What Prospect for Implementation? Volume 1, Issue 2 *Journal of Human Rights Law and Practice* (2018) 37-45, at 37.
- <sup>v</sup> Law no.96/06 of 18 January 1996 to amend the Constitution of 2<sup>nd</sup> June 1972. Article 65 of this Constitution is to the effect that the preamble is an integral part of the constitution.
- <sup>vi</sup> It should, however, be noted that the international protection of Human Rights has adopted the idea of diplomatic immunity which should water down the provisions of article 45.
- <sup>vii</sup> Article 7 of the International Covenant on Civil and Political Right 1966.
- <sup>viii</sup> Cameroon's Constitution of 1972 with Amendments through 2008.
- <sup>ix</sup> Journal Officiel de la République du Cameroun, Code Pénal Loi n° 67/LF/1 12 Juin 1967.
- <sup>x</sup> Law n°2005 of 27 July 2005 on the Criminal Procedure Code, Cameroon.
- <sup>xi</sup> NYO WAKAI and 172 others vs. *The People*, the administrative authorities responsible for the maintenance of law and order proceeded to arrest persons suspected of being involved in the destruction of property and other criminal acts committed during public manifestations, which led to the state of emergency in the North West Province in October 1992.
- <sup>xii</sup> Journal Officiel de la République du Cameroun, Code Pénal Loi n°67/LF/1 12 Juin 196.
- <sup>xiii</sup> Adopted and proclaimed in General Assembly resolution 217 A (III) of 10 December 1948, available at <[https://zakon.rada.gov.ua/laws/show/995\\_015](https://zakon.rada.gov.ua/laws/show/995_015)>.
- <sup>xiv</sup> Ratified by the Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention" of 17.07.1997, available at <<https://zakon.rada.gov.ua/laws/show/475/97-%D0%82%D1%80>>.
- <sup>xv</sup> Ratified by Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII of October 19, 1973, available at <[https://zakon.rada.gov.ua/laws/show/995\\_043](https://zakon.rada.gov.ua/laws/show/995_043)>.
- <sup>xvi</sup> UN Basic Principles for the Treatment of Prisoners, Principle 5.
- <sup>xvii</sup> 31 Cameroon's Criminal Procedure Code, Law n°2005 of 27 July, Section 122.
- <sup>xviii</sup> International Covenant on Economic Social and Cultural Rights, Article 12 and ACHPR, Article 16.
- <sup>xix</sup> Case of Winterwerp v. The Netherlands, judgment of 24 October 1979; Case of Weeks v. The United Kingdom, judgment of 3 October 2006; Case of Amuur v. France, judgment of 25 June 1996; Case of Grabowski v. Poland, judgment of 30 June 2015.
- <sup>xx</sup> Case of Chahal v. the United Kingdom, judgment of 15 November 1996.
- <sup>xxi</sup> P. S. Elkind. Interpretation and application of the rules of criminal procedure law. Moscow: Judicial Literature. (1967). 192 p.
- <sup>xxii</sup> Law No 2005/007 of 27 July 2005 on the Criminal Procedure Code.
- <sup>xxiii</sup> See Laura-Stella Enonchong, at 390.
- <sup>xxiv</sup> M. Macovei. *Human rights handbooks No. 5: The right to liberty and security of the person. A guide to the implementation of Article 5 of the European Convention on Human Rights.* (2002).
- <sup>xxv</sup> Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, principle 1
- <sup>xxvi</sup> Article 12 of the International Covenant on Economic, Social and Cultural Right 1966, it is Article 12 stipulate that healthy life is extended to food, safety, nutrition and other healthy conditions.
- <sup>xxvii</sup> Kurt v. Turkey, judgment of 25 May 1998.
- <sup>xxviii</sup> Case of The Sunday Times v. The United Kingdom, judgment of 26 April 1979, available at <<http://hudoc.echr.coe.int/eng?i=001-57584>>.
- <sup>xxix</sup> Case of Silver and Others v. The United Kingdom, judgment of 25 March 1983, available at <<http://hudoc.echr.coe.int/eng?i=001-57577>>.
- <sup>xxx</sup> Case of Garkavyy v. Ukraine, judgment of 18 February 2010, available at <<http://hudoc.echr.coe.int/eng?i=001-97425>>.
- <sup>xxxi</sup> Case of Taran v. Ukraine (2013), judgment of 17 October 2013, available at <<http://hudoc.echr.coe.int/eng?i=001-126909>>.
- <sup>xxxi</sup> Case of Belousov v. Ukraine (2013), judgment of 7 November 2013, available at <<http://hudoc.echr.coe.int/eng?i=001-127813>>.

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xxxiii *Chanyev v. Ukraine* (2014), judgment of 9 October 2014, available at <<http://hudoc.echr.coe.int/eng?i=001-146778>>.

xxxiv *Ignatov v. Ukraine*, judgment of 15 December 2016, available at <<http://hudoc.echr.coe.int/eng?i=001-146778>>.

xxxv Decision of the Constitutional Court of Ukraine of 23 November 2017, available at <<https://zakon.rada.gov.ua/laws/show/v001p710-17#n2>>.

xxxvi *Korban v. Ukraine* (2019), judgment of 4 July 2019, available at <<http://hudoc.echr.coe.int/rus?i=001-194188>>.

xxxvii Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, principle 1

xxxviii Cameroon Criminal Procedure Code Law n°2005 of 27 July 2005, Section 30.

xxxix Amnesty International Report (2014), ***Right Cause, Wrong Means: Human Rights Violated and Justice Denied in Cameroon's Fight Against Boko Haram***, p. 19S

