Egypt: how a new Protest Law is used to silence opponents (1)

Under the supervision of President ElSisi, a former military officer, Egyptian counter-revolutionary government promulgated a new law governing the right to protest. Not only is this legislation severely restricting the freedom of demonstration, but it is also used to arrest, prosecute and jail opponents through controversial trials. Young revolutionaries and human rights defenders are particularly targeted.

In this first part, we are discussing the provisions of the freedom-destroying law.

Over one year ago, on 24 November 2013 precisely, Egyptian authorities promulgated the first significant legislative document after the ouster of Mohamed Morsi, Islamist President of Egypt, in the summer of 2013. In the absence of a Parliament, the new Protest Law (Law 107 'for organizing the right to peaceful public meetings, processions and protests', was promulgated by Interim President Adly Mansour. A first draft was submitted to political parties for comment, and suggested amendments were sent. Although minor adjustments were done, the final version of the law immediately gave rise to discontent among opponents and human rights defenders.

The Protest Law "seeks to criminalize all forms of peaceful assembly, including demonstrations and public meetings, and gives the State free hand to disperse peaceful gatherings by use of force", 19 local Egyptian NGOs wrote in a common press release. Expressing also concerns, American-based NGO Human Rights Watch noted that the law was characterized by an "overall repressive character" and went "well beyond the limitations permitted under international law", including the International Covenant on Civil and Political Rights. As for the British NGO Amnesty International, it vigorously condemned the new legislation: qualified as "a serious setback", the Protest Law "grants the Ministry of Interior wide discretionary powers over protests and lays out broad circumstances in which demonstrators can be found to

violate the law", the organisation wrote in a statement.

What are the main reproaches directed to the new legislation on protests by human rights defenders? First of all, experts consider that the right granted to the Interior Ministry to ban demonstrations or public meetings goes too far. While Article 1 states that "citizens have the right to hold and join public meetings, marches and peaceful protests", article 10 indicates that the Interior Minister or the Security Director may "prohibit" a public meeting, a march or a protest "if serious information or evidence of threats to security or peace are obtained by them".

A legislation far too restrictive

According to NGOs, the latter constitutes "vague" or "loose" grounds, which authorities may use to "not only (…) prevent or forcibly disperse protests by supporters of the Muslim Brotherhood, but (also) essentially (…) ban all opposition protests.". While the law allows in theory peaceful assemblies, it sets actually a range of situations that may be deemed to be violations of its provisions. Article 7 enumerates them: "disrupting public security", "obstructing production", "hampering citizen's interests", "affecting the course of justice, public utilities", "cutting roads or transportation, or road, water, or air transport, or obstructing road traffic or assaulting human life, or public or private property."

These terms are "particularly vague", Human Rights Watch says, and would "allow the authorities to criminalize a range of legitimate peaceful public meetings and demonstrations". For example, a strike in a factory, a protest in front of a court or a march on a large avenue could be prohibited on the basis of the new law. In addition, article 5 bans also protests in places of worship, or their arena, or their annexes, a provision that was largely considered to be tailor-made to prevent Muslim Brothers from demonstrating.

Because of these numerous restrictions, international and local NGOs believe that the Protest Law is not in line with the International Covenant of Civil and Political Rights, which Egypt signed in 1967 and ratified in 1982. Its Article 21 dictates indeed that "no restrictions may be placed on the

exercise of [the] right [of peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

Custodial sanctions and "hyperbolic" fines

Sanctions or punishments for violations of the Law's provisions are also deemed particularly problematic. Anyone who organizes a protest without prior notification to a police station (article 8) will be punished by a fine comprised up to 30,000EGP (3,470EUR, article 21), which is a quite high sum in Egypt. Moreover, the law allows prison sentence in several cases: for those found to violate provisions of Article 7 (obstruction of production, cut of roads, etc.), which is punished by a jail sentence comprised between 2 and 5 years (and a fine up to 100,000EGP – 11,500EUR -, article 19). In addition, those who wear a mask "hiding their facial features" during a protest may be condemned to a jail sentence of up to one year, and a fine up to 50,000EGP (5,700EUR, article 20)!

Egyptian Human rights NGOs denounced these custodial sanctions and "hyperbolic fines", that are "incompatible with the nature of the punishable act, (…) a matter which contravenes the most basic international principles and standards". Far from this repressive approach indeed, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association recently recommended establishing an enabling legal environment for peaceful assemblies, through implementation of a set of best practices. Country laws should not only state clearly their "presumption in favour of holding peaceful assemblies", but also "facilitate and protect" them.

UN Special Rapporteur believes also that States have a positive obligation to actively protect peaceful assemblies, especially "from individuals or groups of individuals, including *agents provocateurs* and counter demonstrators, who aim at disrupting" protests. He adds that "Assembly organizers and peaceful participants should not be held responsible and liable for the violent

behaviour of others". By doing so, the Special Rapporteur places the responsibility for peaceful assemblies on States, and not on protesters alone. And when it comes to the use of force in case of an incident during a demonstration, UN Special Rapporteur recommends that "wherever possible, law enforcement authorities should not resort to force". He refers to Human Rights Council's resolution 19/35 and makes it clear that "where force is absolutely necessary", authorities should ensure that "no one is subject to excessive or indiscriminate use of force".

Security forces may use lethal weapons against protestors

These recommendations are not reflected at all in the new Egyptian Protest Law. On the contrary, it permits the use of an excessive force, according to human rights defenders. They particularly incriminate article 11, that allows the forcible dispersal of a protest by security forces, and article 13, that lists allowed means that security forces can resort to in case of a failure in dispersing a demonstration. These means include rubber bullets and "non-rubber bullets". Egyptian NGOs firmly opposed to these provisions, since "such ammunition may lead to death". Amnesty International added that as a result of them, security forces are provided with "a legal framework for the use of excessive force against any protesters".

Circumstances where firearms can be used are also widely criticized. According to the law, the police can use lethal force in legitimate self-defence (Article 13), "which under Egyptian law is broadly defined to grant police discretion to include circumstances other than those strictly necessary to protect life", Human Rights Watch remarked. Article 13 also states that firearms can be used in case of a "danger posed against life, money, or property"; yet, the inclusion of money and property in this provision "contravenes international law and standards", Amnesty International notices, since firearms should be only used when they are "the sole means of defence against an imminent threat of death or serious injury".

Gaëlle Anne Fouéré

Egypt: how a new Protest Law is used to silence opponents (2)

Under the supervision of President ElSisi, a former military officer, Egyptian counter-revolutionary government promulgated a new law governing the right to protest. Not only is this legislation severely restricting the freedom of demonstration, but it is also used to arrest, prosecute and jail opponents through controversial trials. Young revolutionaries and human rights defenders are particularly targeted.

In this second part, we are reviewing several famous trials that highlight the use of the law for repressive purposes.

Restrictions of the right of assembly, deterrent sanctions, excessive use of force against protesters: for all these reasons, the new Protest Law was explicitly rejected among those who are committed to fundamental freedoms. They were afraid that Government uses it to establish legal basis for repression. “Instead of using the opportunity to break the pattern where the security forces repeatedly kill protesters with no consequences, the new law will further entrench abuse,” Hassiba Hadj Sahraoui – Middle East and North Africa Deputy Director at Amnesty International – said.

In fact authorities immediately used the new legislation as an effective tool to repress opponents. Two days only after its promulgation, in November 2013, “No to military trials”, a group that was formed in the aftermath of the revolution, organized a demonstration in front of Shura Council, the Egyptian Lower House, against provisions of the new Constitution allowing for military trials of civilians. It was immediately dispersed by security forces and resulted in the arrest of tens of demonstrators. In addition, two prominent activists were arrested, though they were not present at the demonstration’s place: Ahmed Maher, 34 years old, one of the founders of 6th of April Youth

Movement, and Ahmed Douma, 29 years old, a member of the Egyptian Popular Current – a nasserist party -, and a famous youth movements' activist.

While they were being questioned within Abdeen Court, in Cairo, clashes erupted in front of the court and resulted in the arrest of two other renowned revolutionary leaders: Mohamed Adel, 26 years old, Media Representative of 6th of April Youth Movement, and Alaa Abd ElFattah, 34 years old, awarded blogger and member of a family of highly respected human rights defenders. All four men were subsequently tried in two different cases: the "Shura Council case" for Ahmed Maher, Mohamed Adel and Ahmed Douma, and "Abdeen case" for Alaa Abd El Fattah. Accused of organizing a demonstration without prior notice and attacking central security forces' officers, the former were sentenced to 3 years in prison and fined 50,000EGP each (5,700EUR). As to the latter, he was indicted for breach of the Protest Law, illegal gathering, theft and attacks of officials on duty, and condemned to 15 years' imprisonment, a fine of 100,000EGP (11,500EUR) and further 5 years of police surveillance after his release.

Young revolutionaries are particularly targeted

With these sentences, Egyptian authorities attacked the most popular symbols of the Egyptian Revolution. Ahmed Maher and Mohamed Adel are both leaders of 6th of April Youth Movement, a very large group that gathers nearly one million Facebook fans and contributed to a large extent to the anti-Mubarak demonstrations in January 2011 and consecutive attempts to set up a new democratic regime in the country. Established in Spring 2006 to support El-Mahalla's workers – a huge and traditionally seditious industrial city -, who planned a politically and socially motivated strike on 6 April 2006, the movement also helped to organize a protest against Khaled Saeed's brutal murder by Alexandria's police forces, in June 2010, a tragic event that caused tremendous turmoil among young people and is regarded as a triggering factor of the revolution.

Ahmed Douma, 29 years old, is also to be counted among major opponents to the current regime. A journalist, writer and poet, he joined Kefaya ("Enough!")

ten years ago, one of the early movements whose purpose was to challenge Mubarak's power. Founding member and/or member of a number of youth movements, including the Coalition of the youth for the Revolution, which tried to federate the numerous youth groups that took part to the revolution of 2011, Douma is famous for its high number of political incarcerations: no less than 17 times, from Mubarak's era to Morsi's rule to Sisi's one!

As for Alaa Abd ElFattah, he and his family symbolize the fight for human rights. His late father, Ahmed Seif, was a human rights attorney who was arrested, tortured and imprisoned in the 1980's. His sister, Mona, is a founder of the "No Military Trials for civilians" group, while his wife Manal, an activist as well, is Bahi ElDin Hassan's daughter, an initiator of the contemporary human rights movement in Egypt. A software developer by trade, Abd ElFattah established with his wife Manalaa, the first blog aggregator that did not restrict the inclusion based on the content of the blog. Manalaa was given a Special Award by the French NGO Reporters Without Borders in 2005. Abd ElFattah was first arrested in 2006 while he was demonstrating for an independent judiciary and subsequently, he was repeatedly jailed for his political activities.

In addition to Shura Council and Abdeen cases, the new Protest Law was also used to arrest and imprison renowned members of the Revolutionary Socialists party, including a young human rights lawyer, Mahienour ElMasry, 28 years old. On 2 December 2013 – about ten days after the law's promulgation -, ElMasry and her colleagues took part in a demonstration in front of the court where murderers of Khaled Saeed (see above) were being tried, in Alexandria. According to a press release published by 20 NGOs, demonstrators were beaten with batons and given punches by police officers, and random arrests took place. Accused of demonstrating without permit and assaulting security forces, Mahienour El-Masry and seven other activists were condemned to a two-year sentence and a fine of 50,000EGP (5,700EUR).

With this trial, Egyptian authorities silenced one of the Alexandrian icons of the revolution. A left-wing lawyer, Mahienour ElMasry is a defender of workers. While she was imprisoned, her friend Rasha Abdullah, an Associate

Professor at the American University of Cairo, shared on Internet a text asking for her release and depicting her noble character. “The beauty of Mahienour (…) is that she does not just go to a workers’ sit-in – she actually knows many of the workers by name and personal story”, she says. Moreover, she is a fierce opponent of the military regime. Her friend Rasha recalls that “one of the clips that went viral after the revolution on Egypt’s popular evening talk showed her at the second ever Khaled Said protest in Alexandria, shouting off the top of her lungs, ‘Unite ye people, shoulder to shoulder; Down down with Hosni Mubarak.’ That was months before January 25, 2011, long before “Down down with Hosni Mubarak” became a popular chant.”

Human rights defenders also in the eye of the storm

A more recent case shows that Protest Law is not only used to repress political opponents, but also to threaten human rights organisations. On 26 October 2014, Heliopolis Misdemeanour Court sentenced 22 persons to three years in prison, three additional years on probation and a fine of 10,000EGP (1,194EUR) for breaching the Protest Law and other charges, including damaging property and displaying force. Among the defendants was an awarded lawyer, Yara Sallam, transitional justice officer at the Egyptian Initiative for Personal Rights (EIPR), an active local NGO. All of them were arrested three months before, while they were participating to a march heading to the Presidential Palace in Cairo to demand the release of prisoners of conscience and the repeal of the Protest Law. In a common press release, EIPR and 12 other NGOs report that the march was dispersed by security forces using teargas and protesters were arrested with the help of “individuals in civilian apparel”.

Yara Sallam, who received the Pan-African Human Rights Defenders Network’s award in 2013, was asked questions about her work at EIPR, the organisation’s management and its activities. While her cousin, arrested with her, was released without charge, Yara Sallam was kept in custody and referred to the public prosecution. All detainees were also interrogated about their political affiliations, their opinions on the Protest Law and their choice of

candidate during the presidential elections.

A travesty of justice

Trials of these activists and human rights defenders (6th of April's leaders, Alaa Abd ElFattah, Mahienour ElMasry, Yara Sallam) all share commonalities. They follow the same pattern characterized by a range of rights infringements and result in what should be called a travesty of justice. First of all, protestors were beaten, and/or insulted, and/or assaulted during their arrest and custody. Mohamed Adel and Ahmed Douma showed marks of beatings on their hands, legs and stomach during their appeal hearing, Amnesty International said.

Though Alaa Abd ElFattah announced its intention to give himself up to the public prosecution, policemen broke into his house, raided it, seized the laptops and beat him and his wife. Security forces also used a cancelled order of arrest against 6th of April's leader Mohamed Adel to raid a NGO, the Egyptian Center for Economic and Social Rights (ECESR), where Adel served as a volunteer. Five staff members were arrested, brought to an unknown place, blindfolded and beaten for over 9 hours.

Charges brought against these activists are also similar to each other. They include demonstration without a permit or prior notice; attack on security forces (Maher/Adel/Douma, Mahienour ElMasry); illegal gathering, theft and attacks on policemen (Alaa Abd ElFattah). According to lawyers, the authorities did not choose to prosecute the activists for the sole charges of protesting without a permit, but added extra charges to justify a custody. In a joint press release issued after the arrest of Yara Sallam and 22 other protesters, 13 Egyptian NGOs wrote that "the penalty for protesting without a permit is a fine which makes it illegal to hold suspects in pre-trial detention […] the Ministry of Interior resorts to fabricating other charges for protesters such as assaulting establishments and individuals in order to turn the charge to either a felony or a misdemeanour that mandate pre-trial detention."

Long months behind bars

Actually, the majority of arrested activists remained behind bars for several months. With the exception of Ahmed Maher, Ahmed Douma and Mohamed Adel, whose trial – the first of its kind after the enforcement of the law – was disposed of in less than one month after their arrest, other protesters were illegally detained for several months before being judged – over 100 days for Alaa Abd ElFattah, over 5 months for Mahienour ElMasry.

Moreover, analysis of their trials brings to light the absence of proofs and fake investigations. Ahmed Maher and Ahmed Douma were questioned within the court when demonstrations they were alleged to have taken part in occurred, according to Amnesty International. Similarly, Yara Sallam and other defendants were accused in a police report of damaging a police vehicle, whereas they were arrested before the time the incident took place.

Judges were also unable to produce credible evidence of the offences. In all cases, proofs that were presented were linked to assertions of security forces' members. According to local NGOs, in Abd ElFattah's lawsuit, "the prosecution's case solely rests on police investigations and witnesses, including some five or six police officers carrying out the arrests". Likewise, 6th of April's leaders Maher and Adel, and Ahmed Douma, were also sentenced on the basis of proofs provided by non-neutral parties, i.e. "police officers, the general investigations office and National Security Office".

In addition, judges neglected exculpatory evidence and witnesses for the defence, according o Amnesty International, including videos screened during the trial, showing Mohamed Adel helping a police officer who was suffering from the effects of tear gas, and testimony of a police officer who claimed during the trial that Mohamed Adel tried to calm the protestors and did not take part in the clashes. The case of Yara Sallam and other defendants also shows a lack of convincing evidence: according to the Observatory for the Protection of Human Rights Defenders, two videos were shown during the hearing, but the judge failed to identify the defendants on them.

Finally, all these trials showed a contempt for the rights of the defence.

Lawyers were disdained and prevented from doing their job. In Mahienour ElMasry's case, they were unable to present their defence either before the court or the prosecution. Alaa Abd ElFattah's lawyers could not defend their clients either: according to a press release issued by 16 local NGOs, "defence did not have the chance to call in witnesses, cross-examine prosecution witnesses, examine video evidence or plead their case". Moreover, the public prosecution demonstrated clearly their will to laugh at them: while the trial was planned to start at 9am, the lawyers were waiting outside the court when they learned by chance that the trial already ended and the verdict was handed down *in absentia* without any hearing!.

Similar disrespect to rights of defence was noticed throughout investigations and trial of Yara Sallam and other human rights defenders. In addition to the ban put on contacts between arrested protestors and lawyers, no information was provided about the whereabouts of the former. Location of the trial was also modified at the last minute, forcing lawyers to rush across the city to join the new location. With all these infringements, both of defendants' rights and lawyers' dignity, Protest Law proves to be tailor-made with the aim of quelling any dissenting voice.

Female Genital Mutilation between Human Rights and Tradition

Female circumcision is a form of gender-based violence and a fundamental violation of the rights of girls and women. The World Health Organisation (WHO) defines female circumcision, or female genital mutilation (FGM) as: 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.' An important complication in ending FGM is that it is a deeply entrenched social norm, practiced in 29 countries in Africa and the Middle

East. According to a statistical overview provided by UNICEF in 2013, more than 125 million of the girls and women living in these countries have experienced FGM (2013, UNICEF – *Female Genital Mutilation/Cutting: a statistical overview and exploration of the dynamics of change*).

Despite the absence of data collection, it is estimated that also in some EU countries women and girls are at risk of FGM. Because of this the practice has gained more attention in the EU during recent years.

The WHO identified four major types of FGM:

- The *clitoridectomy* is the partial or total removal of the clitoris;
- The *excision* is the removal of all the clitoris and the inner labia (lips that surround the vagina), with or without removal of the labia majora (larger outer lips);
- The *infibulation* is the narrowing of the vagina opening by creating a seal, formed by cutting and repositioning the labia;
- Girls and women can be subjected to other harmful procedures for non-medical purposes, like pricking, piercing, incising, scraping and cauterising the genital area.

As was quoted above, female circumcision has no health benefits. Even more so, FGM alters the natural functions of the woman's body and it can be harmful in many ways. Further, the procedure carries great risk and can generate immediate consequences such as severe pain, shock, haemorrhage, sepsis (bacterial infection), urine retention, and / or injury to nearby genital tissue. Additionally, FGM can produce long-term implications like cysts, damage to the external reproductive system, uterus or vaginal infections, complications in pregnancy and child birth or psychological damage. Because of the potential destructive effects, there are cases when it is necessary for circumcised women to undergo further surgeries later in life. (WHO – *Female genital mutilation*).

The age at which female circumcision is practiced differs from one ethnic group to the other. It can vary from shortly after birth to after delivering the first child, but mostly it is carried out on girls whose age is between

four and ten. Although in urban areas female circumcision can be performed in a hospital, in rural African areas the procedure is often carried out by an old woman of the village with no medical training. Besides, often basic tools are used such as knives, scissors, razor blades or pieces of glass. The hygienic conditions in which the procedure occurs are, therefore, very poor most of the times.

The practice is supported by a wide range of motives and justifications which are deeply-rooted into the cultural and historical situation of the societies where FGM is mostly carried out.

The two main justifications for FGM are religion and tradition. Since it is mainly practiced in Muslim communities, female circumcision acquired a religious dimension. However, in the risk countries FGM is practiced by followers of different beliefs, such as Christians, Animists and Jews. It would be therefore wrong to identify the procedure only with the Islamic faith. Besides, it is not practiced by all Muslims. Even more important than perceiving female circumcision as a religious obligation, social pressure is imposed on individuals trough family and community members. Those who do not implement the practice would be excluded and ostracised from the community life.

It can be claimed that tradition and not religion is the main origin of the justifications supporting FGM. While many traditions promote social cohesion, others do great harm to the physical and psychological integrity of individuals. FGM is perceived as an initiation rite, a transition in status from girlhood to womanhood and marriageable age[1] (Before the initiation through mutilation, the girls are kept in seclusion for at least two weeks and they get instructed about morality, social codes, being a good wife, behaviours around elders and other age groups (2009, African-Women.org – *Myths and Justifications for the Perpetuation of FGM*).

Among sociological reasons, the sexual and marriage factors are essential. In many Third World countries, marriage is necessary for a woman’s survival. Finding a husband and reproducing are the ways a woman can reach economic

stability and social status. In order to get married a girl needs to be a virgin, otherwise both the girl and her family could face social consequences. FGM is considered as a way to ensure virginity. Alongside this justification, women are also believed to be weak when it comes to emotion and the control of their sexuality; circumcision is expected to control women's sexuality. However, even though FGM may reduce physical feelings, it cannot reduce the desire and it is not assurance of chastity (Dr. Ashenafi Moges – *What is behind the tradition of FGM?*).

Psychological reasons play also an important role, particularly regarding gender identity. FGM is often considered a necessary practice in order for girls to be considered a complete woman. Clitoris and labia are seen as 'male parts' of a woman's body, and clitoris is also considered to be ugly on a girl. The practice eliminates any indication of maleness in a woman's body and makes a woman feminine (Amnesty International – *End FGM European Campaign*).

Another justification for the practice of FGM is the fact that it contributes to the cleanliness and beauty of women, since an unmutilated woman is considered dirty and polluted. It is believed that secretions produced by the glands in the clitoris, labia minora and majora are bad smelling and unhygienic, therefore their removal makes the body clean. In reality, by closing the vulva and preventing the natural flow of urine and menstrual flow, FGM could lead to uncleanliness. (Dr. Ashenafi Moges – *What is behind the tradition of FGM?*).

As argued before, the practice of FGM is, in any form, internationally recognised as a violation of the human rights of girls and women. Despite that several actions have been taken to address the issue on an international level, they were mostly unsuccessful. The interventions were often external, and those who tried to tackle the problem ignored the social and economic context of the countries were FGM is practiced. Some actions taken by Western feminists and human rights activists were also met with resistance and negative reactions from locals; these initiatives were considered as condescending and derogatory toward their culture. (1997, Frances A. Althaus

– *Female Circumcision: Rite of Passage Or Violation of Rights?*)

The rights of women and girls, which the practice of FGM violates, are protected in several international and regional instruments such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture, Convention on the Elimination of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC), the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union.

Both national and domestic legislation did not prove to be successful in eliminating FGM. At the contrary, they forced to carry out the procedure in secret and unsanitary areas, increasing health risks for girls and women. (Jessica A. Platt – *Female circumcision: Religious practice v. Human rights violation*)

Some international organisations have therefore developed new ways to address the issue. They support local activist groups with funding, training and technical expertise instead of being directly involved. A positive way to address female circumcision can be through education and women's empowerment. Educational groups in the countries where FGM is mostly practiced can give women knowledge about the operational procedure involved in female circumcision, the different forms of FGM, and inform them about the procedure's potential health risks. (Jessica A. Platt – *Female circumcision: Religious practice v. Human rights violation*). In order to establish a balance between religious beliefs and the promotion of human rights, the clinicalisation of female circumcision or the implementation of mild forms of circumcision that can be carried out in a hospital at the birth of a female child can be promoted[2]. (The *sunna*, for instance, is a form of circumcision practiced in Somalia under sterile and anaesthetic conditions and which drastically decrease the possibilities of casualties).

Finally, circumcision through words can be encouraged. It is a way to implement the practice spiritually rather than physically through a programme

of training, counselling and informing girls on anatomy, physiology, sexual and reproductive health, gender issues. The program is followed by a ceremony performed in front of the entire community which represents the rite of passage of girls into womanhood. Circumcision through words is a spiritual alternative which allows women to practice their religion without risking their health. (Jessica A. Platt – *Female circumcision: Religious practice v. Human rights violation*)

The practice of female circumcision derives from complex belief systems. Many efforts to eradicate the practice originated from outside the community often met with hostility from the community practicing them: the idea of ending their tradition is inconceivable, and Western pressures for change is perceived as culturally imperialistic. This is why actions to stop female circumcision are most likely to be effective when they originate within the culture that practices them. (1998, Lauren Hersh – *Giving Up Harmful Practices, Not Culture*).

Addressing FGM requires a long-term commitment and a collective effort. There are no easy or quick solutions. Female circumcision needs actions from different sectors and on different levels. The international community plays an important role in raising awareness on the issues, but legislation alone is not sufficient to end FGM. Engage the communities where the practice is widely spread, and adopt programmes that include empowering education – with a special focus on women's empowerment – is a good way to develop knowledge and consensus at community level. (2008, WHO – *Eliminating Female genital mutilation*).

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How I realized what human rights mean in Egypt

For anybody who used to live in Europe, becoming aware of human rights practices in Egypt is a tough experience. A kind of tsumani that makes you understand that there is still a very long way to go to only reach the first step of what could be considered a satisfying situation regarding basic human rights respect. When I look back over my shoulders, three key memories come to mind.

Contrary to what one may think, the first of these memories has nothing to do with political human rights, but is related to workers' rights, and generally speaking, to mere human dignity. As any newly arrived in Cairo, I faced the difficult task of looking for a decent flat to live in. While visiting dozens of "barely acceptable" apartments, I was unpleasantly surprised by doormen's living conditions, that were far from being decent, too. All Cairo's doormen, with no exception, live in dirty, cramped areas, that even can't be called

“flats”. Most often, they encompass a single low-ceilinged room located under the building’s stairs, opening on an inner courtyard whose floor is usually covered in rubbish that residents throw out of their windows. This single room generally hosts the whole doorman’s family, i.e. himself, his wife and their children. They have to manage to organize their whole life in this restricted area: cooking, sleeping, watching television, doing homework, etc.

When the doorman is single, he may even not have the option of “enjoying” a room: he just lives under the stairs, and sleeps on a mattress lying on the floor. Surprisingly, nobody seems to be shocked by this degrading treatment of human beings. Doormen in Cairo are usually poor people coming from Upper Egypt, who left their villages because they were not able anymore to live honourably off their occupation – fishing, agriculture, etc. -; this is then implicitly admitted that they have to accept any offer, even a degrading one. Buildings never include accommodation for doormen, or only this single ugly room on the ground floor. Architects do not take into account the requirement of a lodge for the doorman. From this perspective, upper classes’ areas do not differ from deprived ones: whatever the residents’ social class, doormen’s accommodation is always similar.

The 2011 revolution brought no change to this situation. Doormen’s living conditions are not a matter for discussion. No voice was raised to denounce this flagrant violation of human dignity, either at an individual level or through political parties. While demands for social justice are a common slogan, it never occurred to people that they could include improvement for doormen’s living conditions. Social revolution has not started yet.

Frighten practices

The second memory that comes to mind is the account of an Egyptian friend of mine who took part in the 2011 revolution. In his thirties, Maged is an independent movie director who abhors Moubarak’s dictatorial regime, and though he was not a political activist, he naturally took to the streets in response to calls for protest. One day, as he was demonstrating, he happened to be caught by police officers and brutally thrown into a police car. He was

blindfolded and his hands were tied. Then he could hear the car moving off and racing along to an unknown destination. The car braked suddenly several times, for no apparent reason, then moved off again. At a point, the car stopped in a place that seemed to be located far away from the city, as noise level diminished and lower car traffic volume could be heard. My friend assumed that his abductors stepped out of the car, as he could hear car doors slamming, then voices grew fainter and fell silent.

Maged waited alone a long time. He did not dare neither move nor try to speak or ask a question to understand what was happening. After a time that seemed like a lifetime, he decided that he may try to make the blindfold slide, in order to free his eyes and get an idea of the place he has been brought to. He succeeded in moving it a bit and was stunned to realize that he has just been left alone in the desert. The car was stopped in the sticks and abductors left for good! My friend could manage to step out, head for a road and come back home. Actually, this practice was very common during Moubarak's rule and was aimed to scare people. Maged was lucky enough that he was neither jailed nor questioned, but this experience resulted in a trauma that he painfully recovered from. It did not deter him from continuing his political struggle, but even reinforced his conviction that the regime should be overthrown.

This fright practice was temporarily brought to an end after Moubarak's ousting, not because security forces were reformed – they were not -, but because they had to retreat from the streets and confined themselves to police stations, for fear of a revenge of the population who hated them. Not surprisingly, police resumed frightening political opponents by means of this specific practice in November 2013, when the government issued a controversial law practically forbidding demonstrations. A group of 50 female protestors were arrested, secretly brought to an unknown destination, then dumped in the desert in the middle of the night.

A torture room within the Senate

My friend Maged was lucky that he was not questioned, but unfortunately,

violations of activists' human rights can also be far worse. I remember what happened to one of my colleagues, a French journalist called Samuel, while he was covering parliamentary elections in 2011*. Since clashes erupted between revolutionary young people and security forces on mythic Tahrir square, Samuel had to try several alternate roads to be able to reach event's place. As he crossed a checkpoint, he was arrested by an intelligence services' officer. The whole story is told here, in an article that Samuel wrote immediately after his release. He was taken to several police stations, then to what he calls the "kommandantur" of the "police city": temporary headquarters of security forces during the clashes were inappropriately located within Senate premises. My colleague realized to his horror that this prestigious institution has been turned into a torture centre. "Traces of blood lied on the marble floor", he writes. He could also hear people being beaten and howling with pain in adjacent rooms. Samuel had to stop several times near these rooms with the officer who kept a close watch on him. Though he considered that his own situation was not at risk because he was a Western journalist, Samuel admitted that he was afraid. But he tells in his article that he made it a point of honour to keep a defiant attitude in front of the officer.

My colleague was eventually taken to an office which seemed to be the chief's one. Ironically describing him as an "ageing beau", Samuel reports that he asked him questions in English, while howls coming from torture rooms could continuously be heard and covered the conversations. He writes that in the course of the questioning, the high-ranking officer had to "raise his voice, while on his face, a polite and annoyed expression seemed to mean: 'Those howls are irritating, aren't they?' " Samuel's assessment of the circumstances were right: after a while, the "chief" returned his ID back and put an end to the questioning, adding with no irony that he was welcome.

Here is the harsh reality I became aware in Egypt: in the shade of the pyramids, enjoying human dignity and exercising fundamental rights are less than a dream. In this dictatorial regime, not only political rights are restricted; in order to remain, it must apply a law of force to all kinds of relationships, even the social ones. Should only a portion of the country be

subject to nonviolent rules, involving values such as equality, freedom, dialogue or respect, the whole regime would collapse.

* As for me, I never experienced any arrest by security forces in Egypt, except once during the revolution, when I was going back home in the evening after curfew hours. I was arrested at a checkpoint and brought to an intelligence service building, but as I was a UN staff member at this time and had my pass with me, they released me… after 5 hours, still.

The manifesting Muslim in contemporary Europe; respecting or restricting freedom of religion?

I have seen great intolerance shown in support of tolerance.

~Samuel Taylor Coleridge

Introduction

While inherently diverse in its variation, the concept of religion as a whole has been aptly described as "…one of the most vital elements that go to make up the identity of believers and their conception of life" (*Kokkinakis v. Greece*). Given the historical role and significance of religion throughout European history, it is no wonder that respect for religious freedom is nowadays, albeit to varying extents, categorically enshrined in some form or other within each Council of Europe member state.Furthermore, Article 9 of the European Convention of Human Rights (ECHR)guarantees freedom of religion- not only the right to choose one's own religion but also the practice and manifestation of such.

This protection however, despite its national, European and International guarantees,has in practice given rise to many conflicts of interest between

the individual and the state. This is primarily due to the non-absolute nature of freedom to manifest one's religion under Article 9 ECHR, as qualified under Article 9(2):

"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The following assessment will focus on various European national practices in limiting the right of the individual to manifest his/her religious beliefs and the European Court's evaluation and response to such curtailments. Of specific focus will be the challenges faced by Muslim women within Europe and their right to wear the hijab in the conduct of their daily life, particularly within the education system.

A divided approach

As will be examined below, the Court has often sought to establish whether there exists a common approach throughout the member states as regards the domestic legal position of the Islamic headdress in the education environment. Such a European consensus does not currently exist, understandably due to the different ethnic demographics and prominence of religion within the state itself, as well as the varyingly politicised dimension of the issue. Take Turkey for instance. Despite its majority Muslim population, the state's staunchly secularist nature has repeatedly trumped the right to freedom of religion, notwithstanding the constitutionally enshrined protection of the latter. The ban on the hijab within the public education system has lead to large-scale national debate on the issue, and has prompted substantial litigation at national and European level. Only within recent years and due to considerable public pressure has Turkey somewhat eased the staunch restrictions on the headscarf.

Conversely in the United Kingdom, where Islam is neither traditionally the religion of the state nor the majority religion today, the quintessentially

multicultural approach has manifested without any such institutional prohibitions on the hijab generally, as well as within the sphere of education. Numerous schools have been considered to go to lengths to provide school uniforms tailored to Muslim dress code, as too have the Metropolitan Police Force.

In 2004, France introduced legislation prohibiting the wearing of the hijab and other overtly religious symbols in both primary and secondary schools, though it does not extend to universities. France has also gone one step further as regards the full-face Islamic veil (the niqab and burka) and has banned such religious dress entirely within the public sphere. The impetus of the law stemmed from security concerns, where it was argued that a person is not readily identifiable while their faces are concealed. In addition, the political debate has focussed strongly on the compatibility of the full-face veil with concepts of equality and women's rights, leading the French parliament to condemn the religious headdress as "an affront to the nation's values of dignity and equality" (*BBC World News*, 'The Islamic veil across Europe'). In 2011, Belgium followed the French lead and became the second EU state to prohibit the burqa, while the issue has also been strongly debated in the Netherlands in recent years.

In Denmark, it is currently not prohibited to wear the Islamic veil in education institutions. However, as of 2008, it is prohibited for members of the judiciary to wear distinctly religious symbols, including the hijab, so as to maintain a religiously and politically impartial courtroom. Finally, in Germany, the constitutional court ruled in 2003 that the banning of the hijab in education institutions was permissible, providing it had legislative underpinning.

The evaluation by the European Court of Human Rights

As noted above the right to manifest one's religion is clearly susceptible to limitations by the state providing the interference is, "prescribed by law…necessary in a democratic society in the interests of public safety, for the protection of the rights and freedoms of others" (Article 9(2) ECHR). On

the other hand, the Strasbourg judiciary is also quick to reiterate the vital role of freedom of religion and its importance in defining a pluralist, democratic society:

“Freedom of…religion is one of the foundations of a ‘democratic society…The pluralism indissociable from a democratic society which has been dearly won over the centuries depends on it.” (*Kokkinakis v. Greece*)

However, as its jurisprudence clearly attests, the Court has shown significant reluctance in rebuking domestic legislation and the rulings of national courts where interferences with the manifestation of religion have arisen. The wide margin of appreciation (*i.e.* the room for legal variation) afforded to the member states in this regard has been justified on the basis of a lack of European consensus on, “the importance of the significance of religion in society…[and] must inevitably be left up to a point to the State concerned, as it will depend on the domestic context…”(*Leyla Şahin v. Turkey*). In this regard, the deference by the Court toward the relevant member states has been highly criticised as undermining the fundamental nature of the right to religion and instead “adopt[ing] the intellectually lazy option of running for the cover [of] the margin of appreciation.”(Lewis, ‘What not to wear: religious rights, the European Court and the margin of appreciation’)

In *Karaduman v. Turkey*, the University of Ankara had refused to issue the applicant’s university degree, pending the provision of an identification photograph that showed the applicant without any headdress. The European Commission of Human Rights (the Commission) upheld the ruling of the national courts that the requirement that students could not wear headdress of any sort in their identification photographs, including the Islamic veil, did not violate Article 9. Critical in the decision to dismiss the applicant’s case, the Commission highlighted that the applicant had knowingly enrolled in a secular university, where restrictions on the manifestation of religion could be expected so as “to ensure harmonious coexistence between students of different beliefs.” (*Karaduman v. Turkey,* p. 108). The European Court approved of the Turkish Constitutional Court’s fears that the veil worn by

some Muslim women at the university might adversely affect those who had chosen not to wear such. Finally, the Commission concluded that all other considerations aside, the provision of a photograph for identification purposes only, which was not intended for exposure to the general public, could not be seen as a manifestation of religion. Thus, it determined that no interference had in fact occurred under Article 9 ECHR.

The case of *Dahlab v. Switzerland* concerned a Muslim primary school teacher, who had been prohibited from wearing the hijab at school, as it was in contravention of the denominational neutrality required within the Swiss education system. Section 6 of the cantonal Public Education Act of 1940 explicitly required that "the religious beliefs of pupils and parents [be] respected". Here, the Court examined the ruling of the Federal Court in significant detail. Particular importance was attached to the domestic court's finding that the age of the pupils in the applicant's class (between 4 and 8 years) made them highly impressionable by the "role-model" figure of a teacher. The Court was concerned that given the children's young age, there was a possibility that the hijab would have a proselytising effect on the children, despite the lack of any complaints by the students' parents to that effect. Finally, in holding that the state had not exceeded its margin of appreciation, the Court appeared to agree with the Federal Court that the hijab itself was difficult to reconcile with the concepts of "tolerance, respect for others and …equality and non-discrimination". Thus, having found that the restriction was justified in principle and was proportionate given the young age of the children, the Court held that the limitation was therefore necessary in a democratic society and dismissed the application.

With due regard to the above, the most significant case in this area is *Leyla Şahin v. Turkey*. The applicant had been in her fifth year of medical school at the University of Istanbul when the alleged violation occurred. Şahin was on several occasions refused access to various aspects of her medical education on the grounds that her hijab was in contravention of the various regulations in place. The Constitutional Court had previously ruled in 1991 that the prohibition on wearing the veil and headscarf in higher education institutions did not conflict with the Constitution given that such a

restriction was necessary to preserve the secular nature of the state, as enshrined in Article 2 of the Turkish Constitution and also gender equality inherent in the Constitution's Preamble (the introductory founding principles). Having thus found a basis in law, the Grand Chamber further held that the restriction had also pursued a legitimate aim in that it sought to preserve the secularist nature of the state and also the rights and freedoms of others of differing religious convictions. In the final element of evaluating whether the restriction was "necessary in a democratic society", the Court cited *Dahlab,* where the hijab was seen to be a "powerful external symbol", its potential proselytising effect and the anomalous nature of such with the concepts of tolerance and equality for women. In the final proportionality assessment, the Court highlighted the fact that the ban affected all religious attire, not merely that of Islamic origin (para. 118). Furthermore, the ban had come in light of a prolonged public debate on the issue, as well as extensive examination by the Turkish courts, and thus had supposedly taken all the relevant affected parties' rights into account (para. 120). On such a basis, the Court did not find a violation of the applicant's right to freedom of religion by virtue of the legitimate restriction provided under Article 9 (2) ECHR.

Despite a lack of controversy from within the Grand Chamber panel itself (16 votes to one), the judgment of the Court opened itself up to substantial criticism by human rights groups and religious organisations alike. The ruling of the majority also incurred pointed disapproval from the sole dissenting judge- Judge Tulkens- in her dissent. It is submitted by the author, much in the same vein as Judge Tulkens, that the Court failed to properly distinguish the situation in *Dahlab,* where one of the crucial factors in the case was the authoritative role of the applicant vis-à-vis her young students. Here however, the applicant had been 25 years old at the time of the interference and had consistently maintained that she chose to wear the veil of her own volition. In no uncertain terms, Judge Tulkens voiced her concerns about the Court's paternalistic approach in its subjective opining of the alleged fears associated within Islamic practice, where she firmly believed that such pronouncements went far beyond the Court's role. As to the

majority's claim that the veil was *inter alia* "hard to reconcile with the principal of equality" (para. 111), Judge Tulkens pointed out (and it is submitted correctly) that:

"It is not the Court's role to make an appraisal of this type…[nor should it] impose its viewpoint on the applicant…"

She reiterated on several occasions that the Court had not been furnished with sufficient evidence that the hijab posed a security threat to Turkish society and that the Court hadn't sufficiently supervised the domestic restriction.

After the judgment in *Şahin*, the prominent human rights NGO Human Rights Watch echoed the concern and disappointment of Judge Tulkens, maintaining that the Court had:

"let down thousands of women who will be prevented from studying in Turkey's universities… It missed an important opportunity in this case to stand firmly behind principles of freedom of religion, expression, and non-discrimination…" (Human Rights Watch, 'Turkey: Headscarf Ruling Denies Women Education and Career')

Since the case of *Şahin*, significant developments have occurred in Turkey regarding the prohibition on the Islamic headscarf. After an initially unsuccessful attempt in 2008, the ban on the headscarf in universities was finally lifted at the end of 2010. As recently as October 2013, the restrictions have also been eased in the workplace, allowing women employed in the public sector to wear the headscarf, for the first time since the modern Turkish state was founded. The lifting of the ban has split public opinion in Turkey; many believe that such comes as a large step in restoring freedom of religion and expression as well as enabling women to take a more active role in the workforce, while opponents warn of the eroding effect it may have on the secularist state.

***S.A.S. v. France*: Strasbourg to evaluate the French Burqa Ban**

The Grand Chamber of the Court is currently adjudicating the highly pertinent

and seminal case of *S.A.S. v. France*, with the judgment due sometime this year. At the core of the complaint is the French law criminalising the full-face veil. The applicant, a devout Muslim woman who wears the burqa, complains that the French law violates her rights to: freedom from inhumane or degrading treatment (Article 3 ECHR), private life (Article 8), freedom to manifest religious beliefs (Article 9 ECHR), freedom of association and assembly (Article 11 ECHR), and prohibition from discrimination (Article 14 ECHR). Under the law, first introduced in October 2010, those found to be wearing a full-face covering in public places, except in places of worship, can be fined by up to €150, while those found guilty of coercing others to wear the veil face a fine of up to €30,000 and a year in prison. Furthermore, anyone found to have breached the law is also required to take mandatory citizenship training to remind the convicted person of the "republican values of tolerance and respect for human dignity' (Open Society Foundations, 'S.A.S. v. France: Criminal Penalty for Wearing a Full-Face Veil in Public Spaces'). Several NGOs have filed *amicus curiae* (third party) briefs in support of the applicant, including the Open Society Justice Initiative, Liberty, Article 19 and Ghent University Human Rights Centre. The general common thread of the support is the argument that the law is disproportionate in its aims, unfairly prejudices the ability of certain Muslim women to conduct their daily life according to their religious convictions and stands to encourage the stigmatisation of Islam. Furthermore, the former Council of Europe's Commissioner for Human Rights also voiced serious concern with regard to the ban, expressing that:

"Those who have argued for a general ban on the burka and niqab have not managed to show that these garments in any way undermine democracy, public safety, order or morals. The fact that a very small number of women wear such clothing has made the proposals even less convincing. Nor has it been possible to prove that these women are victims of more gender repression than others." (Thomas Hammarberg, 'The Europe Must Not Ban The Burqa' *The Guardian*, March 2010)

Similarly, the Council of Europe's Parliamentary Assembly also issued a recommendation, which *inter alia* "call□s□ on members states not to establish

a general ban on full face veiling or other religious or special clothing" (Recommendation 1927: 'Islam, Islamism and Islamophobia in Europe', June 2010). Rather, the recommendation focuses on the prevention and punishment of those who try to coerce others into wearing such clothing by: "penalising, on the one hand, all forms of coercion, oppression or violence that compel women to wear the veil or the full veil, and by creating, on the other hand, social and economic conditions enabling women to make informed choices through the promotion of genuine policies on equal opportunities for women and men which embody access to education, training, employment and housing." (Recommendation 1927, para. 3.15)

It is the author's contention that by shifting the focus from punishing the individual believer to those who coerce female Muslims to wear the veil is the correct approach by which to tackle the concerns regarding gender empowerment and equality. A mandatory ban on the veil does not take into account the debilitating effects it will have on those women who adhere to a certain religious interpretation, whereby their personal manifestation of such is dependent on wearing the veil. Not only does it have the potential to ostracise these women from daily life should they feel they cannot go outdoors without their covering, but it can also create negative stigmatisation within society itself. Minority adherents, as is the case with the estimated 2,000 Muslim women that wear the full-face veil in France, stand to be the target of a distinctly hostile and negative stereotype fostered by a law that tells society that these women pose a threat to democracy and the French nation as a whole.

This case provides the Grand Chamber with the opportunity to move away from its earlier paternalistic approach as seen in *Şahin,* and to narrow the excessive margin of appreciation it has tended to afford to states in their limitations on religious manifestations. It is predicted that the crux of the issue to be determined by the Court will be whether the French law is "necessary in a democratic society". In this regard, it is hoped that the Court will recognise the disproportionate effects the law creates. Firstly, should it be argued that the law is a national security measure (regarding facial identification), then the Court should take note of the very small

percentage of women who actually wear the full-face covering in France. The second relevant issue relates to the correlation of the full-face veil with being irreconcilable with the principles of tolerance and equality, as highlighted in *Dahlab* and *Şahin*. The focus should not be on punishing fully consenting Muslim women for adhering to an interpretation of their religion, but rather to examine whether the law adequately protects women who are being coerced into wearing the veil. In this regard, it is submitted that the relevant paragraph of the French law which criminalises the coercion of forcing the veil upon another can be considered "necessary in a democratic society", while the automatic criminalisation of fully-consenting women is paternalistic, disproportionate and has detrimental effects on the individual. From the perspective of the applicant in *S.A.S. v. France*, namely a fully consenting Muslim woman, it is hoped that the Court will find the restriction on her right to manifest her religion to be in violation of Article 9 ECHR.

Conclusion:

Instead of liberating the women from the alleged shackles of oppression, domestic laws such as those seen in the extreme in France and Belgium, fail to entertain the notion that women may *choose* to wear these symbols. Thus by banning the veils, the laws not only encroach on women's right of autonomy and self-determination, but also render them with a *de facto* ultimatum of choosing between pursuing education, work and daily life *or* adhering to their religious convictions.

The sensitivities that are involved in cases of this sort go to the very core of the individual's identity and also define a state's efforts to strike that much sought after balance between appeasing both the religious zealots and hard-core secularists. In the middle of both extremes are the individuals who are looking to pursue their religious duties, and those individuals preferring not to be affected by those rituals by proxy. If the Court is to be convinced by national measures against so-called "fundamentalist movements", such strongly-worded allegations need to be substantiated by some sort of empirical proof before the Court should readily endorse such

controversial sentiments. Similarly, the Court should be more willing to examine the individual applicant's situation more closely and whether the respondent government's arguments make practical sense in light of the facts. On this basis, it is the author's contention that the Court in *Şahin* should have put greater emphasis on the applicant's free choice and age, as was done by Judge Tulkens. At the very least, the Court should have disassociated itself from the point that she was being a so-called victim of the veil. As to the case of *S.A.S. v. France*, it is contended that the Court should seize this opportunity to recognise and protect minority religious adherents, leaving misplaced paternalism and societal prejudice aside.

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Abortion in Poland and Romania: two former communist countries, completely different experiences

Poland and Romania are two countries that share a lot of similar experiences from a cultural and historical point of view, but as we will see in this article, it is their differences that makes them stand out on the European scene. Both experienced their fair share of occupations, partitions and communist dictatorship and both had a chance of a rebirth after 1989. Despite their similarities, their trajectories were quite different and this is reflected in the way in which the two states also tackle sensitive issues such as abortion. While one country is very pro-life, the other is European champion at abortion. Nevertheless, the two countries have similar birth rates: for the year 2013, it is estimated that the birth rate for Romania was of 9.4 births/1,000 population and in Poland of 9.88 births/1,000 population. (http://www.indexmundi.com/)

The following examination will look at the two countries' overall history of abortion and try to determine possible reasons why they are situated at two opposite poles on this issue. To do this, we will look at the role of the foreign influence, political parties and religion.

Abortion in Poland

Poland is one of the most pro-life oriented countries in Europe, but few know that it hasn't always been like this. Starting in 1932, abortion was legally performed if there were medical reasons indicating that the pregnancy endangered the life of the women. Poland was also the first country to accept abortion in the case of pregnancies which were a result of a criminal act. This law was effective until WWII, when under the rule of Hitler, abortion was possible on demand in Poland. This was not the case in Germany, where it was still considered a crime. At that time, Martin Bormann, Hitler's private secretary and head of the Party chancellery said:

“The Slavs are to work for us. In so far as we do not need them, they may die. Slav fertility is not desirable.”(Robert S. Wistrich, *Who’s who in Nazi Germany* (New York: Routledge, 2002), p. 19). This quote appears also on pro-life websites and the topic has been brought up recently by Polish pro-life activists in a few interviews.

(https://www.academia.edu/795365/Polish_pro-life_movement_and_one_of_its_leaders)

In May 2010, Polish abortion activists shocked the public opinion by displaying graphic billboards with aborted fetuses and the face of Hitler, in order to remind the Poles of the Nazi rule. Nevertheless, this argument is used by isolated groups who are aiming at putting the equal sign between abortion and murder or abortion and the Nazi regime. The main reason why many Poles oppose the legalization of abortion nowadays has to do with religious convictions mainly.*

At the end of WWII, things went back to how they wore before, but later it was the Communist regime that permitted abortion on demand. Some criteria still had to be met however: the mother had to prove either that she had no means for raising a child or that the future baby was the product of a crime.

In 1980, abortion became possible only with the affidavit of the physician and since there were no regulations restricting it, many abuses took place.Things dramatically changed after the fall of communism in 1989, when new debates on the theme of abortion began. The distribution of the film “the Silent Scream” along with better knowledge on the subject, and also with the teachings of Pope John Paul II, who played an important role in the independence movement made abortion be perceived as a crime (http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf, p. 191)

The moment when everything changed was 1993, when a new law on family planning was adopted, a law that was also sought to protect the human embryo. A legal abortion is now possible only when the pregnancy endangers the life of the mother, when there are clear indications that the fetus is malformed or when the pregnancy is a result of a criminal act.

Abortion in Poland nowadays

The issue of abortion is difficult to approach because of the emotions and contradicting views involved: while the majority agree that the law needs to be changed and that abortion based on socio-economic factors should be approved, studies show that there is a difference of opinion in feelings towards the law on abortions and the abortions themselves. Some people believe that abortion is murder and this might explain lack of action for reform.

Nowadays, the debate is between those who are pro-life and those who are pro-choice and so far no agreement has been reached between the two extremes. With regard to the pro-choice standpoint, the first argument in this camp pertains to the woman's right to self-determination. The second pro-choice argument has to do with her socio-economic background and her inability to raise another/a child and is also related to avoiding illegal abortions which are riskier for her health. When abortion was legalized in Poland during the 1950's, the reason behind it was that it was needed: a large number of women were dying during underground abortions. But here lies the problem: it was not a right obtained by the women themselves, it had nothing to do with self-determination or any feminist movement, it was simply necessary for the well-being of the entire society. Moreover, the communist egalitarian approach to gender roles provided no actual benefits for the women, as everything was calculated to serve the nation and not certain individuals. The changes took place only in several spheres of the lives of the people, but traditional gender roles had stayed the same and Poland continued to be a patriarchal society. (same thing in Romania, certain rights or benefits were granted, but not because women had fought for them). The fact that women were passive in receiving these "benefits" only means that they had no influence in keeping them and this is exactly what happened later.

The debates that followed after 1990's focus on the fact that abortion is necessary especially for the impoverished women who will resort to illegal abortions because of a restrictive law that does not allow for a legal one and thus risk their own lives: "Past experiences shows that poor and helpless

women will use drastic means [because of the restrictive law]…No one promoting the [anti-abortion] law mentions the easily predictable effect of the law, which will be an increase in infanticide, as was the reality before 1956". *(*http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf, p. 191)

The problem with this argument, which is in use even nowadays, is that it reinforces the idea that women are helpless and need protection (a notion that is more beneficial to maintaining patriarchy) and that women who decide to have an abortion and who do not want to use the socio-economic background as a reason are excluded from the equation.

On the other hand, the absence of a rights-based approach for so many years (especially during communism) makes it problematic for such notions to be adopted in present-day Poland, as they have not evolved out of a solid basis. The concept of human rights applied in such a fashion is something that emerged only in the last decade and it still requires time to sink in.

It is also considered that from a historical point of view, the identity of the Polish women became almost synonymous with the fight for independence. They become more than mothers, daughters and wives, they were heroines, especially during the time when Poland was divided between Russia, Austria and Prussia (18930-1864). While men were at war, women stayed home, kept the society and the national identity together. During this time the concept of "Mother Pole" has emerged and this legacy of women as "saints" has become a heavy burden; not fulfilling that role was and still is perceived as betraying the family institution as well as the catholic church. *(*http://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf, p. 191)

Abortion in Romania

Before discussing the current situation regarding abortion in Romania, this article will firstly present the historical development of abortion in this state. The victory of Bolshevism in Russia (in 1917) brought with it for the first time in the world a concrete measure of women's emancipation: the legalization of abortion on demand. This law was in effect for 16 years,

until Stalin, in contradiction to the principles he agreed upon 30 years before, forbade abortion. The prime reason for this measure was to counter the low growth of the Soviet population. This law remained in place until his death (1953).

As an Eastern European country, Romania had to abide by Soviet law, a situation that changed when Khruschecev took the power in the Soviet Union. In that period the 1920s law was reinstated. The Romanian government at that time started a pro-soviet propaganda, followed afterwards by the 463 Decree, decree which brought Romania the emancipation much desired. It was this Decree that empowered women and gave them full custody of their own bodies: they could decide if they wanted to keep the baby or not. (http://www.soviethistory.org/index.php?page=subject&SubjectID=1936abortion&Year=1936)

After this period, what followed was a decade of abortion that ended in 1966 when Ceaușescu, the president at that time, prohibited it. The reason for taking this measure was rooted in his fears about the impact and popularity of pregnancy terminations in the long run (abortions were more than 1 million a year). He was also preoccupied, just like Stalin, with the demographic phenomena and the nation's future. Thus the 770/1996 law emerged, which was made to regulate abortions. There were 6 conditions that a pregnant woman had to fulfill in order to get an abortion: if she had at least 4 children (5 starting with 1985); if she was over the age of forty; if she was suffering from a serious disease, which can be transmitted genetically; if she was suffering from a physical disability incompatible with the normal upbringing of a child; if the pregnancy was putting her life at risk; if the pregnancy is the result of rape or incest. (http://www.ceausescu.org/ceausescu_texts/overplanned_parenthood.htm)

Between the years 1966 and 1989, with few exceptions, abortions were strictly prohibited, and contraception as well. However, illegal abortions continued, despite the legal restrictions applied and the serious consequences on health. This law existed until 1989, when Ceausescu lost power and Romanian legislation was changed, with the introduction of a new law making abortion

legal.

Romania is an interesting case to study. It is the only communist country where abortion was prohibited from 1967 to 1989 and which nowadays represents a tragic case. The procedure of having an abortion is a very controversial one, because there are no restrictions concerning the way in which it is performed and the women who go through it do not receive any counseling at any time during this process.

The only institution that is condemning it is the Church, because Christianity sees abortion as one of the biggest sins that one can commit in front of God. The maximum time limit for performing an abortion in Romania is for pregnancies that do not exceed 14 weeks. The abortion is made at the women's request in a medical institution and according to the law, it can be performed later as well, if it is absolutely necessary for therapeutic reasons. A doctor who performs illegal abortions risks suspension.

In the case of this country, abortion can be considered a contraceptive measure, because Romania is the European member with the highest number of abortions per year. This may lead one to the conclusion that abortion is perceived here as a contraceptive measure and not as an extreme, emergency measure. Having the highest rate of abortion in the EU, it is a paradoxical country, which shifted from one extreme to the other.

Romania has to make changes in its legislation concerning abortion. If a woman wants to have this procedure she should benefit from the best medical care, where she is offered therapy before and after the abortion. One might blame the education system for "the normality" of abortions. If people would be more informed on this topic, than the frequency of abortions would likely diminish.

Conclusions

The two countries are perfect examples of two extreme situations. While in Poland abortion was legalized because of necessity and not because women would have necessarily fought for it, in Romania it was banned because of

Ceaușescu's desire to build a larger nation. The Polish culture was and still is bound to value family traditions, the idea of community and of a unified society and that women are seen as "mothers of the nation." Moreover, the Nazi regime left deep scars that will take several more years to heal.

Romania is at the other extreme, having for 22 years a dictator with grandiose plans for the country: release it from national debt (at his death, in 1989, Romania had zero national debt), increase the natality and have more citizens who "fight" for the communist cause. In order to achieve these goals, he created a nation of impoverished people, who lived in fear of the system and in fear of each other. The Romanian mothers of the nation were compensated the more children they had. The title of "Heroic Mother" was awarded to the women who had at least ten children and it was accompanied by a monthly subvention of 500 Lei. This honorific distinction was not enough motivation for the impoverished families to have more children and illegal abortion were at its peek during this time. Therefore, when communism fell and all the ideals connected to it were rejected, the notion of "Heroic Mother" had no more value as well.

Although the socio-economic background is fairly similar in the two countries, their extreme approaches to abortion might be a result of two factors. First of all, the way in which the countries put an end to their communist regimes was very different: in Romania, the end of 1989 brought a bloody revolution, followed by Ceaușescu's execution. The kangaroo trial that the President faced as well as his shooting were broadcasted on national television. Afterwards, Romania had no viable alternative for the communist party, while in Poland, the anti-communist Solidarity Party won the free Polish elections and communism was overthrown in a democratic way. While Romania was in a period of confusion and sunk even deeper in corruption, Poland was finding its way out of the dark times and adopted good, healthy reforms right from the start.

Second of all, while the Orthodox Church was fairly obedient to the communist state, the Catholic Church was a strong advocate for anti-corruption and anti-communism in Poland. Looking at how different cultures deal with the

issue of abortion, one obvious pattern is that the strong Catholic Church has a clear say in how the legislation is shaped not only Poland, but all the countries in which it is the national religion.

In Romania, after the fall of the communism, the Orthodox Church – dwarfed by Ceausescu's regime – started to get strength again, but not enough to impose its views into politics. On the other hand, Pope John Paul II was not only an international figure, but was and still is one of the most beloved people of Poland. He had a great role in the collapse of Communism and therefore, the Catholic religion in itself was regarded as the savior of the nation. Furthermore, since abortion is considered a sin and feminism an attempt to destabilize family life, women's voices were not heard then and have a hard time being heard nowadays as well.

The two countries have yet to find balance and although they have opposite problems with abortion, it is clear that sexual education needs to be a priority for both of them. Catholic Poland treats sex as a taboo and illegal abortions represent the unseen struggle of Polish women. In Romania on the other hand, the very high number of abortions performed each year shows that people, women and men, are not preoccupied with safe contraception, which also means a lack of concern in regard to the sexually transmitted diseases. Both countries are in a critical time, when things have to change. Only time will tell in what direction things will go and how long it will take to get there.

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* *article updated on 6th of April 2014*

Lesbian, Gay, Bisexual, and Transgender (LGBT) rights in Turkey

This paper will examine and address a fundamental human rights issue: the discrimination and violence lesbian, gay, bisexual and transsexuals (LGBT) citizens face in Turkey. The central aim of this paper is to respond to two basic questions:

Why does the LGBT community face discrimination in Turkish society?

How can we decrease discrimination and harassment towards LGBT people in Turkey?

That being said, even though LGBT people are becoming stronger and more visible in Turkey, they are still facing violence, attacks, abuse and discrimination on a daily basis. Honor crimes against LGBT are believed to be a way of keeping the ‘honor’ of the family intact. Kaos GL, a Turkish LGBT rights organization, tracked 16 “hate crime” murders of gay men and transsexual people in Turkey in 2010 alone. (www.lgbtinewsturkey.com/2013/09/11/2012-report-of-human-rights-violations-based-on-sexual-orientation-and-gender-identity/)

Homofin, is a herbal treatment, which claims to influence hormones. The manufacturer states: ‘It is now up to you to be or not to be a homosexual”. Homofin’s site even encourages mothers, who suspect their sons

are gay, to buy these capsules and secretly dissolve the drug in their food. The government has yet to take any legal action to get this unethical, unscientific drug off the market.(http://www.mambaonline.com/2014/01/03/gay-cure-pills-condemned/)

In addition, police officers regularly arrest LGBT people on the accusation of prostitution. Sexual orientation or gender identity is often used as a basis for criminal penalties, in particular executions, arrests or detention. Critics say these actions are a way of putting pressure on the LGBT community. Most LGBT people that have experienced such incidents do not report this misconduct; they know that those responsible will never be punished.

To this day, there are many obstacles LGBT activists face on social networking sites and the internet in general. One example is that websites of LGBT associations are regularly hacked by religious groups.

While the government plays dumb, the fundamental rights of LGBT people are being violated, especially their right to private life. Homosexuals are increasingly targeted, also in hate speeches made by government officials. In 2010, Selma Aliye Kavaf, the Minister for Women and Family, classified homosexuality as a biological disorder and a disease which needed to be cured. Further, in response to the question ‘when Turkey is going to have openly gay ministers’ the mayor of Ankara, Ibrahim Melih Gokcek stated ‘ if god willing (insallah) in our country there are no gay and will never be’ when he was asked ‘when Turkey is going to have openly gay ministers’. Even more so, the fact that Prime minister Erdogan has never mentioned homosexuality or LGBT people during his service is a clear sign that the government should be blamed for the violence and harassment against LGBT people; by being passive, the government clearly shows their toleration of homophobic and transphobic attitudes.

Moving forward, The Universal Declaration which was adopted by the UN General Assembly on December 10th 1948 passed with a vote of 48 in favor (Turkey being one of them), zero against and eight abstentions. Article 1 of the

Universal Declaration states that ‘all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’. However, the rights of LGBT people are ignored and not mentioned in the Turkish constitution’s prohibition of discrimination or the social and civil rights. (http://www.un.org/en/documents/udhr/)

Meanwhile, LGBT groups are pushing their agenda forward in order to include protection against gender/sexual orientation discrimination in the Turkish Constitution and have some support from outside the LGBT community. The LGBT activists campaign for equality before law.

On the 30th of June 2013, the gay pride parade attracted almost 100.000 people. This was seen as a positive development by LGBT activists. (http://www.nytimes.com/2013/07/01/world/europe/protests-squelched-gay-rights-march-brings-many-in-turkey-back-to-the-streets.html?_r=2&)

On the other hand, Gezi resistance which started on 27th May 2013, was an anti-government struggle against injustice and cruel and inhuman intervention of the Turkish police. The protesters demanded freedom of the press and freedom of expression, the removal of all barriers between the citizens and their right to education and health service, as well as protesting against discrimination based on sexual orientation and gender identity.. During the Gezi struggle, LGBT people got a chance to show that they are normal and harmless human beings, and do not warrant that people are afraid of them. Gezi remains an event that has sent a clear message to everyone : ‘the struggle of the people in Gezi Park was a battle for democracy and rights for all’.(http://roarmag.org/2014/01/gezi-ottoman-turkish-nationalism/)

A momentous decision was taken when People’s Democratic Party (HDP) freshly nominated five LGBT activists. Furthermore, the Republican People’s Party member and also LGBT activist Öykü Evren Sözen has announced her candidacy once again from Bursa Osmangazi district city. Another big step was made when Can Cavusoglu, an openly gay independent candidate, publicly announced that he is running to become a mayor in Giresun’s district of

Bulancak in the March 2014 local election. He declares himself gay, activist, writer, thinker, painter humanist and women's rights activist. (http://www.hurriyetdailynews.com/hdp-pledges-diversity-with-its-party-assembly.aspx?pageID=238&nid=57005)

Being Gay, bisexual or transsexual is seen as an "illness" by religious groups. Hate crime is a daily reality throughout Turkey. Islam being the dominant religion in Turkey is one of the reasons why there are anti-gay actions. Religious clerics state that homosexuality is a test. If you are not able to stand the temptation, you will go to hell. If you resist, you will be pardoned and go to heaven. In Turkey, there are many religious people who believe that Islam's position regarding LGBT people would be to apply the death penalty (http://www.gmanetwork.com/news/story/321419/pinoyabroad/worldfeatures/gay-muslims-in-turkey-torn-between-religion-and-sexuality)

To conclude, the government in Turkey has to introduce a new constitution containing greater human rights protection. An anti-discrimination law to protect LGBT is a necessity. In this way, the discrimination in society will not only decrease but will also reduce the long-established judicial practice of giving penalty reductions based on unjust provocation in hate-motivated killing of LGBT people. Currently, the perpetrators continue to be rewarded by the judiciary. LGBT people will continue to be targets if the LGBT are not seen to be equal before the law. The demands of LGBT people for equality and protection under the law, full justice and freedom for LGBT people should be accomplished. This year was utterly a difficult one, marked by several hardships the LGBT had to endure, such as killing attempts, ill treatment, rape and cyber attacks. Thus, I reckon a proper end of my article would be a very inspiring line from Nazim Hikmet's invitation poem: "To live like a tree single and at liberty and brotherly like the trees of a forest.

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