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The Government Performance Regarding Compensation of Victims of Severe Violations of Human Rights: The Paradox of State Immunity and Compensation

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Abstract: The effort of the international community is indicative of status of individual rights and freedoms in the modern world to prevent tremendous and widespread violation of human rights in the past decades and forecast of redress institution to support victims of human rights. Thus, in recent years some governments has been sought to support this category of victims by accepting claims caused by severe violations of human rights in national courts and ignore the judicial immunity principle of state. According to the belief of the governments, some rules of human rights such as the prohibition of torture have been among jus cogens and have been at the top of the hierarchy of international law that is assumed first in meetings with the customary rule of state immunity. In contrast, it seems that there are also many objections by countries and international judicial institutions regarding superiority of Jus Cogens of human rights on the principle of state immunity. Now the question is whether can be limited the domain of the recent rule in confronting of human rights and the rule of state immunity and severe violation of human rights is considered as an exception to it?

Key words: Human rights severe violations, Jus Cogens, compensation of damage, state immunity, judicial procedure

INTRODUCTION

After the end of World War II and the Universal Declaration of Human Rights in 1948, the international community has tried to follow up development and ensuring human rights in different ways and in international human rights system. Undoubtedly in being statutory of human rights it means becoming law or human rights law, the role of the internal law and international law in parallel are very crucial. Thus in addition to the collective effort of the international community, government programs and positions on the protection of individual rights and freedoms are important. In other words, now the behavior of governments in this area has essential role in the fulfillment of human rights. The main function of this normative system is restricting the power government to individuals. Therefore, the government is committed to ensuring rights for individuals. Of course this does not mean that human rights are not in the relations between people but most of the space in the discourse of human rights is guaranteed space of rights of the people. That is why ruling literature on the international human rights instruments about the states is commitment-based literature and compared to people is right-based. So, nowadays the observance of rights and freedoms of the individual is primarily depends on the policy and practice of governments in this field. State practice is achieved of their performance and what they think and thus the evidence procedure and performance of government should be searched in the official spokesmen, the correspondence of Ministry of Foreign Affairs, government documents, the position in international organizations, statutes and court decisions.

Other thing is that despite the international commitments of states to protect human rights and fundamental freedoms and despite the perception and confirmation of various networks support of human rights, it should be noted that in the real world existence of pressures and restrictions imposed on the set of the inherent rights is dramatically evident and the number of victims of violence and rape in most places is abundant and visible. In fact, although, the government is committed to respect for human rights but at the same time are the biggest violators of this law also. Therefore, it should be considered for the rights of the missing victims of human rights violations and compensation for losses. “Right to appeal” and consequently predict of institution “redress” in the field of international human rights law can be justified in that regard. This right (right to justice) has been also among the individual rights and its guarantee must be done by the government. Sometimes human rights violations are outside the

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territory of the country where the court or tribunal in which case the evidence contradicts the principle of state immunity and human rights will be jus cogens. In other words, if the person is claiming violations against its own government, demands lawsuit in the national courts, if there is such right to him, nothing prevents the exercise of that right. The problem is occurred when claiming individual in the national courts and against other states demands lawsuit. In such cases, national courts as a rule are encountered with a strong barrier called "immunity". The question now is what procedures governments have been taken in pushing this contradiction?

According to the above question in this study effort will be done to be analyzed government performance in regarding the redress of victims of serious human rights violations, according to domestic law, official positions and jurisprudence.

REDRESS OF VICTIMS OF SEVERE VIOLATIONS OF HUMAN RIGHTS IN NATIONAL LEGISLATION

Undoubtedly, most contemporary states are being ruled by binding, general, express, future-oriented rules. Qualified rule of such characteristics is the main element of legal systems or the "law" (regarding characteristics of the law bank: Rasekh, Mohammad, rights and interests, Volume 2, Tehran, Ney publication, 2014). States subject to the rule of law is primarily imposed and enforced these criteria and general rules to maintain peace and order in society. Accorsding to this principle, administrative authorities of a country can not issue commands to their will and individuals are required to do or refrain from doing something unless its command or sentence has been on legal basis that is one part of the system that has been created the new basic law for the protection of individual rights against state authority. Therefore, principle of redress victims of severe violations of human rights and the ability to run will have the support of national courts that is the outcome of the legislative process. In the national legal system, many of the leading countries in the field of law, redress of people has been directly predicted due to the violation of individual rights and freedoms. In fact, "direct legislative" represents a condition that the legislator has taken the initiative of legislative in the area of redress of victims of human rights violations and has not been satisfied only to pass some treaties and international instruments that contain principle of compensation from these people. Of course, mentioned laws are laws that have been created the possibility of filing law suits against foreign governments like extra-territorial offenses in recent years through reform immunity.

The torts quasi are mostly as severe violations of peremptory norms of human rights. For example, foreign rulers of united states immunity act in relation to this issue have a comprehensive and accurate regulation. Study 5 of the 1605 of the law has been predicted. "A foreign state will not be immune from the jurisdiction of United States courts: in cases in which a petition has already been proposed for financial compensation resulting from bodily injury or deprivation of life or damage to property that should have acted in the United States due to acts or omissions resulting in tort of a foreign government or any agent or employee within the framework of his official duties. The exception contained in the paragraph shall not apply in the following cases. In the case caused by act or perform and the failure of applied and implemented which is based on good vision, regardless of whether it is the duty of abuse: or in any claims arising from the pursuit of harassment, abuse of the judicial process, defamation, slander, misrepresentation, fraud or interfere with another contract law."

With the approval of the immunity of foreign rulers in the United States, American lawyers of human rights were transferred their efforts in the implementation of human rights from international authorities to the civil justice system. By combining the immunity of foreign rulers with the "tort of foreigners" these new lawyers found a new channel in United States courts for lawsuits against foreign governments that violate the rights of individual citizens and their nationals.

Following the adoption of amendment immunity of foreign governments of the United States by the US Congress in 1996 and spread of jurisdiction of the courts of the United States, the rulers of this country had the opportunity to pay the claims of nationals against foreign governments. The law was amended which contains anti-terrorism except for personal injury or deprivation of life of those who have been made extrajudicial killing, aircraft sabotage and hostage as a result of torture. Accordingly, paragraph (a), paragraph 7 of the 1605 law governing immunity of United States foreign states: in cases in which financial compensation claims have been brought against a foreign state for personal injury or deprivation of life problem of torture, extrajudicial killing, aircraft sabotage and hostage-taking or the material support or resources to undertake such a claim ... is devoted to such acts, provided that such acts or support by an employee, servant or agent of a mentioned foreign government have been committed that is applied within the mandate or employment or agency, foreign state is not immune from the jurisdiction of the courts of the United States. Added exception based on the law is

applicable only in those cases that is raised by United States nationals. It means that plaintiff in the lawsuit is a citizen of the United States. But in addition to American citizenship calls for project fights, according to the exception counterterrorism, the lawsuit states can be read only when the incident in question occurred or after the results of the accident have been identified by the state department as state sponsors of terrorism by the United States. The other condition is that fights can only be considered in the form of the anti-terrorism against a foreign state sponsor of terrorism that is given to foreign government an opportunity to settle fights based on the international norms appropriate have accepted arbitration judgment.

In 1998, America's Congress was approved law of civil liability for acts of terrorism-supporting states (known as Flatow amendment) that to the parties or the legal representatives of the people as a result of terrorist acts under the exception set forth in the law governing immunity of foreign United States have been hurt or killed, the right fight plan against the agent has been granted to employee or agent of a foreign government who are among the states of sponsor terrorism, provided that such persons as agent, employee or agent of a foreign government have committed a terrorist act.

But an amendment in 2008, study 1083 except for counter-terrorism has been received to merge paragraph (a) paragraph 7 of section 1605 immunity law of foreign rulers and the Flatu amendment. According to the new paragraph of study 1605, if the victim is a member of the armed forces or government employee or contractor that has been on duty during the incident of the origin of the dispute, provides for him the possibility of litigation. With the introduction of this regulation, Non-United States citizen employees and contractors who are serving in this country and they are also under the anti-terrorism exception of law immunity of foreign rulers.

The third alternative of section B of 1083 article passed by Congress with the amend 1610 study immunity law of foreign rulers is followed property seized for enforcement of the judgments against foreign states. This property include: state property of losing party, property brokers and government agencies including units that have their own independent legal personality and the direct and indirect benefits of the state or its agencies are being applied in these units, regardless of the degree of commercial real control of government over them and regardless of the state of the profits or benefits of the asset have been received or not. The 2008 amendment has been provided as well as the possibility of the sentencing to punitive damages against foreign states which previously had been banned law immunity of foreign rulers.

Accordingly, United States courts in many cases have been tried to the sentencing about payment of restorative and punitive damages against foreign governments (including against the Islamic Republic of Iran). Punitive damages are damages that are just to punish and prevent reprehensible behavior of defendant and do not have any restorative natures. The main source of damages is the rights of "common law". According to consensus among scholars of English law, punitive damages in the modern sense in the case of "rooks against bernard" dates back in 1964. Courts of pursuant states to the legal system, according to the British House of Lords ruling in this case, this category of damages has been limited to certain cases that include:

- Clear permission of the law
- When defendant has been benefited from committing a tort so that criminal is committed by calculating the profit and probable loss civil liability arising from commitment of crime
- To punish civil servants for arbitrary action outside the issuing authority or unconstitutional actions

But Australia and the United States do not observe these restrictions. Some believe the study of governing rules on the responsibility of states in international law and international jurisprudence reflects the fact that there is not basically the license for the decision to pay such damages in international law and this dream was recognized only to the US government and is legally inadmissible but the laws of some other countries have addressed the issue of compensation for victims of human rights violations.

In the UK state Immunity law and the regulations of Article 5 states. A government does not have immunity in relation to the following claims:

- Deprivation of life or personal damage
- Hurt or damages to material property that have been done as a result of an act or omission in great Britain

As well as Article 13 of the state immunity law of Australia is declared. Foreign governments are not immune in the following areas as far as is concerned to judicial review:

- Deprivation of life and assault and battery on a person
- Material damage to property by acts or omissions committed by researchers in Australia

Canada's State Immunity law in 1985 has been adjusted in Article 18 that its Article 1 is known foreign governments including government leaders and representatives of the state and its political subdivisions such as states, provinces, departments and so on. In Article 3 of this law is pointed to the immunity of foreign states, except for the exceptions in the law. Articles 4-8 are also pointed to the exceptions which include: withdrawal of immunity by the express written consent or litigation or participate in proceedings (except objection to the jurisdiction of the court), claims related to the trade of foreign government, claims related to death, bodily injury or damage to persons in the territory of Canada, claims related to certain aspects of maritime law, any claims related to property interests of the substitution effect, pay the grant (donation) or unclaimed property has been resulted.

Article 7 of the Singapore State Immunity law and Article 6 of the state immunity law of South Africa in this regard have similar regulations. As can be seen, there are a few things in common in national laws relating to personal injuries and damage to property of individuals. First of all, damages in the laws and damage is material and tangible and does not include spiritual damage because in many cases spiritual compensation by state is considered contrary to international comity and the rule states. Second, the act or omission leading to injury and damages must have occurred on the territory of the state court.

Legal rules of jurisdictional immunity implies that apart from 1996 exceptional rules amendment of the United States, almost none of the domestic law of the judicial immunity of foreign governments, the competence of national courts has not extended to committed torts in other countries by foreign governments and laws of the country have been limited this authority to the committed torts on the territory of court. Even in the United States before the 1996 amendment in several cases, courts in this country have jurisdiction to the important torts over the continental United States. Petition of defendants have been rejected extraterritorial jurisdiction of US courts. In the case of Al-Adsani (1995), high court was attempted to distinguish between committed acts outside the territory of the United Kingdom and committed acts in the UK and was announced that clear articulation of Immunity Act of 1978 of the British government has been granted immunity to foreign governments for committed acts outside the territory of the country. As a result, the exception contained in Article 5 of British State Immunity law is inapplicable and the State of Kuwait has immunity for Mr. Al-Adsani Claims (UK, High Court Queen's Bench Division, Al-Adsani v. Government of Kuwait, Judgment of 15 March 1995, 103 ILR).

REDRESS OF VICTIMS OF SERIOUS HUMAN RIGHTS VIOLATIONS IN THE OFFICIAL GOVERNMENT POSITIONS

The government's official position concerning the redress of victims of serious human rights violations during the internal rules can be derived national courts procedures or statements by officials of various governments. These legal actions by the various organs of the country that are including legislative, judicial or executive institutions in relation to foreign affairs and international, can lead to an international convention (material element of creating custom, process-based, means repetition of events or actions is clear. Refers to actions that are in some way related to international relations, the practice or habit that is not only internal aspects of an international customary rule). And it may be said it is the most important consequence of the government's official position because these days many international treaties or at least most of their provisions and annunciation of rules have been traditional. At the time of the conclusion, treaties have been separate. In fact, this issue is the "codification of international law" which especially in the nineteenth century is gone rapidly and gradually all existing customary rules are converted on treaty.

According to the international law commission of the United Nations and many international jurists, authentication rules of customary international law can be derived from this source share:

- International diplomatic relations is in the form of treaties, declarations and other intergovernmental diplomatic documents
- The performance of the international institutions will be appeared as decisions, votes and so on
- The intergovernmental action is proposed in terms of rights, rules, judicial decisions, administrative and so on (Wang, 1995)

Some believe that any legal analysis of the external relations including the legislative of internal governments, judicial decisions and the performance of government agencies directly involved in international law that have been participated in the process of normalization in the international law and have been facilitated and prevented implementation of international law. The international law is also resolved through it.

In terms of international commitments, state practice (material element custom-state practice) as reflecting the customary psychological element (opinio juris) is the reason for the existence of a rule of customary

international law. In other words, the regulations are considered customary rules that their formation is the result of the sum of two elements that generally, the material element, namely the function (procedure) and a belief to be required in the rule of law (opinio juris sive necessitatis) is called. The effect of these two elements for the formation of customary law with no legal rule has not emerged in order. This is the only technology the judges, international judges and state agencies by resorting to it can be determined whether in a particular case against a customary rule is set or not. The judges, the jury and organizations have been used to use the technology of the sum of two elements (material and psychological elements) to infer the existence of a rule customary as the use of a "representative material" is allowed chemists to identify the existence of this or that element in the solution.

But governmental actions that are the creator of the international law it can be divided into the following three categories:

The first category (internal rules and regulations): Regarding principle of compensation in the laws and internal regulations, discussed in detail in part one:

- The principles of the constitution and international laws related to foreign affairs
- The decisions of the executive branch: actions and countermeasures are specifically responsible for international relations, including the Foreign Minister and his colleagues. These actions without limitation include: political and diplomatic correspondence, notices, statements, political and diplomatic speeches, military commands and orders of government in matters of war

The second category (formal political positions): Regarding actions of the political authorities of the country can be said that in the history of international law in cases where only one political statement of an official especially, the President and the Secretary of State as sufficient evidence to support the rights of another state or the identity of a legal status has been accepted. For example, international Court of Justice in the case of French nuclear tests (the claims of Australia and New Zealand against France) on 20 December 1974 announced as "unilateral declarations that the French ministers pledged to stop nuclear tests in the atmosphere had been the intention of committing France and is legally binding mode (to France)".

Declaration issued by Poland and Great Britain in the political situation and Declaration of 1955, the government of Egypt regarding Suez Canal is as other instances in which voluntary limitation of sovereignty of a state has been approved in this case can be referred to the case of East Greenland.

Nowadays these types of statements and actions have led to the creation of customary international law. For example, there is a rule according to which statements and notes related to current affairs by Foreign Ministry for political officers have been issued that they have been accepted their credentials and make a commitment for this country (Barbrys, translation Amir Arjmand, 1994).

In relation to the compensation of victims of severe violations of human rights and the abolition of state immunity in the event of a conflict with the fundamental principles of human rights, it seams that up to now none of the senior officials had no official comment and have not been witness of declaration or statement by any country. But on the whole, substantive check of positions in government or group of governments to the principle of compensation and legal rules around it is shown that there is encouraging prospects on the subject for the victims of human rights. In other words, those of official government positions (in the form of legislation and judicial procedures) on the compensation of victims of serious human rights violations that support of these issues, can lead to the formation of international custom in not too distant future about accepting claims for compensation of victims of human rights in all circumstances. Some believe that material element of custom is required a long time to get over the customary form but in response to this, can be said that development of international relations in recent decades, also has been accelerated the emergence of the rule of law and the belief is achieved that continuous operation over a long time is not needed.

In addition to the decolonization and development, the nations have been faced with the new problems (such as pollution, aviation, human rights, terrorism, the fight against international crime, the military aggression, etc.) that each one is needed to the special rules. In other words, international law has been created a rule under pressure from these factors inevitably and since social phenomena are the result of approaching each other's countries, its solutions should be common and global. Means of bilateral or multilateral or regional will not reach the desired result. For example, subject of struggle with transportation and drug use or pollution of the environment are including issues that like international peace are needed common precautions, otherwise not only fight with problem but also its stability at one point of the world is caused threatening the security of the country. Custom form is mentioned the concept of hetero

genesis custom in such circumstances. With regard to this subject, it can be expected that in the short term the discussion of compensation for the guarantee and protection of fundamental human rights, regardless of the time element would be the formation of international customary law.

The third category (decrees and internal judicial decisions): When the domestic judicial authorities is being applied except to international legal affairs and claims application of the provisions of international law or is actually enforced the regulations on time on their ownis created customary background such as court decisions about the spoils of war or to punish hijackers. Of course in connection with the adoption of these decisions should be act with caution.

Judicial procedure is presented customary rules that have been created by the performance of national courts. The most popular of them are the opinions of the permanent court of international justice in the case of a Lotus French ship case and issue of Serbia bonds. In the first case, France is known criminal prosecution by courts in Turkey sea captain as violations of international law because according to international law of the country does not allow the government that the committed crime is prosecuted and punished by a foreigner in a foreign land to spend the nationality of victim. The court has not accepted because according to him, Turkish courts did not know its jurisdiction only due to nationality of victim but has also been relied to the operating results has been achieved Lotus captain in Turkey.

As a result, the court has also been relied that have been created by national courts. Based on this rule with the implementation of this rule, committed crimes by the Lotus captain as far as was related to the jurisdiction of the court a crime that was described on the territory of Turkey. The court concluded that the Turkish court to establish its jurisdiction in this case did not violate any of the rules of international law (The case of Lotus, 1927).

The second proposition may be noted that the difference is between France and Serbia regarding services related to borrowing in France. In the proposed case Serbia is claimed that governing law on the borrowing is the France law that the Serbian law is in force. According to the borrowing contract, debt service was paid to gold. Serbia was claimed that applicable law is French law because in the view of the country, the law would allow Serbia that the made commitments to Frank, gold has played with Frank bill. So the first problem was to determine the law governing the contract borrowing. Determining the law governing the contract is related to private international law rules generally are part of internal law. However, some of the rules of private international law have been created by international treaties and conventions and are considered the rules of public international law.

To resolve the dispute in this case, the court has exactly been cited to a rule of this kind, a rule according to which the law governing the contract should be determined "the nature of the obligations and conditions of the contract have been created".

The court was stated that the customary rule has been created through judicial decisions and according to this rule, the court was stated that about the services of interest, the law governing on the borrowing contract is not Serbia law (The Permanent Court of International Justice, 1929).

In mentioned two examples is referred to issues related to private international law: in one means determine the location of crime and in the other is determining the law governing on the contract. However, The Hague Tribunal was resolved both cases according to the rules on the validity of their origin are in the field of international law and have been created through domestic judicial bodies decisions.

In recent years, procedures for foreign domestic courts despite the immunity rule in cases where the compensation of victims of severe violations of human rights and the protection of the victims have confirmed. For example, it can be named the Italian courts in this regard which may be in the not too distant future ecstasy formation of international custom. Thus in the second part of this paper outlines the issue.

REDRESS OF VICTIMS OF SEVERE VIOLATIONS OF HUMAN RIGHTS IN DOMESTIC JUDICIAL PROCEDURES

Right to petition is among the basic rights of individuals and the first step in the realization of justice. Hence, people who has been subjected to rape their rights, freedom and security it should be refer to revive it possible to have a competent judicial authorities. Under Article 8 of the Universal Declaration of Human Rights "the actions have been raped the basic rights and the right has been known by the constitution or by law. Everyone has the right to an effective remedy by the competent national tribunals". Article 14 of the International Covenant on Civil and Political Rights are also affirmed the equality of persons before the courts and justice. Thus in case of violation of the individual rights of access to the courts and consequently, it is possible to provide redress to individuals.

If a person claiming violations of their rights, the lawsuit against his government and the national courts nothing prevents the exercise of his right to be. But a lawsuit against the government of the foreign state courts, the issue of "immunity" from foreign governments to the killing. In other words when a country's domestic courts to claims against foreign governments or their official representatives handle in most cases, based on the axiom that "the times, the person is not able to apply the rule of" competent because they oppose the principle of sovereign equality of states rejected. Over time, a number of customary rules established under international law that domestic courts from exercising jurisdiction over disputes and claims that foreign governments to design capacity was banned. These rules generally was justified with the argument that should be avoided from interfering in the exercise of sovereignty by foreign governments and official representatives, the possibility of carrying out their duties without unnecessary interruptions. America's First Federal Supreme Court on 24 February 1812 in a case Schooner Exchange v. Mc Foddon and others like to state immunity rule cited: "the world of regimes that are components of independence and equal rights and equal. Mutual benefits, this rule leads to build relationships with each other and thus interact with human morality is the requirement of good faith requires that the rule of exclusive territorial jurisdiction under certain conditions, against other states ignore" (Harris, 2005).

When the doctrine of "state immunity" comes that is a claim against a foreign state exposed to court audition of another state. In this situation, the court proceedings in the qualification and essentially before the nature of the dispute, the government should be considered the safety rules. At this stage, the effect of limiting the immunity of jurisdiction of the court in dealing with the raised claims against a foreign government and does not resolve the substantive claim (Trooboff, 1987). According to the common law immunity for human rights violations only domestic courts would violate government will have the right to address the violations. However in many cases, violations occurred outside the territory of the respective victims. Accordingly, although international law on state immunity persists but some governments are ignoring this issue, the government's immunity for serious violations of human rights norms declare abolished. In recent years, the performance of some domestic courts in Europe has been based on the same reasoning. For example, it is possible claims against Germany spoke Italian nationals. Reasons and justification for the court to assume jurisdiction, mainly based on human rights principles and priorities of the Department of State Immunity rules based on customary rules.

Fans of granting immunity from prosecution to the government's human rights violations, three analytical approach to providing: first view, the theory of "hierarchy of norms" when a government based on the support of human rights as fundamental norms of international law as are violated, the government canceled its immunity. The second view, the fact is that if a government is one of the fundamental principles of human rights that are equivalent to peremptory norms, violates state that implicitly as their immunity is withdrawn. Action in such a situation is considered as a waiver of immunity, the government is violating the peremptory norm. The third view, based on the assumption that the human rights violations of fundamental rules of international crimes are considered as crimes committed in the context of state immunity be abolished. In other words, granting immunity to governments in relation to acts that are regarded as international crimes, the universal values that transcend the interests of a single government, undermine. Antonio Cassese believes that the fundamental rules of state immunity from the jurisdiction of foreign states can influence in which case such rules can not exclude immunity (Cassese, 2001).

Therefore, in theory the preferences and the impact of human rights on the principle of immunity for two reasons were cited. Said first directly under any circumstances, violate human rights law including death or personal injury and financial entities that are recognized as a violation of human rights, the rule of state immunity gives way and the second is that the immunity of states in the human rights violations with the right to a fair trial and therefore incompatible with the principle of compensation is necessary (Okeefe, 2011).

So, at this point assuming that a lawsuit against the state of nationality (in the case of violation of individual rights by the government) will not be faced with a serious problem to review those cases in which individuals will be willing to make amends government other than their own government. Should see domestic and international courts in dealing with allegations of human rights abuses by foreign governments have taken the procedure.

Ferrini v. Germany: On 4 August 1944 near the city of Arezzo in Italy, Mr. Ferrini was kidnapped by the German army and were sent to the country for forced labor for German companies. He called on April 20, 1945 in a labor camp Kahla was arrested and forced to work. On September 23, 1998 Mr. Ferrini wish court against the German government and called for compensation for material and moral civil initiative of the German government. But on November 3, 2000 Court of First

Instance wished to be ineligible and then the Court of Appeal of Florence on January 14, 2002 was emphasized. So, Mr. Ferrini in the final stage of appeal against the decision was filed in the Supreme Court of Italy (Ferrini, 2004).

Italy's Supreme Court issued its decision on March 11, 2004. After review, the Supreme Court concluded that although the actions that governments in the exercise of their sovereignty they are immune from the jurisdiction of foreign governments and courts but in the case of serious violations of fundamental human rights and values of the international community this is not acceptable and can not be the principle of state immunity is invoked. The court rules on human rights and values of the international community under the auspices of jus cogens which is the highest order of international legal order (Ferrini v. Germany, 2004). The court referred to the United Nations General Assembly Resolution 95 (1) of 11 December, 1946 and the Nuremberg-era forced labor and exile regarded as war crimes. And then, the international crimes are considered a threat to humanity as a whole and debilitating of international coexistence. Court focuses on the crimes mentioned in the Italian territory. The arrest and deportation of Mr. Ferrini of Italy begins the territory and the issue, Mr. Ferrini case is different from other claims. Finally, it should be noted that the Supreme Court referred Italy to the principle of universal criminal jurisdiction in relation to international crimes, believes that this principle can be extended to the civil remedy these crimes. After Ferrini claims, the other claims were raised with the same issue before the Supreme Court of Italy which was confirmed by the court.

Proposed claims against Iran in the courts of United States of America: In 1996, Foreign Sovereign Immunity Act (FISA) (Foreign Sovereign Immunity Act) of United States was amended to be included a counter terrorism except for personal injuries or deprivation of life of people that as a result of torture was created extra judicial killing, aircraft sabotage and hostage-taking. The 1996 amendment to the United States Congress in the courts of the country which granted original jurisdiction for its history can be found in international law. The amendment to the federal courts jurisdiction to torts of foreign governments such as the United States or outside of its territory against nationals of the United States is going to be granted. In addition to the immunity of foreign rulers, "Alien Tort Claims Act" in the United States that the two together possible claims against foreign governments as part of their human rights.

Lamberth judge in 1998 with regard to the Act of 1996 in the case of Flatow against the Islamic Republic of Iran issued a decree against Iran (Stephen M. Flatow v. The Islamic Republic of Iran, 999 F. Supp. 1, United States District Court, District of Columbia, March 11, 1998). According to the judge, some institutions of the Islamic Republic of Iran's Ministry of Intelligence and some politicians support the Palestinian jihad groups that have been responsible for bombings, killing Alisa Michelle Flatow, held responsible and must pay for the damage to his survivors take. Flatow (1998) American student in a suicide attack on a tourist bus in the Israeli-occupied Gaza Strip was killed. According to the judge Lamberth Act of 1996 has established the basis for the jurisdiction issue against Iran. Also in his view, civil liability laws have been created the basis for litigation against the terrorists of foreign governments. Although, the provisions of this law are only concerned with government agencies. The law of civil liability for personal injuries caused by terrorist acts stipulates that officer, employee or agent of a foreign government as a state sponsor of terrorism, civil responsibility will be introduced. In the end, the court to determine the damage caused by the foot and hurt feelings Alisa Michelle Flatow's family as well as $225 million in punitive damages against Iran considered.

After Flatow's claim against the Islamic Republic of Iran, similar claims were brought against Iran in the United States courts. For example in 1998 in the case of the kidnapping of three American citizens named David Jacobsen, Frank Reed and Joseph Cicippio in Beirut, Judge Jackson to pay a total of $65 million was sentenced. In another vote in 2000, he ruled Iran's condemnation of US $341 million. The reason for the kidnapping and detention of an American journalist Terry Anderson votes to be issued in Beirut by Hezbollah claims court was seized. As well as Lamberth judge in 2000 once again, Iran was condemned in the case of the killing of two American student named Matthew Eisenfeld and Sara Duker in Israel in the amount of $327 million of restorative and punitive damages. In all the above cases, the main justification for Iran's support of terrorist groups in Lebanon and the Palestinian court, the court believed responsible for kidnapping or murder of American citizens. In other words, American claimants to provide documents claim that Iran supports groups such as Hamas and Hezbollah and the group's actions attributed to Iran and Iran's rise to civil liability.

Procedure of other countries: Greece Viothia case, argued that the case if a government's commitment to mandatory state court implicitly such immunity is withdrawn because it is beyond the rule is to do with safety and because of a violation of the will of the community of nations such behavior is not legitimate.

Secondly, human rights treaties ratified by the government with a commitment to provide effective means of redress as the waiver of immunity is implied. States that ratified these treaties drawn specifically dealing with human rights violations have agreed to it.

However, the courts of many countries still rely on foreign states immunity from qualification to deal with similar cases refusing. For example in the case of Jones against Saudi Arabia (Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia) the Saudi government refuses to lift immunity of the British House of Lords. Mr. Jones is one of the subjects of the British government in 2001 during a bombing in the Saudi capital Riyadh is arrested. He was detained for 67 days and in Saudi prisons to torture and terrorize it. After his release and return to Britain to claim damages due to torture and psychological effects caused by it, its lawsuit against Saudi Arabia. After the action in the first instance and appeal then the case was raised in 2006 in the British House of Lords.

From the perspective of a member of the House of Lords, Lord Bingham, the Council must rule on the conflict between the international prohibition of torture as a crime against humanity and the rule of state immunity from the jurisdiction of other governments would handle (Jones v. The Kingdom of Saudi Arabia, 2006). The decision of Lord Bingham noted that the prohibition of torture as a peremptory norm of international law accepted but she believes that no compelling reason exists to prove that allowed governments to overcome the immunity of state, raised allegations of torture they. Also, nowhere in the convention against torture and the convention on the immunity of states and their property (approved in 2004) for civil claims based on acts of torture, an exception to state immunity has not been established.

In the most recent verdict, Supreme Court of Canada in voting October 10, 2014 is announced in the case of Kazemi's family against Iran that the government of Iran to the domestic courts of Canada has immunity. Zahra Kazemi was photographer and Iranian journalists and has been a Canadian citizen who claimed in 2003 in Evin prison on torture in the past.

In the above case, the claimant argued that should lead to the "law of state immunity", 1985. Parliament of Canada who was alleged arrests, torture and murder of Ms. Kazemi had immunity from prosecution as (Kazemi Estate v. Islamic Republic of Iran, 2014, Para). Thus, for the action plan for a total of $17 million in physical, mental and emotional as well as the court had requested punitive damages.

Supreme Court of Canada in its decision stated that according to current legislation for Canada to plan and to receive compensation in the Canadian courts do not have fights. According to the court in such circumstances, foreign governments and leaders and administrative officials of these states have immunity unless explicitly "state immunity law" has been established. According to the mentioned law, immunity of foreign states is not canceled in cases where the torture has been occurred outside of Canada. In other words, in the case of the (torture outside of Canada), the Canadian Parliament and propriety principles of state sovereignty and the interests of those who are willing to fight in the courts of Canada is preferred. The court, the issue of international law, the Charter of Rights, Canada, the law or the constitution of Canada's State Immunity Charter of Rights and Freedoms does not contradict.

Supreme Court of Canada also believes that Article 14 of the convention against torture can not be interpreted in such a way that Canada is bound to universal civil jurisdiction in respect of torture. Although, torture is a crime in Canada but in the present case is not subject to torture or illegal repugnant because it is obvious illegality of torture. The question is whether the foreign government in a Canadian court for torture outside of Canada is following.

According to the court, Article 3 (1) of the state immunity fully specified criteria and exceptions to state immunity and the common law, peremptory norms of international law can not be the exceptions contained in Article 3 (1) of the State Immunity added there. According to the State Immunity Act, torture can not be considered outside of Canada among the exceptions to the immunity rule.

However, before 2014 and the above-mentioned decision, committee against torture in addressing the annual report of Canada in 2005, its concern has been announced Canada's position to provide civil remedies to address violations suffered by all victims of torture, whether inside the country or outside of it and is recommended the country and is provided appropriate means civil remedy contended for all victims of torture in accordance with Article 14 of the convention.

REDRESS OF VICTIMS OF SEVERE VIOLATIONS OF HUMAN RIGHTS IN INTERNATIONAL JUDICIAL PROCEDURES

Some judgments issued by national courts in recent years has led some countries their claims against the votes of the exporting country in the International Court of Justice to ask. In these types of cases, individuals have claimed the role of the countries that fought against each other, plan and above all demanding recognition of

immunity from judicial decisions are exporting states. It is obvious that the position of the International Court of Justice and court opinion in this regard is noteworthy and important.

Germany claims against Italy in the International Court of Justice: On 23 December 2008, the German government is planned lawsuit against Italy at the International Court of Justice. Germany is argued that Italy has been violated their obligations under international law by ignoring the jurisdictional immunity of Germany. From the perspective of Germany, the basis jurisdiction of the court, the European Convention for the peaceful settlement of disputes was approved on April 29, 1957 (ICJ, 2012).

The german government's petition contains the following demands: Germany is wanted from International Court of Justice to be decided and specified that the Italian government:

- With the adoption of a civil action against the Federal Republic of Germany on the basis of international humanitarian law violations by Germany during World War II from September 1943 to May 1945 has been committed violation of its international law obligations regarding the immunity of German
- By adopting an arrest warrant against Villa Vigoni as the German government property that was used for non-commercial purposes has been violated judicial immunity of German
- By announcing of being greek provisions the entry into force of Greek provisions in accordance with the same situation referred to in paragraph 1 has been violated judicial immunity

Subsequently, the German government wants the tribunal to be investigated and declared that:

- International responsibility of Italy is evident
- The Italian government should be act the necessary measures to its own choice and is ensured that the decisions of its courts and other judicial authorities will be unenforceable which leads to violations of Germany's jurisdictional immunity
- The Italian government should be act the necessary measures to its own choice and is ensured that Italian court in future legal claims against Germany will not accepted (in accordance with paragraph 1 that was described it)

The first argument is based on the fact that Italy customary international law to the extent that each country acts resulting in death, bodily injury and damage to property in the territory of the court, no immunity, even if the action to apply rule occurred. The forced slaves were not related.

The court, case law states support the assumption that government immunity to apply the rule as well as for civil proceedings in respect of acts resulting in death, bodily injury or damage to property by the armed forces or government institutions were committed, remains. According to the position of countries and cover some national courts even if these actions have occurred in the territory of the headquarters of the court, customary international law also requires state immunity. The court accepts that customary international law as called for granting immunity to a state, it's time to torts committed in another country by the armed forces or organizations of the state and the current armed conflicts happened.

Italy is the second argument consists of three parts. First, Italy maintains that the measures have led to claims of violations of international law applicable in armed conflict. Such as war crimes and crimes against humanity. Second, Italy argues that the rules that were violated and the third one is jus cogens, Italy emphasized that the exclusion of claimants from all forms of redress made to the exercise of jurisdiction by the courts as a last resort be necessary Italy.

The International Court of Justice, there is no conflict between jus cogens and customary rule of state immunity that the Italian government could appeal to this conflict. From this perspective, the rules of state immunity form and nature of determining whether a state court can exercise jurisdiction on other countries do? In other words, the rules of immunity in respect of the scheme was legal or illegal action, not talk.

Illegitimacy violation of rules such as the prohibition of murder, deportation and forced labor that occurred between 1943 and 1945, approved by all parties involved in the war. But the problem is to apply the principle of state immunity and determining that the Italian courts had jurisdiction over claims arising from such abuses, inconsistent with these rules are not violated.

Therefore, the court considers that the Italian courts in denying immunity to Germany that according to the court opinion, Germany is entitled in accordance with customary international law, constitutes a breach of the obligations of the Government of Italy to Germany.

The court with 12 votes against 3 votes decides that Italy's commitment to respect the immunity of Germany in accordance with international law and by accepting the claims raised against Germany due to violations of international humanitarian law committed by Germany between 1943 and 1945 violated. With 14 votes against 1 vote decides that Italy comply with its obligations

towards Germany's immunity under international law and by taking measures Villa Vigoni violated the ban against Villa. With 14 votes against 1 vote decides that Italy's commitment to uphold the immunity of Germany under international law with binding decisions of the courts know Greece in Italy based on violations of international humanitarian law committed in Greece by Germany has violated. With 14 votes against 1 vote decides that Italy should pass the appropriate legislation or refer to other elective procedures and other judicial authorities infringing court's decisions to ensure the safety of Germany under international law will be gone.

But on October 24, 2014 the court issued a verdict Italian constitution, International Court of Justice announced its opposition to the vote. The court Italy's constitution: Article 3 of the convention 2013/5 Italy which governs judicial immunities, contrary to the constitution Italy. Italian parliament before it, Article 3 of last listed as transparent mechanism to comply with the court had given average 2012. According to the Italian court must disqualify themselves from ruling on the actions of other governments refrain. Moreover, it is the courts of Italy duty any vote that has already been issued contrary to the court are canceled. The other law is inconsistent with the constitution of a court declared the 1957 law passed related to the implementation of Article 94 of the Charter of the United Nations that obliges Italian courts to abstain of exercise jurisdiction over the actions of other states that implementation of the Vote 2012, war crimes and crimes against humanity are considered (The Italian Constitutional Court, 2014).

The court of the Italian constitution, the authority sees no need to make in this regard that customary international law governing immunity from war crimes and crimes against humanity against the government, according to Italy's constitution was illegal. Because this rule, despite the validity of international law, the legal system and Italy are not valid. Such immunity to the fundamental principles of the legal system in Italy is the conflict so that any acceptance of it by Article 10 of the Italian constitution which in other ways to accommodate itself is embedded in customary international law in domestic law of Italy is impossible. Fundamental principles enshrined in the Italian constitution and inalienable rights of man of accepting international rules (including customary international law) in the country's legal system in accordance with paragraph 1 of Article 10 of the constitution specifies. This means that the rules can not violate the fundamental principles of the domestic legal system was Italy.

Italy's constitution court their vote to the proceedings before the court points out that Germany has agreed to commit war crimes and crimes against humanity, without the court for compensation of victims is available. The existence of such crimes was confirmed by the International Court of Justice.

Therefore in such circumstances and in the absence of a guarantee in this regard, the right to judicial litigation will be violated clearly because discussed actions have been illegal. For court of constitution of Italy, state immunity function is not support of illegal acts of state. Finally, the court of Italy constitution is concluded that impunity of the prosecution of war crimes and crimes against humanity committed by the government have not been entered to the Italian legal system based on Article 10 constitution and is legally ineffective.

CONCLUSION

The performance of various governments has been different in recent years in the primacy of "state immunity rule" or "human rights peremptory norms". Some countries such as America, Greece or Italy have been tried to develop the scope of authority of their courts in the field of this category of claims according the importance of individual rights and freedoms. Therefore, regulations and internal regulations or judicial procedure in these countries have been the reflector of the performance of the governments in favor of fundamental human rights.

Although, mentioned perspective, it means primacy of peremptory norms has been set to expand on the customary rule of state immunity and some international law scholars believe that violation of fundamental and jus cogens rules of human rights violations will lead to the abolition of state immunity but at the moment, the rule of state immunity in a global level is more welcoming and issued decrees by national courts has been led to a violation safety rule in most cases have been accompanied with criticism from the international community.

Many countries opposed to the violations of state immunity have been criticized on the validity of the arguments in favor of this procedure. Some believe that regularity state immunity is a form while is considered peremptory norms of substantive human rights can not be prevented it that a government of national courts of another state is not relied on judicial immunity.

Therefore, there is not a conflict between of these two which could be due to the hierarchy of legal rules in the international system that mandates the primacy of peremptory norms. However, it can be expected pros and cons of superiority human rights law on the state immunity rule and consequently the responsibility of violating governments regarding compensation of

affected people in the coming years in the context of the realities of the international legal order has changed and a dynamic and ongoing process of international law is provided a way to reality.

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