

МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

**БАЛКАНОТ МЕЃУ МИНАТОТО И
ИДНИНАТА: БЕЗБЕДНОСТ,
РЕШАВАЊЕ НА КОНФЛИКТИ И
ЕВРОАТЛАНТСКА ИНТЕГРАЦИ**

INTERNATIONAL SCIENTIFIC CONFERENCE

**THE BALKANS BETWEEN PAST AND
FUTURE: SECURITY, CONFLICT
RESOLUTION AND EURO-ATLANTIC
INTEGRATION**

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Проф. д-р Цане Мојаноски

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Анче Белада
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Марија Рашковска Георгиевска

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Dr. sc. Cane Mojanoski

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Aleksandra Todoru
Marija Raškovska Georgievskaja

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Dr. sc. Cane Mojanoski
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1 Maj b.b.
7000 Bitola
tel: +++389(0) 47223788

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Contents

CONCLUSIONS IX

EUROPEAN NATIONALISM AND BALKAN NATIONALISM CAN THEY CREATE NEW STATES IN EUROPE? 1

Dr.sc Vladimir Ortakovski

DEMOCRACY, RULE OF LAW, HUMAN RIGHTS 17

VICTIMISATION IN PENAL INSTITUTIONS IN THE REPUBLIC OF MACEDONIA 19

Dr.sc Oliver Bachanovic, Natasha Jovanova, MA

REFORM OF SERBIAN POLICE - BETWEEN GREAT EXPECTATIONS AND HUMBLE RESULTS..... 35

Dr.sc. Želimir M. Kešetović, Mladen Mrdalj, MA

STRESS AND STYLES OF COPING WITHIN THE INMATES 45
IN THE FEMALE PRISON IN THE REPUBLIC OF MACEDONIA 45

Dr.sc. Dragana Batic, Aleksandra Dimitrovska, MA

DEMOCRATIC LEGAL GUARANTEES OF THE REPUBLIC OF MACEDONIA AS A MODERN STATE 60

Dr.sc. Metodija Dojcinovski, Ljupco Levkovski, MA, Nikola Kletnikov, MA

EXTRA-PARLIAMENTARY INSTRUMENTS OF SECURITY SECTOR OVERSIGHT AND HUMAN RIGHTS PROTECTION IN THE REPUBLIC OF SERBIA 76

Dr.sc. Zoran Keković, Dr.sc. Vanja Rokvić, Dr.sc. Zoran Jeftić,

SECURITY AND SAFETY IN THE PENITENTIARY INSTITUTIONS IN THE REPUBLIC OF MACEDONIA 91

Dr.sc. Marija Milenkovska

CONNECTION BETWEEN CRIMINAL VICTIMIZATION AND FEAR OF CRIME..... 108

Natasa Jovanova, M.A, Vesna Trajanovska, M.A

THE POSITION AND COPING STRATEGIES AMONG LIFE-SENTENCED INMATES IN THE R. MACEDONIA 117

Aleksandra Dimitrovska, M.A, Dr.sc. Dragana Batic, Aleksandar Donev

LEGAL FRAMEWORK FOR PROTECTION OF THE RIGHTS OF THE CONVICTS IN THE PENITENTIARY INSTITUTIONS IN REPUBLIC OF MACEDONIA	135
Dr.sc. Iskra Akimovska Maletic	
LIMITATION OF HUMAN RIGHTS DURING POLICE CONDUCT IN CRIMINAL AND MINOR OFFENCE PROCEEDING.....	159
Gojko Setka, M.A, Goran Amidzic, M.A	
THE RELATIONSHIP AND MUTUAL INFLUENCE BETWEEN SOVEREIGN EQUALITY OF STATES, INTEGRATION AND HUMAN RIGHTS AND FREEDOMS	172
Ljubica Pendaroska, M.A, Ilija Djugumanov	
CONFISCATION PROCEDURE AS A TOOL FOR.....	183
FIGHTING ORGANIZED CRIME – PRO ET CONTRA.....	183
Oliver Lajić, LLD, Aleksandar Čudan, LLD, Dragana Čvorović,	
LLM	
HATE CRIMES AND CRIMINAL JUSTICE REACTIONS IN THE REPUBLIC OF MACEDONIA.....	198
Dr.sc. Veljko Popara, Ivan Žarković, Zorica Kojčin	
ASSUMPTIONS AND SELECTION PROCEDURE - APPOINTMENT OF EXPERTS	212
Dr.sc. Tanja Kesić, Dr.sc. Milan Žarković, Dr.sc. Ivana Bjelovuk,	
POLICE MANAGEMENT - ART OR SCIENCE?	229
Dr.sc. Nikola Dujovski, Dr.sc. Cane Mojanoski,	
INTER-RELATIONSHIP OF DEMOCRACY AND HUMAN RIGHTS IN THE MODERN STATE.....	241
Mirjana Ristovska, PhD candidate in Law, Dr.sc. Bozidar Milenkovski,	
HUMANITARIAN AND HUMAN RIGHTS LAW IN THE CONTEXT OF WOUND BALLISTICS AND SELECTION OF HANDGUN AMMUNITION.....	251
Dr.sc. Slavko Angelevski, Dr.sc. Metodi Hadji-Janev	
CORRUPTION AS A THREAT FACTOR TO THE FUNDAMENTAL VALUES OF THE STATE	265
Dr.sc. Marjan Nikolovski, Borche Petreski, MA.....	
265	
USAGE OF COERCION MEANS FOR PROTECTION OF THE PERSONAL SAFETY OF POLICE OFFICERS	279
Jonche Ivanovski, MA, Aljoša Nedev, MA	

POVERTY AND THE CONSEQUENCES OF POVERTY 291
Dr.sc. Šabani Alisabri, Dr.sc. Nedžad Korajlić, Dr.sc. Haris
Halilović,

**SECURITY DILEMMAS AND GEOPOLITICAL TRENDS IN
INTERNATIONAL RELATIONS WITH PARTICULAR
REFERENCE TO MIDDLE EAST, EASTERN EUROPE AND
WESTERN ASIA**

GLOBALIZATION AND INTERNATIONAL POLICY 311
Dr. sc. Miodrag Labovic,

TWO YEARS AFTER THE ARAB SPRING - ON THE LONG ROAD TO
DEMOCRACY 344
Dr.sc. Rina Kirkova, Nenad Taneski

GEOPOLITICAL TRENDS IN THE NORTH-AFRICAN AND MIDDLE-
EAST REGION THROUGH THE PRISM OF OIL AND NATURAL
GAS..... 355
Dr.sc. Toni Mileski, Nikolco Spasov, MA

THE CORRELATION BETWEEN THE ARAB SPRING AND ISLAM
AND THE IMPLICATIONS OF THE ARAB SPRING ON THE FOREIGN
POLICY OF EU 366
Dr.sc. Elena Temelkovska-Anevska,

THE STRATEGIC IMPORTANCE OF CENTRAL ASIA: THE NEW
GREAT GAME 378
Dr.sc. Snezana Nikodinoska – Stefanovska

THE ARAB REPUBLIC OF EGYPT TODAY SECULARISM VS.
ISLAMISM..... 389
Dr.sc. Slavejko Sasajkovski, Ljubica Micanovska, BA in
Sociology

HYBRIDITY AMONG THE NATIONAL COSMOPOLITISM AND
GLORIFICATION OF HYBRIDITY..... 400
Goran Zendelovski,MA Sergej Cvetkovski,MA

EU INTERNAL SECURITY- MUTUAL THREATS AND APPROACH IN
COPING WITH THEM 408
Dr.sc. Zorica Saltirovska,

APPLICATION OF THE GAME THEORY IN FUNCTION OF DIPLOMATIC NEGOTIATING MODEL	422
Dr.sc. Stevo Jaćimovski, Dr.sc. Dane Subošić, Dr.sc. Slobodan Miladinović,	
INTERNATIONAL POLICE MISSIONS AND OPERATIONS OF EU .	441
Dr.sc. Marjan Arsovski,	
SECURITY DILEMMAS AND GEOPOLITICAL TRENDS AFTER THE ARAB SPRING AND POSITION OF THE POWER COUNTRIES IN THE MIDDLE EAST	455
Dr.sc. Igor Gjoreski,	
SECURITY ISSUES AND RISKS OF THE EUROPEAN NEIGHBOURHOOD: EASTERN PARTNERSHIP (EAP)	465
Dr.sc Marijana Musladin	
NATIONAL SECURITY OF THE STATE IN THE PROCESS OF GLOBALIZATION	478
Dr.sc. Saša Mijalković, Marija Popović, MA	
NEGOTIATING ENVIRONMENTAL CONCERNS	491
Nevena Gavric, M.A, Aleksandar Ivanov, M.A	

SECURITY IN THE ERA OF SMART TECHNOLOGY

IMPLEMENTATION OF LOGISTIC REGRESSION IN THE RESEARCH OF SECURITY PHENOMENA.....	511
Dr.sc. Cane Mojanoski,	
CYBERCRIME IN POLAND	532
Dr.sc. Jerzy Kosiński	
TERRORIST AND CRIMINAL NETWORKS: SMART ENEMIES IN A NEW SECURITY ENVIRONMENT.....	547
Tanja Milosevska, MA	
IMPLICATIONS OF TECHNOLOGICAL CHANGES ON POLICE AND STRATEGY OF DEFENSE AND SECURITY	559
Ivan Jovetic, M.A	
SAFETY AND THE INTERNET	573
Borislav Djukic, MA, Aleksandar Miladinović, MA Vitomir Petričević	

FORENSIC ANALYSIS OF LASER PRINTER CARTRIDGES.....	585
Dr.sc. Vojkan M. Zorić	
METHODOLOGY OF CRISIS COMMUNICATION AND THE POWER OF NEW TECHNOLOGIES	596
Dr.sc. Zoran Jevtović, Dr.sc. Srđan Milašinović	
THE USE OF CYBERSPACE FOR TERRORIST PURPOSES - WITH SPECIAL REFERENCE TO THE FINANCING OF TERRORISM	605
Dr.sc. Svetlana Nikoloska, Dr.sc. Ivica Simonovski	
USB FLASH DRIVES - SECURITY RISKS AND PROTECTION.....	622
Dr.sc. Dimitar Bogatinov, Dr.sc. Slavko Angelevski	
CYBER ATTACKS AND THEIR REAL THREATS TO THE MODERN WORLD.....	634
Dr.sc. Zlate Dimovski, Dr.sc. Katerina Krstevska, Ice Ilijevski, MA, Kire Babanoski, PhD Candidate.....	
CONCEPT AND PRACTICE OF ‘CYBER HATE SPEECH’ IN INTERNATIONAL AND DOMESTIC LAW.....	649
Dr.sc. Zaneta Poposka, Dr.sc. Jovan Ananiev	
LEGAL INSTRUMENTS IN R. MACEDONIA REFERRING TO PROCESSION, CLASSIFICATION AND SAFETY OF DATA AND INFORMATION IN THE INTEREST OF THE STATE AND THE INDIVIDUAL.....	662
Bogdancho Gogov, LL.M.	
OPPORTUNITIES FOR ABUSAGE OF DATA IN THE NEW TECHNOLOGIES	673
Dr.sc. Cvetko Andrevski, Dr.sc. Svetlana Nikoloska, Marijana Blazevska,	
“PRIVATE SECURITY COMPANIES AND THE WESTERN BALKANS-THE CASE OF BOSNIA AND HERZEGOVINA”	683
Dr.sc. Jasmin Ahić, Dr.sc. Haris Halilović,	
SECURITY AND PROTECTION MEASURES IN THE REPUBLIC OF SRPSKA JUVENAL CRIMINAL LAW.....	699
Nikolina Grbić-Pavlović, LL.M, Dr.sc Ljubinko Mitrović,	

DEMOCRATIC LEGAL GUARANTEES OF THE REPUBLIC OF MACEDONIA AS A MODERN STATE

Dr.sc. Metodija Dojcinovski,
e-mail: metodija.dojcinovski@ugd.edu.mk

Ljupco Levkovski, MA
e-mail: ljupcio22@hotmail.com

Nikola Kletnikov, MA
e-mail: nikola.kletnikov@ugd.edu.mk

Military Academy “General Mihailo Apostolski”- Skopje

Abstract

This paper is an attempt to determine the guarantees of societies in the modern world. Democracy, legal state and human rights make a unity that cannot be separated. Human rights in their tense and dependent relationship with the democracy are the most visible criteria for the character of the government. They limit its self-will by delimiting the zones of influence even when it comes from the citizens. A legal state canalizes all the principles and practices, which guarantee the freedom of the individual and his or her participation in the overall functioning of the society. A state built over the principles of democracy with emphasized accent of respect and protection of human rights is a radical contrast to the state absolutism and basic criteria for the rule of the law.

Established international standards which guarantee and protect the human rights as universal and non separable with the law are proclaimed as a civilization ideal. We wonder why in a modern society imagined as human and civilized we are facing discrimination, problems in the legal procedures, illegal trafficking, spread of economic poverty and ecological catastrophe. Why it is a society where the new forms of violence and war crimes are reaching larger extents? Is the society ready to deal with the new challenges and the respect the human rights? It seems that the world today is away from the imagined civilization ideal and the protection of human rights on the Balkan is a difficult mission.

Republic of Macedonia has ratified almost all agreements related to human rights at international and European level and has adopted an extensive legislation which directly or indirectly regulates the human rights issues. Yet, what is the extent of its implementation. Whether the society will be characterized as democratic ones depends on the functioning of the institutions and implantation of the legislature.

In line with this, this work aims to show the inseparable thread between the democracy and the legal state with an accent of the human rights.

Key words: democracy, legal state, human rights, protection, institutions, international regulations, rule of law

Introduction

As a result of the evolution of the man's goal to create a humane and impartial society, where all people as free beings would practice their individual and collective rights, characteristic for their human nature, the idea and concept of human rights and freedoms emerge and develop. The development goals of this idea originate from the moral rights and obligations between the people who live in a civil society or between the people and political authorities i.e. the institutions of the civil society.

It is developed to a degree to be understood as the most general system of values, embraced by the majority of polities and cultures, as a cultural achievement of the development of the religious, philosophical and legal doctrines and theories and, in general, the development of human thought.

In theory, human rights are generally valid and equal for everyone.

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.¹

Human rights can not be bought, inherited or earned, they are simply universal, inalienable and immanent for every human being which implies that they can not be taken away and refuted.

As basic criteria, human rights reflect citizen's role in the society and as such are particularly important in their mutual interaction. The more they are respected and protected the lower the opportunity for it to be resorbed and abused by the authority. They control and regulate the performance of the state's government towards certain individuals, freedoms are given to individuals in relation to the state, through which the state is required to meet people's basic needs, who are under its jurisdiction.

The level of achievement and respect for human rights in a society is the only measurable criteria for evaluating the overall efficiency of the society and the need for its adapting or changing.

In this context, human rights, democracy, and rule of law are core values of today's living. That is why it is necessary to provide assurance that all human rights, whether civil, political, economic, social or cultural to be respected and protected everywhere.

¹ United Nations General Assembly. (1948). Universal Human Rights Declaration, Article 1 Retrieved from <http://www.un.org/en/documents/udhr/>

International human rights standards and their incorporation into domestic legislation

The concept of the legal state and the rule of law in the modern domain of development is undoubtedly in the foreground suppresses the respect of human rights and freedoms as the primary criterion for the existence of law and the state.

Human Rights are defined as the rights contained in the international acts and documents, and accepted by many states as part of their national legislation². Starting points around the concept: the life and dignity of the human being. He is the nucleus around which to build the whole concept of human rights and freedoms.

In this sense, human rights today have their legal basis and concept in the international law, in the form of written legal norms and standards, as well as relevant institutions that guarantee and control their implementation and compliance. They are incorporated into the national legal systems of modern states to guarantee and ensure their compliance with the everyday life of its citizens.

Human rights and their respect constitute the most important basis for the construction of a modern and democratic society that for which every state strives. Respect for human rights nowadays in the democratic, developed societies, such as the European Union, is raised to a high degree. The European Union and its institutions and documents today ensures a high level of respect for human rights and freedoms.

Our country as a candidate to join the European Union, from its independence up to today has taken more steps to meet EU standards on human rights and freedoms, which is an undeniable fact. However, before the independence, it dwelled for a longer time in the socialist structure of society which had a different treatment and respect for human rights and freedoms. After gaining independence, again it entered in a specific and complicated, and it would be correct to say a confusing period of transition, which with its features opened many opportunities for violation of human rights and freedoms. But as a modern state, although relatively young, in its independent existence as a state aims and is oriented towards joining the European family of democratic legal states within the European Union. For these reasons, the Republic of Macedonia is in the process of harmonizing its domestic legislation with the European law and in this sense, the legal norms in the field of human rights and freedoms to implement in the domestic law as a condition without which it can not (*sine qua non*) for achieving this

²United Nations General Assembly. (1948). Universal Human Rights Declaration, Article 1 Retrieved from <http://www.un.org/en/documents/udhr/> Article 1

historic goal. That is why the importance of respecting and implementing international standards for the protection of human rights and freedoms in the Macedonian legal system emphasize principles that get directly into the core of the process of European integration of the Republic of Macedonia. However, the right does not exist only through the existence of legal norms, but even more through the remedies for their protection within the meaning of the maxim *ubi ius ibi remedium* - where there is a right there is a remedy.

Today's level of civilization development, in all countries with a democratic system the preferential significance of the international law is generally accepted over the domestic law and is an undeniable part of the domestic law. In this direction, in accordance with the Constitution of the Republic of Macedonia "International agreements ratified in accordance with the Constitution are part of the internal legal order and can not be changed by law"³.

Macedonia has ratified almost all major human rights treaties at the international and European level, as the UN conventions, the ILO, UNESCO and the Council of Europe.

Establishing legally binding obligations, Macedonia is a state-by sequence human rights treaties of the UN. Some of them are:

International Covenant on Economic, Social and Cultural Rights – CESCR, 1966

Inter-national Covenant on Civil and Political Rights– CCPR, 1966 (not accepted responsibility for interstate complaints, Art. 41);

Optional Protocol to the CCPR, 1966

Second Optional Protocol to ICCPR, 1989

Convention on the Rights of the Child – CRC, 1989

Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment – CAT, 1984 (accepted responsibility for the investigation, individual / inter-state complaints, Articles 20, 21, 22);

International Convention on the Elimination of All Forms of Racial Discrimination – CERD, 1965 (accepted responsibility for individual complaints, Art. 14); etc.

Core ILO conventions ratified by the Republic of Macedonia are:

Freedom of association and collective bargaining – Convention no. 87 and C98 Convention (ratified in 1991);

Elimination of discrimination in respect of employment and occupation – Convention No. 100 (ratified 1991). Convention No. 111 (ratified 1991).

³Parlament of the Republic of Macedonia. (1991). Constitution of the Republic of Macedonia, Official jurnal No. 52/91, 01/92, 31/98, 91/01, 84/2003, 07/05,03/09; Amendment 118,

Elimination of forced and compulsory labour – Convention no.29 (ratified 1991) and Convention br.105 (ratified 2003).;

Abolition of child labour – Convention br.138 (ratified 1991) and C182 (ratified in 2002)

In terms of the relevant conventions of UNESCO, Macedonia has ratified the following agreements:

Convention on Technical and Vocational Education, 1989

Convention on the protection and promotion of the diversity of cultural expressions, 2005

Convention against Discrimination in Education, 1960

Establishing binding legal obligations, Macedonia is a state-side of the following agreements established under the auspices of the Council of Europe, which relate to the protection of human rights:

European Convention for the Protection of Human Rights and Fundamental Freedoms– ECHR, In 1950 (signed 1995g.a entered into force 1997).

Protocol to the ECHR, 1952 (signed this 1996 entered into force 1997.) and Protocols to the ECHR from 1-14;

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987

European Social Charter,1961 etc.

Constitutional concept of human rights in the Republic of Macedonia

In the literature one can find positions that attempt to create an effective protection of human rights, not only creating sound declarations, is „in the core“⁴ of the new constitutions of Central and Eastern Europe, including the Republic of Macedonia.

In this sense, we believe that every constitution whose supporting pillar doesn't embrace human rights is undemocratic and “not valid”. Therefore, any modern national legislation seeks to fully incorporate and comply with international obligations and human rights standards. The legislation should provide protection of human rights of all individuals in a society. Therefore, you should provide for appropriate national guarantees such as, separation of powers, independence of the judiciary, equality before the law and the existence of external control mechanisms⁵.

⁴Herman S. (1991). Constitutional Developments in East Central Europe, Journal of International Affairs, vol.45,No.1,1991, page.81

⁵ Ministry of Foreign Affairs. (2009). Strengthening the National Human rights Protection System, Manual for embassies of EU States, Human Rights Division. The Netherlands, page.99

During the adoption of the Constitution, the Republic of Macedonia has accepted the liberal concept that understands human rights as inalienable, and the state is only their guarantor. "The purpose" of the constitutional protection of human rights is "the individual", and its dignity.⁶

The Constitution of the Republic of Macedonia⁷ incorporates international human rights standards. As one of the fundamental values referred to in Article 8 of the Constitution are the fundamental rights and freedoms of man and citizen, recognized in international law and confirmed the Constitution. In addition to the fundamental values also included are - the free expression of national identity, the rule of law and respect for the generally accepted norms of international law.

Chapter 2 of the Constitution of the Republic of Macedonia elaborates in detail the human rights that are divided into civil and political rights, economic, social and cultural rights as well as the guarantees of basic freedoms and rights. Right here you can see the liberal concept of human rights which the Constitution has accepted and the importance which is given to the human rights in the highest legal act.

Human rights in the Constitution are seen individually and purpose of the constitutional protection of the citizen and his dignity. Main feature of the concept of human rights is equality, which is defined in Article 9: "Citizens of the Republic of Macedonia are equal in their rights and freedoms regardless of sex, race, color of skin, national and social origin, political and religious beliefs; property and social position. All Citizens are equal before the Constitution and the laws."

Apart from the right to equality the Constitution of the Republic of Macedonia covers a wide range of civil rights which include freedom of association, freedom of assembly, the right to vote, the right to complaints, the right to respect and protect the privacy of personal and family life as well as a number of other rights provided in the chapter for fundamental human rights and freedoms.

The Macedonian Constitution fully protects the right to life. The death penalty can not be imposed in any situation and any form of torture is prohibited as well as an inhuman or degrading treatment or punishment. The constitution declares the principle of presumption of innocence and states that everyone charged with a criminal offense shall be presumed innocent until his guilt is determined by a final court decision.

⁶Renata, T.D.(2009). Constitutional concept of human rights in the Republic of Macedonia, European human rights standards and their implementation in the legal system of the Republic of Macedonia, Proceedings of the scientific debate, Skopje, Republic of Macedonia

⁷ Parliament of the Republic of Macedonia. (1991). Constitution of the Republic of Macedonia, Official journal 52/91, 01/92, 31/98, 91/01, 84/2003, 07/05,03/09;

Improving and increasing the scope of human rights and freedoms in Macedonia was covered with the amendments to the Constitution. The Amendment VIII has strengthened the rights of ethnic communities which states "Members of communities have the right to express freely, foster and develop their identity and their communities and use the symbols of their community.

The Constitution also includes the legal effect of international agreements signed by the country. In the act of ratification they become an integral part of the Macedonian legislation which is confirmed by the constitutional provision provided in Article 98 whereby courts adjudicate based on the Constitution, laws and international agreements ratified under the Constitution.

Also in Article 118 of the Constitution states that international treaties which will be ratified by us are becoming an integral part of the internal legal order and can not be changed by law. The Constitution of the Republic of Macedonia establishes authority for the protection of constitutionality and legality which operates as a Constitutional Court who, among other responsibilities, has the duty to protect certain freedoms and rights of citizens under constitutional powers.

Rule of law and legal state as a concept in limiting and controlling state power

Often in everyday and political life between the notions of the rule of law and the legal state does not distinguish, and they are equal. What really connects and makes similar these two notions is that in essence they are putting two concepts that are aimed at achieving the political ideal of limited and controlled power.

One of the fundamental values of the constitutional order of the Republic of Macedonia is the rule of law. This term refers to conditions that must be provided, namely all acts and activities of the state bodies must be based on the provisions contained in the highest legal act of the state, ie the Constitution and laws-application of the principle of constitutionality and legality and of course enrollment to all individuals and authorities under the constitution and laws - submission to all of the legal order. Certainly, the state must necessarily comply with the statutory provisions, but the laws must be in accordance with human rights and freedoms, ie the leading thread in the decision, and in particular in their implementation it is necessary to be human rights and freedoms. Holders of state power, ie the state as a whole in achieving activities account must have the view that the rights and freedoms of the people of their natural rights, and the role of the state is not to give or consuming them, but to guarantee and creates conditions for their respect and

protect. This means that the rule of law opposes tyranny and makes them responsible and punishable procedures without exception, even when it comes to power holders. This is certainly the most important institutional prerequisite for the realization of the principle or concept of rule of law, independence of the judiciary. Rule of law can not have if not consistently implemented the principles of legality and legal certainty.

If you take into account that democracy is intended to prevent a person or a small group of people to rule the people of arbitrary manner, then the rule of law ensures that a state has an autonomous legal system which ensures equality before the law, limiting the powers of public authorities and ensuring equitable access to independent and fair judiciary.

One free democracy, which confirms the participation of the social parts in the formation of the political will, there is a need for state-legal creation. Democracy and the rule of law form an indivisible unity. With the notion of the rule of law, indicates the degree of relatedness of the state and law (understood as the sum of all the laws and other regulations), in which the state with the help of law shall regulate the legal relationship between individuals, legal relations within the state organization, as well as the legal relationship between the state and citizens, who thus become citizens. Certainly the rule of law implies equal treatment of all subjects in the state, ie the equal application of the constitution and the laws, and of course all those principles and modes of behavior that guarantee freedom of the individual and his participation in political life. State law is a radical contradiction to the police state and state svoevolieto. In it, individual lives are constantly supervised by the "up" in the constant threat of sudden mixing of the existing state security apparatus. In all this he feels controlled and constantly monitored by mistrust, which poisons the entire human coexistence. Despite all precautions citizens can never get rid of the hand of the state. One that causes dissatisfaction among those in power, he threatens arrest or harassment, loss of employment or can carry in camp without having to exercise their right to a proper trial. But if it is brought before a judge, it is approached as an official political leadership, because there is no principled independence of the judiciary. Judiciary in these systems is only one of many organizational techniques for "human material" may be available. Thus, an ordinary citizen never knows if they fell face vladeachite herself nesigurnsot involves dependence and non-freedom. Forgive this right may still function normally in the private sphere, namely in dictatorships punish thieves or those who committed a traffic offense. But we can not rely on this, because all law is equally valid if called. Ultimately the dictator or the state party determines what is right.

Protection of human rights at the national level and the responsibility are the role of institutions in the protection and promotion.

National human rights institutions, in particular human rights commissions, play a significant role in the promotion and protection of human rights domestically. Therefore the strong protection of the human rights agenda of a democratic and free country must necessarily engage in and the establishment of such an institution at the national level, where the institution already exists, it is taking continuous measures and steps aimed at strengthening its mandate, professionalism and facilities.

Paris Principles⁸ represent the so-called "Soft law" relating to the status of national institutions for human rights are basic standards on the basis of that form National Committees or human rights institutions. Accordance with the standards of the Paris Principles should be mandated institution for active promotion and protection of human rights explicitly defined at the highest level with the Constitution of the State or legal text.

Basic obligations in accordance with the established principles derived for national human rights institutions, inter alia, the submission of opinions, recommendations and proposals to the government, parliament or other competent bodies, in the exercise of its advisory role, which among other things may refers to any legal or administrative provisions, practices or any situation of violation of human rights. Other duties include the preparation of reports on the situation in the country in connection with the exercise of human rights, as well as the obligation to point out the government of the country concerned situations in any part where human rights are violated and to give their suggestions and initiatives to overcome such situations. National human rights institutions are responsible to ensure the harmonization of national legislation, regulations and practices with the obligations imposed by international covenants and conventions ratified by the country, as well as to monitor their implementation at national level.

The procedure for the appointment of national human rights institutions is implemented by a special Sub-Committee on Accreditation in the framework of the International Committee for coordination. Subcommittee reviews applications for acquiring the status of a national institution primarily from the point of view of meeting the specific Paris's Principles by the reported body within national context. In the Republic of Macedonia has no accredited national human rights institution. At the moment when the National Institution for Human Rights will be established in accordance with the Paris's Principles, it will further contribute to the effective protection of the rights of persons and citizens of the Republic of Macedonia.

⁸ UN General Assembly.(1993). Paris Principles , adopted in resolution 48/134;

Judiciary as a central institution in the protection of human rights

Might say, in the protection of human rights, the main problem is generally known fact present at the international and national level (more or less in a particular country) - marginalization of law and inconsistent (neglect) the principle of separation of powers on legislative, executive and judicial, that all together negatively reflects to respect and protection of human rights. Despite this situation, continuing the process of glorification and the domination of politics and political (executive) power, which constantly finds forms and means - (open - double standards, or hidden - through ambiguous norms, or in confronting the international principle for example, the principle of "consensus" in the EU with the "right to self-determination of peoples, including the name of your state) in reality -to rule and to impose its political will and interests. How else can be understand, in the beginning of XXI century, imposing absurd dispute over the name of Republic of Macedonia, contrary to the international principles and norms of equal treatment of nations and states, human rights for national identity and dignity, expressed in the name of the state.

This condition, more or less, is also present at the national level, with inconsistent tendencies of the unprincipled accomplishing of the principle of division of state power not only through non establishment of a mutual balance of relevant institutions, holders of individual governments, but also with problematise constitutional and legal relations between the three authorities, especially with attempts to influence and political control over the judiciary. So today, in the modern world, is more than needed reaffirmation of international and national principle of an independent judiciary, which not only normative, but the real need to obtain and has a central place and to be vertebrate of rule of law, democracy and the protection of human rights and freedoms.

There is no adequate institution through which the most justly can be resolved most of the conflicts, abuses of power and authority, criminal behaviors (from organized crime to corruption), the elimination of violations of individual human rights and freedoms, or their protection and promotion.

Ombudsman in protecting human rights

In accordance with Article 2 of the Law of the Ombudsman⁹, the Ombudsman is a body of the Republic of Macedonia, which protects the constitutional and legal rights of citizens and all other persons when they are

⁹ Law of Ombudsman , Official Journal of the Republic of Macedonia no. 60/2003

violated by acts, actions and omissions of the actions by the state administration and by other bodies and organizations with public mandates. Ombudsman as an institution is the last shelter in which the damaged people seek protection in order to accomplish their rights, which were violated by the state administration. Ombudsmen usually have the role of supervisors and the same accomplishing by exploring the complaints submitted by citizens through inspections and examination of the work of state bodies as well as through other forms of conducting of inspections and investigations that the Ombudsman raises on its own initiative.

Ombudsman of the Republic of Macedonia protects the constitutional and legal rights of citizens who are violated by the state administration and by other bodies and organizations with public mandates. Ombudsman pays particular attention to the protection of the principles of non-discrimination and adequate and equitable representation of members of communities in the state bodies, bodies of local self-government and in the public institutions and services.¹⁰

The Ombudsman is independent and autonomous in the performance of their function and duties within its jurisdiction, performing it on the basis and in the framework of the Constitution, law and international agreements ratified in accordance with the Constitution.¹¹

Need of establishment of a National Preventive Mechanism

UN member states realized that it is necessary to take preventive measures to achieve the objectives of the Convention against torture and other kind of brutal, inhuman or degrading treatment or punishment, and to strengthen the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or torture.

Preventative nature of regular visits of the places of deprivation of liberty, according to their specific purpose and methodology, makes them different from protective visits that focus exclusively on a specific appeal to solve a specific problem. Preventive visits by national mechanism, which has the authority to enter into all places of deprivation of liberty, with or without prior notice, has access to all documents and the right to speak with a person of his choice, will certainly have a strong deterrent effect of implementation of torture or any other form of brutal, inhuman or degrading treatment. These visits are proactive, regular and on the spot are identifying the gaps

¹⁰ Amendment XI, paragraph 2 of the Constitution of the Republic of Macedonia, 2001.

¹¹ Article 3 of the Law of Ombudsman , Official Journal of the Republic of Macedonia no. 60/2003

and identify the elements that may lead to the establishment of conditions or treatments that are considered as a torture or other forms of brutal behavior.

The purpose of this preventive mechanism is through a process of continuous dialogue with the authorities, through which points out the problems in a timely manner to correct and improve the gaps and at the same time and in a timely manner to prevent possible side effects.

National Preventive Mechanism under the Ombudsman

National Preventive Mechanism (NPM) in the Republic of Macedonia was established by the Law for Ratification of the Optional Protocol to the Convention against torture and other brutal, inhuman or degrading treatment or punishment¹² by the Republic of Macedonia. The purpose of this preventative mechanism is to establish a system of regular visits conducted by independent international and national bodies on places where people are deprived of their liberty, in order to prevent torture and other brutal, inhuman or degrading treatment or punishment.¹³ With this law, the Republic of Macedonia declares that the Ombudsman has been appointed to act as the National Preventive Mechanism and with his consent and non-governmental organizations and organizations that have the status of humanitarian organizations in the country can take some of the responsibilities of the NPM. NPM functioning as a special separate organizational unit within the Ombudsman, whose main task is the prevention of torture and other brutal, inhuman or degrading treatment or punishment? NPM prepares and operates according to its own work program and in accordance with the specific methodology that includes a system of regular visits to all places of detention under the jurisdiction of the state.

According to the adopted legislation, prevention is done by establishing a system of regular visits that may be announced or unannounced. National preventive mechanism based on detecting conditions preparing a report with appropriate recommendations that the Ombudsman shall submit to the competent authorities and to propose measures to be taken in order to improve overall conditions in places of detention. The competent authority to which the report is sent is obliged to examine the recommendations of the NPM and to start dialogue with it for possible implementation measures. NPM in the Republic of Macedonia in accordance

¹² Law for ratification of the optional protocol to the convention against torture and other brutal, inhuman or degrading treatment or punishment, Official Journal of Republic of Macedonia " nu.165/2008

¹³ Article 1of the Optional protocol to the Convention against torture and other brutal, inhuman or degrading treatment or punishment, Official Journal of Republic of Macedonia " nu.165/2008

with the powers arising from the Optional protocol has access to all data and information relating to the number of persons deprived of their liberty, as well as the number of places and their location; has access to all information relating to the treatment of these persons, as well as the conditions of their detention; access to all places of detention and their installations and facilities; has opportunity to have private discussions with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply with relevant information; has the liberty to choose the places it wants to visit and the persons they want to interview; and right of contacts with the UN Subcommittee on prevention of torture, to send information to them and to hold meetings with them¹⁴. NPM at the end of each year, prepare a separate annual report, and in accordance with the Optional protocol, the Republic of Macedonia is obliged to publish and distribute them publicly.

Commission for Protection against Discrimination

Commission for protection against discrimination is an independent body with status of legal entity and works in accordance with the responsibilities defined by the Law of prevention and protection from discrimination¹⁵ which provides prevention and protection from discrimination in the realizes of rights guaranteed by the Constitution of the Republic of Macedonia, laws and ratified international agreements. By law is prohibited any direct or indirect discrimination, calling and encouraging discrimination and helping in discriminatory treatment on the basis of sex, race, color, belonging to a marginalized group, ethnicity, language, nationality, social origin, religion or religious beliefs, other kind of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status or any other basis provided by law or ratified international agreement. According to the responsibilities established by law, the Commission shall act on complaints, give opinions and recommendations for specific cases of discrimination, to the complainant's, gives information about their rights and opportunities for prosecution or other action for protection, for violations raises initiative for initiation of proceedings before the competent authorities, establish cooperation with the authorities in local government, responsible for the achievement of equality and the protection of human rights, providing

¹⁴ <http://www.ombudsman.mk>

¹⁵ Law for Prevention and protection from discrimination, Official Journal of Republic of Macedonia , nu.50/2010

opinions on draft laws relevant to protection from discrimination.¹⁶ The Commission also has jurisdiction to act proactively and preventively by monitoring the implementation of the law, initiating amendments to the regulations for the implementation and promotion of the protection from discrimination, by providing recommendations to the national authorities to take measures to achieve equality and conducts studies, research and training related to discrimination.

Institutional weaknesses

All have some weaknesses to be called "national human rights institutions" according to the Paris's Principles. The big problem is that the Ombudsman as an authority fails to protect human rights when they are violated by private actors in society, does not guarantee the plurality of all social factors relevant to human rights, the focus is more directed towards the protection of violation of rights, but the promotion of human rights and the prevention of violation are in the background of the functioning. Furthermore, a serious lack is the fact that the recommendations of the Ombudsman are optional that in condition of low political culture affect the efficiency of protection and guarantee of rights and freedoms. If you have in mind that as an institution is already established, with competence, availability and functioning, there would be no resistance from the government, so in order to eliminate these and many other shortcomings, we believe that it is necessary to strengthen and improve the position of the Ombudsman in direction of extension of the competences, deepening and channeling of the legal framework, and of course focusing on research, promotions and trainings on human rights. When we are speaking for weaknesses of mentioned institutions the Commission for protection against discrimination has only a narrow domain of protection- only from discrimination, then the legal requirements for commissioner election are too wide positioned that influence to choice of people who are not prepared to respond to tasks; Commission does not have administration and a lack of human resources because the commissioners are "freelancers". Certainly additional weakness is that independence is in doubt due to the fact that part of the commissioners is employed in executive power, and no financial independence (except for pay).

In order to protect and promote human rights in addition to the existing institutions (governmental, non-governmental, independent commissions and bodies, etc.) we believe it is necessary to establish a new

¹⁶ Article 24, Law for Prevention and protection from discrimination, Official Journal of Republic of Macedonia , nu.50/2010

institution-only, expert body which would be responsible for the promotion, protection training and prevention of violation of constitutionally guaranteed rights. Institution or body will ensure plurality, with a focus on research and crystallization of international human rights standards. Naturally this would cause some difficulties, namely resistance could occur by the government, would have financial repercussions and of course there is the possibility of overlapping responsibilities. Of course, the degree of efficiency in the protection of human rights, by existence or non-existence of a new institution or expert body, is based on cooperation between existing institutions that in its focus on action have human rights. But cooperation should not be reduced only at the national level. Deepened international cooperation ensures consistent implementation of the legislation and the willingness and determination of the state to set human rights and freedoms on the level of priority.

Conclusion

Protecting and promoting human rights is an imperative of every modern society and a prerequisite for the effective functioning of any democratic country. Their protection is as well a prerequisite for Balkan countries membership in the EU as is in the case of R.Macedonia. However in some cases it seems that there is an overlook of the fact that there are certain principles which are immanent to a legal state and need to be respected. It seems that the management with the system of the legal state is getting out of the framework provided by law. Considering that the focus of the International Organization's reports is on the actions of the police, the conditions in the prisons and of course the judicial system, it is save to say that in addition to the lack of political will to change things at the same time we are talking about systematic issues that penetrate to the lowest level of any of the systems mentioned. It is certain that Macedonia will have to work harder on human rights protection and decreasing discrimination especially in cases where they have been violated in a legal processes, and also understand that the mechanisms of a legal state and the division of government in the modern democracies are made to prevent politics prevail the law and establish some kind of controlling mechanisms in order to protect them from arbitrariness and abuse. Certainly, the human rights protection and promotion remains an important element of the Macedonian foreign policy. The Republic of Macedonia is a member of the principal conventions for human rights within UN, has been reporting regularly regarding their implementation and is in close cooperation with the committees established with these conventions. Macedonia is continually reinforcing the activities and participation in the international organization's

bodies that are active in this area. The country has strongly supported the formation of the Human rights council in 2006, as a most suitable forum for further human rights and fundamental freedoms promotion through a universal partnership and dialog. For these reasons the Republic of Macedonia applied for membership in the Human rights council in the period of 2013-2016.

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