

HUMAN RIGHTS PROTECTION FROM THE PERSPECTIVE OF THE 1991 CONSTITUTION OF MACEDONIA

Azam Korbajram, Elif Hoca, page 43-53

ABSTRACT

Human rights have been a topic of conversation since ancient times, and for many years there has been a struggle for their guarantee. Almost all states have led to fierce battles for their realization. After the process of constitutionality and constitutional movements began, the universality of human rights and freedoms came to the fore. Namely, it is from the time of Bill of Rights in 1215 until today. In a modern sense human rights are becoming universal which are already guaranteed by the UN Charter and the European Convention on Human Rights. Especially Macedonia, as a candidate country for membership in the European Union, is fulfilling even new additions. Humanity and the Rights of the Child were created on the basis of the French Revolution, which was founded on August 26, 1789, for the purpose of demonstrating the cause of democracy and freedom. 1789 - Declaration of Human and Citizen Rights are published by the French Revolution. Accepted by the French National Assembly on August 26, 1789 Adopted by the French Mankind and Advocates in 1789, Adopted by the French Constitution in 1791. Humanity and Human Rights Consciousness is a human being and is made of 17 articles. Bunlar; Human rights are based on different rules and principles. Freedom of expression, property, security and the right to freedom of expression should not be expressed in the words of the citizens. 1789 Declaration of Human and Citizen Rights, The statement of the 16th article of the article on the existence of freedom, the meaning of the rights of the right and the right of the righteous, is expressed in a comprehensive way. In accordance with the idea of a nation-state that emerged from this, the Macedonian state started to make a new constitution in 1991 after declaring its independence and aimed to guarantee both the spirit of the Declaration and the universal nature of human rights with the constitution.

Keywords: 1991 Constitution Republic of North Macedonia, UN Charter, European Convention on Human Rights, Constitutional Guarantee of Human Rights, 1789 Declaration of Human and Citizen Rights.



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INTRODUCTION

Although the constitutional recognition and guarantee of human rights has become widespread especially in the 20th century, the historical development process goes back to ancient times. If we take the Magna Carta Libertatum as a basis in England, we see that human rights have been guaranteed and taken part in the constitutional order since the 13th century. In 1791, the document known as the Bill of Rights was constitutionalized in the United States. In this sense, the guaranteed rights have been expanded, adding the right to freedom of expression, assembly, press, religion, inviolability of home, fair trial, and not to be sentenced to excessive and extraordinary punishments. In the process that followed, there were also developments in the rights and freedoms of equal voting in the period from 1787 to 1964. Finally, the developments in France The 1789 Declaration of Human, Human and Citizen Rights is an important document on human rights, and these principles have been taken into account in the constitutions of many countries on the way to becoming a democratic state.¹

Although the 1789 Declaration of Human and Citizen Rights is very important in terms of guaranteeing human rights against the state and the theory of separation of powers, especially article 16 is a cornerstone for our subject: *„A society in which rights are not guaranteed and separation of powers is not determined has no constitution“* (Article 16).² The case of seeing human rights as a domestic legal issue gained a universal dimension with the adoption and publication of the 1948 Universal Declaration of Human Rights, and accordingly, it was transferred to regional documents. This document was established on the basis of the founding Treaty of the United Nations in 1945 and undoubtedly, the UN prioritizes respect for the natural rights of human beings due to being human. The 1948 Declaration included social and economic rights (positive rights) as well as classical, negative rights, and

¹ Erdoğan, M, *Anayasal Demokrasi*, Siyasal Kitapevi Press, 2017, p.207-208. This information has been written on the basis of the information contained in this work.

² In terms of the issue and the universal nature of the declaration, please refer to the following source. Civelek, J . (2011). 1789 Fransız Bildirisi Ve 1948 Evrensel İnsan Hakları Bildirisi . *Milletlerarası Hukuk Ve Milletlerarası Özel Hukuk Bülteni* , 9 (1) , 1-9 .

thus aimed to reconcile classical views with socialist views.³ On the subject of economic, social and cultural rights, some lawyers have criticized on the basis that this situation varies from country to country and that the economic situations are different. Therefore, they argue that the rights in this status will be far from universal and will not be subject to judicial guarantee.⁴

In this sense, it would be appropriate to divide the ways of protecting fundamental rights and freedoms into two. It would be correct to express it as the protection of human rights by domestic law and the judiciary and international European Human Rights protection in terms of being under constitutional guarantee.⁵

HUMAN RIGHTS AND THEIR PLACE IN THE 1991 CONSTITUTION OF THE REPUBLIC OF NORTH MACEDONIA

First of all, in the regulation in which the subjects guaranteed in the 8th article of the 1991 Constitution were included, it was stated in the 1st paragraph under the heading „the fundamental values of the constitutional order of the Republic of Macedonia are“ says: the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution. Therefore, starting from Article 8, human and citizen's rights have been dealt with on a broad scale up to Article 49, and how these rights are guaranteed is regulated under the 3rd heading of this 2nd Chapter.

Firstly, civil and political freedoms and rights was arranged as the first heading. Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law (Article 9).

³ Ibid.

⁴ Deskoska R., Ristovska M., Hristovska T. J., *Ustavno Pravo*, Prosvetno Delo Press, 2021, p. 193-196.

⁵ Gözler K., *Anayasa Hukukunun Genel Esasları*, Ekin Press, 2016, p. 428-436.

CIVIL AND POLITICAL FREEDOMS AND RIGHTS

In articles 10 and 11 says,⁶ the human right to life is irrevocable. The death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia and the human right to physical and moral dignity is irrevocable. The death penalty has been in place since the time of King Hammurabi in the 5th century. Abortion and the term euthanasia are also widely discussed and debated today.⁷ Any form of torture, or inhuman or humiliating conduct or punishment, is prohibited. Forced labour is prohibited. Subsequently, the human right to freedom is irrevocable. No person's freedom can be restricted except by a court decision or in cases and procedures determined by law. Persons summoned, apprehended or detained shall immediately be informed of the reasons for the summons, apprehension or detention and on their rights. They shall not be forced to make a statement. A person has a right to an attorney in police and court procedure. Persons detained shall be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the legality of their detention shall there be decided upon without delay. Detention may last, by court decision, for a maximum period of 90 days from the day of detention. Persons detained may, under the conditions determined by law, be released from custody to conduct their defence.⁸

Article 13 regulates the principle of presumption of innocence, which is considered a fundamental principle of law, and states as follows

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Article 13 – „A person indicted for an offence shall be considered innocent until his/her guilt is established by a legally valid court verdict. A person unlawfully detained, apprehended or convicted has a right to legal redress and other rights determined by law.,,

⁶ Skarikj S., *Naucno Tolkuvanje-Utav na Republika Makedonija*, Kultura Press, 2014, p. 161-163 For a scientific interpretation of the constitution see

⁷ For more details see. Deskoska R., Ristovska M., Hristovska T. J., *Ustavno Pravo*, Prosvetno Delo Press, 2021, p. 201-202.

⁸ Artical 12, Constitution of 1991 of the RNM.

Further in article 14 it is stated that, No person may be punished for an offence which had not been declared an offence punishable by law, or by other acts, prior to its being committed, and for which no punishment had been prescribed. No person may be tried in a court of law for an offence for which he/she has already been tried and for which a legally valid court verdict has already been brought. Also, the right of the individual to appeal is guaranteed, namely, the right to appeal against individual legal acts issued in a first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed.

By the way, with article 16, the freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited.

The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defence of the Republic. The security and confidentiality of personal information are guaranteed. Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing. The freedom of religious confession is guaranteed. The right to express one's faith freely and publicly, individually or with others is guaranteed. The Macedonian Orthodox Church and other religious communities and groups are separate from the state and equal before the law. The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law (article 17, 18, 19).

Regarding the classical rights and basic principles of law, the constitution continues until Article 29, which guarantees the following:

Citizens are guaranteed freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions. Citizens may freely establish associations of citizens and political parties, join them or resign from them. The programmes and activities of political parties and other associations of citizens may not be directed at the violent destruction of the constitutional order of the Republic, or at encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance. Military or paramilitary associations which do not belong to the Armed Forces of the Republic of Macedonia are prohibited.⁹ Citizens have the right to assemble peacefully and to express public protest without prior announcement or a special license. The exercise of this right may be restricted only during a state of emergency or war. Every citizen on reaching 18 years of age acquires the right to vote. The right to vote is equal, universal and direct, and is exercised at free elections by secret ballot. Persons deprived of the right to practice their profession by a court verdict do not have the right to vote. Every citizen has the right to take part in the performance of public office.¹⁰

Also constitution continued by articles 24, 25 and 26 which says; every citizen has a right to petition state and other public bodies, as well as to receive an answer. A citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of a criminal offence. Each citizen is guaranteed the respect and protection of the privacy of his/her personal and family life and of his/her dignity and repute. The inviolability of the home is guaranteed. The right to the inviolability of the home may be restricted only by a court decision in cases of the detection or prevention of criminal offences or the protection of people's health.

In article 27 and 28; Every citizen of the Republic of Macedonia has the right of free movement on the territory of the Republic and freely to choose his/her place of residence. Every citizen has the right to leave the territory of the Republic and to return to the Republic. The exercise of these rights may be restricted by law only in cases where it is necessary for the protection of the security of the Republic, criminal investigation or

⁹ Article 20, 1991 Constitution.

¹⁰ Article 21, 22, 23.

protection of people's health. The defence of the Republic of Macedonia is the right and duty of every citizen. The exercise of this right and duty of citizen is regulated by law.

Foreign subjects enjoy freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements. The Republic guarantees the right of asylum to foreign subjects and stateless persons expelled because of democratic political convictions and activities. Extradition of a foreign subject can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. A foreign subject cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences (article 29 1991 Constitution).

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

On the other hand, having regard to the international documents and agreements accepted by the EU and the International Community, in Chapter 2 the third chapter regulates economic, social and cultural rights with Articles 30 to Article 49.

So, article 30 -The right to ownership of property and the right of inheritance are guaranteed. Ownership of property creates rights and duties and should serve the wellbeing of both the individual and the community. No person may be deprived of his/her property or of the rights deriving from it, except in cases concerning the public interest determined by law. If property is expropriated or restricted, rightful compensation not lower than its market value is guaranteed. The right to property is one of the basic human rights. The right of ownership means the right of the citizen to use a certain movable or immovable property and to dispose of it in a way that suits him.¹¹ The Constitution provides for the possibility of deprivation and restriction of property rights due to the public interest. But the compensation should be at the level of the market price of the value. This is called expropriation and is regulated by law.¹²

Everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment. Every job is open to all under equal conditions. Every

¹¹ Skarikj S., *Naucno Tolkuvanje*, p. 228-235.

¹² Ibid.

employee has a right to appropriate remuneration. Every employee has the right to paid daily, weekly and annual leave. Employees cannot waive this right. The exercise of the rights of employees and their position are regulated by law and collective agreements.¹³

However, the constitution restricts the work of minors. Namely, The Republic particularly protects mothers, children and minors. A person under 15 years of age cannot be employed. Minors and mothers have the right to particular protection at work. Minors may not be employed in work which is detrimental to their health or morality (Article 42)

Everyone is obliged to pay tax and other public contributions, as well as to share in the discharge of public expenditure in a manner determined by law. Citizens have a right to social security and social insurance, determined by law and collective agreement. The Republic guarantees particular social security rights to veterans of the Anti-Fascist War and of all Macedonian national liberation wars, to war invalids, to those expelled and imprisoned for the ideas of the separate identity of the Macedonian people and of Macedonian statehood, as well as to members of their families without means of material and social subsistence. The particular rights are regulated by law.¹⁴ Also, in order to exercise their economic and social rights, citizens have the right to establish trade unions. Trade unions can constitute confederations and become members of international trade union organizations. The law may restrict the conditions for the exercise of the right to trade union organization in the armed forces, the police and administrative bodies.¹⁵

In Macedonia, the constitution guarantees its citizens the right to strike, social and health care and a dignified life. The right to strike is guaranteed. The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies. Every citizen is guaranteed the right to health care. Citizens have the right and duty to protect and promote their own health and the health of others. The Republic provides particular care and protection for the family. The legal relations in marriage, the family and cohabitation are regulated by law.

¹³ Article 32.

¹⁴ Klimovski S., *Ustavno Pravo i Politicki Sistem*, Prosvetno Delo Press, 2012, 271-282.

¹⁵ Article 37

Parents have the right and duty to provide for the nurturing and education of their children. Children are responsible for the care of their old and infirm parents. The Republic provides particular protection for parentless children and children without parental care.

It is a human right freely to decide on the procreation of children. The Republic conducts a humane population policy in order to provide balanced economic and social development. Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.¹⁶

The Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries, as well as Macedonian expatriates, assists their cultural development and promotes links with them. The Republic cares for the cultural, economic and social rights of the citizens of the Republic abroad.

GUARANTEES OF BASIC FREEDOMS AND RIGHTS

Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency. Judicial protection of the legality of individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed. A citizen has the right to be informed on human rights and basic freedoms as well as actively to contribute, individually or jointly with others, to their promotion and protection.

The freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status. The restriction of freedoms and rights cannot be applied to the right to life, the interdiction of torture, inhuman and humiliating

¹⁶ Article 41-43

conduct and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession (Article 54).

CONCLUSION

With the development of the concept of constitutional movements, constitutions become a basic act of states and peoples. From the philosophy of the constitution and the making of a constitution, between the division of power the basic element is the constitutional guarantee of human rights. In the course of the development of human rights, it finds its place in the internal legal and constitutional order from an international platform. Namely, from the UN conventions and the European human rights treaties and the decisions of the International Court of Human Rights are applied in the constitution and the constitutional-legal order of the Republic of Macedonia. Progress in the field of money as a basic human right should be emphasized. Namely, Article 10 states that human life is inviolable and that in the Republic of Macedonia no death penalty can be imposed on any grounds. On the other hand, the right to equality, the prohibition of torture and ill-treatment, legal certainty and a fair trial, the right to liberty, the right to privacy, freedom of religion, freedom of expression, freedom of association, freedom of peaceful assembly, freedom of residence and movement, suffrage, property right as basic human rights, on the other hand, economic-social, cultural rights (right to work, right to trade union, right to strike, right to social security, health care) are covered and regulated with the 1991 constitution. With the signing of the peace agreement in 2001, constitutional amendments covered and redefined the rights of minorities, ie communities that are not a majority. It is a good indicator that according to the guarantee of human rights, the Macedonian Constitution aspires to the European Union and Western democratic civilization, which results through international conventions and legal-democratic principles. All these rights should be openly and explicitly stated in the Rules of Procedure of the Constitutional Court in relation to a constitutional complaint and to obtain complete judicial protection in relation to the human rights provided by the Constitution.

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