

The Protection of Human Rights and Freedoms According to International Laws and Domestic Laws in North Macedonia - Comparative Aspects

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Abstract

Human rights and freedoms are of particular importance in international arena for which are adopted different legal acts that are focused for its protection. Also, such protection is foreseen within the states, starting from the highest legal act which is the constitution, i.e. the Constitution of North Macedonia and other legal acts which are under the constitution. In this regard, it is important to mention the role and the importance of the international acts in the international arena. Therefore, the efforts always have been made by the international organizations and states, with the aim to protect these rights as fundamental rights.

In today's legal and international theories, there are almost same opinions, which consists in the protection of human rights and freedoms, and for the same are provided different legal mechanisms.

Through this paper, I have elaborated the legal overview of the protection of the human rights and freedoms, as well as the international protection and domestic protection of these rights within state institutions of North Macedonia, for which are adopted various legal acts.

However, the international organizations and the states are those who should always ensure the legal protection of the human rights and freedoms, but this is not always applicable and depends on their ability. Therefore, as a result of such weakness,

the citizens have the opportunity to address for the violation of their rights to various institutions of international organizations, in order to realize their subjective rights.

Keywords: *Constitution, convention, human rights, international protection, state.*

Introduction

Taking into consideration the importance of human rights and freedoms, it can be said that obviously they are a fundamental value of the constitutional order of any state. Therefore, states are the ones who should always provide legal mechanisms for their protection. It is also important to mention the role and the importance of international organizations, which through their acts ensure and protect the human rights and freedoms.

Whenever we mention the states that have a crucial role in the protection of human rights and freedoms, it is normal that they exercise this through their domestic legislation, starting from the highest legal act-the constitution, the law to the bylaws. However, this ranking must always be in line with the international acts, such as international conventions. Therefore, this is a principle and action that should always be followed by the states.

The domestic laws of different states, which regulate in more detail the matter of human rights and freedoms, must always be in function of their full implementation in practice, respectively in the protection of human rights as basic rights. All of these issues are provided in the paper on what states provide for in their domestic laws, which are almost very similar to each other. In addition, I am also focusing on Law on Prevention and Protection Against Discrimination of North Macedonia, which refers to the procedures in case of various forms of discrimination before the competent authorities, as well as do not exclude the role of ombudsman for this purpose. Also, it is important to mention the implementation of the basic guarantee that are provided in the Constitution of North Macedonia, the role of the courts and the Constitutional Court in the protection of human rights and freedoms, etc. The human rights and freedoms, except for national protection, they also enjoy international protection. For this purpose, in a part below the paper, I have used some international acts which relate to this issue and which have an almost identical content, but which differ depending on the bodies that bring them.

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The development of human rights

The struggle for human rights begins with efforts to recognize his fundamental rights, such as the right to life and liberty, which have been important, especially in the period of the slave owning and feudal system. Bourgeois revolutions add to these basic rights some other rights which belong to the so-called natural rights, such as the right to equality, the right to security, and the right to resist the oppressor (Gruda, 2003, p. 363). Therefore, the mentioned rights are present even today and are an integral part of the domestic legislation of the states. Many lawyers, politicians and philosophers of the sixteenth, seventeenth and eighteenth centuries as well Grotius, Locke, Spinoza, Pufendorf, Thomasius, Volf, Voltaire, Montesquieu, Russo, Jefferson, etc., under the influence of the school of natural law, begin to treat the human rights as rights defined by “divine law” or “law of God”, which is rooted in the heart of every human being and which obliges to do all that corresponds to the rational nature of man, and to refrain from that which harms. These rights the individuals enjoys by birth. They are inviolable, inalienable and unpredictable because they are given by the Creator (God). This group includes: (a) the right to life; (b) the right to freedom; (c) the right to security; and (d) the right to equality. Later was added the right to resist the oppressors and seek happiness (Gruda, p. 363).

On the issue of the individualization of human rights, there are a number of individualization discourses which relate to two categories of human rights and freedoms, namely: (a) civil rights and politics; (b) economic and social rights. This notion was used early in the United Nations, especially after the Universal Declaration of Human Rights, 1948, where the Commission on Human Rights took care on the finalization of the draft Convention on Human Rights, which were included only civil rights. However, when the United Nations General Assembly deemed it reasonable to decide in 1950 that political, economic, social and cultural rights should also be included, than the mentioned Commission took expedited steps to fulfill some of the articles proposed by the Assembly. The Commission was also informed that the rights and obligations of states for these rights had different comparisons in their civil law, and there was little debate about this. However, they disagreed on what those differences meant in terms of the unity of the Universal Declaration (Whelan, 2015, p. 72).

It is worth noting that the essence of human rights is to protect individuals. In literature have two different approaches. The first involves holding individuals criminally accountable for directing or carrying out violations of international humanitarian law and human rights standards. The second approach to protecting human rights focuses more on the obligations of “states” to refrain from violating human rights standards and their responsibilities if and when

they have failed to do so (Gibney, 2015, pp. 90, 91) Thus, in Europe, there are two instruments of relevance, namely: (a) the European Social Charter 1961 (revised in 1996); and (b) the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols.

The European Social Charter (ESC) was drafted in 1961. It was meant to be the “sister” of the ECHR and to guarantee protection of ESCR in member states of the Council of Europe. Between 1990 and 1996 the Charter underwent changes aimed at giving more teeth to the protection of human rights incorporated in it. The most important change worth highlighting here is the adoption of the revised ESC in 1996. The revised Charter restates the 19 rights contained in the 1961 Charter, amends some of them and introduces new ones. The revised Charter also incorporates rights set out in the 1988.

The revised ESC contains an impressive number of provisions that apply to specific groups of persons. These provisions include: (a) the right of men and women to equal pay for work of equal value; (b) the socio-economic protection of children and adolescents in the occupational field; (c) the right of employed women to protection of maternity; (d) the right of persons with disabilities to independence, social integration and participation in the life of the community; (e) the right of children and young persons to social, legal and economic protection; (f) the right of migrant workers and their families to protection and assistance; (g) the right of elderly persons to social protection; and (h) the right to equality of opportunity and treatment of men and women workers with family responsibilities (Sutton, 2017, p. 44).

It is important to mention that the first sparks of proclamation and guarantee of certain rights of citizens is found in a document called Magna Carta Libertatum proclaimed in 1215 by King John Lackland of England (Saliu, 2001, p. 121). Other important documents which regulates this matter are: (a) the Petition of Rights (1628); (b) the Haebas Corpus Act (1679); (c) the Bill of Rights (1689); (Saliu, p. 122); (d) Declaration of Independence of the United States of America (1776) and; (e) Declaration on Human and Civil Rights (1789 and 1793) (Gruda, 2003, p. 363). The Petition of Rights has a declarative character, therefore it is not so important in the legal theory. Whiles, the Haebas Corpus Act represents a system of guarantees of personal liberties to the court and the police. And, although the Bill of Rights document resembles these two documents (i.e. Petition of Rights and Haebas Corpus Act), it differs from those two acts by the timing and manner of its adoption (Saliu, 2001, p. 122).

The classics of Marxism and the human proletariat have added a social dimension to them, claiming to liquidate the social inequality, because without this many of the proclaimed rights have more formal than essential character.

Until the recent times, the human rights were treated as matters of internal competence of the states. Therefore, nor states and the international community, has no the right to raise the issue of human rights violations in a state without the risk of this being interpreted as interference in the internal affairs of that state. The exceptions were the capitulation regime and humanitarian interventions (Gruda, 2003, p. 363). However, today, such a thing does not exist, especially in the spectrum of international organizations, which mainly act in the protection of human rights and freedoms, although in some cases their decisions are mandatory, but still not respected by the state to which they referred. As for the principle of non-interference in the internal affairs of states, which is current to this day and which is internationally recognized and accepted? Nevertheless, the international community, especially after the creation of the League of Nations and the United Nations, has increasingly paid attention to the well-being of the individual, as one of the most important conditions for maintaining peace, security, stability and democracy (Gruda, p. 363). However, in many countries in the world, the human rights and fundamental freedoms are brutally violated, and are oppressed ethnic, racial or religious minorities, the discrimination and apartheid are practiced, and even the acts of genocide, which prove that despite the progress that has been made, the struggle for self-determination in full in human rights life has not yet been won everywhere (Gruda, p. 364).

In accordance with the international law, disputes of a legal nature can be initiated by the states before the international courts. In case of any adversarial procedure before an international tribunal, they are known as “continued” procedures”. And, as such, they are realized between the state on the one hand, corporate body or an individual on the other, especially in case there is no disagreement on a question of law or fact, a conflict, a clash of legal views or of interests. Institutions which are entitled for such disputes are: the Court of Justice of the European Union in Luxembourg, the European Court of Human Rights in Strasbourg, the Inter-American Court of Human Rights in San José, Costa Rica, or the newly-created African Court on Human and People’s Rights in Arusha. However, with the ICJ, to which no contentious case can be submitted unless both applicant and respondent are states. Private interests can only form the subject of proceedings before the court if a state, exercising its right of diplomatic protection, takes up the case of one of its nationals and invokes against another state the wrongs which its national claims to have suffered at the latter’s hands the dispute thus then becomes one between states (Handbook of ICJ, p. 33). I will not give a detailed explanation for the legislative side of the ICJ, as I will address in the following part of the paper.

However, human rights debates have been going on for several years United Nations about that how and to what extent human rights should be integrated in

peace-keeping operations and it was achieved that the United Nations Human Rights Programme should be enhanced and fully integrated into the broad range of the organizations activities. Also, it was underlined that “human rights are a key element in peace-making and peace-building efforts and should be addressed the context of humanitarian operations” (Ramcharan, 2002, p. 105).

International laws and its role in the protection of human rights

The human rights and freedoms, except that are enjoying domestic protection by the states through the legal acts adopted in regular procedure, they are also enjoying protection by various international laws which are accepted internationally. In addition, I will mention some international acts which are mostly focused on the protection of human rights and freedoms, as well as for their effect on implementation in the practice.

It is worth noting that with the drafting of the UN Charter in San Francisco in 1945, it was decided by a majority that the world should be given the power in promoting of international cooperation, with the aim of the universal realization of the human rights. However, they rejected the idea of giving the power to organization in protecting of human rights.

The Security Council, which has mandatory powers, was focused more on security and international peace than on human rights (Ramcharan, 2018). However, the preamble of the UN Charter itself emphasizes the importance of fundamental human rights, in order to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small (UNCH). Therefore, in the UN was established also the Commission on Human Rights in 1946, which had the task of mediating human rights violations. This opportunity was given in 1967, for which the Commission was specifically authorized (by the Economic and Social Council, with the encouragement of the General Assembly). Therefore, the Commission on Human Rights procedures and mechanisms was mandated to examine, monitor and publicly report either on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates). These procedures and mechanisms were collectively referred to as the Special Procedures of the Commission on Human Rights. But, today instead of the UN Commission on Human Rights is the Human Rights Council. The Human Rights Council is an intergovernmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them.

What characterizes the Human Rights Council has to do with complaint procedures which allows individuals and organizations to bring human rights violations to the attention of the Council. In this case the parties have the right to supplement procedure form in which are provided data that should be completed by natural and legal persons, as well as government organizations. In the procedure form are foreseen some conditions that should be fulfilled: (a) information on the state concerned, (b) facts of the complaint and the nature of the alleged violations, (c) exhaustion of domestic remedies, (d) submission of communication to other human rights bodies, (e) request for confidentiality.

The Human Rights Council also works with the UN Special Procedures established by the former Commission on Human Rights and now assumed by the Council. The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advice on human rights from a thematic or country-specific perspective. The system of special procedures is a central element of the United Nations human rights machinery and covers all human rights: (a) civil; (b) cultural; (c) economic; (d) political; and (e) social. (www.ohchr.org).

The other act that addresses the issue of human rights and freedoms is the Universal Declaration of Human Rights. Among the many rights incorporated and especially the article 2 provides: “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty” (UDHR, article 2). As can be seen in this provision, it is noted that such thing is provided in the constitutions of different states, for which they pay special attention to human integrity as the most perfect being, and at the same time also enjoys special protection. Although the Declaration does not contain a specific provision regarding treatment of non-nationals, it can be inferred that they are covered (Steiner, 2012, p. 24). Also important is the principle of equality before the law, as a very important principle of justice (UDHR, article 2).

The issue which still does not find the right solution in our country has to do with discrimination which occurs in all forms. However, in this case I would like to mention the provision from the UDHR which provides that: “everyone, without any discrimination, has the right to equal pay for equal work” (UDHR, article 23). Thus, in the mentioned the article it is clearly defined what the institution or organization should do with the employees. This is where the dilemma arises, what is the effect of the domestic laws of the states; in this case the law which

regulates the work of the state institutions, respectively the administration of North Macedonia. Therefore, the mentioned law in most cases finds different interpretations which make it impossible to implement it effectively in practice.

Another important document obviously is the European Convention on Human Rights, 1950. At the beginning of the provisions of this convention, is foreseen the right to life, namely in article 2 is provided: “everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”. The mentioned provision clearly provides for the possibility of enforcing the death penalty depending on the states that enforce it. However, on the other hand, the meaning and importance of the right to life fades, and normally it excludes the principle of resocialization of the sentence, as the main goal to the convicts. Absolutely, here can rise different interpretations which in reality should not happen, as it is in expressing the right to life as a fundamental right.

Taking into consideration that with this article are protected individuals from being killed arbitrarily by a state, but does not ban the death penalty, where it exists under the law. For that reason an additional protocol (no. 6) to the convention was opened for signature in 1983. It provides: “the death penalty shall be abolished. No one shall be condemned to such, penalty or executed”. This protocol is the first international legal instrument to make the abolition of the death penalty a legal obligation. To accede to the protocol states must, eliminate the death penalty from their law, except in respect of acts committed in time of war or of imminent threat of war (Бурдин, 2003, p. 19). Also, the same is foreseen in the Charter of Fundamental Rights of the European Union, in which it is provided “no one shall be condemned to the death penalty, or executed” (article 2). Therefore, the death penalty in these states is prohibited in all forms.

The above document contains a series of provisions which pertain to human rights and freedoms, starting from: (a) right to life; (b) prohibition of torture; (c) prohibition of slavery and forced labour; (d) right to liberty and security; (e) right to a fair trial; (f) no punishment without law; (g) freedom of thought, conscience and religion; (h) freedom of expression; (i) freedom of assembly and association; (j) right to marry; (k) right to an effective remedy; (l) prohibition of discrimination (ECHR, article 2-14).

It is interesting to expand little the meaning of article 7 of the convention, which provides: “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal

offence was committed”. Obviously, the criminal offences are considered to have been committed at the moment while the law is in force and which recognizes the action by a person as a criminal offence, otherwise such an offence will not be considered a criminal offence if it is not provided by law. Therefore, here is expressed the temporal aspect, as a circumstance. And, on the other hand, it cannot be given more severe punishment than the one that was at the time when the criminal offence was committed, i.e., that the punishment cannot be imposed to the detriment of the convicted person, but in his favour.

In cases of violation of rights, the parties have the right to submit a request to the aforementioned court i.e. European Court of Human Rights. The court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the convention or the protocols thereto (ECHR, article 34). Then, the court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken (ECHR, article 35). Therefore, for the parties, these actions in the last instance, also can only be taken after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

It is also important in the context of human rights and freedoms the Convention on the Rights of the Child, 1989. Therefore, member states must respect the rights of children under their jurisdiction, regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (CRCH, article 2). Also, in article 3 of this convention is provided: “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”, which means that children should be given special care, and that there should be no abuse by the mentioned institutions.

What characterizes our country and relates to the provision of the mentioned convention is the issue of the right to acquire a nationality (CRCH, article 7). Although our state, North Macedonia, is a party to this convention, but in practical life many citizens in our country do not enjoy this right. And, on the other hand, this is contrary to the law of our country as well as non-compliance with the mentioned convention.

As was mentioned above, respectively in the protection of human rights and freedoms with domestic laws, and especially for the role and the importance of the ombudsman in the promotion and protection of legal and constitutional

rights of citizens, obviously is provided their protection by the European Ombudsman, which operates within the EU countries, are more precisely this is justified in the following article, that provides: “any citizen of the Union and any natural or legal person residing or having its registered office in a member state has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the union, with the exception of the Court of Justice of the European Union acting in its judicial role”. Therefore, even here the function and role of the ombudsman in the protection of rights and freedoms, in this case of EU citizens, are clear.

Domestic laws in North Macedonia and its role in the protection of human rights

The human rights obviously enjoy internal protection and this should be ensured by the state through positive laws starting from the highest legal act – the constitution. Therefore, the human rights and freedoms are one of the fundamental values of the constitutional order. This is also foreseen in article 8 of the Constitution of North Macedonia, in which, the human rights and freedoms have been given priority and are placed in the first place, which in reality it should be.

In our law, has been doing the categorization of human rights and freedoms, including: (a) civil and political freedoms and rights; (b) economic, social and cultural rights (CNM, part 1 and 2).

Among the rights and freedoms guaranteed by the constitution, more of them which have particular importance are personal freedoms and rights, which ensure the protection of personal and physical integrity as human beings. From this set of freedoms and rights, with the constitution of the North Macedonia are guaranteed: (a) the right to life; (b) inviolability of physical integrity; (c) the right to privacy; (d) inviolability of human freedom; (e) the presumption of human innocence; (f) the right to protection; (g) the right to appeal; (h) freedom of movement and choice of residence; (i) inviolability of the apartment; (j) inviolability of secrecy of letters and other means of communication; (k) freedom of belief and the right of citizenship (Saliu, 2001, p. 369).

The right to life is one of the most important and that at the same time finds application not only its formal but also its practical side. Thus, human life is inviolable, and the death penalty cannot be imposed on any basis (CNM, article 10). From here, it can be seen that the death penalty is prohibited under the constitution of the North Macedonia. It even means the functioning of a democratic state whose goal is to promote the fundamental values, among

which are part and which are more important, such as human rights and freedoms. However, if we enter and analyse the practical side of the protection of these rights and freedoms, it seems that it contradicts with article 9 of the constitution. I say this for many historical and national reasons, which later led to interventions aimed to improve some constitutional provisions, which came as a result of the war in 2001 and which resulted by the signing of the Ohrid Agreement at the same year. Therefore, the constitution of North Macedonia remains in the group of flexible constitutions which are easily changed, depending on the circumstances that arise. If we look at the positive provisions of the mentioned constitution, it is normal that every citizen can be called for the protection of rights and freedoms before the regular courts, and to the Constitutional Court of North Macedonia, in a procedure based on the principle of priority and urgency. Therefore, every citizen has the right to be informed about the human rights and fundamental freedoms and actively to contribute, individually or together with others, for their progress and protection. Also, the constitution of North Macedonia guarantees the judicial protection of the legality of individual acts of the state administration and other institutions that exercise public authority (CNM, article 50). In addition to these guarantees, the constitution provides also other guarantees, which includes: (a) rule of law; (b) the principle of constitutionality and legality; (c) public announcement of laws; (d) *vacatio legis* period; (e) prohibition of retroactive effect of the regulations, except in exceptional cases, in cases when it is more favourable for the citizens, etc. (CNM, article 51, 52). Among the human rights and freedoms, which has to do with his physical integrity, the well-known principle “*nullum crimen nulla poena sine lege*”, which still plays an important role today. This rule is provided in the legislations of different states, as well as in the article 13 of the constitution of North Macedonia.

The citizens of North Macedonia also have the right to appeal against the decisions of the court of first instance (CNM, amendment XXI). So, here the right to appeal is presented to us as a constitutional category, while for other appeals which are directed against the decisions in the first instance to the state administration bodies or the body that performs public authorizations are regulated by law. As a result of such a change, there was a need to amend Article 15 of the Constitution of North Macedonia.

However, in the protecting of the human rights and freedoms, the courts also have an important role. Namely, the judges during the application of law should protect human rights and freedoms (LC, article 2, paragraph 2). Also, everyone has the right to equal access to a court in protecting his rights and legitimate interests. In the decision on civil rights and obligations and in the decision on criminal responsibility, everyone has the right to a fair and public trial within a

reasonable time before an independent and impartial court established by law (LC, article 6, paragraph 1-3).

Except in the controlling of constitutionality and legality, solving of conflicts of the jurisdiction, decision on the responsibility of the President of the Republic and other competencies, the Constitutional Court of North Macedonia protects the rights and freedoms of the individuals and citizens. Thus, according to the constitution, the Constitutional Court protects the rights and freedoms of individuals and citizens that relate to freedom of belief, conscience, opinion and public expression of the opinion, political association and action and the prohibition of discrimination against citizens on the grounds of sexual, racial, religious, national, social and political affiliation.

Unlike to the abstract normative control, the subject of, assessment within this competence is the individual acts and actions of the public authorities for which the citizen considers that are violated some of the mentioned constitutional rights. In addition to the immediacy of the request (constitutional appeal) for protection of the rights violated by an individual act or action, a second feature of this competence is that the subject of dispute can be not only an administrative act, but also a court decision in any instance.

Despite the fact that the introduction of this competence within the Constitution of 1991 is a significant novelty in the tradition of the constitutional judiciary in North Macedonia, its limitation to only three groups of freedoms and rights proves to be a serious obstacle to significant entry of the court into direct protection and to other constitutional freedoms and rights of the individuals and citizens (<http://ustavensud.mk>).

Regarding to the procedure for the protection of the rights and freedoms, according to article 110, paragraph 3 of the Constitution of North Macedonia that provides: “every citizen who considers that by an individual act or action is violated his right or freedom which is determined by article 110, paragraph 3 of the Constitution of North Macedonia, may request a protection from the Constitutional Court within 2 months from the day of adoption of the final individual act, i.e. from the day of detection of the action by which the violation was committed, but not later than 5 years from the day of its undertaking” (RPCCNM, article 51). Upon completion of the procedure, with the decision for protection of the rights and freedoms, the Constitutional Court will determine whether there is a violation of them and depending on that, it will annul the individual act, will prohibit the action with which the violation was committed or will reject the request (RPCCNM, article 56).

The Republic is obliged to guarantee the protection of ethnic, cultural, linguistic and religious identity to all members of the communities (CNM, amendment VIII). The novelty here is the phrase “members of communities”

and not “members of nationalities” as previously cited in article 48 of the constitution. However, what remained unchanged initially had to do with the protection of linguistic identity, respectively its materialization in public life and for this it was later intervened with a special law in order to advance the use of languages, in particular the Albanian language.

Another issue regarding to human rights and freedoms and especially their protection, is also in the United Nations Report on Human Rights of 2019, which mentions the need to intervene to change the laws that have to deal strongly with discrimination and its manifestation in all forms. The case belongs to our country-North Macedonia, which was assisted through civil society organizations in the adoption of the new law, i.e. the Law on Prevention and Protection Against Discrimination by the Parliament of the North Macedonia (UN HRR, 2019, p. 4). The above law was drafted in an almost two-year working process, with the inclusion of civil society organizations that work on the provision of free legal aid in cases of discrimination and following several public consultations (Bogdanovska, 2020, p. 4) Within the framework of the mentioned law, is foreseen the Commission for Prevention and Protection from Discrimination, whose function is more promotional in the protection of human rights and discrimination (LPPAD, article 21). However, this should not be considered as unimportant, because persons who consider that are discriminated can initiate a complaint to the mentioned commission, which then gives further recommendations. If the opposite does not happen, then the commission initiates a procedure for minor offences before the competent court (LPPAD, article 23-27). Also, in case it is concluded that there has been discrimination, the same can definitely be done through a lawsuit by the person who finds such a thing (LPPAD, article 32). From here it can be said that the mentioned law has a more preventive role in case of discrimination, as well as it guides efforts to improve the situation created by discrimination, otherwise the decisive role will have a lawsuit initiated before competent court.

It is important to mention that the human rights and freedoms, as basic values of the constitutional order, are definitely foreseen in the constitutions of other countries, such as in the constitution of the Republic of Kosovo, Albania, Serbia, Croatia, etc. Therefore, due to the importance that have the human rights and freedoms, and especially provided for and protected by international acts, for which I will elaborate later, they enjoy a special place in the constitutional order of a state.

The Constitution of the Republic of Kosovo provides a special chapter that deals in detail with every right and freedom which enjoys individuals in accordance with the laws and the highest legal act i.e. the constitution, starting from human dignity as a fundamental value, equality of individuals up to the

fundamental rights and freedoms during emergency situations. However, here is given also importance the equality of individuals before the law, more precisely all citizens are equal before the law, and that everyone enjoys the right to equal legal protection (CK, article 24).

What remains as a principle which in reality should be applied is the right to a fair and impartial trial and the right not to be tried twice for the same offence “ne bis in idem”. These two principles are very important in the field of jurisprudence and the competent authorities should always take into account these universally accepted principles (CK, article 31, 34). The protection of human rights and freedoms is also guaranteed by the Constitution of the Republic of Albania. And, for this, is foreseen a special chapter which in an exact manner, foresees some of the rights and freedoms which are also internationally protected. Thus, the constitution above divides the human rights and freedoms into: (a) personal freedoms and rights; (b) political freedoms and rights; and; (c) economic, social and cultural freedoms and rights (CA, part II-IV).

The Constitution of the Republic of Serbia also pays attention to human rights and freedoms. Thus, the issue of the human rights and freedoms is regulated in a separate part of the constitution, starting from the article 18 to article 81 (CS, article 18-81). At first view, it seems that it is completed in the formal-legal aspect in terms of the human rights and freedoms, but in the practice the opposite has always happened, which means not only the violation of the highest legal act-the constitution, but also the violation of international acts, which were always manifested by war from the former Federal Republic of Yugoslavia, and which resulted in international intervention in order to prevent from the invasion of the territories of its republics.

In the Croatian constitution, the human rights and freedoms are categorized in several parts, including: (a) personal and political freedoms and rights; and (b) economic and social freedoms and rights (CC, article 14-70). In the protection of human rights and freedoms, except the state-it is about central states, non-governmental organizations also play an important role. In this regard, it is worth to mention when they, i.e. non-governmental organizations, are presented to us as promoters or protectors, which are related to the promotion of democratic processes. In this case the organizations can be at the local and central level, namely, when they follow the municipal council, during adoption of decisions and its implementing in practice. Regarding to the adoption of the decision in the council, the NGO assesses whether it was adopted according to legal procedures, respectively, whether the decision is contrary to the laws and the constitution of the North Macedonia. This action the NGO’s make while participating in the sessions of the municipal council or by analysing the decision. Regarding to the implementation of the decision in practice, the NGO’s take care that

if the decisions that have been adopted before are respected and ensure the participation of all stakeholders in following the implementation of the decision (<http://irz.org.mk>). On the other hand, it is worth to mention that the Delegation of the European Union (DUE), the Organization for Security and Cooperation in Europe (OSCE) as well as USAID-funded projects have funded and supported a large number of NGO's to engage in judicial reform with an aim to building and independence of the judiciary, its capacities as well as to provide special training for this purpose (Димитриева, 2015, p. 36). But in practice it can be said that such a thing does not happen, taking into consideration the weaknesses and the great corruption that has captured the judicial system of our country, which normally results in not enjoying in all the fundamental human rights and freedoms.

In protecting of human rights and freedoms also play an important role the Helsinki Committee for Human Rights which is registered in 1994. So, the Committee monitors the situation with human rights, provides legal assistance, co-operates with other organizations and state bodies for the purpose of improving the promotion, respect and protection of human rights and freedoms. The Committee's goal is the protection and promotion of the human rights and freedoms guaranteed with the Constitution of the Republic of North Macedonia, the international instruments and the Helsinki Final Act of 1975, as well as building democratic conditions in which they can be exercised based on the rule of law. The Committee sets off from the premise that all people should have the possibility to enjoy and practice their basic rights and freedoms and should be able to protect them in case of violation or limitation. This is the basis of the rule of law, human rights and democracy (<https://mhc.org.mk>).

In the promotion and protection of the legal and constitutional rights of citizens and all other persons against whom they have been violated by acts and actions by the state bodies, obviously the Ombudsman plays an important role, as a preventive mechanism for the protection of human and civil rights and freedoms (LO, article 2). The protection of the legal and constitutional rights of citizens and other persons, according to the rules of procedure of the ombudsman are divided into four groups and include the following areas: (a) civil rights and freedoms; (b) civil protection and security rights; (c) economic rights and the regulation of humanitarian spaces; (d) labour rights, environmental rights and the rights of service users (RPO, article 12).

What specifies the work of the ombudsman and which has to do with the protection of the human rights and freedoms in case of their violation, respectively the protection of the legal and constitutional rights of citizens, especially the protection of the principle of non-discrimination and equal treatment of all communities to state bodies, to local self-government bodies, as

well as public services, is done by filling a complaint (RPO, article 32). There is also a possibility for complaints to be filled by the ombudsman himself, in case of violation of legal and constitutional rights or in case of violation of the principle of non-discrimination and fair representation of members of communities, and precisely in these cases before initiating the procedure, he is obliged to obtain the consent of the injured person (RPO, article 36). In the formal-legal point of view is reasonable and leaves such a possibility, but looking at the practical side and especially based on the statements of the ombudsman institution it turns out that his actions, respectively his recommendations, in most cases are not taken into account by the state institutions, which are related to the protection of human rights and freedoms. Therefore, the state is the one who should always take care and ensure not only in the conduct of legal acts, but special attention should be paid for the full implementation in practice not only to laws that relates to human rights and freedoms, but also other legal acts, starting from the highest legal act-constitution.

And, in the end it is worth mentioning the importance and the role of the permanent survey commission for the protection of the freedoms and rights of citizens.

According to article 76 of the constitution of North Macedonia, the Assembly sets up a permanent survey commission for the protection of the freedoms and rights of citizens. The Commission considers issues regarding: (a) general questions, proposals and opinions regarding the implementation of the provisions of the constitution, laws and other regulations and acts of significance for the realization and protection of civil freedoms and rights; (b) points to the need of adoption of laws, regulations and acts with a view to a more comprehensive protection of civil freedoms and rights; (c) follows, reviews and analyses the implementation of the ratified international acts which regulate the protection of civil freedoms and rights; (d) reviews communications from citizens and takes a position upon them; (e) cooperates with scientific and professional organizations in the filed of protection of civil freedoms and rights; (f) cooperates with relevant foreign and international bodies in the filed of the protection of the civil freedoms and rights and (g) other issues related to the protection of civil freedoms and rights. The Commission cannot exercise investigative and other judicial functions (<https://www.sobranie.mk>)

Conclusions

The efforts for the protect human rights and freedoms have existed since ancient period, as natural rights which are still relevant today. Therefore, states

are the ones who should always be available to ensure and guarantee the full implementation of these rights as the most vital values of the individual and society in general.

In addition to the international protection of human rights and freedoms, their protection is also foreseen by international laws, and that this protection must be provided by various international organizations and institutions for this purpose. However, I can conclude that despite a large number of international laws, respectively international documents, in most cases their nature is more proclaiming rather than obligatory for the states.

Human rights and freedoms, as a constitutional category are obviously fundamental values of the constitutional order of a state, and as mentioned above such a thing is provided in the constitutions of many different states, so they have a central place in the hierarchy of higher acts within states. On the other hand, except to the formal side of the existence of human rights and freedoms, their material side is also very important, and that is why citizens have at their disposal the right to appeal, for any violation that hinders their realization in practice. However, I can say that this is more valid in states which have a more advanced legal system, and which provides opportunities for their realization before the authorized state bodies, or in other words the realization of these rights and freedoms occurs in states with developed democracies, states which have a clearer view of the concept of democracy.

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