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**HUMAN RIGHTS PROTECTION IN THE REPUBLIC OF MACEDONIA BASED ON ETHNICAL BASIS**

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**Abstract:** Each state determines the fundamental values of the constitutional order, values that are very significant and speak sufficiently about the mode of functioning of that state. Among other things, the fundamental values defined in the Constitution of the Republic of Macedonia are the fundamental freedoms and rights of man and citizen. As we see these basic values for Macedonia lie in two corners, both nationally and internationally. The guarantees provided by the state and international law should be looked at from the aspect of providing legal protection if the presumption that these values are inviolable collapses. Article 9 of the Macedonian Constitution guarantees equal treatment of all citizens, and the same speaks about equal treatment both before the constitution and before the laws, regardless of race, national origin, political or religious beliefs. The question is how is the current situation regarding the position of citizens in the Republic of Macedonia! What care does the Republic of Macedonia show in this regard given the significant integration processes for our country! In the final instance, we will address the dilemma regarding the state's responsibility in respecting human rights.

**Keywords:** Human rights, ethnic discrimination, Constitution of Republic of Macedonia, European Convention of Human rights

**1. NATIONAL LEGAL PROTECTION**

In order for every citizen to realize equal rights to protect their political, economic, social, cultural and other rights, the state must provide equal opportunities. Article 50 of the Constitution of Macedonia states clearly the following:

*“Every citizen may invoke the protection of the freedoms and rights set forth in the Constitution, in front of the courts and the Constitutional Court of the Republic of Macedonia, in a procedure based on the principles of priority and urgency.*

*Judicial protection of the legality of special acts of the state administration and of other institutions exercising public authority is guaranteed.”<sup>167</sup>*

On the other side Republic Of Macedonia has a Legal Framework based on specific law that guarantees the minorities right as Law on the use of Language, the Law on the Committee for Inter Community Relations, Law on civil servants, the Law promoting and protecting the rights of persons belonging to communities which represent less than 20% of the population in the Republic of Macedonia, etc. Among other things, the state provides obligation for each citizen to respect the Constitution and Laws. Laws and legal acts should be recognized, otherwise the ignorance of laws undermines the "*ignorantia juris nocet*", in this context it is not only necessary to recognize but also the contribution of each individual individually and jointly to protect and advance human rights as basic values. Respecting the rights of the other speaks a lot about what we are, speaks of how to lead our country, to make political decisions, but it speaks more about our past.

To check the level of respect for rights, we must first analyze various levels of state functioning. Human rights are not treated separately from the current state of functioning of the state, i.e state problems are reflected in individual reports. Is it fair in this century to talk about respecting the human rights, especially the racial, ethnic, and religious grounds? The answer is no, and this is really disappointing. When we talk about rights we refer to justice, but there are other preconditions needed.

First of all justice requires democracy, human rights as a proper subset of the rights founded on justice, so a society that fully protects human rights is not just ipso facto. A conception of human rights is part of an ideal of global public reason, a shared basis for political argument that expresses the common reasoning that adherents of conflicting religious, philosophical and ethical traditions can reasonably be expected to share.<sup>168</sup> That conception includes an account of membership, and human rights are entitlements that serve to ensure the bases of membership and a democracy that justice requires is associated with a demanding conception of equality, more demanding than

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<sup>167</sup> Article 50, Constitution of Republic of Macedonia.

<sup>168</sup> T. Karakamisheva, Human Rights in the Republic of Macedonia, Seen through the lens of the Constitutional and the practice of Democracy, 152. *Revus Journal for Constitutional theory and philosophy of law / Revija za ustavno teorijo in filozofijo prava* 11/2009 Ustavno pravo Zahodnega Balkana.

the idea of membership associated with human rights.<sup>169</sup> As we see, building a state initially requires institutional support; we need awareness, a society without prejudice, equal treatment and non-discrimination.

As the key body for analyzing the level of respect of human rights in the Republic of Macedonia is the Ombudsman. In his latest work report, in addition to other reports, an interesting approach is noted:

“Over the last few years, the control of the Assembly of the Republic of Macedonia on executive power is strengthened when it comes to defining measures for the implementation of recommendations for overcoming the situation found in the Annual Report on the level of ensuring respect, advancement and protection of freedom and citizens' rights, respect of the principle of non-discrimination and fair and adequate representation of community members ... The People's Advocate can not begin with the realization of the competences acquired if initially no sufficient financial means are provided, while the changes made will remain only as a pro-forma implementation of all recommendations by international institutions. Indeed, in addition to the normative prerequisites for the acquisition of the National Institution for Human Rights, practical implementation is needed, which in no case can be realized without the necessary means and human resources”<sup>170</sup>

First, we notice the negligence of state institutions either in institutional or financial support. The second is Macedonia trying to make progress only in terms of meeting the legislative preconditions without paying any attention to their implementation. In terms of discrimination in progress reports, Macedonia is not showing improvements, instead, there is regress. Concretely for 2016 it is said that:

- In the field of protection against discrimination, in contrast to the previous two years, there is an increase of around 20%, with the largest number of complaints related to discrimination in the field of employment;
- Citizens' complaints of discrimination on ethnic grounds have not been reduced, followed by complaints on protection from mobbing in the workplace, and discrimination based on language use.
- EVN and other service providers during the implementation of the disconnection measure from the network, consistently respect the procedure and conditions set forth by law and always approach them equally to all users;
- The largest number of procedures led to ethnic discrimination are complaints that the Ministry of Internal Affairs over the past years did not accept the recommendations of the Ombudsman;
- Situation is still more difficult because the citizens of the Roma community are not allowed to cross the borders of the state. "The latter is related to the discriminatory treatment but also the worrisome is the violation of the right to free movement of citizens.

The discriminatory treatment of employment in state institutions is still apparent, and for 2016 the number of Macedonian employees is 74,2%, Albanians 19,2%, Turks 2,0%, Roma 1,4%, Serbs 1,5% Vlachs 0,7%, Bosnian 0,4%, others 0,7%. If we analyze the data from 2007 we see there is an increase in employment from other nationalities, but again this has been the result of the international pressure for fair representation. Nevertheless, they are still underrepresented in the civil service and other state institutions, including the military, police, intelligence services, courts, national bank, customs service, and public enterprises.

On the other hand, State Department reported that according to the country's most recent census in 2002, the ethnic composition of the population was 64.2 per cent Macedonian, 25.2 per cent Albanian, 3.9 per cent Turkish, 2.7 per cent Roma, 1.8 per cent Serbian, 0.8 per cent Bosnian, and 0.5 per cent others.

“Albanians continued to criticize unequal representation in government ministries and public enterprises; The country's police academy continued to fall short of the number of minority trainees needed to comply with the constitution, which stipulates that the administration reflect the ethnic composition of the state; Albanians alleged the government designed the testing process in the academy unfairly to deny access to minority groups; Albanians complained of cultural biases in the tests. Albanian and other minority representation within the civilian administration of the Ministry of Defense remained low; some elite units of the police and the military had almost no representation of ethnic minorities; Roma reported widespread societal discrimination. NGOs and international experts reported that employers often denied Roma job opportunities, and some Roma complained of lack of access to public services and benefits. The Ministry of Health and the NGO Hera, in partnership with UNICEF, sponsored the Roma Health Mediators Program to provide health, social, and early childhood development services in seven municipalities with high Roma populations<sup>171</sup>. Being discriminated once is a violation, being discriminated against

<sup>169</sup> *ibid.*

<sup>170</sup> Annual report on the degree of provision, respect, advancement and protection of human rights and freedoms 2016, Ombudsman, March 2017, Skopje;

<sup>171</sup> Annual report on the efficiency of the legal protection of human rights in the Republic of Macedonia, Publisher: Macedonian Young Lawyers Association – MYLA Skopje, September 2014 -December 2015, page 30.

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even since your first steps in the neighborhood, exceeds all human limits, and we are not aware about the state criteria for respecting human rights.

The constitution of the Republic of Macedonia as a safeguard mechanism foresees the possibility of claiming the subjects that violate the rights in the courts of the Republic of Macedonia, as well as by the Constitutional Court of the Republic of Macedonia. The party's obligation is to submit its request, but the court decides whether this claim is grounded or not, it decides on the case epilogue. The constitution of the Republic of Macedonia as a safeguard mechanism foresees the possibility of suing the subjects that violate their rights in the Republic of Macedonia as well as by the Constitutional Court of the Republic of Macedonia. The party's obligation is to submit its request, but the court decides whether this claim is grounded or not, it decides on the case epilogue.

Bearing in mind the significance of the Constitutional Court in the legal system of Macedonia, two requests were filed seeking protection of freedom and rights from the Constitutional Court of Macedonia. Both requests were rejected with the same grounds that “not enough facts and evidence submitted which prove discrimination”<sup>172</sup> From the answers provided by the Constitutional Court it is seen that this court did not even take the case under consideration, nor did it attempt to analyze the case, since the parties were given the same answer previously given by the institution from which they requested protection. Several other cases have been answered that the Constitutional Court is not competent to make written decisions regarding the cases. So not a few cases end up with applications or requests to the European Court of Human Rights, where the required protection Macedonia did not guarantee, but did not even consider analyzing the complaints.

## 2. INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

Fundamental rights and freedoms, apart from national law, which in extreme ineffective way protects human rights, are also guaranteed by international law at the time when the state becomes a part of international acts and assumes the obligation for ratification in the legislative institutions.

Freedom of thought, conscience and religious freedom of belief and religious freedoms of citizens are guaranteed by international law, documents as Universal Declaration of Human Rights, Articles 2, 16, 18, the International Covenant on Civil and Political Rights Article 18, the European Convention on Human Rights. The roadmap should be seen in close relation with other EU instruments includes a renewed social agenda: “Opportunities, access and solidarity in 21st century Europe” and in addition to the Communication on non-discrimination and equal opportunities a renewed commitment, as well as the European Pact for Gender Equality, all of which make a specific reference to the three well known EU directives in this field, which have been adopted to give effect to Article 13 of the Treaty of the European Commission: Council Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.<sup>173</sup> These instruments are key areas for identifying objectives and actions which should facilitate their implementation in the Republic of Macedonia.

In addition to the abovementioned constitutional provisions, one should, first of all, recall that it is the Ohrid Framework Agreement which provides a crucial guarantee of the rights of the non-majority communities in the Republic of Macedonia. In terms of policy documents in this context, one should take into account the Strategy for Equitable Representation of Ethnic Communities in the Public Sector and the Strategy for Development of Broadcasting Activity in the Republic of Macedonia for the period 2007-2012 and the Action Plan for its Implementation.<sup>174</sup> In conclusion, one should stress that it is the Council of Europe’s Framework Convention for Protection of National Minorities, which is also an integral part of the national legislation in this field, and which provides one of most important inputs for further progress of the Republic of Macedonia.

## 3. CONCLUSION

State policy plays an extremely important role in regard to respecting human rights. It creates priorities while citizens support, then we find that the majority in the Republic of Macedonia is adapting this negligent situation to human rights, and this is due to the low level of civic awareness, the wrong priorities, and above it all lack of leadership by people who will stop the practice of adopting legal rules from foreign states and make efforts to enforce current laws. Laws are brought by the state, delegated by citizens to citizens, bad laws do not exist, but

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<sup>172</sup> Ibid, page 34.

<sup>173</sup> Human Rights Legal and Policy Action Framework Focusing on Social Inclusion and Poverty Reduction, Ludwig Boltzmann Institute of Human Rights, Macedonian Helsinki Committee for Human Rights – MHC, February 2011, page 25.

<sup>174</sup> *ibid*, 41.

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there are people who are uninformed and unprepared for responsibilities in state functions, to establish justice, to promote the needs of citizens in accordance with the requirements for respecting the human rights. The rule of law requires a democratic state, a state where human rights are respected, where the laws are being enforced, and national courts are the protector of the rights and interests of citizens and not of state institutions. Citizens are those who can demand responsibility from the state that state policy is consistent with their demands, but the Republic of Macedonia has more problems than we think. While our problem are our rights, Macedonia is concerned about its integration into Euro-Atlantic structures. The current situation in respect of human rights and minorities in particular has never been so alarming, so I consider that another priority for Macedonia rather than the implementation of laws and defense mechanisms does not exist!

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