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Human Rights in the Republic of Macedonia

Seen Through the Lens of the Constitution and the Practice of
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Human Rights in the Republic of Macedonia

Seen Through the Lens of the Constitution and the Practice of Democracy

Avtorica dr. Tanja Karakamiševa v članku Človekove pravice v Republiki Makedoniji obravnava varstvo pravic in svoboščin v veljavni ustavni ureditvi Makedonije. Posebej se posveča vprašanju demokratičnosti ureditve in prakse na tem področju. V drugem delu razprave govori o vzrokih in posledicah eskalacije mednacionalnih sporov in izbruha nasilja, ki so pripeljali do ustavnih sprememb glede varstva pravic narodnih skupnosti. V sklepnem delu avtorica analizira uveljavljanje mednarodnih standardov varstva pravic v Makedoniji, ki si prizadeva postati članica Nata in Evropske unije. Pri-spevek objavljamo v angleškem izvirniku.

Ključne besede: Makedonija, pravice in svoboščine, mednacionalni konflikti, ustavni razvoj, varstvo pravic na mednarodni ravni

1 IS THERE A HUMAN RIGHT TO DEMOCRACY?¹

Bearing in mind the opinion of Joshua Cohen stated in his paper “Is there a Human Right to Democracy?”, *the answer is 'no'*. The author has elaborated this conclusion on the basis of the *five interconnected claims* which have played an important role:

- justice requires democracy;
- human rights are a proper subset of the rights founded on justice: so a society that fully protects human rights is not *ipso facto* just;
- 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

¹ See: Christine Sypnowich, *The Egalitarian Conscience*, 11 - Sypnowich-chap 11, Joshua Cohen, »Is there a Human Right to Democracy?«, 226.
See: http://iis-db.stanford.edu/pubs/21328/is_there_a_human_right_to_democracy.pdf
Bearing this conclusion in mind, I would like to point out my opinion. There can be no universal rights without democracy, but democracy is not a universal right; it is a human project which must be earned.

that adherents of conflicting religious, philosophical and ethical traditions can reasonably be expected to share;

- that conception includes an account of membership, and human rights are entitlements that serve to ensure the bases of membership; and
- the democracy that justice requires is associated with a demanding conception of equality, more demanding than the idea of membership associated with human rights.

The author has concluded that democracy is a *demanding political ideal*. The thesis that there is a human right to democracy threatens to strip away its demanding substances.

On the other hand, the United Nations Universal Declaration of Human Rights² and the ICCPR³ in several Articles *have defined democracy as a universal human right*, or rather that “everybody has the right to democracy”. Article 21 of the Declaration has enshrined the principle of “pluralist democracy”, which provides that:

1. Everyone has the right to take part in the government of their country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in their country.
3. The will of the people⁴ shall be the basis of the authority of government; this will of the people shall be expressed in periodic and genuine elec-

2 *Universal Declaration of Human Rights*, General Assembly Resolution 217 A (III), 10 December 1948, <http://www.unhchr.ch/udhr/lang/eng.htm>.

3 The differences between the two articulations in the UDHR and ICCPR are very interesting. Article 21 of the Declaration can be read syllogistically to mean that the basis of governmental authority is such popular will as has been expressed in the elections, whereas non-liberal regimes would prefer it to mean that the popular will is (in some abstract sense) the basis of - and therefore expressed by - governmental authority, and is also expressed in elections. The Covenant version simplifies the matter by leaving undefined the relationship, if any, between not only authority and elections, but also between authority and participation.

4 From my point of view, »the will of the people« is an abstraction which does not have an observer-independent existence. Only the wills of individuals exist and these are never the same for all individuals. How to aggregate these individual wills and how to safeguard the rights of all kinds of minorities, namely all those who are not in favor of a decision which is supported by the majority? What if these decisions gained their support through blatant demagoguery? Recent history is full of examples of undemocratic objectives and totalitarian regimes which, at times with some justification, claim to be executing the will of the people. The only »will of the people« which is not a prelude to a totalitarian society is the democratic principle. Gregory Fox and Brad Roth have made this point regarding Article 21: »Article 21 of the UDHR, in a manner strikingly dissimilar to that of the document's other Articles and that of the ICCPR, speaks not merely of the individual right to take part in government, but also of the principle that '(t)he will of the people shall be the basis of the authority of government', and that »this will shall be expressed in periodic and genuine elections«. Implicitly, Article 21 links governmental legitimacy to respect for the popular will. Yet this linkage does not appear in the subsequent, and legally binding, International Covenant on Civil and Political

tions which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures⁵.

The rights enshrined in the International Covenant on Economic, Social and Cultural Rights and subsequent human rights instruments covering group rights (e.g. indigenous peoples, minorities, people with disabilities) are equally essential for democracy as they ensure an equitable distribution of wealth, as well as equality and equity in respect to access to civil and political rights. Democracy⁶ is the voluntary association of people wishing to live in a healthy society that respects their right to their own opinions, beliefs and interests, a condition which requires that in terms of decision making, all are considered equal (subjective equality). They will have to accept all decisions which meet that principle or the principles which can be deduced from it, or which are taken resulting from a procedure which has been established under such decisions. A basic principle which is unacknowledged in the Declaration is that with each right comes a duty.

Universal rights imply universal responsibility of all those able to shoulder it to ensure that the conditions necessary to meet these rights are fulfilled. *Democracy is identified by certain key principles, and by a set of institutions and practices* through which these principles are realized. Its starting point, like that of human rights, is the dignity of the individual person. However, democracy also has a specific focus - that of decision making about the rules and policies for any group, association or society as a whole, as well as a distinctive concep-

Rights (ICCPR). Article 25 of the Covenant speaks of the right to participate in public affairs - including the right to genuine and periodic elections - but it does not purport to condition governmental authority on respect for the will of the people. See: *International Covenant on Civil and Political Rights*, signed 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.

See: Gregory Fox and Brad Roth, *Democracy and International Law, Review of International Studies* (2001) 27, 335, and also Henry J. Steiner, *Political Participation as a Human Right, Harvard Human Rights Year Book* (1998) 77, 87–88, 90, 93.

- 5 This paragraph of Article 21 is actually the link between democracy and human rights.
- 6 The word democracy itself comes from the Greek word meaning »rule of the people«. The Athenian conception of democracy was that a select group, the »citizens«, free-born men, would rule the rest. This was essentially representative democracy in which all heads of families would represent everyone else in their household. When democracy is defined as »rule of the people«, it is much easier to see democracy as a universal concept, but human rights and democracy have to be elaborated as distinct concepts. In the Western mind however, they are intertwined. A convenient shorthand of many Americans is that »human rights« include the ones mentioned prominently in the Declaration of Independence (life, liberty and the pursuit of happiness) and those enumerated in the Bill of Rights. The American Constitution and Bill of Rights say very little about democracy or elections but quite a lot about the rights of individuals and states. On the other hand, the Bill of Rights was written to ensure that the individual was protected from the government. According to the European Court of Human Rights, »democracy appears to be the only political model contemplated by the ECHR and, accordingly, the only one compatible with it«.

tion of citizens, not only as the bearers of rights and responsibilities, but as active participants in the collective decisions and policies which affect their lives.

The core principles and institutions of democracy are:

- a) Popular control and political equality realized through a framework of guaranteed citizen rights,
- b) Representative and accountable political institutions subject to electoral authorization⁷, and
- c) An active civil society.

Yet, the essential elements of democracy are:

- a) Respect for human rights and fundamental freedoms,
- b) Freedom of association,
- c) Freedom of expression and opinion,
- d) Access to power and its exercise in accordance with the rule of law,
- e) The holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people,
- f) A pluralistic system of political parties and organizations,
- g) The separation of power,
- h) The independence of the judiciary,
- i) Transparency and accountability in public administration and
- j) Free, independent and pluralistic media.

All the UN human rights texts embody a commitment to a democratic form of government and, according to A. W. Brian Simpson⁸, reflect four ideas:

- a) The first is that government should be based on the will of the people,
- b) The second is that all appropriately qualified citizens should be able to participate in the government of their country,
- c) The third is that the will of the people should be ascertained through periodic elections and
- d) The fourth is that elections should be free elections, with universal suffrage and a secret ballot.

Therefore, the basic principles of democracy are that the people have the right to a controlling influence over public decisions and decision makers, and that they should be treated with equal respect and of equal worth in the context of such decisions.

7 »Democracy cannot be understood in terms of some unmediated notion of popular will. The aspirations of the multitude inevitably conflict, which is precisely why the practice of politics has emerged. The aggregation of interests and opinions implicit in the concept of a democratic will can be recognized only when absorbed into some representative form«. See: Martin Loughlin, *The Idea of Public Law*, Oxford, Oxford University Press, 2003, 112.

8 See: A W Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*, Oxford, Oxford University Press, 2001, 757.

Today, the concept of a democratic society where democracy could be implemented “is acknowledged as a fundamental feature of the European public order”.⁹ That is apparent, firstly, from the Preamble of the ECHR, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realization of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights. The phrase “democratic society” also appears in Articles 6, 8, 9, 10, 11 and Article 2 of Protocol 4 of the European Convention of Human Rights¹⁰. Also, the European Union is high on rhetoric with regard to democracy and human rights promotion. The Nice Treaty, as well as the recently agreed Lisbon Treaty, extends the objective of promoting democracy and human rights and fundamental freedoms inside and outside the Union. A ‘Joint Statement on EC Development Policy’ by the Council of Ministers and the European Commission incorporated the promotion of human rights, democracy, the rule of law and good governance as an integral part of development cooperation, as a “new framework for the European Commission’s activities in support of human rights and democratization”.¹¹

From the above mentioned, democracy and human rights cannot be treated as a unitary and indivisible concept but *should be considered as separate and distinct concepts which are very much intertwined*. They cannot function separately. They need each other and reinforce each other. Where there is democracy, there are also human rights and vice versa. A democracy without human rights is not an ideal democracy, because it cannot function adequately. Human rights without democracy are not complete.

On one hand, the values of freedom, respect for human rights and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy, but on the other hand, democracy provides the natural environment for the protection and effective realization of human rights.

Democracy unsupported by respect for human rights cannot in itself guarantee observance of human rights. Also, democratic deficits and weak institutions are among the main challenges to the effective realization of human rights.

9 See for more details: Philip Leach, *Taking a Case to the European Court of Human Rights*, Oxford, Oxford University Press, 2nd edition, 2005, 161.

10 Article 6, right to fair trial, Article 8, right to respect for family and private life, Article 9, freedom of thought, conscience and religion, Article 10, freedom of expression, Article 11, freedom of assembly and association, and Article 2 of Protocol 4 of the European Convention of Human Rights, freedom of movement.

11 See: Gordon Crawford, *Evaluating EU promotion of human rights, democracy and good governance: towards a participatory approach*, University of Leeds, <http://www.edpsg.org/Documents/Dp22.doc>.

Democracy is the application of human rights to the field of government. Human rights are democratic rights because they are necessary for democracy, just as democracy is necessary for human rights. But human rights are not just a necessary prerequisite for democracy. They bring about democracy. We can talk about human rights only in terms of a particular predefined environment. In today's world, the most fundamental environment is democracy, and hence the sort of relationship human rights share with democracy is of vital significance.

2 THE DEMOCRATIC CONTENT OF HUMAN RIGHTS IN THE MACEDONIAN CONSTITUTION - LEGAL AND POLITICAL PERSPECTIVE

The Republic of Macedonia has had an interesting 18 years of development of its democratic political and constitutional system. The Republic of Macedonia has passed through *two important phases in its modern history of independence*, which have actually made tremendous changes to political institutions and to political life.

The first phase began in 1991 when the Constitution was adopted¹² and lasted until the so-called inter-ethnic conflict occurring in 2001. The escalation of the violence emerged in the context of several significant landmarks that were to pave the way for a considerably brighter future for the country.

First, ethnic violence emerged after the Stabilization and Association Agreement with the EU had been signed¹³. This agreement opened up a variety of issues

12 The Constitution of the Republic of Macedonia has been pronounced in the *Official Gazette of the Republic of Macedonia* 52/1991 from 22 November 1991, when it came into legal force and practice in the Macedonian legal system. Until now, the Constitution has had 31 amendments to its content.

13 On November 24, 2000 the SAA is initialed at the Zagreb Summit, making the Republic of Macedonia the first state in the region to sign the agreement. Immediately afterwards, in December, Exceptional Trade Measures come into force on the basis of the special Regulation from the Council from September 2000, for the countries of the SAP introducing and providing asymmetrical trade benefits to Macedonia, as well as decision on eligibility of the country to use the CARDS Programme 2002-2006. Finally, Macedonia and the EU signed the SAA in Luxembourg on April 09, 2001 which entered into force on April 01, 2004. The Agreement covers areas of political dialogue; regional cooperation, aspects of the four freedoms and creation of a free trade area by 2011 for industrial products and most agricultural ones, approximation of the legislation to the Community *acquis* specifying some very precise rules in the field of intellectual property rights, competition and public procurement, broad spectrum of different forms of cooperation in Community policies, justice and home affairs. See: Stabilization and Association Agreement between the European Communities and their Member States, for one part, and the former Yugoslav Republic of Macedonia, for the other part, *Official Journal of the European Union*, Vol. 47, 20 March 2004, 13–81.

that were to lead to a complete harmonization of our country's standards with those of the EU in all aspects, particularly in the field of the practical realization of human rights. Such harmonization would influence the status of the collectivities and the building of the democratic capacity of institutions, which would have immediate impact on the fight against corruption and organized crime.

The second landmark of the time, prior to the escalation of violence, was the signing of the agreement with the former Federal Republic of Yugoslavia concerning the border between the two countries. This practically closed the last remaining issue of international borders with our neighbors.

The third issue I find important and which was supposed to resolve some open issues was the then forthcoming population and household census and the concrete preparations for it. It was supposed to be carried out in accordance with international standards, in cooperation with the international community and under its supervision. The census was expected to take the dilemmas regarding the ethnic structure of the Republic of Macedonia off the agenda and prevent future politically-motivated abuse of statistics which had previously occurred.

For some political structures in the Republic of Macedonia, these landmarks were too dangerous to be allowed to happen. It was too obvious that after the successful completion of these points, the Republic of Macedonia would become a well organized country with legal order and legal rules. But, for some political subjects, this was the worst scenario that could occur. Better conflict than an organized Republic of Macedonia, were the thoughts of some leaders. The conflict had begun.

The second phase started after the peaceful resolution of the inter-ethnic conflict and adoption of the political document which was the product of negotiations with the four most significant political parties (two ethnic Macedonian and two ethnic Albanian) with the direct involvement of the EU and USA representatives as guarantors. This political document is commonly known as the Ohrid Framework Agreement concluded on August 13, 2001.

Currently, the Macedonian Constitution is structured in two parts, the preamble and the normative part, which itself is divided into nine sections: basic provisions, fundamental rights and freedoms of individual and citizen, organization of the state, constitutional court, local self-government, international relations, defense and state of war and emergency, changes in the constitution and final clauses. The interest here is directed to the conceptualization of citizenship rights and freedoms, as well as their obligations.

The Macedonian Constitution grants individual as well as collective rights to communities, organized on ethnic principle. While this duality was affirmed within the preamble and in certain Articles of the 1991 Constitution, the amendments of 2001 have reinforced the ethnic component in the concep-

tualization of collective rights. The term nationalities has been substituted with communities, further guarantees have been directed constitutionally to communities (ethnic, linguistic and cultural) and protective mechanisms in the voting procedures and measures for proportional and equitable representation¹⁴ of the communities within public offices have been asserted with the constitutional amendments. Collective rights are included in the basic provisions and fundamental rights and freedoms.

I would like to mention that even before the concluding of the Ohrid Agreement, the Macedonian Constitution had itself contained a comprehensive catalogue of fundamental rights starting from Article 9 to 48, including civil, cultural, economic, political and social rights and freedoms for all individuals and national minorities. But, in some opinions, the Ohrid Agreement was a response to the inequalities embedded in the system beforehand, and for others, it was a peaceful agreement that was to end the violence, signed under the threat of terrorism and international intervention. It proclaims its aim to strengthen the civic nature of the state-liberal approach to citizenship and therefore strong civic rights and duties, although it has in reality embedded some of the features of the power-sharing approach, precisely consensus democracy.

The Ohrid Framework Agreement secured group rights for specified ethnicities that are not in the majority position, as well as establishing strong provisions that would eliminate the possibility of permanent exclusion of the latter,

14 The Republic of Macedonia has ratified the Framework Convention for the Protection of National Minorities with a declaration introducing restrictive interpretations of the term 'national minorities', which has not been defined in the Convention. It must be noted that according to some experts the circumstances allowing for a large maneuvering space are among the weaknesses of the Framework Convention. On the contrary, others claim that this flexibility could lead to a much more efficient implementation and monitoring than is the case with other human rights instruments.

See for more details: Stefan Troebst, Preface and Acknowledgements, Implementing the Framework Convention for the Protection of National Minorities, *ECMI Report* No. 3, Flensburg, European Centre for Minority Issues, August, 1999.

Another crucial aspect should also be taken into consideration: the desire of the Republic of Macedonia to become a member of the EU and NATO. The EU especially emphasized in its Copenhagen political criteria its interest in the protection of national minority rights, and the Framework Convention is regarded by all involved parties as appropriate proof of individual performances in this sensitive domain. The European Commission issued the opinion on the candidacy of Macedonia for EU membership, recommending granting candidate status to the country at the beginning of November 2005. Following the opinion of the Commission, on December 17, 2005, the European Council in Brussels decided to grant Macedonia the status of a candidate country for EU membership. The adopted membership-criteria became the basis of negotiations and pre-accession strategy with the applicant countries, the last condition implying full acceptance of the *acquis communautaire*, including participation in all three pillars established by the Treaty on EU.

See: Council of the European Union. Brussels European Council 15/16 December 2005 Presidency Conclusion., http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/87642.pdf.

through boosting their political representation at the state and local levels, but also elimination of the exclusive ethnic Macedonian's state ownership¹⁵.

Special attention within the Ohrid Agreement was given to the decentralization of the country, as a mechanism for strong political participation of the minorities, as well as reforms in the state administration (proportional representation of all ethnicities, especially in the police), double majority principle for adoption of the key decisions in the Parliament, use of minority languages, and state-funded university education in the Albanian language.

It is clear that the Ohrid Framework Agreement was brought as a consequence of a grave security crisis that the Republic of Macedonia fell into after ten years of virtual life. Macedonia's society was very fragile in the moment of signing the Agreement, which might have caused the emergence of parallel institutions and parallel security structures. The implementation of the Framework Agreement was taken in times of deregulated and wasted institutions in a partisan, criminal and militarized context.

The Republic of Macedonia has implemented the Agreement into its constitutional and legal amendments. *The main changes to the Constitution* were made in the field of ethnic rights and their protection by the institutions.

For example, in the units of local self-government where at least 20 percent of the population speaks a language other than the official Macedonian language, that language and its alphabet shall be used as an official language in addition to the Macedonian;

- The ethnic communities are equitably represented in all public bodies at all levels and in other areas of public life;
- The question of abovementioned double majority for the laws which directly affected questions of culture, use of language, personal documentation, use of symbols etc.;
- Assembly elects the Public Attorney with a double majority;
- Within the Assembly functions the Committee for Inter-Community Relations, where seven members are from the Macedonian MPs and seven from Albanian MPs. Others are elected to represent other ethnic communities: Turks, Vlachs, Roma, Serbs and Bosniaks.

In the field of human rights, the Republic of Macedonia respects not only ethnic (collective) rights, but also individual rights and freedoms of all citizens. The Republic of Macedonia has ratified almost all the relevant human rights treaties; so, as with many other countries in the world, the key challenge lies again in the implementation and operationalization of these standards, making them work in practice. All so-called "core human rights treaties" have

15 See the full text of the Ohrid Framework Agreement in the official website of the President or of the Government of the Republic of Macedonia; www.vlada.mk or www.president.gov.mk.

been ratified by the Macedonian authorities. It should be noted that prior to Macedonia's independence in 1991 most of the conventions were already in force within its territory, as the former Yugoslavia had been state party to them.¹⁶

By way of succession to the former Yugoslavia, the Macedonian Government took over responsibility for its international relations effective 17 September 1991. Also, the Republic of Macedonia was admitted as a member to the United Nations by General Assembly Resolution A/RES/47/225 of 8 April 1993, following the dissolution of the former Yugoslavia and became a Member of the Council of Europe on 9 November 1995.

Convention	Signature	Ratification/ Succession/ Accession	Entry into Force
International Covenant on Economic, Social and Cultural Rights (CESCR) 1966		18/01/1994 (Suc)	17/09/1991
International Covenant on Civil and Political Rights (CCPR) 1966 (competence for inter-state complaints (Art. 41) not accepted)		18/01/1994 (Suc)	17/09/1991
Optional Protocol to the CCPR 1966		12/12/1994 (Acc)	12/03/1995
Second Optional Protocol to ICCPR 1989		26/01/1995 (Acc)	26/04/1995
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) 1984 (competence for inquiry procedure, individual/inter-state complaints (Arts. 20, 21, 22) accepted)		12/12/1994 (Suc)	17/09/1991
Optional Protocol to CAT 2002
Convention on the Rights of the Child (CRC) 1989		2/12/1993 (Suc)	17/09/1991

¹⁶ For example, the process of ratification of CERD was finished on 2 October 1967, for CCPR on 2 June 1971, for CESCR on 2 June 1971, for CEDAW on 26 February 1982, for CAT on 10 September 1991 and for CRC on 3 January 1991.

Convention	Signature	Ratification/ Succession/ Accession	Entry into Force
Optional Protocol to the CRC on the involvement of children in armed conflict 2000	17/07/2001	12/01/2004	12/02/2004
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography 2000	17/07/2001	17/10/2003	17/11/2003
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979		18/01/1994 (Suc)	17/09/1991
Optional Protocol to CEDAW 1999 (no opting-out of inquiry procedure, Art. 10)	03/04/2000	17/10/2003	17/1/2004
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965 (competence for individual complaints (Art. 14) accepted)		18/01/1994 (Suc)	17/09/1991
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) 1990	....	....	....

Source: OHCHR Treaty Database, www.unhchr.ch/tbs/doc.nsf

The Republic of Macedonia has ratified the following so-called Fundamental ILO Conventions¹⁷:

- Convention No. 87 and No. 98 on Freedom of Association and Collective Bargaining ratified on 17/11/1991,
- Convention on Elimination of Forced and Compulsory Labor No. 29 on 17/11/1991 and No. 105 on 15/07/2003,
- Convention on Elimination of Discrimination in Respect of Employment and Occupation No. 100 on 17/11/1991 and No. 111 on 17/11/1991, and
- Convention for Abolition of Child Labor No. 138 on 17/11/1991 and No. 182 on 30/05/2002.

¹⁷ See: ILOLEX Database of International Labor Standards, <http://www.ilo.org/public/english/standards/norm/index.htm>

Concerning relevant UNESCO Conventions, the Republic of Macedonia has ratified the following treaties¹⁸:

- Convention Against Discrimination in Education 1960 on 30/04/1997 by succession,
- Convention on Technical and Vocational Education 1989 and
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005.

Establishing binding legal obligations, the Republic of Macedonia is a state party to the following treaties established under the auspices of the Council of Europe relevant for human rights protection¹⁹:

	Signature	Ratification/ Succession/ Accession	Entry into Force
ECHR 1950	9/11/1995	10/04/1997	10/04/1997
Protocol to the ECHR 1952	14/06/1996	10/04/1997	10/04/1997
Protocol No. 2 to the ECHR, conferring upon the European Court of Human Rights competence to give advisory opinions 1963	9/11/1995	10/04/1997	10/04/1997
Protocol No. 3 to the ECHR, amending Articles 29, 30 and 34 of the Convention 1963	9/11/1995	10/04/1997	10/04/1997
Protocol No. 4 to the ECHR, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto 1963	14/06/1996	10/04/1997	10/04/1997
Protocol No. 5 to the ECHR, amending Articles 22 and 40 of the Convention 1966	9/11/1995	10/04/1997	10/04/1997
Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty 1983	14/06/1996	10/04/1997	10/04/1997
Protocol No. 7 to the ECHR 1984	14/06/1996	10/04/1997	1/07/1997
Protocol No. 8 to the ECHR 1985	09/11/1995	10/04/1997	10/04/1997

18 Source: UNESCO Legal Instruments section, www.unesco.org.

19 Source: Council of Europe Treaty Office, <http://conventions.coe.int>.

	Signature	Ratification/ Succession/ Accession	Entry into Force
Protocol No. 11 to the ECHR, re-structuring the control machinery established thereby 1994	09/11/1995	10/04/1997	01/11/1998
Protocol No. 12 to the ECHR 2000	04/11/2000	13/07/2004	01/04/2005
Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances 2002	03/05/2002	13/07/2004	01/11/2004
Protocol No. 14 to the ECHR, amending the control system of the Convention 2004	15/09/2004	15/06/2005	
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987	14/06/1996	06/06/1997	01/10/1997
Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1993	14/06/1996	06/06/1997	01/03/2002
Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1993	14/06/1996	06/06/1997	01/03/2002
European Social Charter 1961	05/05/1998	31/03/2005	30/04/2005
Additional Protocol to the European Social Charter 1988	05/05/1998	....	....
Protocol amending the European Social Charter 1991	05/05/1998	31/03/2005	
Additional Protocol to the European Social Charter Providing a System of Collective Complaints 1995	.....	.....	.....
European Social Charter (revised) 1996	.....	.....	.....
European Convention on the Adoption of Children 1967	03/04/2001	15/01/2003	16/04/2003

	Signature	Ratification/ Succession/ Accession	Entry into Force
European Convention on the Legal Status of Children born out of Wedlock 1975	03/04/2001	29/11/2002	01/03/2003
European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children 1980	03/04/2001	29/11/2002	01/03/2003
European Convention on the Exercise of Children's Rights 1996	03/04/2001	15/01/2003	01/05/2003
Convention on Contact concerning Children 2003	.....	.....	.....
European Charter for Regional or Minority Languages 1992	25/07/1996	.....	.....
Framework Convention for the Protection of National Minorities 1995	25/07/1996	10/04/1997	01/02/1998
Council of Europe Convention on Action against Trafficking in Human Beings 2005	17/11/2005	....	2009

According to Article 118 of the Constitution, the international agreements ratified in accordance with the Constitution are part of the domestic legal order and cannot be changed by law. In this matter, in the hierarchical position of the legal norms, international agreements take precedence over domestic laws.

The international agreements are sources of law, which means that individuals or other subjects in the law may automatically invoke the provisions of the international agreements and the courts and administrative agencies are under the obligation to apply them directly. The human rights agreements have a stronger legal effect than the other international agreements.²⁰

²⁰ This is unambiguously inferred in Article 8 (paragraph 1, item 1) from the Constitution of the Republic of Macedonia, which stipulates the respect of the basic human and civil freedoms and rights, recognized in the international law and laid down in the Constitution, as one of the highest values of the constitutional order of the Republic of Macedonia.

3 CONCLUSION

The Macedonian legal system, as already mentioned, belongs to the category of states where continental law is applied and where the main sources of law are the Constitution, the national laws and the international agreements concluded and ratified according to law.

The international law, according to the Vienna Convention on the Law of Treaties (1969), has in principle its priority with respect to national laws and is based on the fundamental principles of international law stated in Article 26 (*Pacta sunt servanda*), according to which “every treaty in force is binding upon the parties to it and must be performed by them in good faith” and Article 27 that “excludes the invocation of provision of internal law as justification for a failure to perform a treaty of the Convention”²¹.

The Republic of Macedonia as a member of the United Nations and of the Council of Europe has ratified numerous international agreements and committed itself through the proper Constitution to conform to the principles stated in these agreements. Respect for the generally accepted norms of international law is stated as one of the fundamental principles of the constitutional order (Art. 8) and the international agreements that are ratified in conformity with the Constitution are an integral part of the internal legal order and cannot be changed by law (Art. 118).

In the evaluations which are made by the European Council, the country's human rights record is considered as generally satisfactory, with remarks that they must improve on a daily basis in the field of ethnic issues, Albanian language education (which has practically been achieved), minority representation in the police and Defense Ministry and the need to design policies that promote ethnic tolerance and integration following European standards. As is stated in the National Human Development Report, “the pragmatic West anyway keeps the positive evaluations despite the weak institutions and no transformations within the system, thus being completely aware that it can be much worse than just having a formally democratic country”.

The European Commission has already made some conclusions discussing the political criteria and has evaluated the political institutions of the country as stable and democratic, functioning properly, respecting the limits of their competence and co-operating with each other. In relation to the Ohrid Framework Agreement, it considers further effective implementation as crucial for confidence and consolidation of achievements. Rule of law is seen as gradually consolidated, however the police reforms should progress further in order to prevent possible escalation of incidents, while the efficiency of the judiciary needs to be improved.

21 Vienna Convention on the Law of Treaties, 1969, see: <http://www.un.org>.

The protection of fundamental rights shows no major problems and specifically the area of minority rights, encompassing both changes to legislation as well as their implementation, is on a high level. In relation to regional cooperation, the name issue with Greece requires sustained efforts as it should be resolved in the interest of good neighborly relations.

Predstavitev avtorice

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