

Guaranteeing and Protection of Human Rights and Fundamental Freedoms in Kosovo

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Abstract:

Human Rights describes a concept, which it belongs to all people from the birth.

On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act, the Assembly called upon all Member countries to publicize the text of the Declaration and to try to spread it, to be presented, read and explained, especially in schools and other educational institutions in all countries and states without considering their political status. The General Assembly declared this statement as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, always given this Statement, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure recognition and enforcement of their universal and true, both among the peoples of Member States themselves and among the peoples of territories under their administration. This statement highlights the universality, the character indivisible and inalienable rights and freedoms, international standards of human rights; international law of human rights; ancestral rights; institutions and procedures for the development and protection of human rights.

Key words: Freedom, Fairness, Declaration, protection.

Introduction

In the Republic of Kosovo, the fundamental rights and freedoms are protected by the Constitution.

General Principles of the Constitution of the Republic of Kosovo:

1. The fundamental rights and freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms provided in this Constitution.
3. Everyone has to respect the human rights and fundamental freedoms of others.
4. The rights and fundamental freedoms described in the Constitution are also valid for legal persons, to the extent applicable.

Direct application of International Agreements and Instruments.

The rights and freedoms guaranteed by international agreements and instruments in addition, are guaranteed by the Constitution, directly applicable in the republic of Kosovo and have priority in case of conflict, over the provisions of other laws and public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Convention on Civil and Political Rights and its Protocols;
- (4) Framework Convention of the Council of Europe for the Protection of National Minorities;
- (5) Convention on the Elimination of all forms of Racial Discrimination;

- (6) Convention on the Elimination of all forms of Discrimination against Women;
- (7) Convention on the Rights of the Children;
- (8) Convention against Torture and other Cruel, Inhuman and Degrading.

Ombudsperson in Kosovo

The Ombudsperson Institution in Kosovo (OIK) is an independent organization, which has a mandate to examine issues relating to alleged violations of human rights or abuse of authority by public institutions in Kosovo. The Institution conducts investigations, issues reports and provides legal services and public advocacy.

The institution is mandated to monitor the policies and laws adopted by local authorities to ensure that they respect the standards of human rights and good governance. Although it monitors compliance of the judiciary with the standards of human rights, the Institution of Ombudsperson is not a substitute for courts and cannot directly investigate crimes, change court decisions, or issue binding decisions.

In cases where the institution considers that a practice or general situation affects not just one person or a group of them, but the public as a whole, and at the same time not in accordance with international standards for human rights, it issues a Special Report

How the Ombudsperson helps?

If investigators of the institution finds that there are violations of human rights, institution representatives can seek solutions through various channels. The Ombudsperson Institution can mediate between complainants and local authorities, recommend actions to local authorities, issue public reports, or raise its concerns through the media.

In cases dealing with complaints of Kosovans against any public authorities outside Kosovo, the Ombudsperson Institution may offer its services offering advice or other support. It may also refer cases to the competent Ombudsman or any other institution of the nature in the respective state in question. The Ombudsperson Institution does not deal with disputes between private individuals.

The Ombudsperson Institution receives and investigates complaints from anyone in Kosovo who believes that his/her rights have been violated by a local public authority in Kosovo. All the services are free.

Legal Basis

The Ombudsperson Institution in Kosovo (OIK) was established in 2000 by UNMIK Regulation no. 2000/38, which provided the institution with a mandate to investigate complaints against UNMIK and local public administration.

Protection of freedoms

Protection of freedoms and human rights are the main pillar in the normal functioning of democratic states because from the respect for the rights and freedoms development directly depends on the political, economic and legal democratic state. This is proved by euro states - Western (Scandinavian) where respect for the freedoms and human rights has reached the zenith and are most powerful economic, social and democratic.

Protection of freedom and human rights has come as a result of the influence of many different factors but the most important is the infliction of violence or unjust wars that have occurred throughout human history periods.

As a general were vulnerable category of elders, women and children as the natural aspect these are subordinated to another class who have the potential to cause catastrophic wars human dimensions. In those cases when greatly are violated the rights and freedoms we have initiatives to protect them and

the history of humanity recognizes some important documents on the protection of freedoms and human rights:

1. Code of Hammurabi (2130-2088 BC) Babylon (old as humanity);
2. Quran and "Hadith" (moral and political virtues);
3. Christian Law (canon law);
4. Great Charter of Liberties (Carta Magna Liberate - 1215);
5. Charter of Human Rights (Bill of Rights in 1689);
6. The Declaration of Independence of the United States in 1776;
7. Declaration of the Rights of Man and the Citizen in 1789;
8. The French Revolution with the slogan "Liberty, Equality, Fraternity";
9. Universal Declaration of Human Rights proclaimed on 10 December 1948;
10. European Convention for the Protection of Human Rights and Freedoms, 1950;
11. The International Covenant on Civil and Political Rights;
12. International Covenant on Economic, Social and Cultural Rights, etc.

International legal acts which have established international and national institutional stability are: the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Freedoms.

Guaranteeing Fundamental Freedoms and Human Rights with the Universal Declaration of Human Rights

The adoption of the Universal Declaration of Human Rights on 10 December 1948, marks one of the most important events that occurred after the disaster of World War II.

By analysing the importance of human rights and fundamental freedoms, commitment secular to guarantee and protect them, we can conclude that the Universal Declaration of Human Rights - UDHR, has its roots back in early antiquity along the whole wide world history to its adoption, especially including catastrophic events that occurred in World War II.

This war and its enormous atrocities, provided the basis to draft the Declaration and approve it. Meanwhile relying on the effects of disasters that left the war, was laid the foundation for a broad consensus on the need of building a new legal order of global character.

In this regard one of the most meaningful vision ideas on new international legal order was the message of US President Franklin D. Roosevelt sent to Congress, which referred four freedoms, which was expected to be the purpose of the new world order, which should be built after the disaster of the war, these four freedoms are: freedom of expression, freedom of belief, freedom from poverty and freedom from fear.

Prior to the enactment of the UDHR, there was some disagreement between the states regarding how to name the document Declaration or the Convention and so the states were divided into two groups, where the representatives of China, the USSR, USA and Yugoslavia were the biggest supporters of this document on human rights called Declaration, which according to them was not formally binding, while the other group representatives from Australia, India and the UK propose that the document for human rights to be called the Obligatory Convention.

So this shows that the problem was of international political character. After all this, and finally after three years from the adoption of the United Nations Charter, the General Assembly of the United Nations adopted and proclaimed as the General Declaration of Human Rights (10 December 1948). This Declaration was adopted unanimously after 48 states have voted; against there was none, while 8 countries had abstained

(USSR, Poland, Czechoslovakia, Ukraine, Belarus, Yugoslavia, South Africa and Saudi Arabia).

However this statement at its introduction proclaims that the recognition of human dignity, equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. This statement differs from all the classical texts for human rights, for the first time link the civil rights, political rights and economic, social and cultural.

UDHR has preamble and 30 articles, including a large number of human rights and fundamental freedoms. Within the UDHR the human rights and fundamental freedoms are divided into two groups: 1). Civil and political rights, Sections 4-21 and 2). Economic, Social and Cultural Rights, Articles 23-27.

Within the group of civil and political rights include: the right of life, personal liberty and security, freedom from slavery and servitude, freedom from torture and acts or convictions discourteous, freedom from imprisonment or arbitrary detention, the right to trial fair and public hearing by an independent and impartial court, the right to be considered innocent until proven guilty, freedom from arbitrary blending with privacy, family, home or correspondence and the prohibition of attacks on the honour and good name of freedom of movement and choice of residence, freedom of research and the joy of asylum in case of persecution, the right to a nationality, the right to respect marriage and the creation of family, property rights, freedom of thought, conscience and religion, freedom of expression of opinion, the right of holding peaceful assembly and association and the right to vote and to participate in governance in public affairs.

While within the group for economic, social and cultural rights include: the right to social security, the right to work, to protection against unemployment and the right to equal pay for equal work, the right to a standard of living, which provides

health and welfare of each and the family and the right to security in the event of unemployment, sickness, disability, old age, the right to education and the right to participate in the cultural life of the community (see the Universal Declaration of Rights Human, adopted and proclaimed by the UN General Assembly with its resolution 217 A (III) date 10 December 1948).

After the UDHR was approved by the General Assembly of the United Nations in form of Resolution and not in the form of international treaty, the countries received no international obligations to enforce the act, but only the moral obligations. However, in most countries in their constitutions and legislation included basic principles on freedom and basic human rights.

This Statement and other acts of international character, regardless of the manner of their adoption and legal power, today they have become the main prerequisites which a State shall be included in the Constitution and its laws, in order for this country to have opportunity to integrate into Euro - Atlantic structures.

European Convention on Human Rights is considered the European Constitution for the protection of human rights, it is a document which is issued by the Council of Europe, adopted on 4 November 1950 in Rome, and entered into force on 3 September 1953, as the core its legal establishment has the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948. Convention have managed to sign almost nearly all European countries where among them is the Republic of Albania and hope that very soon part of the Council of Europe to be also the Republic of Kosovo in order to be able to sign the European Convention Human Rights because it is a legal principle, but in order to sign the Convention, Kosovo must be a member of the Council of Europe.

The convention guarantee some of the basic human rights: the right to life, all are protected from torture, slavery is prohibited and no one can perform the work of slavery, guaranteed the right to freedom and individual security, everyone has the right to fair trial and the public, every person has the right for respect of his private and family life, the right to freedom of thought is guaranteed, conscience and religion, freedom of expression is guaranteed the right to freedom of peaceful assembly and association, the right to marry and creation of family etc.

From the entry into force of this Convention there have been established two institutions that are strong implementation mechanism and guarantee the provisions of this Convention, they are: the European Commission for Human Rights and the European Court of Human Rights.

The European Commission for Human Rights aims and its key job is to reviewing requests presented to the Secretary General of the Council of Europe by the parties who are victims of violations of human rights and the application can be submitted by the individuals, associations, various organizations and member states of the Council of Europe signatory to the European Convention respectively for Human Rights.

The European Court of Human Rights is a very important institution and key mechanism in the implementation of the provisions of the Convention because its composition is so much judges are signatories to the Convention (two judges can be from the same country).

The judges are elected by the Consultative Council with a mandate of nine years and must meet basic criteria to be part of the Court: be experienced, high moral standards, professional and family life, to the high reputation of the state where they come and have professional qualifications (university education). This Court has jurisdiction to settle only those cases

that swallow violations of the Convention and arising from the Convention signatory states.

Conclusion

As the foundation of freedom and fundamental of human rights and as the most important acts considered to be: the Magna Carta in England of 1215 and the Declaration of Human and Citizen Rights of 1789 in France.

After World War II was were derived these very important activities: UN Charter ceasing Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Covenant International Covenant on Economic, Social and Cultural Rights, and many other acts that guarantee and protect fundamental freedoms and human rights.

Regarding the implementation of these acts, a standard of their involvement in its legislation has reached the Republic of Kosovo through the Constitution (2008), the second chapter that refers to the rights and fundamental freedoms which includes the main acts of international protect and guarantee the rights and fundamental freedoms (see the Constitution of the Republic of Kosovo, Article 22, Direct Applicability of International Agreements and Instruments.

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Konventa për mbrojtjen e të Drejtavë të Njeriut dhe Lirive
Themelore

Deklerata e Përgjithshme mbi te drejtat e njeriut

Në mbrojtje të lirive themelore – jurispodencë dhe interpretime
te rregullimit të jetës dhe aktivitetit të autoriteteve
shtetërore në Evropë.

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