

## POWER AND HUMAN RIGHTS IN THE CASE OF REPUBLIC OF MACEDONIA

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### ABSTRACT

The Constitution of the Republic of Macedonia declares human rights and freedoms as fundamental values as well as separation of power in legislative, executive and judicial. However, the balance of those three powers (legislative, executive and judicial) in the Republic of Macedonia has been undermined in favor of one of them – executive power, which influences the exercise of human rights and freedoms, civil rights principle.

Actual political power in the Republic of Macedonia departing from legitimately constituted institutions of the political system transforms them in deceptive and meaningless institutional mechanism affirming its party decisions, which instead of transforming the loose and fluid political scenery into democracy; it was transformed in weak and chaotic party state<sup>1</sup>.

All this obviously has impact on the exercise of human rights and freedoms in the Republic of Macedonia envisaged by the Constitution.

The objective of this study is to indicate that the impairment of the balance of the three powers in RM in favor of executive power adversely affects the exercise of human rights and freedoms defined by the Constitution.

The study will emphasize the importance of human and civil rights and freedoms in a democratic society where the concept of rule of law applies; actual constitutional solutions will be presented in R. Macedonia on the human and civil rights and freedoms and distribution of power as well as empiric indicators on the level of respect for human rights in R. Macedonia. The study will end up with conclusions.

**KEYWORDS:** human rights, Constitution, Constitution court, power.

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### INTRODUCTION

No other form of political life is so difficult to create and maintain as democracy. In that context a state has to be perceived as legal organization, or organization founded on legal provisions and

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<sup>1</sup> Klimovski Savo, Constitutional Law and Political System, Prosvetno delo, Skopje 2006, p. 839.

that functions as a result of application of law. Law is however integrally related to a state since it creates the law and ensures its application. The requirement of a legal state should be understood in terms of a state that recognizes and protects civil rights and freedoms, which are deemed to be beyond the state, independent from the state, or they are matter of something given beforehand, perennial, inviolable, natural rights acknowledged and subjugated by the state<sup>2</sup>.

The concept of rule of law in general implies a principle of limited government, or an assumption that only the political government that is limited to the goal of its establishment is legitimate<sup>3</sup>. The term rule of law *stricto sensu* is identified with the fundamental personal and political rights and freedoms.

A legal state is a synonym of rule of law if instead of establishing unlimited power with the help of law it establishes the right to limited power, instead of privileged and politically structured society it establishes legally institutional community, instead of omnipotent party state which by its existence legitimates the restrictions and breach of human and civil rights and freedoms, a state has been established in which the rights and freedoms are measures of its legality and equity<sup>4</sup>.

Key characteristic of a legal state is its functioning based on general legal principles equally valid for the citizens in equal social conditions<sup>5</sup>.

What are human rights? This question is complex, and the answer in conditions of different cultures and civilizations and imperfect mechanism of their implementation is essential and practical. Consequently, what is legal and human for one society does not have to be for another. Conventional constitutional theory defines human rights as subjective public rights of the citizens in relation with the state authority. They constitute a restriction and guarantee against the abuse of state power, and an important mechanism for its restriction. Human rights are exercised and infringed in extremely unequal, hierarchical vertical social relationship citizen-state authority. It goes back to the foundations of the state authority and legal order extremely determining their legality. Contemporary law and political science determines human rights as minimum moral-political requirements of natural law character possessed by every individual or should be possessed in relation to the state authority or society he/she lives in. Those requirements are recognized on the basis of law and not on good will, mercy or clemency.

In that context, human rights are essential political and social and economic requirements of the citizens in relation to the state authority and society as a whole, exercise of which is a precondition for biological, political and cultural existence of the individual, or life in conditions honorable for man, his human nature and dignity. Human rights arise from the human personal character as most perfect, rational being on the planet, his nature and general nature of the relations among people. Human rights are natural because the man acquires them with the fact of birth and exercised in relation to other people and state authority, not with will and mercy of the state. Consequently, all subjective rights belonging to individuals are not human rights. Human rights are only those subjective rights that are not owed to the state and its will, but those possessed by a human being as a man irrespective of the state and the right it creates.

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<sup>2</sup> Puhovski Zarko, Sta je pravna drzava, gledista (anketa), Beograd, oktobar-decembar 1989 br.10-12, god. XXX, str.69.

<sup>3</sup> Basta Lidija, Politika u granicama prava, Belgrad,1984, str.113.

<sup>4</sup> Basta Lidija, Sta je pravna drzava, gledista (anketa), Beograd, oktobar-decembar 1989 br.10-12, god. XXX, str.80-81.

<sup>5</sup> Basta Lidija, Politika u granicama prava ... str.115.

Characteristic of human rights is also their political nature because they are exercised or infringed in the state legal order and relate to the state authority. The exercise or infringement of human rights is an essential element in the process of administering sovereign power of any state. Human rights are therefore a very sensitive issue interfering in the foundation of the state power and public order, which is a cause for their infringement and deny even in states with significant legal and democratic tradition.

Human rights are fundamental to democracy and democratic. The development of the idea of human rights is mainly perceived as a multi-phase process from ideal to realization. Professor McIlwain advocates the theory that separation of power is extreme and that immoderate use of the phrase balance and counterbalance is one of the biggest delusions, although it does not involve the separation of public function of creation of law, interpretation and enforcement.

The practice of office of modern powers indicates that state authorities are multifunctional, and that overlap of functions with particular authorities is unavoidable. Consequently, it is a fact that executive authorities are also authorized to create law, but it is also a fact that when performing that office they should take care of legislation or hierarchy of higher regulations<sup>6</sup>.

The orthodox theory of separation of power in addition to the separation of functions and authorities encompasses the employees in authorities, whereby the separation of power may be made by other criteria such as territorial one. When speaking about separation of power basic issue is achieving the balance between state and legal powers. Power must reconcile with law, and without administering power neither state nor law exists. Absolute power is despotism or tyranny and absolute freedom leads to anarchy. Anyhow, between those two extremes there is a middle path where the authority restrained by law guarantees real power<sup>7</sup>.

## THE CONCEPT OF HUMAN AND CIVIL RIGHTS ENVISAGED IN THE 1991 RM CONSTITUTION

The Constitution of the Republic of Macedonia of 1991 proclaims civil society, core of which is the citizen his/her rights and freedoms. In this context, the state sovereignty arises from its citizens and belongs to them. Heading from the presumption that in a society, human and civil rights and freedoms is basic criterion of his/her real status in that society, the Constitution of the Republic of Macedonia of 1991 actually provides for central position. Human rights in the Constitution of Republic of Macedonia are treated in two ways: some like fundamental values of the constitutional order and judicial feasible rights, and the others like program principles, for which the state is to create conditions to be exercised. The Constitution of the Republic of Macedonia prescribes the basic human and civil rights and freedoms, as they are recognized in the international law, as first fundamental value of the constitutional order of the Republic of Macedonia<sup>8</sup>. Such treatment is based on the human and citizens' endeavor to be provided deserving and active position and role in the social life in the country, to create conditions for individual and collective expression, to obtain guarantees for relief from any form of arbitrariness, tyranny and fear from power and force holders, to determine the position of human and citizen in the political life of the country and total society action.

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<sup>6</sup> Quotation BAČIĆ A, Konstitucionalizam i podjela vlasti u »reaktivnim« ustavima postkomunistickog razdoblja, Politicka misao, Vol.29. br.1,1992, str 46-47.

<sup>7</sup> Usp. Cowen, .. *Fourtd.nrion.s of Freedom*•, p. 197, cit. pr. B. O. NwabuC7.C, op. cit., p.22.

<sup>8</sup> Article 8 indent 1 of RM Constitution, Official Gazette of RM No 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09.

In principle, rights and freedoms are treated as a guarantee that may not be exceeded by the authority if they want to observe the role given by the society democratic concept. Therefore, rights and freedoms are the fundamental determinant of the system, a frame in which the authority must restrict its action. The Constitution of the Republic of Macedonia of 1991 grounds the concept of rights and freedoms on the basis of civil-liberal democratic concept, which heads from the civil principle. At the very beginning, the Constitution provides wide systemic derived charter on human and civil rights and freedoms, which begins with civil, political (RM Constitution – Articles 9-29<sup>9</sup>), economic, political and cultural rights (RM Constitution – Articles 30-49<sup>10</sup>), and it also defines the constitutional guarantees<sup>11</sup> (Articles 50-54<sup>12</sup> of the RM

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<sup>9</sup> The right to life, integrity of human being, the right to freedom, presumption of innocence, the right to defense, the right of petition, freedom of movement and housing, inviolability of the home, secrecy of correspondence and other forms of communication, freedom of religion, right to citizenship, right to equality and non-discrimination, freedom of thought and self-determination, freedom of speech and public address, freedom of the press and other types of information, freedom of assembly, freedom of association, right to vote, right to petitions and appeals, right of aliens, right to defense of the country.

<sup>10</sup> Right to property, right to work, freedom to work, right to social security, social care and health care, right of veterans and war invalids and families of fallen soldiers, social family care, right to determine freely the number of children, right to healthy environment, right to education, freedom of scientific, artistic and other forms of creative work, right to trade union organization and strike, obligation to provision of material assistance.

<sup>11</sup> The Constitution secures protection of human rights and freedoms provided for therein. Every citizen is provided possibility to refer to the protection of the rights and freedoms determined by law, both at regular courts (in criminal and civil procedure) and at the Constitutional Court of the Republic of Macedonia, and in a proceeding that is principally grounded on principles of priority and urgency (Article 50). As available guaranties of the human and civil rights and freedoms, the Constitution also provides for independence and autonomy of the judicial function, the courts' obligation to decide on the Constitution and laws only, as well as the duty of the Constitutional court to protect the constitutionality and legality pursuant to the Constitution. In this context is the constitutional guarantee of judicial protection of legality of the relevant acts of state administration and institutions with public competences (Article 50 of the Constitution).

Laws of the Republic of Macedonia must be in compliance with the Constitution, and , and all other regulations must be in compliance with the Constitution and the law. Everybody is obliged to comply with the Constitution and the law (Article 51 of RM Constitution).

Laws and other regulations are published prior to taking effect. Laws and other regulations may not have retroactive effect, except in cases when it is favorable for the citizens (Article 52 of the Constitution).

Advocacy is autonomous and independent public service securing legal assistance and has public competences pursuant to law (Article 53 of RM Constitution).

<sup>12</sup> The Constitution ensures judicial protection of the human human rights and freedoms provided for therein. Every citizen has a possibility to refer for protection of the rights and freedoms determined by law both before regular courts (in criminal and civil proceedings) and the Constitutional Court of the Republic of Macedonia and in procedure mainly grounded on the principles of priority and urgency (Article 50). As available guaranties of the human and civil rights and freedoms, the Constitution also provides for independence and autonomy of the judicial function, the courts' obligation to decide on the Constitution and laws only, as well as the duty of the Constitutional court to protect the constitutionality and legality pursuant to the Constitution. In this context is the constitutional guarantee of judicial protection of legality of the relevant acts of state administration and institutions with public competences (Article 50 of the Constitution).

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Constitution) related to their exercise, which is relevant to the evolution of civil subjectivity in the European political history. Certainly that the Constitution does not list all the rights; however it reads that everything that is not prohibited by the Constitution and law is permitted.

The Constitution provides for that human and civil rights and freedoms may be limited only in cases determined by the Constitution and in a time of military or extraordinary situations, whereby the restriction of the rights and freedoms may not be discriminated on the grounds of gender, race, skin color, language, religion, national or social background, property or social position, nor restriction of rights and freedoms may refer to the right to life, prohibition on torture, inhuman and degrading treatment or punishment, to legal determination of punishments and sentences as well as to freedom of conviction, conscience, opinion, public expression of opinion and religious confession (Article 54 of the Constitution).

However, the principles and intention of the Constitution do not mean that the conditions of full realization of citizen rights and freedoms are achieved in the current social and political reality. There are various objective and subjective restrictions of economic, social, political and cultural nature. Positioning the citizen in the core of the constitutional and political system, the Constitution determines and sanctions only the rights and freedoms and creates presumptions of constitutionality and legality for their realization. The Constitution of Republic of Macedonia links the fundamental rights and freedoms to the terms human and citizen. Although there is not any terminological and technical meaning between the terms citizen and human, civil and human rights and freedoms, it is unambiguously that the citizen is human in literal sense, due to which civil rights are also human rights. In our contradictory and undeveloped political system the citizen is a holder of the basic personal and political rights, who is a member of the community and social and political being. However, the citizen, at the same time, is a human being, due to which his rights have social and political sense. No real rights exist unless the human and citizen is perceived as unity, unless the rights and freedoms are understood, guaranteed and exercised as individual, and human values and freedoms.

It must be pointed out that the human and civil rights and freedoms are significantly and radically restricted to the power functions. Defining a wide list of human and civil rights and freedoms, the Constitution of the Republic of Macedonia has also determined their protection system, which is realized through two essential guarantees envisaged thereto. First, the rights and freedoms determined by the Constitution are exercised thereunder, and the manner of exercise of certain rights and freedoms may be prescribed by law only, and solely when provided for in the Constitution, or when it is necessary for their exercise; second, the rights and freedoms guaranteed by the Constitution may not be deprived or restricted, i.e. they might be restricted only in cases determined by the Constitution. In this way, proclaiming the principle of direct application of the Constitution in the field of human and civil rights and freedoms, the Constitution not only determined the human rights and freedoms but also provides for their exercise. However, the practice of protection of the human rights <sup>13</sup> lags behind the normative provisions<sup>14</sup>.

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<sup>13</sup> So Progress Reports for the Republic of Macedonia, prepared by the European Commission will be noted that in 2014 “*The legal and institutional framework is in place. However, more concrete results need to be seen in practice, both in terms of reduction and deterrence of corruption. The human and financial resources of the various enforcement bodies and supervisory agencies remain weak and their powers, status, independence and visibility need to be strengthened in order to engage in effective operations. The situation as regards freedom of expression continues to be highly problematic... The country has already completed the majority of reforms and has established*

## THE CONCEPT OF THE RM CONSTITUTION OF 1991 FOR THE POWER

Fundamental value declared in RM Constitution (Article 8) is also the separation of power in legislative, executive and judicial powers. Generally in every modern state, the organization of power is made according to the principle of separation of power. The theory deals with the dilemma whether it is possible to separate the state power or it is inseparable. Or it is a matter only of division of public functions among three different subjects. The standpoint mainly prevails that the principle of separation of power in fact means separation of public functions to legislative, executive and judicial powers. State power is inseparable, and the functions of the state must be adjusted and relatively indivisible. Although separate functions of the state must be coordinated. They cannot be independent from each other nor equal. One of them must give directions (legislative power), while the others (executive and judicial) act under the directions (by the legislative power). However it must be emphasized that the executive and judicial powers are not hierarchically dependent on the judicial power, perceived from the functional aspect, they remain subordinate to the judicial power. It is however sufficient to establish an imbalance among the three powers (legislative, executive and judicial) in favor of one of them and to perceive discrepancy in the declaration of the human and civil rights, which by itself is complete and well-formulated and inevitable and far-reaching negative repercussions generated by that imbalance related to the charter and state of facts of the civil rights and principle of citizenship. In practice, citizens feel it immediately and in particular if that imbalance is in favor of the executive power. In addition to guarantees, higher level of democratic conscience and relationships are required as a presumption for consistent exercise thereof to observe the principle of separation of power. RM Constitution of 1991 has abolished the principle of inseparability of power (principle of parliamentary rule), according to which the power was concentrated in the Assembly wherefrom the executive and judicial powers emerged hierarchically subordinate to the Assembly. The actual Macedonian model of separation of power is a mixed<sup>15</sup> model, which includes in itself elements of the parliamentarian<sup>16</sup> and presidential<sup>17</sup>

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*the necessary legal and administrative structures in this area. However, there is a risk of back-sliding in some areas, including the judiciary and the fight against corruption. Further efforts are needed to safeguard the independence of judges, to improve quality of justice and to facilitate access to justice.*“

The same rhetoric may be noted in the 2013 Report: *“As regards fundamental rights, progress was made on the rights of the child, the protection of property rights and data protection. However, overall efforts in this area are hampered by a persistent lack of funding and capacity, and all relevant institutions need to become more proactive in promoting and safeguarding fundamental rights in .“* While in 2012 Report better valuations may be noted as related to the respect for the human rights and freedoms: *„Overall, the civil and political rights are widely respected and certain further progress has been achieved.“*

<sup>14</sup> Treneska-Deskovska Renata, Constitutionalism and the Human Rights, UKIM-Faculty of Law, 2006, p.285.

<sup>15</sup> The mixed model is characterized by assembly, government, politically accountable to the assembly, president of the state elected on direct elections and judiciary. The specificities of this system are expressed in relation to the legislative and executive powers, which in relation to the judicial power do not have any effect like in pure parliamentary system. In this system, judicial power has more or less independent position.

<sup>16</sup> The parliamentary system is a flexible model of separation of power, in particular when cooperation and relations between legislative and executive powers is concerned. However, such model of separation of power contributes to independent position of the court in relation to the other two powers and at the same time in their shadow.

<sup>17</sup> Characteristic for the presidential system is a rigid separation of power in legislative, executive and judicial powers, unity of executive power in one authority (the president) and existence of mechanism of cooperation, shared control and coordination. In such system judges have permanent mandate and independence in their function, they

systems. The position of the Government is undertaken from the parliamentary system, which is established by the parliamentary majority in the Assembly and thus accountable to the Assembly. The independent position of the President is undertaken from the presidential system, which is elected on direct elections by all citizens and shares the executive power with the Government. The President is vested with suspensive veto to the laws adopted by the Assembly by absolute or simple majority, and is stable unlike the Government which is unstable element of the executive power<sup>18</sup>. RM Constitution fails to provide opportunity to be cancelled by the Government or President of the state. Court as an authority in such model should have independent and autonomous position<sup>19</sup>.

If practicing of the principle of separation of power is in question as declared in RM Constitution, numerous deviations appear in its implementation, i.e. this principle in the Republic of Macedonia is not consistently realized in practice<sup>20</sup>. From the aspect of independent position of those three authorities performing the three functions, it is extraordinary significant to establish normal relations in their functioning, joint limitation and coordination. Macedonian model of separation of power makes it possible for the Assembly to make double pressure on the RM Government: that is, to require accountability from the Government related to particular type of policies that are realized through vote of confidence or lack of confidence of this authority and interfere by the Assembly in the personnel composition in the Government, which impartially reduces the space around Prime Minister to make personnel changes that do not have important influence on the government and its joint and several responsibility before the representative body. The current position of RM Assembly is by law defined possibility only that the Government is the authority that entails the work of the Assembly, the President of the state and courts, although it legally does not have such defined position in the state. The Government as a part of the executive power, in practice has dominant role in relation to the other two powers of RM transforming the Assembly<sup>21</sup> in plain voting machinery, and the court<sup>22</sup>, when necessary, an authority to punish the political opponents, which essentially deteriorates the principle of separation of power<sup>23</sup> in the social practice.

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are appointed by the president of the state in agreement with the parliament. The sound position of the president in that system entails increased interference and influence on the operation of the judicial power.

<sup>18</sup> Skarik Svetomir, *Comparative and Macedonian Constitutional Law*, Skopje, 2004, p. 531.

<sup>19</sup> Kambovski Vlado, *Judicial Law*, Skopje, 2010, p. 112.

<sup>20</sup> Treneska-Deskovska Renata, *Constitutionalism and the Human Rights*, UKIM-Faculty of Law, 2006, p. 282.

<sup>21</sup> The functioning of the Assembly continued to be hindered by the lack of constructive political dialogue and the ongoing deep divisions between the political parties. The absence of most opposition MPs from parliament hampered its work on adopting new reforms, and its ability to provide the necessary checks and balances on the activities of government – Republic of Macedonia 2014 Progress Report of the European Commission.

<sup>22</sup> One of the main challenges is the growing concern voiced about the selectivity of, and influence over, law enforcement and the judiciary. The basic rule of law principle, that justice must not only be done but must also be seen to be done, is not fully understood or respected by the authorities in terms of law enforcement actions targeted at specific persons or sectors. Questions continue to be raised both inside and outside the country about possible political influence over certain court proceedings. Although the court structure is formally independent from external influence of the parliamentary and executive branches, individual judges must also appear to be acting independently of any form of pressure, otherwise public trust will be lost and the rule of law called into question- Republic of Macedonia 2014 Progress Report of the European Commission.

<sup>23</sup> There is not clear difference between the state and the governing parties. Politization on central and local level is seriously concerning. The confidence in independence of the state institutions is on a low level due to the widespread perception of politization of the administration and lack of transparency. Credible allegations exist that pressure was put on the employees in the public sector during the elections in April. Public administration remains

It is undoubtedly that such function of the principle of separation of power has big impact on the exercise of human rights declared in RM Constitution.

### **EMPIRIC INDICATORS OF THE LEVEL OF RESPECT FOR HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA**

If we analyze the 2014 Report produced by Global Network for Rights and Development, an independent and neutral international organization, we may conclude that the Republic of Macedonia is ranked on 77th position, and that the International Human Rights Rank Indicator is 51.25%. Compared to Slovenia, which is ranked on 30th position and Denmark<sup>24</sup>, ranked on the high eight positions, our country is ranked very low on this scale. Namely, under this indicator, it is obvious that the human rights in the Republic of Macedonia are not respected sufficiently and appropriately, in particular perceived from the prism of democratic principles, which are practically fundamental value pursuant to our applicable acts.

Table 1: International Human Rights Rank Indicator

Country	Rank	Indicator
Denmark	8	74.64%
Slovenia	30	61.30%
Macedonia	77	51.25%

Source: <http://www.ihrri.com/about.php>

Furthermore, if we analyze the Reports prepared by NGO Freedom House for the period 2011-2015, presented in Table 2, as particularly relevant sources in the field of the human rights and freedoms, we may conclude that Macedonia is also ranked very low. To be exact, according to the general indicator, our country has a rating of 3.5 on the scale from 1, as best rating, to 7 as worst value. Yet again compared to Slovenia and Denmark, which continuously for that period have best rating, Macedonia lags behind related to the respect for human rights and freedoms. Situation is identical if we take a look separate values of the level of respect for human rights and freedoms. Consequently, Macedonia, in the period from 2011-2014, is ranked somewhere in the middle of a total of 195 countries in the world, with an identical value of 3 in both areas. However, the recent 2015 Report marks increase of those values to 3.5 related to the political rights and 4 for civil freedoms. This indicator practically leads to a conclusion that the democratic capacity of our country has decreased, or that the human rights and freedoms are increasingly violated and not protected by the competent institutions. In this context, Slovenia and Denmark have retained the same level compared to the previous years.

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fragmented and subject to political influence despite the progress in judiciary. There is serious concern for the control of the Government on the public institutions and media – Republic of Macedonia 2014 Progress Report of the European Commission.

<sup>24</sup> In this part the respect for human rights and freedoms are reviewed comparatively between Macedonia on the one side and Slovenia and Denmark on the other side. Slovenia is former member of SFRY, like our country, and as of 2004 Member State of the European Union, with similar legal tradition like Macedonia. While Denmark, EU Member State, has particularly democratic capacity and is a model-state related to the respect for human rights and freedoms.



Table 2: Freedom House Rating

Country	2015	2014	2013	2012	2011
Denmark	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1
Slovenia	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1	Freedom rating: 1 Political rights: 1 Civil liberties: 1
Macedonia	<b>Freedom rating: 3.5</b> <b>Political rights: 4</b> <b>Civil liberties: 3</b>	<b>Freedom rating: 3</b> <b>Political rights: 3</b> <b>Civil liberties: 3</b>	<b>Freedom rating: 3</b> <b>Political rights: 3</b> <b>Civil liberties: 3</b>	<b>Freedom rating: 3</b> <b>Political rights: 3</b> <b>Civil liberties: 3</b>	<b>Freedom rating: 3</b> <b>Political rights: 3</b> <b>Civil liberties: 3</b>

Source: <https://freedomhouse.org>

Moreover, when analyzing the Freedom House empiric data on the freedom of expression, presented in Table 3, the values for our country are unsatisfactory. Namely, Macedonia is qualified as partially free country in the period from 2011-2015, with particularly variable indicator, which in 2011 was 48, while in 2015 it is 57, or remarkable rise of this value for almost ten units. Accordingly, it may be noted that the freedom of expression in our country is restricted and not respected by the authorities. On the other hand, Slovenia and Denmark are assessed as free countries with different indicator values.

Table 3: Freedom House press status

Country	2015	2014	2013	2012	2011
Denmark	Press status: Free Press freedom score:12	Press status: Free Press freedom score: 12	Press status: Free Press freedom score: 12	Press status: Free Press freedom score: 12	Press status: Free Press freedom score: 13
Slovenia	Press status: <b>Free</b> Press freedom score:	Press status: <b>Free</b> Press freedom score: 24	Press status: <b>Free</b> Press freedom score: 24	Press status: <b>Free</b> Press freedom score: 25	Press status: <b>Free</b> Press freedom score: 25
Macedonia	Press status: <b>Partly free</b> Press freedom score: 57	Press status: <b>Partly free</b> Press freedom score:57	Press status: <b>Partly free</b> Press freedom score: 56	Press status: <b>Partly free</b> Press freedom score: 54	Press status: <b>Partly free</b> Press freedom score: 48

Source: <https://freedomhouse.org/report/freedom-press>

Pursuant to Article 110 indent 3 of RM Constitution<sup>25</sup>, the Constitutional Court of Republic of Macedonia has jurisdiction to protect some human and civil rights and freedoms only such as

<sup>25</sup> Currently amendments to RM Constitution are ongoing. One of the proposed amendments - XXXIX to RM Constitution provides for introduction of the institute constitutional action intended for strengthening the protection of human rights and freedoms as defined in the Constitution, particularly in their scope, and instead of so far actions of the Court on five guaranteed rights by the Constitution, it is envisaged that the Courts acts on 12 additional rights.

freedom of conviction, conscience, expression of thought, political association and activities and prohibition of discrimination of citizens on grounds of sex, race, religious, national, social and political affiliation. If we analyze the Court statistics related to the protection of those rights and freedoms, we will conclude that the number of filings to this Court related to their protection is very low, and they are mainly rejected by the Court.<sup>26</sup> In 2013, the Constitutional Court<sup>27</sup> received 22 filings related to protection of the civil rights and freedoms, and 13 cases were settled. 10 filings related to the protection against discrimination, and 2 to protection of the freedom of conviction, conscience, thought and public expression. All filings related to the protection of the rights and freedoms were rejected, 6 due to incompetence, and 7 due to lack of decision-making process presumptions. In 2012, the Constitutional Court<sup>28</sup> received 25 filings related to protection of the civil rights and freedoms, and decisions were made on 27 cases. 15 filings related to the protection against discrimination, 11 to protection of the freedom of conviction, conscience, thought and public expression, and 1 to protection of freedom to political activity. In 6 cases, the Court rejected the filings related to protection (4 cases related to protection of freedom of thought and public expression, one case protection against discrimination on the grounds of social affiliation, and one case related to discrimination on the grounds of religious affiliation). The Court made decisions on rejection of 21 cases, due to incompetence in 11 cases, eight cases due to lack of decision-making process presumptions, and 2 cases due to inopportuneness. In 2011, the Constitutional Court<sup>29</sup> received 23 filings related to protection of the human rights and freedoms, and decisions were made on 27 cases. In that year the Court decided on 23 cases. 3 cases were rejected as ill-founded, 20 cases were rejected, 11 due to incompetence, two due to lack of decision-making process presumptions, 5 due to inopportuneness, while one case got administrative decision.

Analysis of the data presented in the Reports of the Ombudsman of Republic of Macedonia shows that in 2014 a total of 4249 appeals were filed, of which 1474 or 34.69% referred to violation of human rights by the central authority, 346 appeals or 8.14% related to violation of the rights by local authorities, while 61 appeals or 1.44% related to violation of the rights both by the central and local authorities. In 2013 the total number of appeals filed to the Ombudsman was 3780, of which 1461 or 38.65% referred to violation of human rights by the central authority, 356 or 9.42% by local authorities, while 56 or 1.48% both by the central and local authorities. In 2012, the Ombudsman received a total of 4346 appeals for violation of the human rights and freedoms, of which 1647 or 37.90% violation of the rights by the central authority, 439 or 10.10% by local authorities, and 42 or 0.97% both by the central and local authorities. General conclusion related to the indicators presented is that the number of appeals filed to the Ombudsman of the Republic of Macedonia varies depending on calendar years with increasing trend. Furthermore, remarkable is the fact that of the total number of appeals filed, mostly refer

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Intention of the proposer of the Amendment is to ensure constitutional protection of the most part of the civil and political rights and envisaged by the Constitution; however this protection omits the economic, social, and cultural rights, the right to property, political right, the right to trial within reasonable time, right to healthy environment or the right to education.

<sup>26</sup> There is concern that changes in the composition of the Constitutional Court in recent years affect its independence. It started to drag on and compromise decisions-2014 EC Progress Report on Macedonia.

<sup>27</sup> Review of the function of the Constitutional Court of RM for 2013, [www.ustavensud.mk](http://www.ustavensud.mk).

<sup>28</sup> Review of the function of the Constitutional Court of RM for 2012, [www.ustavensud.mk](http://www.ustavensud.mk)

<sup>29</sup> Review of the function of the Constitutional Court of RM for 2011, [www.ustavensud.mk](http://www.ustavensud.mk);9-29.

to non-observance of the human rights and freedoms of Macedonian citizens by the central authority.

## CONCLUSIONS

Accepted model for protection of the human rights in the Republic of Macedonia is that the Constitution as highest legal and political act envisages and guarantees the human rights thus restricting the authority thereby and by separation of power.

Although the organization of power is based on the principle of separation of power, it is not consistently applied in practice in the Republic of Macedonia. In fact, the Assembly does not control the function of the executive power; office holders are not accountable nor function within the frames of legal restrictions. There is a problem with the judiciary independence as well as political culture of respect of the principle of separation of power. The declared thesis by the Constitution that the citizens exercise their authority through democratic elected representatives is disputable, in particular due to the complaints related to the irregularities in numerous election cycles in the Republic of Macedonia. The practice of protection of the human rights lags behind the normative provisions. The question is what the concept of protection for exercise of human rights is envisaged by the Constitution as the highest legal and political act.

The Constitution of the Republic of Macedonia envisages the protection of human rights essentially through court (regular, administrative and constitutional) and through off-court bodies (Ombudsman). In order to protect the human rights, those institutions must be independent both from the legislative and executive authorities and from the judicial authority, political parties, associations, trade unions, media and etc. Awareness of human rights should be raised in the Republic of Macedonia as well as building of strong public opinion to support legal values and rule of law. The techniques for promotion of human rights are to be built and improved, mainly those imposing increased risk for violators as well as to extend the possibility to hear the voice of the protectors of the human rights.

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