

Promotion of Human Rights in the Republic of Kosovo

Albulena Ukimeraj

Abstract

Fundamental rights and freedoms are constitutional category of democratic states whereas the standards for guaranteeing these rights have been determined in the highest international acts of the United Nations.

Promotion of equality and compliance with human rights initially originated in social developments in antiquity period. The Greek philosophy represented by world class philosophers Plato and Aristotle, created the foundation for complying with these rights which still serve as principles in the modern times and democratic developments. In later stages of social developments, despite the progress, compliance with human rights in the slavery era but even in the medieval times was faced with many challenges. Meanwhile, the development of the modern world, as an enlightening historic moment, it is the French Revolution, which was of course preceded by important documents in the history of development and advancement of human rights such as: Magna Carta Libertatum and the US Constitution.

The reason for addressing this topic consists in the fact that these fundamental rights and freedoms are parts of constitutions of many countries including Kosovo, which are proclaimed and protected by different acts and norms, however they continue to be infringed either by individuals or

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institutions. Thus, with the aim of promotion of human rights and legal basis related to them in the Republic of Kosovo, this paper will elaborate development of human rights and the legal infrastructure for protection and compliance of human rights in a chronological manner by providing conclusions on the promotion of human rights in the Republic of Kosovo.

Key Words: Human rights, protection and compliance with rights, constitution, law

1. Introduction

The aspiration to protect human dignity of all human beings represents the essence of the concept of human rights. This aspiration puts human being in the centre of interest. This aspiration is based in the common universal system of devoted values of the right to life as inviolable right and provides the framework for building a human rights system, protected by internationally recognised norms and standards. During the XX century, human rights were developed as moral, political and legal formulations and guiding principles for development of a world free from fear and poverty.¹

In terms of compliance with human rights in the Republic of Kosovo, it was determined by the political, economic and social situation of the overall developments in Balkans.

Due to conflicts that lasted for hundreds of years, compliance of fundamental principles of human rights and freedoms was often put to a question mark, whereas in different social stages, human rights and freedoms were violated and even their elementary compliance was endangered to a critical extent. Nevertheless, following the fall of communist period and development of democracy, Kosovo did not resist developments of countries deriving from the communist block and the movement for freedom and independence, was crowned with success following the end of war in 1999, whereas civic rights and freedoms took an even stronger dimension through the constitutional and legal principles expressed with the highest founding acts of the new state, on its declaration of independence on 17 February 2008.

¹ Understanding Human Rights, Manual on Human Rights Education, Benita Ferrero Waldner, pg. 26, Austria, 2003.

2. Brief background

All persons are born free and equal in their dignity and rights. They should behave towards one another in brotherly spirit.²

In this context, a brief chronology of advancement of human rights and freedoms in historical stages was presented in the following table:

Table 1: The chronology of Human Rights Developments (to name a few documents)

1215	Magna Carta Libertatum
1689	Virginia Bill of Rights USA
1776	The Declaration of Independence of the United States of America
1789	Declaration of Human and Civil Rights (France)
1948	Convention on Prevention and Punishment of the Crime of Genocide
10 December 1948	Universal Declaration on Human Rights
04 November 1950	European Convention on Human Rights
19 December 1966	The international Covenant on Economic, Social and Cultural Rights
19 December 1966	International Covenant on Civil and Political Rights
22 November 1969	American Convention on Human Rights
1984	Convention against Torture and Inhuman, Cruel and Degrading Treatment and Punishment
1965	International Convention on Elimination of All Forms of Racial Discrimination
1979	Convention on Elimination of All Forms of Discrimination Against Woman
1989	Convention on the Rights of a Child

With respect to compliance with Human Rights in Kosovo, during the time while Kosovo was part of former Yugoslavia, due to unitary system of state regulation, despite the fact that human rights comprised the main part

² Universal Declaration on human rights, Article 1, adopted on 10 December 1948, from the General Assembly of the United Nations.

in the highest legal and political documents, their compliance in practice was very limited or non-existent. During 1990-s, in the beginning of dissolution of Yugoslavia, flagrant violations of fundamental human rights were observed. As a result of several interethnic wars, international tribunals were established and heads of states that ruled during those times were punished for genocide.

Nevertheless, as of 1999, when the United Nations Civil Administration was established in Kosovo, constant efforts were made for guarantying and complying with human and civil rights.

Human rights were guaranteed through Resolution 1244 of the United Nations which created the legal basis for deployment of United Nations Administration in Kosovo as well as the military presence of KFOR. It also provided the basis for the constitutional framework on self-governance, as well as UNMIK regulations on sectorial fields as well as laws of the Kosovo Parliament. After 2008, when the Constitution of the Republic of Kosovo entered into force, the Chapter on Human Rights and the Chapter on the Rights of Communities became an integral part of the Constitution of the Republic of Kosovo. Meanwhile, sectoral laws guarantee gender rights, language rights etc.

3. The legal infrastructure for protection and compliance with human rights in Kosovo

The issue of implementation of the relevant legislation on human rights is crucial in order to effectively implement the legal framework of laws. Kosovo has quite advanced legal framework for the protection of human rights that substantially and directly affect the sphere of protection of human rights. Protection and promotion of human rights and fundamental freedoms, plays an important role in the establishment of democracy, good governance and rule of law.

3.1. The Constitution of the Republic of Kosovo

Under the Constitution of the Republic of Kosovo³ (Chapter 2) speaks about fundamental human rights and freedoms. In this context, human rights and freedoms are indivisible, inalienable, invulnerable, and serve as basis for the legal order of the Republic of Kosovo. Under the Constitution,

³ The Constitution of the Republic of Kosovo.

the Republic of Kosovo protects and guarantees fundamental human rights and freedoms by sanctioning the obligation of every person to comply with human rights and freedoms of others including the rights of both natural and legal persons.

The Constitution of the Republic of Kosovo guarantees human rights and freedoms as following:

Human dignity; equality before the law, right to life; right to personal integrity; prohibition of torture, cruel inhuman and degrading treatment; prohibition of slavery and forced labour; the right to freedom and security; rights of the accused; the right to a fair and impartial trial; the right to legal remedies; the principle of legality and proportionality in criminal cases; the right not to be tried twice for the same offense; freedom of movement; the right to privacy; the right to marriage and family; freedom of faith conscience and religion; religious confessions; freedom of expression; the right to access public documents; freedom of media; freedom of assembly; freedom of association; the right to elect and be elected; protection of property; the right to education; freedom of art and science; the right to work and exercise a profession.

3.2 Law on Civil Service

The Law on Civil Service is a systemic law regulating the status of civil servants of the public administration, which also determines the rights and obligations in relation their positions. This law determines the following rights⁴: The right to suitable working conditions; the right to equal training and equal opportunities in career development; the right to salary – The work of civil employees is compensated through the salary system, which is regulated by a special law; the right to maintain the position and preserve the equivalent position; The right to association; Exercise of political rights; The right to strike; The right of participation and representation in management bodies of the civil service; the right to complain.

3.3 The Law on local self-governance

The Law on Local Self Governance as a basic law regulates responsibilities and competencies of municipal bodies as local self-governance units, within own municipal competencies. Human rights protection is also foreseen in the

⁴ Law on Civil Service, Chapter 6.

local level⁵. Under this law, all municipal bodies make sure that citizens of the municipality enjoy all rights and freedoms without distinction on the grounds of ethnicity, colour, language, religion, political opinion or other opinion, national or social origin, without a distinction of property, birth or any other status, with the aim of heaving them enjoy equal rights and opportunities in municipal services of all levels⁶.

3.4 Anti-discrimination legislation

The anti-discrimination law represents a general framework for prevention and suppression of discrimination based on nationality or association with another community, social or national origin, race ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religious belief or belief, political affiliation, political opinion or other opinions, social or personal situation, age, family or marital status, pregnancy, maternity, wealth, health condition, disability, genetic origin or any other grounds with the aim of implementing the principle of equal treatment.⁷

3.5 Law on Gender Equality

The law on gender equality guarantees protects and promotes equality between genders, as fundamental value for democratic development of the society. This law applies to men, woman and persons who poses a protected characteristic of gender or sex identity, and guarantees opportunities for equal treatment, in both public and private field of the social life, including political and public life, employment, education, health, economy, social benefits, sports culture and other fields determined under the applicable legislation⁸.

3.6 Law on the use of languages

This law guarantees language rights in Kosovo. This law guarantees the use of languages of communities, mother tongue of whom is not an official language, in Kosovo institutions, enterprises and other organisations performing public functions and services⁹. At the national level, official

⁵ Law on Local Self-governance, Article 17 under.

⁶ Law on local self-governance Article 4.

⁷ Anti-discrimination Law, Article 1.

⁸ Anti-Discrimination Law Article 2.

⁹ Law on Use of Languages, Article 1.

languages in Kosovo are Albanian and Serbian languages, whereas in the local level, depending on the percentage of local population, official languages or languages in official use are other languages of minority communities living in certain municipalities. It should be emphasised that Albanian and Serbian languages and their alphabets are official languages in Kosovo and have equal status in all institutions of Kosovo.

4. Institutional structures for human rights in the Republic of Kosovo

The Kosovo institutions must play an active role in promoting equality and also to raise the awareness among public officials and law enforcement over which they have responsibility toward implementation of legislation. Therefore, it is necessary to strengthen the institutional mechanisms, in order to guarantee the rights and freedoms of all citizens in order to ensure the peaceful coexistence in the country.

4.1 Courts

The courts represent the independent branch of the government and in this view they are the main authority for protection of human rights whenever they are infringed by it by individuals or the state. Based on the law on Courts, in the exercise of their function and in rendering their decisions judges are independent, impartial and unbiased, in any way by any natural or legal person, including public bodies¹⁰.

Everyone is equal in the court and other bodies of justice. Every person has the right to be heard impartially and publically by a competent, independent and impartial court established by the law. Such a court will decide in determination of both charges of criminal character against persons, and disputes related to rights and obligations of citizens in the civil field.¹¹

The rights for access to justice and equality in administration of justice are at the core of the rule of law. Every person has a right to be heard fairly and publically and within a reasonable time by an independent and impartial court.¹²

¹⁰ Law on Courts, Article 3.

¹¹ International Covenant on Civil and Political Rights, Article 14. Par 1. Adopted and opened for signature, ratification and accession by the General Assembly through its Resolution 2200 A (XXI) dated 16 December 1966, entered into force on: 23 mars 1976.

¹² European Convention on Human Rights, Article 6, Par 1. Pp.9.

4.2 Ombudsperson Institution in Kosovo

The Law on the Ombudsperson determines the establishment of the legal mechanism for protection, oversight and promotion of rights and freedoms of natural and legal persons from unlawful and undue actions or omissions of public authorities, institutions and other persons or authorities exercising public authorisations in the Republic of Kosovo as well as establishment of the national Mechanism for prevention of torture and cruel, inhuman and degrading treatment and punishment.¹³

4.3 Human Rights Units in ministerial and municipal level

Every institution in both central and local level of government, within its organisational structures, has a Human Rights Unit integrated in it. The mandate and the scope of such units were determined by Administrative Instructions¹⁴.

Duties and responsibilities of Human Rights Units are as following:

- Draft Policies and instructions in the field of human rights within the institution;
- Cooperation with the Ombudsperson Institution and oversight of implementation of Ombudsperson's recommendations;
- Evaluation on implementation of human rights within the institution;
- Participation in drafting of laws and other secondary legislation;
- Promotion of Human Rights;
- Promotion of human rights;
- Cooperation activities with administrative municipal structures, international organisations and NGO-s in the field of human rights protection and promotion;

When it comes to rights and responsibilities of human rights units in municipalities it is worth mentioning the Administrative Instruction of the MLGA no. 2007/08¹⁵.

¹³ Law on Ombudsperson, Article 1.

¹⁴ Administrative Instruction of the Prime Minister No. 8/2005 on "Terms of Conditions for Human Rights Units". And the Administrative Instruction No. 4/2007.

¹⁵ Administrative Instruction of the Prime Minister No. 8/2005 on "Terms of Conditions for Human Rights Units". And the Administrative Instruction No. 4/2007.

4.4 Advisory Office for Good Governance

This Office functions within the office of the Prime Minister and has the following responsibilities¹⁶:

- 1.1. Provides advice for the Prime Minister and the respective unit of the OPM, in the fields of good governance, human rights, equal opportunities and anti-discrimination issues;
- 1.2. Drafts policies in the field of good governance, human rights, equal opportunities and anti-discrimination issues;
- 1.3. Coordinates the process of drafting policies for inclusion of civil society in policymaking and decision-making, and supports the cooperation between the government and civil society.

4.5 Agency on Gender Equality

Initially known as the Office on Gender Equality established in 2005, within the organisational structure of the Office of Prime Minister, was transformed into Agency in 2006.

The Agency on Gender Equality has the following responsibilities¹⁷:

- Promotes, support, coordinate and implement provisions of the Law on Gender Equality;
- Proposes amendments of laws and secondary legislation as well as adoption of other measures for implementation of this Law to the government, in line with the applicable legal procedures;
- Identifies and draft policies that promote gender equality and monitor implementation thereof;
- Participates in drafting of laws, secondary legislation, strategies and programs in order to ensure gender mainstreaming and gender budgeting;
- Leads the process of compilation of reports on the implementation of the Convention on Elimination of all Types of Discrimination Against Woman and Contribute on reporting on implementation of international obligations related to gender equality;
- Cooperates with public institutions and respective gender equality officers in ministries and municipalities, in order to ensure implementation of this law;
- Cooperates with the Civil Society;

¹⁶ The Constitution of the Republic of Kosovo.

¹⁷ Law on Gender Equality, article 8.

- Organises trainings on gender mainstreaming and gender budgeting for institutions;
- Analyses the gender equality situation in Kosovo based on reports, researches and studies and presents findings, monitors findings of annual reports, special reports, guidelines, codes of conducts, opinions and gives recommendations on respective activities and publishes such results.

5. Conclusions

Standards for guaranteeing human rights and freedoms have been determined by the highest international acts of the United Nations.

Promotion of equality and compliance with human rights initially originated in social developments in antiquity period.

With respect to compliance with Human Rights in Kosovo, during the time while Kosovo was part of former Yugoslavia, due to unitary system of state regulation, despite the fact that human rights comprised the main part in the highest legal and political documents, their compliance in practice was very limited or non-existent.

Nevertheless, following the fall of communist period and development of democracy, Kosovo did not resist developments of countries deriving from the communist block and the movement for freedom and independence, was crowned with success following the end of war in 1999, whereas civic rights and freedoms took an even stronger dimension through the constitutional and legal principles expressed with the highest founding acts of the new state, on its declaration of independence on 17 February 2008.

The legal infrastructure for protection and compliance with human rights in Kosovo is based in the Constitution of the Republic of Kosovo. In this context, human rights and freedoms are indivisible, inalienable, invulnerable, and serve as basis for the legal order of the Republic of Kosovo. Under the Constitution, the Republic of Kosovo protects and guarantees fundamental human rights and freedoms by sanctioning the obligation of every person to comply with human rights and freedoms of others including the rights of both natural and legal persons.

After 2008, when the Constitution of the Republic of Kosovo entered into force, the Chapter on Human Rights and the Chapter on the Rights of Communities became an integral part of the Constitution of the Republic of

Kosovo. Meanwhile, sectorial laws guarantee gender rights, language rights etc.

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