

UNIVERSITY OF LJUBLJANA
FACULTY OF SOCIAL SCIENCES

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Proces evropeizacije režima človekovih pravic v Republiki Makedoniji

**The Process of Europeanization of the Human Right's Regime in the Republic of
Macedonia**

Master thesis

Ljubljana, 2015

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The Process of Europeanization of the Human right's Regime in the Republic of Macedonia

Europeanization of human rights is a process which is mandatory for every country that aspires to become EU member state. However, the process itself is quite complex and it is very much dependant on the situation within each country. Accordingly, Republic of Macedonia recognizes the efforts that have to be made in order to provide effective promotion and protection of human rights and freedoms. The purpose of this thesis is to analyze the process of Europeanization of the human rights regime in the Republic of Macedonia. This kind of research aims to analyse what actually means the process of Europeanization and consequently what kind of effect it has on the human rights regime in the Republic of Macedonia. The latter nowadays meets quite many difficulties towards successful achievement of satisfactory level of promotion and protection of human rights. Therefore, the theme is quite relevant, because protection of human rights is criteria which have to be fulfilled in order to join the European Union and subsequently the country has to demonstrate the ability and readiness to accomplish the postulates of a democratic society with regard to human rights.

Key words: Europeanization, European Union, Human rights, Republic of Macedonia.

Proces evropeizacije režima človekovih pravic v Republiki Makedoniji

Evropeizacija človekovih pravic je proces, ki je obvezen za vsako državo, katera hoče postati država članica Evropske unije. Ta proces je precej kompleksen in odvisen od situacije znotraj vsake države. Namreč, Republika Makedonija se zaveda, da mora vložiti veliko truda, da bi lahko zagotovila učinkovito podlago za promocijo in zaščito človekovih pravic in svoboščin. Cilj magistrske naloge je analiziranje procesa evropeizacije na področju človekovih pravic v Republiki Makedoniji. Tako analizira, kaj pravzaprav pomeni proces evropeizacije in posledično kakšen učinek ima na ureditev človekovih pravic v Republiki Makedoniji. Republika Makedonija se sooča z množičnimi težavami na poti uspešnega doseganja, promocije in zaščite človekovih pravic. Tema je tako zelo aktualna, ker je zaščita človekovih pravic prvoten pogoj, ki mora biti izpolnjen za včlanitev v Evropsko unijo, posledično pa mora država pokazati sposobnost in pripravljenost izpolnjevanja zahtev demokratične družbe v zvezi z človekovimi pravicami.

Ključne besede: evropeizacija, Evropska unija, človekove pravice, Republika Makedonija.

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ABBREVIATIONS

CE	Council of Europe
CJEU	Court of Justice of the European Union
EC	European Commission
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
ECSR	European Committee of Social Rights Charter
EU	European Union
FRA	European Agency for Fundamental Rights
LGBT	Lesbian, gay, bisexual and transgender
HLAD	High Level Accession Dialogue
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
NPAA	National Programme for Adoption of the <i>Acquis Communautaire</i>
NPM	National Preventive Mechanism
OSCE	Organization of Security and Co-Operation in Europe
SAA	Stabilization and Association Agreement
UN	United Nations

1 INTRODUCTION

The protection of human rights is an important and sensitive matter, not only in the European Union, but all over the world. As human rights violence is occurring on daily basis all around the world, we need to understand the rational, structural and cultural basis for their continued occurrence and the efforts made for their elimination. It is significant to explore the origin of the concept of human rights on historical basis, as the central theses even back in the history have said that all human beings are being equal. Explaining the term and the evolution of the terminology is also an important issue, as there have been many disagreements when it comes to put “rights” into a particular category. The term “human rights” reflects the idea that these are unalienable rights of every human being, with which no State can interfere. The overall field of human rights is quite complex, including great diversity of actors, organizations, institutions who have different positive or negative impact. Analysing their relation can help in promotion and protection of human rights.

This research aims to analyze the development of the protection of human rights on European ground and the Europeanization process in differential political systems on this essential issue. I would like to give a constructive analysis how the challenge to be part of the big family is influencing domestic changes, to which dimension are they made, and what are the effects of them. A comprehensive assessment of the protection of human rights for each country which aspires to become part of the European Union, is essential issue. Furthermore, it is set as a principle which must be fulfilled in order to be accepted in the European Union and the reasons for that are rather important; every democratic system should guarantee protection of human rights and the rule of law.

Understanding how the challenge to be part of the 'big family' is influencing domestic changes under the process of Europeanization has to be made primarily in explaining the notion of 'Europeanization' itself. As it has become a quite *fashionable*¹ term in the last two decades from which many questions have been raised, it is a very significant to know the exact meaning of this term; how does it effects domestic policies; is it an irreversible process etc.

¹ We can meet the term fashionable all through the literature concerning Europeanization.

Primarily, I would like to explain the conceptual meaning of 'Europeanization' and its diverse implications. It is necessary to explore and understand whether and how this process is changing nation-states and in same time to differ with the notion of 'European Integration' as these two terms cannot be brought to an identical meaning "It is not a simple synonym for European regional integration or even convergence, though it does overlap with aspects of both" (Featherstone 2003, 3). The historical enlargement after 2004, has changed the horizon of the European Integration process towards South Eastern Europe. The latter was also an encouragement for the countries of the Western Balkan to improve their situation, as they want to be part of those "United in Diversity". The protection of human rights is set as a political criterion without which no country can fulfill its longlines be part of the European Union. That is another reason more, why it is truly meaningful to understand how does the process of Europeanization effect domestic changes and reforms providing effective promotion and protection of human rights.

In the reform process, Macedonia has been faced with complex issues concerning the protection of human rights. The process was marked by slow intensity, complex and negative organizational tendencies, absence of political dialogue, no transparency and lack of analyses before amending national legislation. All the previously mentioned features have led to weak, politicized and non-labile institutions which failed to provide effective protection of human rights.

Therefore, I put the research question that I find essential. How does Macedonia make domestic changes (structural, political, institutional) under the process of Europeanization and do they provide ground for effective promotion and protection of human rights?

1.1 STRUCTURE

The structure of this research will include:

The first chapter will contain introduction concerning the subject, as well as addressing the importance of the research question for Macedonia. In precise, I would like to give a theoretical explanation about the historical concept of the process of European integration and its impact on national systems, mainly in the adaptation pressure and the need for changes for fulfilment of the criteria for protection of human rights. The need for assessment of the process

of integration of how and whether it can be seen as a process of socialization, is more than essential issue.

The second chapter will be devoted to the improvement of the protection of human rights on European ground and the Europeanization process in differential political systems, explaining not only what does this process signifies for the EU member states, but also for the candidate countries. I would like to give a constructive analysis how the challenge to be a part of the big family is influencing domestic changes, to which dimension are they successful and what are the effects expected of them.

The third chapter will concern case study of the Macedonian system of human rights protection divided in two parts. The first would include the period until 2001, examining the problems that occurred after establishment of sovereign state challenged with many domestic system changes. The second will be the period within the last decade when a great impact of EU integration process has been made on the overall political, judicial and institutional changes in the Republic of Macedonia and moreover, when Macedonia has made quite a lot of progress in order to provide effective protection of human rights. In this third chapter I would like to explore to what level does Macedonian national system is facing mismatch with the European policy, the willingness and the capacity to adjust, as well as the preferences of certain actors and administrative changes that have to be made.

The fourth chapter will give a detailed picture to the actual and main problems that Macedonia is facing in recent period towards effective promotion and protection of human rights. In this part I would like to include examples of recent events as very significant part showing the existence of the problem, and therefore I would like also to conduct interview with relevant actors involved in this process. That would be the Ombudsman of the Republic of Macedonia as a very important actor or representatives of non-governmental authorities.

The last and fifth part will be the Conclusion of this research which will give an answer to the research question and it will explain how the problems are conceived and how can they be overcome. It will be a significant contribution to my country for the changes that will have to be made in the future, all leading to one goal-effective protection of human rights. It would demonstrate how a stable, healthy and democratic state should work on its path to better society, human development and future EU member state.

1.2 METHODOLOGY

The methods that will be used in this research will be first of all qualitative-based combined with quantitative methods. Understanding how the challenge to be part of the 'big family' is influencing domestic changes under the process of Europeanization has to be made primarily in explaining the notion of 'Europeanization' itself; therefore conceptual analyses will be primarily completed. Furthermore, analyses will be made on the primary and secondary sources: The Constitution of the Republic of Macedonia, national legislation, legal acts, official documents, European Commission reports, key documents on EU integration process, agreements, statistical data, archive-based work, as well as newspapers writing on human rights, NGO's reports. Analysis and interpretation of legal documents will be completed through the logical and functional types of interpretation, as most appropriate for this kind of research. Interviews will be made with relevant groups and examples of recent events and happenings issuing the problems above will be given.

2 EUROPEANIZATION

2.1 INTRODUCTION TO THE TERMINOLOGY AND SIGNIFICANCE

During the 1990's new questions have been raised about the process and the outcomes of the European Integration. Many of those questions concerned the domestic impact that Europe has on the member and candidate countries and what is the overall outcome of those changes. Studies and researches of Europeanization were produced for the member, but as well for the candidate countries and non-member states (Borzal and Risse 2006, 483). Primarily, it is important to differentiate the conceptual meaning of Europeanization and afterwards to analyse the implications of it.

The impact of Europeanization is marked by diversity and asymmetry, as EU's penetration into member states, new and old ones is quite different (Borzal and Risse 2006, 497). Consequently, Featherstone speaks about the process of Europeanization in a "maximalist and minimalist sense". Maximalist, explaining the process of Europeanization as a "structural change that entails must fundamentally to be of a phenomenon exhibiting similar attributes to those that predominate and are closely to Europe", and minimalist "Europeanization as a process which response to the policies of the European Union" (2003, 3). As there is quite a disagreement and not enough research agenda in the literature about the usage of the term Europeanization (Borzal and Risse 2006, 485), certain authors have tried to identify the actual significance of it.

A survey of an academic journal articles referring to Europeanization, has shown that the usage of the term in social science literature has increased constantly through the years, indicating that the term is applied in four extensive categories: "as a historical process; as a matter of cultural diffusion; as a process of institutional adaption and as the adaption of policy and policy processes" (Featherstone 2003, 5-6). Europeanization as a historic phenomenon has quite different meaning, argues (Featherstone 2003, 6) from "export of European authority and social norms to anthropologist using Europeanization to explain the changes in the human society".

Nevertheless, the modern usage of the term is mostly binded with the adaption to the West European norms and practices (Featherstone 2003, 7). In the second category, Europeanization as a cultural diffusion has a very extensive significance as a "transnationalism", more precisely as a "diffusion of cultural norms, ideas, identities and behaviour on national

basis across Europe” (Featherstone 2003, 7). Institutional adaption is a category which is more closely linked to the impact of EU, as Europeanization is quite often defined as the adaption of domestic institutional actors. Accepting Europeanization as a process of adaption of domestic policies and also as a policy process is the widest category which includes numerous perspectives; nevertheless, common for all those processes, is that this process is mostly associated with the direct effect of the EU on domestic level, ideas and interests (Featherstone 2003, 10–12). The existence of different dimensions of how the term has been used and applied in the literature leads to the necessity to clarify it as a key concept and to enlighten the different views of those who have been trying to give a precise meaning of it. The concept of Europeanization has to be well analyzed in order not to guide to confusion and misunderstanding in its utility. Concerning the conceptual analysis of the term, Radaelli refers to the potential risks of its incorrect usage: “concept transformation, conceptual stretching and degreesim” (Radaelli 2003, 28).

The concept of Europeanization is being analyzed both in member and candidate countries. Rationalism and constructivism are the first theories that are defining the different mechanisms and facilitating factors that Europeanization has, explaining the impact of 'Europe' in different domestic changes (Pollack 2006, 41). Borzel and Risse consider that Europeanization could be theorized with two different mechanism “one deriving from rational choice and which emphasizes the logic of consequences, and the other which is deriving from sociological institutionalism which emphasizes the logic of appropriateness”. The rationalist version assumes that “the actors are rational, goal oriented and purposeful and are following a logic of consequentilism”, meaning that every actor depends on another one towards achieving his goals and that the both parties have to exchange “resources, strategies and interests” to produce the common outcomes and mutual interest (Borzel and Risse 2006, 493). Domestic changes according to the rationalist Europeanization literature, have identified two factors which are constraining domestic positive changes “multiple veto players and facilitating formal instiutions” (Borzel and Risse 2006, 492). The socialization approach theorizing the “Europeanization as a process of socialization” (Borzel and Risse 2006, 493), applies that European rules can be capable of influencing through “persuasion and socialization”, by which domestic actors are socialized in European norms and rules and are shifting their interest and identities.

Trying to connect the interest and behavior that is being produced when a country longs for EU membership, some authors (Featherstone 2003, 12) are defining Europeanization as a process that becomes part of the states and their politics and policy making, reorienting themselves to the Union's political and economic dynamic degree. In this context, it is essential to know what Europeanization means for the applicants and not only for the existing EU's countries, as they are subjected to pressures and adaptations. Featherstone sees this process in the applicant countries as a "dimension of conditionality and accession negotiations" (2003, 3–19). However, examining the EU's impact on different candidate countries should not be exaggerated and there should not be overestimation of the influence that EU has. The latter means that a profound estimation to what extent and limitations is EU's influencing and responsible for the changes in less advanced countries is essential.

Finally, (Radaelli 2003, 30) provides a broad definition of the term Europeanization and thus, he considers that:

Europeanisation consists of processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies.. This definition, as including all important matters, seems to be quite acceptable for applicability.

The concept of Europeanization, after arising as a new phenomenon at the end of the 80's, and its usage in the political science have spread in a wide range and its scope of use became wide and diverse (Hafner and Lajh 2005, 17). Most of the political definitions define the concept of Europeanization as a very complex process. Generally, the concept is related to the concepts like innovation, modernization, change and adaptation (Hafner and Lajh 2005, 19). The process of Europeanization is undoubtedly a process conducted in both directions; however, it is very essential to emphasize the necessity to analytically differentiate between the process of shaping the

politics of the European community and the process of Europeanization, as the both processes overlap, but they can not be equalised and replaced (Hafner and Lajh 2005, 20).

2.2 EUROPEANIZATION AND THE SCOPE OF DOMESTIC CHANGES

The theoretical approaches about Europeanization have indeed revealed that the EU leads to domestic changes, although the scope of those changes are not enough explained concerning the degree that the European-level process and institutions provoke changes in domestic politics, policies and polities (Borzel and Risse 2006, 494). The dimensions of domestic change are taught to limit, since the study of Europeanization in the literature is mostly limited on certain analysis, hence a common approach for the impact of this process is not easy to reach (Borzel and Risse 2006, 486). However, every research in different cases has shown that every member state had to adapt to the Europeanization process for reasons of different nature. (Cowles *et al.* 2001, 1) are pointing out that Europeanization is a process of importance and that in every analyzed case this process leads to distinctive changes in domestic structures. The authors emphasize the “domestic adaption with national colors”, whereas the national structures are having a meaningful task in the transformation process and the required outcomes. The three step approach they point out regards the “Europeanization, adaptional pressures and mediating factors” as the essential path on which every country needs to pass through, as a result of their state particulars (Cowles *et al.* 2001, 2). Europeanization as a key concept (Cowles 2001, 3) is being regarded “as the emergence and development at the European level of distinct structure of governance”, a definition that differs from the usual usage of the term, pointing out the interaction among several levels of governance “supranational, national and subnational”. Agreed that the EU is being characterized as an environment of many levels of interactions (Cowles 2001, 17), Europeanization is undoubtedly affecting the wide domestic structures, politics and policy areas (2001, 5).

Difficult to explain the scope and the direction of changes that are likely to occur, the basic concept for Europeanization is based on the adaptional pressure (Cowles *et al.* 2001, 18) deriving from the idea that the Europeanization matters only if there is “divergence”, i.e. if there is “mis-fit” between European-level institutional process, politics, policies and domestic level (Radaelli 2003, 44). Therefore, the question what is being Europeanized and to what extent,

leads to the need to know how much change has been brought by Europeanization –the domains that are affected and the extension of Europeanization (Radaelii 2003, 35).

As it is quite logical that the adaption pressure is preferably high in the EU candidate countries Hafner and Lajh (2005, 24–29) explain the concept of Europeanization as an institutional and procedural adaption. The institutional adaption overtakes the changing of actions, routines, formal institutions and processes and is conditioned by the adaption pressure. In the process of procedural adaption, main focus is being put on the public policy network, as it is considered that the public policy network under the process of Europeanization, primarily changes the logic of decisions taking, and afterwards it supports the advisory politics and it enables redistribution of the sources and power among different public policy actors.

2.3 EUROPEANIZATION – A PROCESS OR A FINAL GOAL?

Primarily, Europeanization should not be equalised with the process of harmonisation with the *aquis communautaire* which primarily sets “the same rules of game”. The concept of Europeanization has been understood and conceptualised in different manners, but the general opinion is that the outcome of the process or otherwise said the final goal can be different. Ristevska Jordanova (Phd dissertation 2010) gives few explanations of the term, concept and process itself, elaborating that Europeanization is more characterised as a process rather than a final state, a process present since the beginning of creation of the European Union as a political community. Europeanization, she further explains, is also defined as “institutional, strategic and normative adjustments, caused by the European integration” (Ristevska Jordanova 2010, 29). Furthermore, there are more distinctive models of Europeanization: “Europeanization through the changes of external border”, “development of the institutions on European level”, “central penetration of the national political systems”, “exporting forms of political organization” and “unification of the European project” (Ristevska Jordanova 2010, 29). It is essential to understand and know how the process of Europeanization is affecting and changing the “home field” of the targeted country. Ristevska Jordanova (2010, 30) explains that on the change of domestic norms, the political culture and the informal institutions which provide contribution for building of consensus and sharing the costs, have positive effects. Therefore, depending of the degree of changes caused on the domestic level, they are characterized as “absorption, adjustment or transformation”.

As this research regards primarily what does the process of Europeanization means for the candidate countries, it is important to mention how the process of European integration and Europeanization affects the candidate country. Ristevska Jordanova (2010, 32) speaks about the mechanisms of Europeanization of the candidate countries. They can be divided in two dimensions “challenged by the EU” or “by domestic challenges”. European Union is an actor that encourages the process of Europeanization by sanctions and awards, which consequently influence the outcomes and costs of the candidate country. That is the model of external incentives. The economic model is created on the base of human/state attitude, according to which the decisions of the subject (the state) are set and fixed, but at one moment they are in a situation to comply their domestic policy with the set of conditions. At this moment, the subject creates his decision on the base of the calculation made of outcomes and cost. Furthermore, by the logic of suitability, Europeanization is encouraged with social learning so that the “targeted countries” are trying to adopt the rules of EU if they think that they are legitimate and if they identify with EU. And according to the last model, the model of learning, the states which are not satisfied with the current position and their »status quo« are adopting the rules of the EU and at the same time, they see those rules as a solution to their problems on the base of “instrumental calculations” or “suitability with the decisions of EU” (Ristevska Jordanova 2010, 33).

After the fall of the communist system and the years ahead, the EC was focused on guaranteeing general democratic stability, the rule of law, promotion and protection of human rights, the creation of assistance programmes, for example PHARE program etc. Nevertheless, the turning point in this period was the summit in Copenhagen in 1993, when the well-known “Copenhagen criteria” were established. Set as political conditions, which every country will have to adopt and obey, they include primarily stability of institutions that will guarantee democracy, the rule of law, protection of human rights and protection of the minorities. Furthermore, in the period ahead, precisely in Essen 1994, the pre/accession strategy was set for adoption of the *aquis communautaire* (Sadurski *et al.* 2006, 28).

The processes related to Europeanization are not only limited to the EU countries, but also to the countries closely related to the EU and even more to the countries aspiring to become part of the EU. The adaption pressure is wider and deeper in the candidate countries rather than in the EU countries, as it is required institutional adaption also in the negotiation process the

Europeanization is being used as an expression of economic, political and security interest of the country aspiring to be part of the EU (Hafner and Lajh 2005, 29). The process of Europeanization is frequently associated with the process of democratization in the post social countries in Middle and Eastern Europe. Therefore, Hafner and Lajh (2005, 31) note, that by no doubt this process is primarily related to the institutional and public political adaption to the standards in the EU and key changes in these countries. Furthermore, they note, that the EU is like *facilitator* to the path of democracy and democratic development, respect of the fundamental rights and freedoms and openness of the political system.

2.4 HUMAN RIGHTS

2.4.1 Origin and development

Human rights and their promotion and protection are essential element of every political, democratic and legal system not only in EU, but in every country that embraces the profound postulates of every democratic system. The concept of human rights is generally accepted and it became part of the world ideology. However, it is a very ambitious thing when the science is trying to explain the nature and the basics of the human rights, but on the other side it is necessary to do that. The development of the idea of human rights and natural laws based on the rational conception of the natural law in the XX century results with adoption of the international and European documents for the rights of the human as an imperative of the modern country (Kambovski 2009, 50).

However, Deskoska (2006, 88) underlines that there is a paradox in the doctrine concerning the human rights. On one side, there is a general consensus about the need and the significance of the human rights, while at the other side, there are many different theories concerning the human rights which elaborate different views, arguments and different approaches. Nevertheless, each theory is neither the right nor the incorrect one, but each has its own contribution for acceptance and development of the human rights. However, the natural-law theory was the first theory that influenced the first legal documents for human rights, which represent the beginning of the history of regulating of human rights and the beginning of the legal history of human rights.

Defining the term and explaining its meaning in the theory has also been a matter of disagreement and long term effort. Many theories explain the term, the nature and the role of the human rights as something that protects the individuals from the state and other individuals from imposing a burden on the individuals because of the “general good”. Others consider the human rights as an instrument for protection of the human dignity notifying that: “the human rights are not goal for themselves” (Deskoska 2006, 55–56).

Relating to the last Deskoska (2006, 55) elaborates that in the history there is a disagreement about the question that the human rights are directed to. Some authors think that they are directed toward the state, while others consider that they are directed towards the human beings, and the third group of authors find that the human rights are directed towards the both. However, today no government is legitimate without promoting and protecting the human rights or otherwise said, human rights are the standard for political legitimacy and ultimate goal of the governments and consequently, every government is legitimate depending on the measure of protection of human rights. Human rights are the basic and the mean for limiting and regulation the state authority (Deskoska 2006, 56). Concerning the term human rights, it is worth mentioning some facts and disagreements. Thomais Paine is mentioned as the first one who used the term human rights in his English translation of the French declaration. In the period that followed, this term became more frequently used and as a substitute for the terms natural rights and the rights of the human. In 1947 Eleanor Roosevelt has made a proposition so that the term human rights is used in the Universal declaration (Deskoska 2006, 56–57).

However, as this research focuses on the human rights protection and promotion in every democratic state, I will elaborate the term human rights itself.

The term itself explains Deskoska (2006, 59) our intention towards the individual and the rights itself. Consequently, guiding the intention towards the individuals, the human rights can be defined as rights which are possessed by someone because he/she is a human. But every right that people have are not human rights: human beings have legal, contractual and constitutional rights, but all of them are not necessarily human rights. Deskoska (2006, 59) refers to few explanations concerning the term and meaning of human rights.

For Sheastack in Deskoska (2006, 59) the rights are a term which can describe different legal connections. Thus, this term is sometimes used in the sense that “the one who has the right”

is authorized for something concerning someone else's obligation. The term is also used to signify immunity from the change of the legal status, also as a privilege to do something; the power to create legal connection...The term right is thus present in different situations and signifies different protection. No matter if the rights are understood as the right to "acquire", as an "authorization" or as "different manners of acting", Deskoska (2006, 60) enumerates few elements they include, creating complex relation: "Every right has its owner (carrier); Rights have capacity; There are parties to whom the right is addressed (they have to act in order to enable the right); The rights have their weight which suggests their meaning".

There is one essential question that is being posed and that is: How can we make difference between human rights and other rights, knowing that all rights are not human rights? Concerning the latter, Freedon (in Deskoska 2006, 61) suggests that the human rights are "conceptual mean expressed in linguistic forms which give priority to specific human or social attributes, which are considered essential for proper functioning of the human being; his goal is to serve as a protective clause for these attributes". The interpretation of this definition is underpinned with few more further suggestions:

It is rather impossible to answer precisely on the question—who defines the attributes of the people; The careful activity includes careful non activity or maintaining or self limiting; The activity needed for protection of the essential human and social attributes will have implications for the carriers as for the the ones from which depends the execution of the laws; Despite that we can have the right to that what is a right, with the law obligatory is not implicated on the objective moral position; The supporters of the right usually have the goal to formalize or institucionalize the rights, primarily through the laws; All rights can protect the wanted values, at least indirectly, but the other rights are deriving from the human rights; The protection can be made by pressure and formal or can include the public meaning in a form of ethical imperativ or can be internal throught the processes of socialization; The right gives certain status or value to the carrier of the right. Because rights are values, the judges who express concern for the human beings, give advantage to the behaviour which contains that concern in relation to the behavior which not includes (Freedon in Deskoska 2006, 61).

The effort to unify the definition of human rights is rather impossible. However, Deskoska (2006, 62) stresses out that these five postulates can help in defining human rights:

1. *Primarily, human rights are rights which limit the state power and establish minimum standards for decent and governmental practice;*
2. *Human rights protect basic values of the human beings and the community. They are referred to the request or authorization of broad continuum of basic values;*
3. *Human rights exist, no matter and independently of their recognition or implementation in certain country;*
4. *Human rights are the most significant rights, but they are not absolute and exclusive;*
5. *Human rights are universal.*

Caca (1994, 13) elaborates that the human rights and freedoms are not only subject and content of the modern constitutions, but they were also at the interest of the philosophers and scientist long before the first written constitutions. That interest, according to (Caca 1994, 13), has its basics in the need to meet the human being not only from antropological perspective, but also as a social being who lives and works in the enviroment in which he communicates with other and expresses himself. He notes three teories about the human rights and freedoms: the theory of natural right, the civil law and positivistic theory and the Marxist theory. While the first two theories are the traditional one, the third one expresses the materialistic view of the world and the class divisions in the society. The questions considering the origin of the justification for human rights have been the main motive and basic upon which different theories for human rights were developed. Therefore, few ideas and theories considering the above will be elaborated.

2.4.2 The Theory of natural rights

The theory of natural rights has its beginings in the ancient world, further continuing in the middle centruy and its basics is in the apstract antropological understanding of the human. Completelly developed in the XVII and XVIII century, this particular theory was an expression

of the bourgeoisie in the battle against the feudal system (Caca 1994, 13). The essence of this theory of natural rights is the understanding that the human beings are born with certain natural and innate rights and on base of those rights human beings do undertake intellectual, physical and moral activities. These rights are innate, they cannot be gifted and therefore nobody can take them or violate them.

Two periods from the middle century are thought as important for the appearance of the theory of human rights: the early middle century and in the already developed middle century in the works of Jean Gerson (Tuck in Deskoska 2006, 67).

Aquinas (in Deskoska 2006, 67) as part of the philosophy of the natural law, postulate the idea that every station in life is determined by God and that all people are under his governance.

Davidson (in Renata 2006, 67) considers that every human being has special gift for individual identity and there he finds the idea of natural laws.

Gerson (in Deskoska 2006, 68) founds his theory based on theology. He understood the relation between the human and God as a reciprocal relation between the equal and that the natural agreement between the man and God exists and that both parties have rights which are deriving from the agreement. In the beginning of the XVII century a new power and direction was given on the development of the concept of human rights.

Grotius (in Deskoska 2006, 68) separated the natural rights from their theological origin and gave a significant encouragement for secularization of the theory of natural right. He defines the natural law as a “dictate of the mind”. Furthermore, he made an influence on many other authors at that period for redefining and transforming the theory of natural rights.

Hobbes (in Deskoska 2006, 69) defines the rights as attributes of the individual, explaining that in the centre of natural attributes lays the desire for personal security and for protection of individual life and that the desire for personal security is the basic motive for social agreement.

According to the Lock's conception of the natural rights, the natural rights are as rights with biggest moral significance, they are basic authorizations of all human beings and it is government's obligation to provide these rights. As a most significant representative of this theory, John Lock has made an influence on the declaration for the rights in USA and France in the time of the revolutions Lock (in Deskoska 2006, 70).

Lock considered also that the natural right obligates everyone who is equal and independent, they must not violate others' life, health, freedom and possession. Moreover, Lock located the problem of political authority in relation between the individual and the state and he found that the respecting of natural laws was as the first condition for legitimacy of the governance.

The most significant critics of natural rights is Bentham (Bentham in Deskoska 2006, 71) who denies the natural rights as “ordinary stupidity”, as “rhetorical nonsense”, or “foolishness”. He found that the rights do not exist out of the governance; they cannot be absolute without greater contradictions. According to the theory of natural rights every human being has rights that are recognized and not granted by the society. The main contribution of the theories of natural rights is that they set a clear distinction between the individual and the state. The idea for natural rights sets a border between the individual and the country and clear knowledge that the state cannot go beyond that border (Deskoska 2006, 73). Although the theory of natural rights is idealistic and scientifically unsupported because it does not recognize and respects the social relations in which the human rights and freedoms are realized and it does not create law which reflects the reality of these relations, the theory was rather progressive at that time and confirmed also with the fact it was an ideological basic for the first declarations in the big bourgeoisistic revolutions in England, France and North America (Caca 1994, 14).

2.4.3 The positivist theory of human rights

This theory was born in the XIX–th century and it is a reverse to the theory of natural rights. According to this theory, the human is a civil individual, a product of the society and of the state. The essence is that this theory sets relation between the individual and the state and in that particular relation the state has the authority and the individual has individual subjective rights which are enabled to him by the state itself (Caca 1994, 15). (Deskoska 2006, 73) elaborates that the positivists consider that the origin of human rights can be only the legal system. The law consists of legal norms and rules adopted by the state and executed with forced sanctions. The theory of positivism is trying to prove that the positive right is exclusive. Creating the law, the state gives the rights to their subjects as a gift and therefore they are a concession of the state. It is upon the state that will decide whether it will give and take the rights. Furthermore,

that means that the legislator is not limited with anything when determining the context of the laws.

2.4.4 The Marxist theory

According to this theory, there are no natural rights because the rights and the freedom of the human as well as the law and the state are created in the class society and are its product. This counts for the bourgeois capitalist as well as for the socialistic countries, with the difference between them on the field of ruling class, as well as the ownership on the means for products. Therefore, according to this theory this is the essential difference between the rights and freedoms of the human and citizen in the bourgeois and socialistic society (Caca 1994, 16). Consequently, the law is an expression of the will of the governance (Caca 1994, 16). The basis of this theory for the rights and freedoms of the human is the human and the citizen is the Marxist understanding of the freedom at all. Marx puts the problem of emancipation of the human as a main problem in his views for the rights and freedoms of the human and the citizen. The Marxist theory includes the social relations and the class struggles as a basic and as an expression of the efforts of the human for his release.

2.4.5 Basic historical documents

The first documents for the rights and freedoms of the human were adopted in the middle century and the idea for guaranteeing the human rights in written form is Anglo-Saxon.

Magna Carta Libertatum is thought to be the first document that contains provisions about the rights and freedoms of the human. *Magna Carta Libertatum* was a charter brought by the English king John Lackland in 1215 after the conflicts with the English barons and under their pressure, so with this document they have gained privileges and limited the King's authority (Caca 1994, 18). However, Deskoska (2006, 95) elaborates that it is rather wrong to consider that *Magna Carta Libertatum* includes the beginning of regulating the human rights of the English, because this document did not include the human rights in today's sense. It is simply an agreement, a compromise made between the King and the barons for distribution of the authority.

Habeas Corpus Act also adopted in England in 1679 by the English parliament is thought to be the base for the later criminal law. It was delivered after difficult political fights in England against the arbitrariness towards the people and their torture. By its character it is an act of a

procedure, but according to his action it presents one of the most significant limits of the personal freedom of human. Primarily in England it was concerning only on the criminal acts and later his application was extended on the cases concerning deprivation from freedom in the civil works. *Habeas Corpus Act* with its content and essence was also adopted in the United States of America in the period of colonialism. The principles of *Habeas Corpus* in the Anglo-Saxon law are in application even today, but its essence is imported in the continental countries in their constitutions as inviolability and invulnerability of the right of personal freedom of the human (Caca 1994, 22).

Bill of Rights, adopted also in England was “an act that declares the rights and freedoms of the subjects and regulates the inheritance of the crown”. Brought by the English parliament, it enables the dominant position of the parliament in the country and generally towards the authority of the crown. Furthermore, the main rights and freedoms of the human are determined. It is thought to be one of the most important documents considering the rights and freedoms of the human because primarily it is an act of the parliament as a representative of the people and second, the document contains specific provisions for the right and freedoms of the human, as well as guarantees for their accomplishment (Caca 1994, 23).

Furthermore, Deskoska (2006, 99) notifies that the history of human rights from the aspect of human rights existence, can be separated in 3 periods: the period of slavery with certain categories of people with no rights; the period of privileges when some classes of people had privileges and at the same time that is the period when there were different social classes with unequal rights and the third period, the period of human rights. The documents mentioned above were all brought in the period of privileges. Consequently, Deskoska concludes that all the referred documents from the English experience do not guarantee the freedom of the individuals and they do not represent a declaration of the human rights, but each of them was one stage further in the long battle for certain rights.

The French declaration for the rights and freedoms of the human and the citizen since 1789 (*La Déclaration des Droits de l'Homme et du Citoyen*) has a very controversial origin. However the Declaration is primarily result of the spirit from the XVIIIth century, but at the same time it is a warning against going back in the past and a sort of manifest for creating a new society (Deskoska 2006, 108–109). Adopted by the French assembly in 1789, it became part of

the French constitution and it was a reference for further constitutions of France. The basic principle of the declaration is in the Article 1 and it proclaims that “the people are born free and stay free and equal in their rights” (Deskoska 2006, 106). Those rights are freedom, property, security and resistance against repression (article 2). The source of sovereignty is in the nation (article 3), the law is an expression of the general will, as every citizen is equal and has the right to give consent in his creation (article 6). Beside the freedom, property, security and the right to resistance against repression, the declaration specifies also the freedom of speech, freedom of press, the religious freedom and freedom of arbitrary closing Deskoska (2006, 107). Generally, Deskoska (2006, 109) notes that the characteristics of the Declaration consist of universality, individualism and abstraction as further ideas which could be used for further legislation.

3 PROTECTION OF HUMAN RIGHTS ON EUROPEAN GROUND AND INTERNATIONAL DOCUMENTS

Human rights today are undoubtedly one of the foundations which the rule-of-law countries stand on; as among the most necessary postulates, when one country does not provide minimum conditions for protection of human rights, it is no longer considered a rule of law country (Cerar 1996, 168). Therefore, a whole scope of institutions guaranteeing rule of law, are of an essential significance for effective protection and promotion of human rights. Western modern countries regulate their policies on few characteristics of human rights: “essentiality, relation to the human, inalienability, absolutism, declarative nature of the articulations, morality, political nature and justice” (Cerar 2007, 20–21).

In the modern world many provisions considering the protection of the human rights and freedoms are taken for granted from the majority of the people. It is important to underline that the first international documents for the protection of human rights and freedoms (the Universal declaration of the human rights) were brought in time of human rights repressions, racial discrimination, inequality of women etc. Therefore, no matter the challenges, wars, terrorism or other conflicts the modern countries in the 21 century are faced with, the development of the protection of human rights and freedoms was going extremely fast after the year of 1948 (Ribičič 2007, 71).

In this chapter, I would like to mention the most significant European and international acts adopted since the Second World War and afterwards, mainly on European ground and particularly in the EU. I also will mention the institutions and bodies related to the protection of the human rights and freedoms, as all of them have high importance for promoting, surveying and guiding the Republic of Macedonia as a candidate country in the EU.

3.1. UNITED NATIONS AND THE RIGHTS AND FREEDOMS OF THE HUMAN

The United Nations (UN) is an organization which had paid special attention and expresses specific concern for determination and enjoyment of the fundamental human rights and freedoms. The basic motive for this kind of interest and action is the fact that the Second World War was denial and violation of the human rights and freedoms unknown to humanity by then. And from this point of view as (Caca 1994, 41) elaborates, it came the base about that the affirmation of the human rights to be determinate in the political structure of the human's freedom, respecting this freedom and stimulating the will to work for economic and social progress as a basic condition for real peace. From Magna Carta Libertatum to the French revolution and afterwards, many declarations which had international meaning were adopted, but at the same time they were accepted as well by individual countries. That is the reason why the international documents of the 20th century which set the standards of human rights protection are considered to be very important turn-over as regards human rights and freedoms (Ribičič 2007, 69). In the modern world, human rights and freedoms have universal nature and consequently this area is basically regulated in the constitutions of the democratic countries and in the international agreements. After the Second World War, UN came to the acknowledgment that without engaging their efforts towards protection of the human rights and freedoms, there cannot be any results considering world peace and security. Consequently, the first step forward, was mentioning the protection of the human rights and freedoms in the Founding Charter of the United Nations² (Ribičič 2007, 70).

² Charter of the United Nations.

The Universal Declaration of the Human Rights³ was adopted and pronounced by the General Assembly of the UN on 10 December 1948. It is a document translated in more than 200 languages and it is the founding document considering the promotion of human rights and freedoms. The Declaration itself has 30 articles which include a wide list of fundamental civil, political, economic, social and cultural rights. The first articles note that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood⁴ and moreover,

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty⁵.

Further, articles 3 to 21 define the civil and political rights and articles no. 22 to 27 define the economic, social and cultural rights.

The basic characteristic of the provisions of the Declaration is that they are extensive, because besides the classical civil and political rights contained in the constitutions and constitutional documents of the XVIII, XIX century and the beginning of XX century, the Declaration also contains economic, social and cultural rights. With these provisions, certain rights were primarily recognized and further the obligation for their protection was set as well as the duty for enabling certain conditions for their enjoyment (Caca 1994, 44).

³ The Universal Declaration of the Human Rights 2015.

⁴ Article 1 of The Universal Declaration of the Human Rights 2015.

⁵ Article 2 of The Universal Declaration of the Human Rights 2015.

Others acts adopted within the UN are also worth mentioning (Ribičič 2007, 74–96) as follows:

- The International Convention on Economic, Social and Cultural Rights adopted in 1966;
- The International Convention on Civil and Political Rights adopted in 1966;
- The Convention about the Status of the Refugees adopted in 1951;
- The Convention of the UN Against All Types of Racial Discrimination adopted in 1965;
- The Convention Against All Types of Discrimination against Women adopted in 1979;
- The Convention against Torture adopted in 1984;
- The Convention on the Rights of the Child adopted in 1989.

3.2 COUNCIL OF EUROPE

The Council of Europe was the first international organization in Europe after the Second World War. It was founded by ten countries⁶ on 5 May 1949 in London and today it has 47 member states⁷ (Council of Europe 2015a). CE was founded in the time when Europe was still divided and in front of a new treaty of war unless was a dialog which would mean peaceful cooperation between the countries and democratic development. Therefore, Ribičič (2007, 17) emphasises the great meaning of its foundation and correlation, which further brought to foundation of the European Economic Community and the European Union. As he notes, its foundation was of a tremendous meaning as a base to build Europe on the visions and principles of united economic area on which there will arise free trade of ideas, people, services and goods.

CE undoubtedly is the leading organization in Europe considering human rights. In precise, its primary and ultimate goal is to ensure protection of human rights noted in the ECHR, signed

⁶ Founding countries are: Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, The United Kingdom (Council of Europe 2015).

⁷ All 47 member states and the years of admission: Greece and Turkey 1949, Ireland and Germany 1950, Austria 1956, Cyprus 1961, Switzerland 1961, Malta 1965, Portugal 1976, Spain 1977, Liechtenstein 1978, San Marino 1988, Finland 1988, Hungary 1990, Poland 1991, Bulgaria 1992, Estonia, Latvia, Slovenia, Czech Republic, Slovakia, Romania 1993, Andorra 1994, Latvia, Albania, Moldova, Ukraine, Macedonia 1995, Russia and Croatia 1996, Georgia 1996, Armenia and Azerbaijan 2001, Bosnia and Herzegovina 2002, Serbia 2003, Monaco 2004, Montenegro 2007 (Council of Europe 2015).

and ratified by its member states, protection of the democratic systems and the rule of law (Council of Europe 2015b). The mechanism by which CE enables its functioning is the following: primarily set of documents, acts and institutions were established. No country can become member state of the CE without ratifying the ECHR and consequently it cannot remain member if it violates the foundations of this convention⁸.

The European Commission of human rights, as well as the European court of human rights, were established with ECHR and for more than five decades they had crucial role for the protection of the human rights in Europe. It was abolished on 1 December 1998 with the Protocol No.11 to the ECHR and it was active only one more year until the closing of the opened cases and finally stopped working in 1999. Since then, the ECtHR is the only institutions for protection of the human rights written in ECHR (Maddex 2000, 128).

The European Commissioner is independent institutions of the Council of Europe. It was founded by the Boards of Ministries of CE on 7 May 1999 in Budapest with a preposition act for founding a commissioner of CE and is authorized for promoting and protection of human rights in all member states of CE (Commissioner for Human Rights 2015).

The European Committee of Social Rights is consisted of 151 independent experts elected by the Committee of Ministers for a term of 6 years (with the possibility of re-election once) and the mission of this board is to observe and to conclude whether the member states respect the obligations noted in the provisions of the ESC. Every year, member states submit a report considering the implementation of the provisions of the ESC (European Committee of Social Rights 2015).

The European Court of Human Rights was established with the adoption of ECHR and is thought to be the most important institution of the CE; its seat in Strasbourg as well. Today, the jurisdiction of ECtHR covers all matters related to the interpretation and usage of the Convention and its protocols. Application to the ECHR can be enrolled by every individual or legal entity that considers that their rights are violated as stated in the Convention. However, the main

⁸ Strasbourg as a head office for most of the institutions of CE was not chosen accidentally. One of the reasons for the CE and probably the most important one explains (Ribičič 2007, 19) was to prevent the possibility of a new war. Therefore, Strasbourg as a place on the French–German border, in France at the same time with German minority, was the suitable one.

condition for acceptance of the application is exhaustion of the whole range of legal means in the state towards which the application is enrolled (Ribičič 2007, 19).

The first task of the court is to check whether the appeal is acceptable and furthermore, whether it is filed within six months period after the day when the final decision was taken in the domestic legal system. State members, by Article 46 of the Convention, are obligated to respect the final decision on every matter in which they are one of the parties. The execution of the decisions is supervised by the Committee of Ministers; however, neither the Court nor the Committee has the authority for direct execution of the decisions. In this regards, the decisions of the Court do not have direct effect on the domestic legal system and it is upon every country to how it will respect the obligations from Article 46. However, member states eventually change domestic legal system as the Court decisions influence those changes and at the same time influence the shaping of practices of the state institutions since with the ECHR. Consequently, Perenič (2002–2004, 54) explains that common European standards for protection of human rights are being shaped, as the meaning of the Convention is a fundamental principle. This kind of institution as the ECtHR is unique and such establishment does not exist on other continents (Ribičič 2007, 122). Only in Europe individuals can reach efficient trial against the state which violated the rights promoted in ECHR, while on other continents that kind of conviction to a certain measure can be reached only in cases by one country against another. The ECtHR is actually one of the most important and perspective institutions of the CE. Namely, the theory attach importance to the fact that with the judicial practice ECtHR creates new law. Therefore, it is essential to know what does the court presents today, what is the level of protection of rights and freedoms which comes out not only from the provisions of the Convention and its protocols, but at the same time from the major legal practice of ECtHR. Certainly, it has enormous validity and it is not measurable with other international instruments considering the field of human rights (Ribičič 2007, 121).

In other words... "ECHR would have been only a desire and optional message as the Universal Declaration of UN, if Strasbourg was not going to have the power to punish financially and to morally stigmatize the states which violate the rights in their own legal system" (Dr. Boštjan M. Zupančič, judge in the ECHR in Ribičič 2007, 121).

3.3 THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ITS PROTOCOLS

After the Second World War Europe was divided and devastated. During the war, massive violations were made concerning human rights and freedoms. Striving to express the unity of the member states of the Council of Europe and to precise the protection of the fundamental rights and freedoms, on the 4 November 1950 in Rome, the European Convention for the protection of the fundamental rights and freedoms was adopted. Ribičič (2007, 109) elaborates that, since the adoption of the ECHR a new development began on the European ground, knowing that the fundamental rights and freedoms are the most important foundation which prevents divisions within Europe. Furthermore, Ribičič (2007, 110) underlines that without ECHR which further was accepted by all member states of the Council of Europe, Europe unquestionably was never going to be that what it presents today.

The ECHR main purpose is to ensure and develop ideals and values in the democratic society, whereas Perenič (2002–2004, 51) observes that every member state of CE individually as well as collectively carries the responsibility for protection of the human rights. The ECHR is the most comprehensive and effective agreement for protection of the human rights in the world. It is the first international instrument for protection of many civil and political rights with number of features, primarily with its form, with its legal obligation as an international act for the member states which signed the Convention, and last and most important with creation of the system for monitoring of the achievement of the human rights protection in internal field (Kaučič and Grad 2003, 99–100).

The achievements of the Council of Europe concerning protection of human rights and freedoms are quite numerous, taking into account that it is an organization which differs from the EU as it does not have supranational characteristics and as such it does not rest upon transfer of sovereign rights. Consequently, Ribičič (2007, 110) elaborates that there is a positive outcome that this organization has succeeded to set minimal standards for the protection of the human rights and at the same time, it set an obligatory system for the member states signatory parties. The ECHR is consisted of five parts and protocols divided in two parts. The first part of the protocols are those which change the ECHR and they have to be accepted by all countries of the CE so that they can be valid. For example, the Protocol No. XI which set ECHR as it is today, and Protocol No. XIV which role was to enforce the functioning of the ECHR and by 2006 was signed by all

parties, except for Russia has not ratified it yet. The other kind of protocols are those which complement the ECHR and start to be valid after ratification of certain number of countries, as for example Protocol No. 6 and No. 13 which refer to the provisions of ECHR on death penalty (Ribičič 2007, 124).

Republic of Macedonia has signed the ECHR on 9. November 1995. Its ratification was on 10 April 1997 and furthermore Protocols No. I, IV, VI, VII, XII, XIII and XIV to the ECHR were signed and ratified (Council of Europe, Treaty office 2015).

3.4 EUROPEAN SOCIAL CHARTER AND EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The European Social Charter guarantees social and economic human rights and it was adopted in 1961 and further revised in 1996. The European Committee of Social Rights rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter (Council of Europe, European Social Charter 2015). Member States of CE in 1997 in Strasbourg committed that they would implement social standards written in the social charter and other acts of CE ;consequently, the ESC also sets system of supervision for the contracting countries. The outcome of this supervision was to insure that the contracting countries would change their legal system and practice, in line with the requirements of the ESC (European Social Charter, 2015)⁹.

⁹ The ESC is a comprehensive document which regards many rights related to work, working conditions, social protection etc: The right to work; The right to fair working conditions; Reducing the risk related to risk work positions; Insuring week vacation; The right to fair payment; The right to free organization of the employees; The right of collective negotiation; The right of the children and youth to protection; The right of women on maternity leave; The right of professional guidance The right to health care; The right to social security; The right to social and health care; The right to the service of social protection services; The right of the invalid person; The right to social, legal and economic security; The right of the children to social, economic and economic security; The right to work abroad; The right of migrant workers and their families to protection and help; To right to equal opportunities and equal treatment concerning employment, no matter of the gender; The right to be informed and advised; The right to cooperate in taking decisions and improving working conditions and environment; The right of the elder person to social care; The right of protection in cases of termination of employment; The right of the employees to protection of payment in cases of employer's inability to ensure payment; The right to dignity on working places; The right of

It is also important to mention the Protocol to the ESC from 1998, which refers to “the equal opportunities of both genders, the right of the employees to notification and consultation in the companies, the right of cooperation of the employees in taking decisions for the working conditions in the companies and the right to social care of the elder person” (ESC, 2015).

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted in 1987 and it was addition to the protection of ECHR provided in Article 3. Thus member states are obligated on a yearly basis to respond, or in precise to send reports to the Boards responsible for these two conventions and at the same time to enable their international supervision (Perenič 2002–2004, 50).

Republic of Macedonia has signed the revised charter from 1996 on 27 May 2009 and its ratification took place on 06 January 2012 (Member States of the Council of Europe, Signatures and Ratification 2015).

3.5 EUROPEAN UNION AND HUMAN RIGHTS

Countries which aspire to join the EU must respect democracy and rule of law; they must provide protection of human rights and minorities, they have to comply with the economic criteria and they must afford the administrative and institutional capacity to effectively implement the *acquis communautaire* in other word, they have to fulfill the Copenhagen criteria¹⁰. This is quite reasonable, as the EU itself is founded on the grounds of promotion and protection of human rights, democracy and rule of law, peace, stability, development and prosperity. All of these commitments are further noted in the internal and external policies of the EU. The establishment of the EU Charter of Fundamental Rights is an attempt to set the permanent system of protection of human rights within EU and its member states.

The EU Charter of Fundamental Rights is a single document which contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizen’s Rights and Justice. They were proclaimed in primarily in 2000, but the Charter became legally binding in the EU

employees with family obligations to equal opportunities; The right of representatives of the employees to protection in the companies; The rights of notification and consultation in the processes of collective dismissal; The right to protection in cases of poverty and social disclusion; The right to accommodation (Ribičič 2007, 40–45).

¹⁰ European Commission–Accession Criteria 2015.

with the entry of force of the Treaty of Lisbon in December 2009 (The EU Charter of Fundamental rights 2000). The charter includes: “all the rights found in the case law of the Court of Justice of the EU; the rights and freedoms enshrined in the European Convention on Human Rights; other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments” (Treaty of Lisbon 2007). Furthermore, the Charter also includes other fundamental rights and is it considered as a modern codification of some of them. The provisions of the Charter are addressed to the institutions and bodies of the EU with regard to the principle of subsidiarity and to the national authorities but only when they are implementing the EU law. After the Treaty of Lisbon entered into force in 2009 it became legally obligatory for the EU institutions as well as for the national governments. The goal of the Lisbon Treaty was to make the EU more democratic, more efficient and more transparent. It enables for the citizens and the parliaments to have an increased role on European level and by this Europe has clearer and stronger voice in the world, protecting the national interests at the same time (Guide to the Lisbon Treaty 2011). The Treaty itself changed and upgraded all the previous treaties of the EU. Concerning the human rights, the major novelty introduced by the Lisbon Treaty was that it recognized the rights, freedoms and the principles in the Charter of fundamental rights and defined the Charter as legally binding. The member states signed the Charter in 2000. After it has become legally binding, the effect is that when the EU suggest and implement laws they have to respect the provisions set in the Charter and also, the member states have to comply with it when implementing the EU legislation. The rights included in the Charter concern the protection of personal data, right of asylum, and equality before the law indiscriminate, gender equality, the right of the children and elder person, social rights, the right to social protection and help etc. The Treaty also enables the EU to accede the ECHR, as the ECHR and ECtHR are the basis for protection of human rights in Europe (Guide to the Lisbon Treaty 2011).

The Charter of Fundamental Rights is still unfinished project of the EU, as it does not contain the whole list of all fundamental rights in the EU which enjoy court protection (Grilc, Podobnik and Accetto 2002, 85). For a long time, actually until it became legally binding with the entry into force of Lisbon Treaty, the status of the Charter was unclear and therefore until then, the CJEU did not found its decisions upon the Charter. Furthermore, the Charter did not

brought any novelty on the filed on the list of fundamental rights which have already been codified in the international documents and which have practice of the CJEU. It is a sort of an upgrade to the ECHR (Grilc, Podobnik and Accetto 2002, 86). However, there is a positive side of the Charter. Namely, starting from the moment of its shaping meant innovative approach when codifying the fundamental rights, mostly because one document contains the rights from different fields which have been written in different conventions and charters (Grilc, Podobnik and Acceto 2002, 87).

3.6 COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU) AND THE HUMAN RIGHTS

The European Court of Justice is one of the first institutions in the Community, established in 1952 with its seat in Luxembourg. Its main role is surveillance over the legality of the acts of the Community and ensuring equal interpretation and application of the law in the Community¹¹. Main roles of the CJEU, as enumerated, are: interpreting the law; enforcing the law; annulling EU legal acts, ensuring EU takes action and sanctioning EU institutions. It consists of three bodies, the first one is the Court of Justice which is consisted of 1 judge from each EU country and plus 9 Advocates General, The second body is the General Court which is consisted of 1 judge coming from each EU member state. And the finally established is the Civil Service Tribunal which is composed of 7 judges. Beside the main role of the CJEU, the Court also indirectly interfere on the field of human rights, as it takes care for implementation of the EU legislation concerning protection of human rights (Roter and Bojinovič 2007, 184).

3.7 EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA)

FRA was established in 2007 as an independent body in the EU, more precisely as specialized agency funded by the budget of the EU. This and other kinds of agencies are set up to provide advices by the experts to the EU institutions and the member states for a whole range of issues. FRA includes 90 staff members, among which experts from many different domains, guided by the management board. The aim of FRA is to provide the EU and its member states advices regarding fundamental rights and to contribute towards full respect of them across the

¹¹ European Court of Justice 2015.

EU. Consequently, its main tasks are to collect and to analyze information and data, to provide assistance and expertise, to communicate and even more to raise awareness of the rights which are protected in the EU (European Union Agency for fundamental rights (FRA) 2015).

3.8 INFORMAL MECHANISMS FOR PROTECTION OF HUMAN RIGHTS – THE EUROPEAN OMBUDSMAN

The reasons for developing the informal mechanisms for protection of human rights are complex, however, they are mostly result of the relations between the individuals and the public and other institutions, as well as the more complex relations in the society which further require normative regulation of those relations on many fields (Rovšek 2002, 127)¹². Furthermore, every country adjusts the work of the ombudsman according to its constitutional system. Most of the countries have the classic parliamentary type of ombudsman, few have ombudsman on local and regional level, and others have special ombudsman for specialized spheres as governmental and ombudsman out of the public sector (Rovšek 2002, 129–131). Beside the difference between them, they are divided in four main groups: parliamentary ombudsman; special ombudsman; regional, local and city ombudsman and ombudsman for the private sector (Rovšek 2002, 131).

Republic of Macedonia has the parliamentary type of ombudsman. It has authority on the whole country and therefore, it is also named sometimes as national ombudsman. It is founded on the basis of the Constitution and other law. Very interesting discussion is about the place of the ombudsman in the system of division of the power. It does not belong to none of the three, but for sure there is an agreement that the ombudsman is a constitutional institution *sui generis* which has certain relations with the branches of the three powers. Its significance is that it enables *checks and balances* of the powers and it does super-visional function on many matters.

¹² The word ombudsman has Swedish origin and it means “representative”. The first ombudsman was appointed by the Swedish King Karl XII in 1773, but as first year of having the real ombudsman is thought to be the year of 1810, when the first parliamentary ombudsman started to work. The classical type of ombudsman is the Nordic type. Its significance is that he has more formal authority for surveillance of certain parts of the public sector as well as the courts and the possibility for direct disciplinary punishment on the responsibilities in the state bodies. However, the Danish model as softer one was later accepted in most of the European countries. It differs from the Nordic as this type of ombudsman does not have the authority of surveillance over the judges (Rovšek 2002, 129–131).

However, although it is an independent constitutional institution, the closest correlation is with the parliament to which is obligated to report about its work (Rovšek 2002, 132).

The European Ombudsman was established on the basis of Article 8 of the Treaty of EU signed in Maastricht in 1992 and also Article 195 of the Amsterdam Treaty. The first ombudsman was voted by the European parliament in July 1995 and it was the Finish ombudsman S. Jacoba. The European Ombudsman is responsible only for surveillance of the work of the EU bodies (Rovšek 2002, 138–139). The Ombudsman is independent and he must not require or take instructions from the institutions and during his mandate he must not perform any other professional activity. With his work he has reached the goal, so today the institutions of the EU are active and more open to the EU citizens', response to their propositions and enabling them free entry to the EU decisions and regulations (Rovšek 2002, 138–139). The right to complain to the European Ombudsman is one the Fundamental Rights of the citizens guaranteed with the EU Charter of fundamental rights. The Ombudsman does not deal with appeals concerning the work of national, regional or local authorities of the member states; also, he does not have the authority to deal with the activity of national courts or national ombudsman. Concerning his work, he files an annual report to the European Parliament (European Ombudsman 2015).

As human rights protection has gained a very important role in the international relations, after the world conference for human rights in Vienna in 1993, it became clear that it is not only important to promote and enjoy human rights, but also to enforce the mechanisms for their achievement. Taking into account all of that, the new generation of ombudsman started to put great effort on the issue of human rights. Today, undoubtedly the role of the ombudsman considering protection of human rights is highly important and inevitable (Rovšek 2002, 135–136).

4 REPUBLIC OF MACEDONIA

The Parliament of the Republic of Macedonia declared independence on 17 September 1991 based on the outcome of the referendum for independence from 8 September 1991. High majority or exactly 95, 32% of the participants on the referendum voted for independent country, but its legitimacy was undermined with the fact that, the Albanians boycotted the referendum. The path towards independency had officially begun in January 1991 when the Parliament of the

Socialist Republic of Macedonia accepted the Declaration for Sovereign and Independent Country of Macedonia. New legal and political frame of the country was concluded with the adoption of the Constitution on 17 November 1991. After becoming an independent country and declared as “sovereign, independent, democratic and social country”¹³, Macedonia started integrating in the international organizations: In April 1993 she was accepted in the UN with the reference “Former Yugoslav Republic of Macedonia”; In October 1993 it became full member of OSCE; November 1995 member of the CE; November 1995 in the Partnership of Peace; 1997 became member of the Euro Atlantic Partnership World; In April 2001 signed the Stabilization and Association Agreement with the EU (Grizold and Župančič 2008, 330). As a country aspirant to become part of the EU, it further started developing closer relations with the EU, following the path that a country aspiring to be an EU member needs to go by.

Human rights are the basic criterion which reflects the position of the individual in the society and at the same time they are an indicator for the character of the country's government. In the previous two chapters, an analysis was made regarding the question: what does the process of Europeanization signify in general and consequently its meaning for the countries aspiring to join certain organizations as well as what does the concept of human rights mean and how it has developed through the history. In the second chapter, overview was given concerning the regulation of human rights within the UN, CE and the EU and the institutions important concerning their promotion and protection. Further, as this thesis concerns the Europeanization of the human rights regime in the Republic of Macedonia from its independence and the process of Europeanization on that field, the Conventions signed and ratified by the Republic of Macedonia were also mentioned. Therefore, in this third chapter consideration will be given on the characteristic of the provisions for human rights and freedoms provided in the Constitution of the Republic of Macedonia, afterwards an overview will be included concerning the activities done as candidate country for the EU and consequently a summing up will be made of the problems that Macedonia is faced with on the field of promotion and protection of human rights and freedoms.

¹³ Article 1 of the Constitution of the Republic of Macedonia.

4.1 BASIC CHARACTERISTIC OF THE CONCEPT OF HUMAN RIGHTS IN THE CONSTITUTION OF R. MACEDONIA

The fundamental freedoms and rights of the human and the citizen confirmed by the international law and provided with the Constitution are one of the founding principles of the constitutional order of the Republic of Macedonia. Positioning the human rights in the basic provisions of the Constitution, Republic of Macedonia has unquestionably determined itself to be in the group of modern democracies that protects and promotes human rights. Their positioning as first of the founding values was not accidental. It was motivated by 2 reasons: the first one was to provide for limitations of the branches of powers and their arbitrariness, and the second reason was to determine the position of the human and the citizen in the overall society. As such, in a democratic country, the rights and freedoms are the basis of the system, a general framework within which each power has to limit its actions (Klimovski 1998, 221–222)¹⁴. “The citizens of Republic of Macedonia are equal in the rights and freedoms regardless of the sex, race, and color of the skin, national and social origin, political and religious belief, property and social position. The citizens are equal before the Constitution and the law”¹⁵.

The Constitution of the Republic of Macedonia with its concepts as a civil state, classifies the human rights and freedoms of the citizen as civil and political rights as well as economic, social and cultural rights whose carrier is the citizen himself. They are regulated in the second part of the Constitution named “The basic freedom and rights of the human and the citizen” (Caca 1994, 155). The Constitutional system of the Republic of Macedonia considering the human rights and freedoms expresses consistency commitment for regulation of the human

¹⁴ The founding principles of the constitutional order of Republic of Macedonia are: The basic freedom and rights of the human and the citizen confirmed by the international law and established with the Constitution; Free expression of the national belonging; The rule of law; Division of the state authority on legal, executive and judicial; The political pluralism and the free and direct and democratic elections Legal protection of the property; Freedom of the market and entrepreneurship; Humanism; social justice and solidarity; Local self-governance; Regulation and humanization of the area and protection and improving of the living environment and the nature; Respect of the general accepted norms of the international law. In Republic of Macedonia is free everything that is not forbidden by the Constitution and the law (Article 8 of the Constitution of the Republic of Macedonia).

¹⁵ Article 9 of the Constitution of the Republic of Macedonia.

rights and freedoms which are generally accepted in the progressive and democratic movements in the world and expressed in the acts and documents of the international organizations, and moreover a basic and confirmations of the creation of free and democratic society (Caca 1994, 146). Deskoska (2006, 236–238) explains that the Constitution of the independent Macedonia was primarily a result of the desire to start a new beginning and to put an end to the past, as well as to make a significant step towards constitutionalism in Macedonia. The other reason is the desire of Republic of Macedonia to join the EU and to show that it protects the human rights and freedoms. As a very important component, she also notes that in the time of creation and adoption of the Constitution, political consensus concerning the needs of constitutional guarantees for human rights and the constitutional concept of them, existed. The goal of the constitutional protection of the human rights is the individual and his dignity as (Deskoska 2006, 239) underlines. Further, she elaborates that Republic of Macedonia accepted the liberal concept understanding the rights as inalienable and the state as their guarantee. The liberal concept of the Constitution can be further seen in the position of the provisions of human rights in this legal documents, as they are guaranteed in the second part and classified in two groups: Civil, political rights rights and freedoms and economic, social and cultural rights (Deskoska 2006, 240).

Regarding the human rights in the Constitution (Deskoska 2006, 239–240) enumerates certain values and elements as liberal characteristics: the rule of law; the principle that “everything is free unless it is forbidden by the Constitution and the law”; the equality of the rights; the provisions saying that the limitation of human rights in military and exceptional conditions must not create inequality in the treatment; the wide list of rights guaranteed for the citizen. Furthermore, another feature of the constitutional concept of the human rights in Republic of Macedonia is that too many constitutional provisions exist which enables legal regulation of the guaranteed rights which according to (Deskoska 2006, 241) is a common characteristic of the majority of the Constitutions in post–communist Europe. The Macedonian Constitution contains approximately 26 provisions for human rights with legal reserve. Consequently, two types of legal reserves can be applied: the first is the possibility to regulate the details and the way of enjoyment of the human rights when that is necessary because of the special nature of these rights and the second is the possibility to limit these rights (Deskoska 2006, 241). Generally, the Constitution of Republic of Macedonia prescribes modern and liberal

concept of the human rights, although it contains certain weaknesses (Deskoska 2006, 247–249) precisely highlights them: the provision concerning the period of detention which was eventually changed, but the best solution was not delivered; the provision considering the secrecy of the letters and other forms of communication; the Constitution does not contain the right of objection of conscientiousness; the Constitution gives too much free space for legal regulation of the constitutional human rights; it lacks the principle of proportionality in limiting the rights in military and exceptional condition; the Constitution contains a long list of rights guaranteed only to the citizens of the Republic of Macedonia and the last, the non–defined status of the general accepted norms in the international law as well as the treaties in the internal law.

4.2 GUARANTEEING PROMOTION AND PROTECTION OF HUMAN RIGHTS

The first decade of independence of the Republic of Macedonia is marked with the difficulties concerning the process of decentralization, privatization, difficulties in the process of democratization of the legal system, as well as the institutional and formal guaranteeing of human rights. The conflict in 2001 ended with signing of the “Ohrid Framework Agreement”, which brought certain changes in the constitutional and the legal system. The first decade of the independence was also period when Macedonia became member of international organizations and as an independent country it signed and ratified many conventions in relation to protection and promotion of human rights. Macedonia in that period also started to become aware that as a country striving to achieve the postulates of a democratic society, its place is to the EU, and therefore began to work on the path of accomplishment of its goals. However, that ambition is still not realized and even more, Macedonia meets quite many difficulties considering promotion and protection of human rights. Two keys approaches or otherwise said analyses are crucial for Republic of Macedonia concerning the protection of human rights. First, one has to consider whether Macedonia fulfills the criteria concerning the protection of human rights and second it should be evaluated Macedonia’s efforts for respect promotion and protection of human rights as an ECHR party. Therefore, in this third and fourth empirical part of this theses, a chronological reflect of the measures taken since signing the SAA (Stabilization and Association Agreement) will be given as well as further analysis of all EU reports in the domain of human rights. Moreover, reflection will be made of the reports of the NGO (Non–governmental organizations) and the Ombudsman reports and activities, as a key to the human rights situation in Macedonia

in the last decade. The Analysis will be complemented with the interviews made with Darko Pavlovski, graduated lawyer from Republic of Macedonia, who was case-processing lawyer in the ECtHR since 01.09.2011–31.08.2015, Dr. Natasha Gaber Damjanovska, Judge in the Constitutional Court of Republic of Macedonia and representatives of the Macedonian Ombudsman's office.

4.3 MACEDONIA IN THE EU AND HUMAN RIGHTS PROTECTION

Republic of Macedonia as a candidate country in the EU is expecting to take the next phase towards the accession process or otherwise said, it is waiting for a negotiation date for EU membership. It is a process that undertakes full preparation of state authorities and institutions, a completion of the approximation process and successful overall functioning as a further member state. Some of the key dates towards the accession in the EU should be recalled: In 1995 Macedonia and EU established diplomatic relations; on 9 April 2001 SAA was signed (SAA includes ten titles and offers a an outline for strengthening of the regional cooperation, political dialogue and for encouraging the expansion of economic relations and markets between parties) (Stabilization and Association Agreement 2015): In 2004 SAA entered in force; 14 February 2005 Macedonia submitted the Questionnaire to the European Commission; 17 December 2005, the European Council granted candidate status to Macedonia; February 2008 the Council adopted the Accession Partnership for Republic of Macedonia (Timeline of the relations with the EU, 2015). However, the main document of the EU for the accession priorities is within the Accession Partnership since 2008, a document which identifies 8 key priorities for progress and areas where efforts need to be made in the accession period. The accomplishment made, is given in the Progress Report by the European Commission on annual basis. Macedonia also defines its EU-related agenda in the NPAA (National Programme for Adoption of the *acquis communautaire* 2015) which is long-term document that defines the dynamic of adoption of the *acquis communautaire*, policies, reforms, structures, resources and deadlines which should be realized by the Republic of Macedonia to fulfill the requirements for EU membership. It enables transparency of the work of the government and for the first time it was adopted in 2006 it is annually reviewed in line with the suggestions made in the progress reports by the European Commission.

The Accession Partnership has set the key priorities for the Republic of Macedonia in relation to the EU accession. Among them, those concerning human rights and protection of the minorities require full compliance with the ECHR, with the recommendations made by the Committee for the Prevention of Torture and also with the Framework Convention for the Protection of National Minorities. Furthermore, one requires full implementation of the rules applying to ethics, internal control, professional and human rights standards in law enforcement agencies, the judiciary and the prison administration. The Accession Partnership also calls for provision of higher standards in the prisons, setting up effective mechanisms to fight all forms of discrimination, enhancement of the protection of women's and children's rights, further efforts in order to provide equitable representation of non-majority communities, as well as promotion of access to education, justice and social welfare for members of minority groups (Accession Partnership, 2015).

A brief, but all-inclusive overview of the European Commission Progress Reports starting from the first one in 2006 until the last one in 2014 is probably the most important observation for this thesis, as it will give a concrete view in the process of promotion and protection of fundamental rights.

In the Progress report of 2006 concerning the section of civil, political, economic, social rights, minority and cultural rights as well as the protection of minorities, fundamental rights and judiciary, the Commission found that: Led by the Ministry of Justice, an inter-ministerial body for human rights was set in order to strengthen the cooperation among the state institutions with human rights issues. Also the Law on Criminal Procedure was amended to abolish pre-trial detention. However, the Commission expressed concern that there was limited progress in the situation in the prisons. In that regards, the mechanisms for investigating degrading treatment were not strengthened enough. Moreover, the Commission established that there were cases of violations of freedom of religion and it required rigorous implementation of new legislative framework. Further, the Progress Report observed that with the new Broadcasting Law a greater independence was provided of the regulatory body and legal guarantees for freedom of expression were strength. The Labor Relation law entered into force and consequently the freedom of assembly and association has been guaranteed. Furthermore, for further involvement of the civil society organizations in the public policy making reforms, the

government adopted a strategy for co-operation with the civil society. However, although there were no major violations of the civil and political rights, it was highlighted by the Commission that more had to be done and made in improving the legal framework. Regarding economic and social rights, the Commission stressed the importance of adoption of an action plan for the protection of children's rights and it also stressed limited progress in the implementation of the National Strategy for the Rights of persons with disabilities and labor rights and trade union rights. Concerning minority rights, their protection and cultural rights, the Commission stressed out that in general the inter-ethnic relations have to improve and in that line it suggested that areas of the Ohrid Framework Agreement and fundamental rights require implementation and improvement of the dialogue between communities. Commission noted improvement in the area of the judiciary, mostly in the legislative level, as the Constitution was amended and steps have been taken in improving of the judiciary. However, the Commission underlined that further progress has to be made for independent and efficient judiciary, as corruption was still a major problem. In relation to fundamental rights, the major number of violations was in the area of property rights (29%), further by police interventions (17%), labor relations (11%), and judiciary activities (10%). Generally, complaints to minority rights to the Ombudsman have declined and a slight degree in progress was made for providing institutional and legal framework for fighting corruption (EC Progress Report on the Republic of Macedonia 2006). In addition, relating to the observation of international human rights law the Commission noted that 638 applications were pending before ECtHR. The Court had received a slightly increased number of applications 251 compared to 2006. A statistics was also provided that in four out of five judgments in 2006 a violation was established and most of the violations were in relation to the length of judiciary proceedings. The Commission also noted that in order to follow the obligations deriving from the ESC, an inter-ministerial committee was set up, however Protocol 1 has still not been ratified (EC Progress Report on the Republic of Macedonia 2006).

The EC in its Progress report in 2007 underlined the next important issues concerning the Observance of international human rights law. Namely, it found that the inter-ministerial committee which was established in 2006 had continued its work, while still was pending the ratification of the revised Protocol 2 from 2005 reforming the control mechanism. In 2006 ECtHR brought 7 judgments and found that the Republic of Macedonia had violated one article

of the ECHR. Rise of the applications at the ECtHR was found or in precise total of 343 new applications in 2006. The inter-ministerial body for protection of human rights met for the first time in 2007 in order to follow up with the recommendations by the UN and the CE on elimination of all forms of discrimination (EC Progress Report on the Republic of Macedonia 2007). Further, considering the section of political, civil, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission emphasized that: In relation to prevention of torture and ill-treatment and fight against immunity, the capacity to investigate ill treatment was developed and an improvement in police behavior towards people in custody was improved. However, limited access to justice was noted as well as long delays in the review of administrative decisions and poor quality of decisions. In relation to the prison system, the Commission found that despite the Governmental programme for improvement of the prison conditions, yet there were no significant progress made and limited progress was found in the implementation of the recommendations about the conditions of detention. Furthermore, it was established that the legal framework on freedom of expression and the media was in accordance with most of the international standards, nevertheless the Commission stressed that the bodies were vulnerable to political interference and there was not enough independence of the public service broadcaster. Regarding women's rights, the parliament declaration for condemnation of all forms of violence against women was positively greeted, but stronger measures against sexual harassment were required. The Commission noted slow implementation of the action plan for the protection of children's rights, as well as worrying conditions in psychiatric hospitals. The Progress Report acknowledged the efforts that were made in the section of anti-discrimination policies, but it also observed failure to complete the process of return of property confiscated during the Yugoslav regime. The Commission also stressed out that the inter-ethnic tensions stayed at low level, however, the integration of the minorities was quite limited and in that line limited progress also noted regarding the situation of Roma which continued to face difficulties in number of areas. The Commission underlined that fighting corruption in judiciary remained a major issue and in that regard the Ombudsman's office received in that year the largest number of complaints concerning the efficiency of the judiciary (EC Progress Report on the Republic of Macedonia 2007).

Considering the Observance of international human rights law, the EC in the Progress report in 2008, noted that the revised Protocol No 2 to the ESC was not yet ratified, as well as the European Charter for Regional or Minority Languages and the Convention on Action against Trafficking in Human Beings. In 2007 the ECtHR brought 16 judgments and found that the Republic of Macedonia had violated the ECHR. In 2007, 454 new applications were made to the Court. So, with a number of 980 pending cases, Republic of Macedonia cases before the Court increased. Finally, the Commission reported little progress concerning promotion of human rights (EC Progress Report on the Republic of Macedonia 2008). Furthermore, considering the section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission noted progress regarding ill-treatment and prevention of torture and also fight against impunity (progress was noted concerning the implementation of the code of police ethnics), as well as developed cooperation between the Ombudsman and the Sector for Internal Control and Professional Standards of the Ministry of Interior. Improvement was found in relation to the prison system. However, the Progress Report established limited access to justice i.e. long delays and long duration in the court procedures. However, concerns were also stated about the lack of sufficient resources of the public broadcaster, even though the legal framework on freedom of expression and the media was in accordance with most of the international standards. Regarding freedom of assembly and association, it was noted that the action plan for cooperation with civil society organizations was progressing and also the implementation of the Law on the legal status of churches, religious communities and religious groups had commenced¹⁶. The Progress Report expressed concerns that there were limited efforts in promoting and increasing female participation in the labor market, although activities concerning women's rights have been undertaken (as committees for equal opportunities were established in 79 out of 85 municipalities and progress had been noticed in the implementation of the national plan for gender equality since 2007, as well as the national strategy against violence had been adopted in 2008). Little progress was also reported with regard to labor, trade unions and property rights. The Commission highlighted that the Law on languages was adopted with extended the use of the Albanian language in public life and

¹⁶ The Law entered into force in May 2008.

compulsory education was extended by law from 8 to 9 years and t. Also, reforms were taking place in the area of mental health. In its Report, the Commission stressed out that there had been some progress with in relation to cultural rights and minority rights as well as a law on use of languages spoken by at least 20% of citizens had been adopted in August, stressing out that inter-ethnic tensions were mostly at a low level. However, little progress was reported considering Roma and other minorities. Progress was also established in the area of judiciary as the independence of judiciary was strengthened and also implementing of the strategy on judicial reforms was noted. However, it was stressed out that most of the complaints received in the Ombudsman's office in 2007 were in relation to the judiciary and most of them for delayed procedures (EC Progress Report on the Republic of Macedonia 2008).

Considering observance of international human rights law, the Commission in the Progress report in 2009, observed progress on ratification of human rights instruments. Namely, the Optional Protocol to the Convention against Torture was ratified, as well as the Convention on Action against Trafficking in Human Beings. However, the number of applications has continued to rise in front of ECtHR, as it was found that Republic of Macedonia had violated the ECHR in 13 cases. The number of new applications made to the ECtHR since 2008 were in a number of 501, 1093 cases in September 2009 were pending before the Court and most of them were in relation to trial in a reasonable time. The law on representing the country before the ECtHR and the Law on enforcement of ECtHR judgments were enacted. The EC in its Report 2009 found that the legal and institutional framework for the protection of human rights and minorities was mostly satisfactory. However, partial progress was recognized on promotion and implementation of human rights, beside the fact that the officials in the law enforcement agencies were obtaining permanent training on human rights and the work of the parliamentary supervisory committee on human rights had not yet been followed up by the government. The Commission remarked that the inter-ministerial body for protection of human rights had made little progress considering promotion of the human rights agenda and finally the country remained without a crucial institution for protection of human rights (EC Progress Report on the Republic of Macedonia 2009). For the year 2009, considering the section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission noted remaining of the limited access to justice, as well as

little progress regarding the prison system. However, the situation in relation to freedom of expression, assembly and association was found to be satisfactory and also the involvement of the civil society organizations in the policy-making and legislative drafting was noted. Regarding women's and children's rights, progressive activities have been undertaken, as National body was established in order to manage the implementation of the national strategy against domestic violence and Sexual abuse of children and paedophilia. On the other hand, little progress was reported considering labor rights and trade unions, the socially vulnerable people and people with disabilities and the anti-discrimination policy. The Progress Report noted some progress on equitable representation on implementation of the law on languages and inter-ethnic integration in the educational system. Further efforts were needed for implementation of the legal framework. Generally, the Commission remarked that most of the legislative and policy measures in relation to fundamental rights were on satisfactory level, however the implementation of the legal framework was uneven and thus, further efforts were needed in that regards. Also, increased budgetary resources were required in order to secure independent judiciary and consequently, to provide effective protection of the human rights (EC Progress Report on the Republic of Macedonia 2009).

Considering observance of international human rights, the Commission in the Progress Report in 2010, noted some progress in the ratification of human rights instruments. However, the ratification of the European Charter for regional or minority languages did not take place. Large number of applications were made to ECtHR, more precisely 400, still large number of cases were also pending before the Court, precisely 1,122 and in that period the ECtHR found that Republic of Macedonia had violated the ECHR in 21 cases and in most of them in relation to trial in a reasonable period of time. Again, the Commission recognized partial progress in the promotion and enforcement of human rights. Concerns were raised about the institutional framework as being completed. The Ombudsman's Office remained to be the crucial point for the protection and promotion of human rights (EC Progress Report on the Republic of Macedonia 2010). Furthermore, regarding the section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission noted in its Report 2010 that: the Ombudsman was appointed as a national prevention mechanism (NPM) for implementing the Optional Protocol to the Convention against

Torture and it started its activities in that regard¹⁷. Also a specialized unit on combating ill-treatment has been set up. The Commission finally noticed increased duration of the court cases. Also the situation considering freedom of expression and of assembly and association was found satisfactory, as well as the growing involvement of the civil society; also the implementation of the Law on the legal status of churches, religious Communities and religious groups was greeted. Nevertheless, concern was raised by the conditions in the prisons in addition to the insufficient capacity, untrained staff and political interference in the prison management. Remarks were made with regard to women's rights in the rural area and the widespread discriminatory customs and stereotypes. The Commission observed that certain legislative and institutional measures undertaken in the Republic of Macedonia and it also gave instructions for further alignment with the *acquis*. Nevertheless, integration of ethnic communities was limited and Roma people continued to have problems with discrimination. Also, it was established that further efforts were required in the anti-corruption battle in the judiciary in order to ensure impartiality¹⁸. Whereas the Ombudsman office received most of the number of complains in relation to property rights 20 %. In short, the Commission found that partial progress was made in reform of the judiciary and in protection of the fundamental rights and little progress in the battle against corruption. The general conclusion of the Commission was that a lot remained to be completed for promotion and protection of human rights (EC Progress Report on the Republic of Macedonia 2010).

Considering observance of international human rights law in the Republic of Macedonia, the Commission in its Progress Report in 2011 noted no progress considering the ratification of international human rights instruments as the European Charter for regional or minority languages remained not ratified. In the period of reporting, the ECtHR brought 8 judgements and found that the Republic of Macedonia had violated rights which are guaranteed by the ECHR. As the previous year, the trend of new applications made to ECtHR and the pending cases remained high, as the entire number of new applications made to the ECtHR since 2010 were 374 with 1,111 applications in September 2011 pending before the Court. The Commission found limited

¹⁷ Corresponding specialized unit on combating ill-treatment had been set up in the Office of the Ombudsman.

¹⁸ 6 judges were dismissed as for abuse of the office.

progress in the promotion of human rights. Furthermore, the implementation of legal framework was rather unequal, while the institutional system was expanded and on the other side remained understaffed. Namely, The Ombudsman's office stayed understaffed. (EC Progress Report on the Republic of Macedonia 2011). In addition, considering the section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission in its Report highlighted that the legal and institutional framework for human rights and the protection of minorities was in place. However remarks were made with certain issues in practice. Namely, the Commission found that efforts should be made considering an effective national strategy for the prisons. Also, increased political pressure and intimidation of the journalists was reported and it was noted that dialogue had begun in relation to the serious issues for lack of freedom of expressions. It was also indicated that the Law on anti-discrimination remained to be fully aligned with the *acquis*, as regarding discrimination on grounds of sexual orientation. Regarding minority rights, the Progress Report highlighted that the representation of the ethnic Albanian community in the civil service was in accordance with its proportion of the population and also increased representation of the Roma and Turkish communities was noticed. Further, an improvement of the Roma in the education system was noticed as well as improvement of their integration, both in secondary and university education. Concerning children's rights, it was noted the adoption of the National Strategy on Prevention of Juvenile Delinquency by the newly established National Council for Prevention of Juvenile Delinquency. Moreover, limited progress was found concerning independent and efficient judiciary, and also it was highlighted the lack of inadequate statistical court data and analysis. Finally, the Commission observed that after a decade of signing the Ohrid Framework Agreement, it still remained an important element for democracy and the rule of law in the country (EC Progress Report on the Republic of Macedonia 2011).

In the Progress Report 2012, regarding observance of international human rights law, the Commission noted that some progress was made, further with the ratification of the revised ESC and the UN Convention on the Rights of Persons with Disabilities and the corresponding Optional Protocol. However, it was noticed that the European Charter for Regional or Minority Languages had not yet been ratified. During the period of reportin, ECtHR brought judgments on seven applications finding that the country had violated rights guaranteed by the ECHR. As

previously in the reports, big number of new applications and pending cases before ECtHR were noticed, more precisely 341 applications had been submitted since 2011 and the complete number of pending applications was 969. Commission noticed limited progress in the promotion and enforcement of human rights, nevertheless efforts were made to reinforce the implementation of the legal framework, as well as to enlarge the personnel in the institutions. The Commission underlined that the Ombudsman still needed a full mandate to promote and protect human rights in compliance with the Paris Principles (EC Progress Report on the Republic of Macedonia 2012). In addition, regarding the section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission in its 2012 Progress Report noted that efforts were made against ill-treatment in police stations and in prisons. Moreover, other legislative activities were ongoing: the adoption of a new Law on Civil Liability for Insult and Defamation, as well as of a new Strategy for Cooperation with Civil Society (2012–2017) and Action Plan (2012–2014). However, the Commission noted that attempts were made in order to enlarge the knowledge of the police officers of European standards, further the prison system was still facing lack of finances and staff although the training and reconstruction within the prison and prison staff remained. Concerns have been raised about the proportionality and constitutionality of the new Law on Lustration which replaced the previous law¹⁹. Also, the Commission raised concerns about lack of pluralism and self-censorship, as well as lack of strategic approach to implementing national strategies and action plans concerning better integration of the gender perspective, women's right and gender equality. Little progress was noticed in the part of children's rights, as amendments to the Juvenile Justice Law provided for more rights and better protection of child victims and introduced special protection measures for child witnesses. Moreover, the UN Convention on the Rights of Persons with disabilities was ratified, however remarks were made regarding civil society and social service as being slow in increasing the provisions of social care services. The Progress Report noted that apart from the fact that the Commission for protection against discrimination became an observer of the European Network of equality bodies, there were many concerns related to the fight against discrimination. Namely, the anti-discrimination law was not

¹⁹ The law allowed publication of the name of former collaborators of the secret service and goes for the period beyond 1991.

still in accordance with the *acquis*, discrimination on the grounds of sexual orientation was still omitted and the LGBT community were still facing discrimination and stigmatization. The process of returning property confiscated under the Socialist Federal Republic of Yugoslavia was found to be successful. However, tensions between ethnic communities and public protest were present, as at the beginning of 2012 several incidents took place and also there were killings in the country. In that regard, the Secretariat for the Implementation of the Ohrid Framework Agreement (SIOFA) began a review of the implementation of the Ohrid Framework Agreement and the Macedonian government for the first time adopted a report since the signature of the Agreement. Also, the strategy for Roma inclusion was adopted for the period 2012–2014, but the Commission noted that there should be strengthening in implementation of existing strategies and cooperation. The Commission reported little progress regarding independence and impartial judiciary, as efforts were still needed for adoption of quality decisions by the courts. In the area of anti-corruption policy, the Commission noted that the legislative framework was in place and that greater efforts needed regarding implementation. Finally, the Commission noted that the institutions needed further development in order to be more effective in promotion and protection of the fundamental rights in practice (EC Progress Report on the Republic of Macedonia 2012).

Considering observance of international human rights law, the Commission in the 2013 Progress report noted that the country has already become party to most of the international human rights instruments, as progress was noticed with ratifications of certain Conventions. In the period of reporting, ECtHR delivered judgments on 6 applications, finding that the country had violated rights guaranteed by the ECHR. The country has been held by the ECHR to provide an effective remedy in cases relating to unreasonably lengthy domestic court proceedings. However, it was recommended to follow up of the execution of over 50 older ECtHR judgments in which it was found in the past that Republic of Macedonia has violated the right to be heard within a reasonable time (Article 6 of ECHR). As a result, an inter-ministerial commission for the execution of ECtHR judgments was established in November 2012. Large number of applications, more precisely 511 had been submitted to the ECtHR in the reporting period, so the overall number of pending applications before the Court was brought to 593 (EC Progress Report on the Republic of Macedonia 2013). Additionally, in the Progress Report 2013, considering the

section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission gave huge accents towards freedom of expression, explaining that although there was legislative progress in the area of freedom of expression, domestically and internationally, the reputation of the country considering media freedom continued getting worse and also the trust between the government and media representative was seriously damaged²⁰. The Commission unfortunately noticed homophobic media content, as well as increased intolerance towards the LGBTI people and also physical attacks. It was also found that lack of limited financial resources and inadequate cooperation between authorities resulted in not enough progress in protection of minorities. The Report suggested that even though more than a decade passed since the Ohrid Framework Agreement, progress was still needed in the matters considering decentralization, non-discrimination, equitable representation, use of languages and education. Unfortunately, ethnic incidents were noticed, as well as hate speech during sports events, violence and divisive rhetoric in certain municipalities during the elections in March. On the other side, progress was reported considering implementation of the Action plan 2011–2015 of the Commission for Protection from Discrimination, as well as of the national action plan for gender equality 2013–2016. However, measures considering the people with disabilities and socially excluded people were still insufficient and also unemployment remained major problem. The Commission noted that the judicial reform strategy and related action plan were implemented between 2004 and 2010 and the majority of the reforms were largely completed. In that regard, the Academy for Judges and Prosecutors had the main role in providing life-long training for the judiciary and prosecution service, however little progress was noticed in the field of judiciary with the introduction of stricter professional requirements for judges and the elimination of remaining backlogs in the courts (EC Progress Report on the Republic of Macedonia 2013).

²⁰ The trust between the government and media representative was seriously damaged by the events of 24 December 2012 when the journalists were removed from the Parliament in order not to be able to follow the debate about the National Budget. Moreover, the Media Dialogue which was a positive example in the region since 2011, was interrupted. A lack of balance coverage was noticed by the public service broadcaster during the election in March and also the governments spend huge amounts for advertising directed only to pro-government medias was noticed.

Concerning observance of international human rights law, the Commission in its Progress Report for the Republic of Macedonia in 2014 noted again that the country was already party to most of the international human rights instruments, the European Charter for Regional or Minority Languages remained not ratified. With regard to human rights, it should be mentioned that the UN General Assembly elected the Republic of Macedonia to be a member of the UN Human Rights Council for the period 2014–16. Violations to the ECHR were found in 6 cases by the ECtHR and in most of them concerning the right to fair trial. 407 new applications were submitted to the Court. Regarding execution of the ECtHR judgments, certain activities have been undertaken in Macedonia. The Commission highlighted that the new amendments to the Criminal Code that provide chemical castration of repeat offenders convicted of child sex abuse, should be supplemented by suitable protections which will ensure that that treatment is given on a entirely voluntary and informed basis, in accordance with the prohibition on inhuman or degrading treatment or punishment. The Progress Report found that the Ombudsman's Office continued to exercise its function of NPM and at the same time played a main role in the prevention of torture and ill-treatment. NPM faced difficulties as under-resourced, however it remained strongly aheaded in identifying inhuman or degrading conditions in places of detention. Concerns remained over the low number of completed investigations in ill-treatment cases. (EC Progress Report on the Republic of Macedonia 2014). Furthermore, considering the section of civil, political, economic, social rights, minority and cultural rights and protection of minorities, fundamental rights and judiciary, the Commission in its last Report 2014 noted that the country has made the majority of the reforms and also the necessary legal and administrative structures in this area, nevertheless a threat was detected in the possibility of weakening in some areas like the judiciary and the fight against corruption, implementation of the fundamental rights framework especially in the areas of anti-discrimination, LGBT rights, prisons, children's rights and the Roma. Media culture and freedom of expression were found to be "major problematic". As regards judicial system, the Commission found that the main reforms have been completed, but still there was no precise implementation of the European standards in relation to independence and quality of justice. Also, there were legislative actions taken. Namely, new Law on Media entered into force in December 2013, regulating basic obligations, protections and freedoms relating to the media and the Law on Execution of Sanctions was amended, introducing

public–private partnerships and transforming the prison security service into a new body (the prison police). However, the Commission noted that there was indirect state control of media output through government advertising and government favored media outlets and the public broadcaster did not provide balanced and informative media content, so therefore there was a lack of independent and accurate objective information’s available for the public. As previously, the Commission underlined that the situation in the area of freedom of assembly and association was satisfactory, freedom of thought, conscience and religion was guaranteed by law and enforced. The Commission reported progress made on the implementation of the action plan for gender equality, which was not the case with the situation with the persons with disabilities and socially vulnerable people. The Commission noted that the violent incidents from previous year towards the LGBTI persons were not repeated; however it recommended raising awareness for the diversity in the society and tolerance. The Commission also found that progress on the protection of the minorities was insufficient as a result on not enough human and financial resources and not enough cooperation between the authorities, highlighting that the main priorities of the Ohrid Framework Agreement was to provide basis for inter–community relations. The Report also noted the major protest by the ethnic Albanian community which started after the court verdict on the so called “Monster case” for the murders of teenagers in Skopje (EC Progress Report on the Republic of Macedonia 2014).

As the next Progress Report on the Republic of Macedonia from the European Commission is expected in November 2015, the updated information this year reveals that the ECtHR dealt with 486 applications concerning Macedonia in 2014, 476 of them were declared as inadmissible or stuck out. Judgments were delivered for 10 applications and in 6 of them it was found violation of the ECHR. 276 applications were pending before the court on 1 July 2015 (European Court of Human Rights 2015).

5 MACEDONIA AT PRESENT

In 2009 the European Commission gave a recommendation to the Republic of Macedonia to open the negotiations for joining the European Union; however, the name dispute between Macedonia and Greece, was the reason that Greece did not agreed for start of the negotiation process. Furthermore, the Commission granted the same recommendation in the three

consecutive reports and again Greece opposed. As a result, the European Commission at the end of 2011 and beginning of 2012 launched a special instrument for Macedonia, the so-called High Level Accession Dialogue (HLAD). The main purpose of this special mechanism was to improve the dynamics of reforms, to foster implementation of the NPAA and to accelerate the accession process towards the EU, as Macedonia was facing delayed start of the negotiations with the European Union. HLAD covers five key issues: freedom of expression, rule of law and ethnic relations, challenges for electoral reform, public administration reform, strengthening of the market economy and good neighbourly relations. The main objectives in the area covering the rule of law and fundamental rights are: Judiciary (efficiency, professionalism and independence), fighting corruption and interethnic relations (European Western Balkans 2015).

On 18 September 2015 the fifth meeting of HLAD took place in Skopje and the progress made regarding the implementation of the political agreement and the Urgent Reform Priorities were reviewed. There was common agreement that HLAD continued to provide support to the accession process at the same time with its focus on the key priorities (European Commission 2015).

Republic of Macedonia has ratified the ECHR on 10 April 1997 and the first complaints against the country, filed by the Macedonian citizens and foreign citizens, started to arrive at the end of 1999. Since the ratification and by the end of 2014 the Governemental Agent of the Republic of Macedonia has acted on overall 681 filed complaints to the ECtHR for eventual violations of the rights and freedoms protected by the ECHR. By the end of 2014, 512 of those were finished, while 169 were pending before the ECtHR. The statistical data of the ECtHR has revealed that since 1999 and by the end of 2014, 4.261 subjects were filed before the Court against the Republic of Macedonia. In the period 2001–2014 108 judgments were brought, 259 decisions for friendship agreement, 114 decisions for one side declaration of Republic of Macedonia (confession of the violation) and 67 decisions for inadmissibility or rejection of the complain. The majority or 67% from the complaints were finished with confirmed violations of the rights in the Convention (Annual Report of the Governemental Agent and Analyse of the subjects and procedures in front of the European Court of Human Rights for 2014).

Republic of Macedonia in the past few years faces serious political crises, which is expected to be partly overcome with the up coming elections in April 2016. Namely, the deeper

political crisis escalated in December 2012 in the National Parliament, when representatives of the opposition and the journalists were forced to leave the Assembly, so that the ruling party could adopt the budget for 2013 as it wanted. They were also physically dragged and insulted by the security forces. The opposition went back to the Parliament in spring 2013 in order to have the local elections.

The first round of elections was declared the most peaceful elections in the history of independent Macedonia without any serious incidents. The elections were however not untainted, as the situation in the Centar Municipality was labeled as undemocratic by the Macedonian opposition with several voters being labeled as questionable for having only recently received their national ID cards and not being actual inhabitants of this respective municipality (OSCE 2013). The latter was reported by the OSCE in its report about the actual elections (OSCE 2013).

General elections took place in April 2014; however, the opposition did not recognize the elections and asked for new elections managed by a technocratic government. Moreover, the opposition did not accept their mandate at the Parliament, (OSCE 2014) as they complained for violation of secrecy of the vote, proxy voting, Election Day campaigning, group voting and pressure on voters (OSCE 2014). Since then until this September 2015 the opposition refused to go back and to be part of the work of the National Assembly. In spring 2015, organized protests by the opposition for few months were held before the Government building as the biggest opposition party – SDSM made publicly known the fact that illegal interception was occurring for many previous years and many public figures (politicians, journalists, professors, judges etc.) were taped. Some of those tapings which concerned government officials were publicly disclosed and the Government was accused of corruption, misuse of office, politization of administration and judicial system, brutal attacks of human rights etc. The opposition protests ended with the Agreement of 2 June (so-called ‘Przhino Agreement’) (Infomax.mk 2015). Namely, the oppositons’ return in the Parliament was made conditional upon setting up of a transitional government which should prepare and organize the next parliamentary elections in April 2014.

It has to be mentioned that through the years, the country also faced many violations of the fundamental rights demonstrated with infringement of the independence of the judiciary and politically brought decisions, governmental prohibition of protests, pressure making on journalists and political involvements in the work of every kind of media, refusal to the civil sector and the scientific community in adoption of laws, discrimination of the LGBT community and the marginalized groups of people (women, Roma population, disabled people) etc. All of these violations are noted in the reports of relevant organisations such as the Ombudsman reports, the reports of the Commission and other international institutions (Human Rights Watch; Helsinki Committee Reports; Obmudsman Reports, LGBT community Reports, The Association of Journalists of Macedonia 2015). As almost all media are controlled by the Governements, Macedonia has fallen down on the list of freedom of the media for a very short time. From 34th place in 2009 the country fell on 117th in 2015. The media are directly or indirectly controlled by the government (Foundation Open Society Macedonia 2015). Therefore, three interviews were made with relevant actors who submitted their knowledge, experience and facts considering the promotion and protection of human rights in the Republic of Macedonia.

Darko Pavlovski, graduated lawyer from Republic of Macedonia, was case-processing lawyer at the ECtHR since 01. 09. 2011 – 31. 08. 2015 (Interview made in September 2015). He considered that the civil (political rights) right such as the right to property, the rights to protest, freedom of expression and prohibition of discrimination, the right to home and healthy living environment are the rights which are most commonly violated. Moreover, the categories of people towards which are violations are made, he mentions the Rome population, people in the rural area, prisoners, politicaly differently minded and the social marginilized people. However, he underlines that the citizens do not often report the violations and they do not require protection of their rights, as a result of ugnorance, apathy and disfunctionality of the system (for example he mention: the long procedures, high judicial and administrative taxes, legal insecurity, unpredictability and the often change of laws and institutions). Consequently, he has said, the citizens often seek for help from international governemental and non-governemental institutions which are present in the country (as the Delegation of the European Commission, the Mission of OSCE, foreign ambassadors, and humanitarian organizations). Furthermore, he has added, that the formal and the actual protection of the rights is enormous and is constantly

enlarging, as well as the growing confidence of the citizens in the institutions which should provide them legal security and protection. In addition, he noted that at the beginning of the 90's there was quite huge enthusiasm for protection of human rights, but because of the unmaturred political culture and social colaps, the achievement was far more difficult. He has also noted that the country in general does not respect (in the sence of taking the general measures) the judgments of the ECtHR. At last, he has underlined that undoubtly the process of becoming part of the EU will bring a social development; however, the expecations of the citizens are huge and even at the time unrealistic, at the same time they do not know their rights and obligations which will come out as a member state in the EU. Finally, Mr.Pavlovski emphasizes that the process of EU integration and the Europeanization of the Macedonian society has entirely lost its credibility with the constant repeating of the recommendation for start of the accession negotiations and failure to respect that recommendation while more the obvious are the abuses and the non democratic behavior by the governement.

Dr. Natasha Gaber Damjanovska is a Judge in the Constitutional Court of Republic of Macedonia; the interview with her was made in September 2015. Mrs. Gaber Damjanovska has elaborated that, unfortunately, the trend at the moment is the massive violation of the fundamental rights in the area of labour rights and generally the labor relations, instead of enriching and expanding their protection. Furthermore, she notes, freedom of expression, sex discrimination, protection of property are among the most violated rights and freedoms. She also notes that the Roma population is the groups of citizens with certain characteristics which are the most common victims of violation of the human rights, beside all the efforts made, their social conditions are bad. Judge Gaber Damjanovska finds the poor citizens and young women in the process of employment as quite vulnerable group due to the legal limitations in the law for termination on the pregnancy. Moreover, according to her the political opponents make a group which suffers from direct or non direct discrimination.

Considering the citizens (un) activity in demanding protection of their rights, judge Gaber Damjanovskashe notes that the laws are primarily made in order to function in practice and therefore a question is posed whether the citizens have the opportunity to have faith and to demand protection of their rights, underlining that the control mechanisms are weak because of the subjective personal decisions in the bodies which do not properly do their work (she

mentioned primarily the courts and further the Anticorruption Commission, the Agency for Media, the journalist professional associations etc). Noting that the Rules of the Constitutional Court are old and the Court does not have proper mechanisms for bringing decisions, judge Gaber Damjanovska finds that the citizens are usually unsatisfied of how does the Court protect the Constitution and the general perception of the citizens is that the Court votes and resonates politically.

Furthermore, she has noted, that the condition of the marginalized groups remains unchanged and even worsened and she underlined the politization in every part of the society is very negative and it produces unfunctionality of the institutions. She also agreed that, in the period after becoming independent country there were more sincere effort for accomplishments of certain goals and standars, than now. According to her, that Macedonia does not follow the recommendations in the area of human rights though HLAD as a process has put some pressure and it made some requirements, yet, the government is persistant in avoiding of its implementation. Finally, judge Gaber Damjanovska concludes that the citizens believe in the process of Europeanization and improvement of their lives, however, it is a process that must become more visible to the citizens, popularization and repetition of its positive values, so that the citizens are acknowledged with its meaning and how it will affect their lives.

The third interview was also made in September and it was conducted with representatives of the Macedonian Ombudsman's office. The latter informed that the Obmudsman dealt with 4.995 complaints in 2014, out of which the largest number or in precise 39,80 % were related to violation of the rights by the public services and institutions²¹, and the majority of the complaints were coming from the area of judiciary 21,20 %, ²² In the interview

²¹ The other complaints were as following: 34,69 % violations of the rights by the central government, 8,14% violations by the local government, 7,22 % of violations by the legal entities, 1,44 % violations from the central as well as and the local governements and 8,71% violations by other subjects.

²² The other complaints regarding the subject area were as follows: consumer rights 11,43%, financies and financial working 5,58 %, labor relations 7,04%, social protection 6,57%, penal and correctional institutions 6,45 %, legal–property area 5,62 %, pension and disability insurance 5,20%, protection of rights during police authority 4,07%, urbanism and construction 3,95%, health care 2,94%, protection of the children 2,92%, civil states and other internal affairs 2%, voting rights 1,84%,non discrimantion and equal representation 1,55%, housing relations 0,85%,

with the ombudsman's office has reported from their experience, the most common group of people that demand protection are the marginalized groups and categories of people with low socio economic status i.e. those who do not have access to the services and do not have enough knowledge about their rights (women, children, disabled people). Nevertheless, educated people, people in labor relation, legal entities and community of citizens also require protection of their rights. According to the Ombudsman, the citizens fail to report the institutions and to ask for protection as a result of the lack of knowledge of their rights and of the procedure for enjoyment of certain rights, as well as un-sufficient acquaintance about the mechanisms for protection of the rights, moreover, the Ombudsman claims that there are fear and disbelief towards the institutions from the consequences when taking certain activities and measures for protection. The citizens address the Ombudsman for interevention for protection of certain rights, but they also ask for help in certain matters which are not in its domain, for example abolition of certain decisions, representation in front of certain institutions etc). In those kinds of cases, the Obmudsman provides legal advice and directs them to the right institution.

Regarding the gaps between the formal and the real protection of the human rights, the Obmudsman consideres that there is necessesity of upgrading the legal system, expressing concern that the laws are changed very often without the necessary scientific and public debate, and often certain laws have been changed even before entering into force and being applicable.²³

The Ombudsman office claims that although Macedonia has generally harmonized legal regulation with the European legislation, practical implementation of the legal solutions failed to take place.

The representatives of the Ombudsman office argue that violations of the rights happen continuously, as it is noted in their reports. Certain changes since the 90's happened, however, according to them, it takes further education, about the rights and raising awareness of the

environment 0,61%, education, culture, science and sport 0,49%, disabled people 0,26% and from other areas 5,41%.

²³ The Ombudsman office claims that certain laws have been adopted in shorten procedure, which further poses the question about their quality and applicability. Consequently, according to them, this kind of frequent changes in the legal system complicates the procedures, the citizens can not have updated information for certain rights. Instead of having an efficient and accessible legal system for the citizens, it becomes complex and unreachable.

citizens, as well as the undertaking activities for authorities which decide for the citizen's rights. Regarding the Euro-integration process, according to the Ombudsman, there is a necessity for further promotion of the human rights, the human rights conventions and documents of the European Union, as well as raising awareness about the advantages of the Republic of Macedonia as a member state of the EU.

In relation to the interview made with the office of the Macedonian Ombudsman, it is also worth noting the interview made with the Ombudsman in July 2015 by the NovaTv with a very important headline which was actually a confirmation said by the Ombudsman during the appearance »The Government has become immune on the suggestions for violation of the human rights« (NovaTv 05. 07. 2015). In the Interview, the Ombudsman emphasizes the essence of the latest reports considering the protection of human rights which are very strict, direct and elaborate the difficult situation in this area. However, the institution itself lately faces financial problems and problems with lack of employees; thus its work has been obstructed and it has become difficult to conduct.

6 CONCLUSION

Human rights protection and promotion in the modern world are inseparable part of the democratic societies. They make a basic value of every constitutional and political system of every country which aspires to be part of the international organizations. Furthermore, they have been at the interest of science, politics and theory through out the history and as a result, they have evolved in the massively accepted idea for their promotion and protection. That kind of evolvement and interest was certainly motivated by many different reasons; however the primary and most important reason is that the people and citizens have been trying to provide themselves decent life and active role in the society. They strived to create conditions for personal and collective expression, as well as to establish the mechanisms and guarantees for full enjoyment of their rights.

However, today we are witnessing that the enjoyment of human rights and freedoms remains an idea quite difficult to achieve in certain societies, as there is a quite big number of countries which do not respect the proclaimed rights and freedoms and do not provide for their protection. Consequently, there is gap between the proclaimed constitutions, laws, conventions and declarations on one side, and their real implementation in practice on the other side. This kind of difficulties is not a problem of a single country or a society, but rather it is a problem of the humanity, because instead of further democratic and progressive evolving, the society goes back in its development and protection of the citizen's human rights and freedoms.

Republic of Macedonia is an independent country for more then two decades and it proclaimed itself as a democratic society which respects its Constitution, legislation, signed and ratified international conventions and declarations, as well as the norms by which is obligated as a member of certain international organizations.

Moreover, it aspires to achieve higher level of progress so that consequently it could achieve its goals of becoming a part of the European Union. However, Republic of Macedonia nowadays, meets regression in the process of protection of human rights, as the overall political and social climate in the past few years contribute for that. The citizens, individually or in groups (marginalized groups, journalists, governmental opponents, migrants etc.) face massive violation of their rights, inability to profit from the quaranteed protection by the country and failure to establish adequate dialogue with the institutions responsible for protection of their

rights. European Commission in the past few reports has noted rather little progress in certain domains but more violations of the rights.

Slow and inefficient judiciary, political involvement in every part of the society, physical violence, media pressure, discrimination on the basis of sexual orientation and discrimination of the marginalized groups have been recognized. Furthermore, breach of rights guaranteed by the Constitution as the right to strike, freedom of expression and equality between genders make just part of the rights that the country does not protect as it is guaranteed by the Constitution and the international documents.

Moreover, the citizens very often are not able to start a procedure for protection of their rights and also fear among people exists and the overall situation stagnates. Analysis of the situation in the past two decades and especially in the past two years leads to the conclusion that although the legal framework and the theoretical basis are to a certain measure set as they should be in Macedonia, there is a huge discrepancy between the legal framework and the real situation in practice.

In general, the process of Europeanization in Macedonia is positively and enthusiastically accepted by the majority of the citizens (no matter how that process is understood—as a process of change or adaptation etc). The public opinion is that it would bring positive benefits on the overall progress of the country. However, many citizens have lost faith in the political and organizational institutions that should provide them enjoyment and protection of their rights and a climate of apathy in the past few years can be noticed.

Undoubtedly, Republic Macedonia must continue to follow and to increase its efforts to the path of a developed democratic society that will provide effective ground for promotion and protection of human rights and freedoms. In that relation, education and involvement in the overall process is more than needed, as they will also provide more objective data, awareness, courage and exact focus on the crucial matters.

“Our lives begin to end the day we become silent about things that matter”.

Martin Luther King, Jr.

7 POVZETEK

Spoštovanje in promocija človekovih pravic v današnjem času je nepogrešljiv del vsake demokratične družbe, ki bodisi je ali želi postati del določene mednarodne organizacije. Njuna narava in pomen sta že dolgo časa nazaj v zgodovini raziskani in danes, več kot kadarkoli v modernem času, pomembni. Vsaka država, tudi Republika Makedonija se zaveda, da so človekove pravice osnovna vrednota vsakega političnega in ustavnega sistema. V magistrskem delu sem se osredotočila, kot že sam naslov pove, na proces evropeizacije človekovih pravic v Republiki Makedoniji. Primarno je bil analiziran proces evropeizacije, kot kompleksen proces odvisen od več dejavnikov, potem pa tudi konkretno, kako ta proces vpliva na področje človekovih pravic v Republiki Makedoniji. Namreč, Republika Makedonija se kot država kandidatka za vstop v Evropsko Unijo, zaveda, da mora doseči višji nivo napredka, na splošno, in mora vložiti ogromno truda, da izpolni določene pogoje ter vzpostavi učinkovito podlago za promocijo in zaščito človekovih pravic in svoboščin.

Republika Makedonija se danes sooča z množičnimi težavami na pot uspešnega doseganja in zaščite človekovih pravic. Celotno politično in socialno vzdušje v zadnjih nekaj letih je pripomoglo k temu, da se Republika Makedonija sooča z nazadovanjem oziroma regresijo v procesu uživanja in spoštovanja človekovih pravic. Že sama analiza je na nek način pokazala, da čeprav sta pravni okvir in teoretična osnova v določeni meri že zastavljena, še vedno obstaja velika luknja med pravnim okvirjem in realno situacijo, ki smo ji priča danes.

Zdi se, da so državljani izgubili upanje v sistem, ki ima primarno obveznost, da državljanom omogoči uživanje in zaščito človekovih pravic. Vendar je proces evropeizacije nedvomno pozitivno ocenjen in podprt s strani državljanov, kateri tudi menijo, da bo prinesel pozitivne učinke na splošni napredek. Še več, Republika Makedonija mora nadaljevati in vlagati v ta proces, če si želi še naprej biti bolj razvita demokratična družba, v katera se spoštujejo načela in vrednote spoštovanja človekovih pravic. Analiziranja v tej smeri so pokazala, da je za doseganje teh ciljev v Republiki Makedoniji, več kot potrebno vsesplošno izobraževanje, vključenost in sodelovanje na več področjih, zavedanje in delovanje, glede najbolj pomembnih dejavnikov.

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APPENDIX: INTERVIEW

INTERVIEW

1. On which area most breaches and disrespect of human rights and freedoms occur, that is to say which group of human rights and freedoms you would indicate as the most violated in the Republic of Macedonia?
2. Do you think that there are certain groups of citizens with particular characters in the Republic of Macedonia that are most commonly victims of violation and disrespect of human rights and freedoms? Who would that be, according to you?
3. According to your estimation, why and what is the extent that the citizens do not report and do not demand protection from the institutions i.e. what prevents them from seeking protection of their rights?
4. What kind of help do people demand when they report violation and disrespect of their rights?
5. How big is the discrepancy between the formal protection and respect of human rights and freedoms and the real undertakings of the institutions?
6. What are the difficulties that you are faced with in the course of your work? At what extent the citizens are (not) satisfied by the work of the institutions in the Republic of Macedonia which should provide protection and enjoyment of their rights?
7. How would you evaluate the violation of human rights and freedoms at the beginning of the transitional period in the '90 and today? What is the difference? Have the kinds of violation, the victims etc. changed?
8. Republic of Macedonia was the first country of the region which in 2001 signed the Stabilization and Association Agreement, and in 2005 it gained the status of a candidate country. However, it is a fact that the Republic of Macedonia in the recent period has marked significant regress in the Euro-integration process. Does Republic of Macedonia follow the recommendations and the opinions, and does it work, in the last decade, on harmonization with the EU legislation regarding the human rights and freedoms? How effective is it, according to you?
9. Do you think that the citizens believe in the process of Euro-integration and that becoming part of the European Union will secure them better and higher quality life, better socio

– economic picture, and thus do they believe that it will bring about true respect and protection of human rights and freedoms? Or in precise, do you think that the citizens are truly acknowledged of the fact what does the EU membership mean regarding the human rights and freedoms?