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# **PROTECTION OF HUMAN AND MINORITY RIGHTS IN THE CONSTITUTION OF SERBIA WITH REFERENCE TO THE LEGAL PROVISIONS ON THE TREATMENT OF PERSONS IN DETENTION**

**ABSTRACT:** The Constitution of the Republic of Serbia contains a large number of provisions on human rights and freedoms. The Constitution guarantees all three generations of rights. Articles 28 and 29 of the Constitution regulate the following rights: Dealing with a person deprived of liberty and Supplementary rights in case of deprivation of liberty without a court decision. Basing the provisions on the aforementioned articles of the Constitution, the criminal procedure legislation has regulated in detail the matter of dealing with persons in custody. After a detailed analysis of the rules of treatment of persons in detention, it has been concluded that it is not about any specific rights or rules, but only about the realization of the basic guaranteed rights that every citizen should enjoy, regardless of their status. Bearing in mind the topic, the paper analyzes the development and conceptual definition of human and minority rights. Some characteristic provisions of the Constitution related to the topic of the paper were also analyzed, and then an overview was made of the legal provisions in Serbia

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on the treatment of persons who are in detention, and which have their basis precisely in the provisions of the Constitution.

**Keywords:** *Constitution, human rights and freedoms, rights of national minorities, criminal procedural legislation, treatment of detainees.*

## **1. Introduction**

Human and minority rights and freedoms are regulated in the second part of the Constitution of the Republic of Serbia (2006). The basic principles governing this area are defined in articles 18-22. In the first place, it is the principle of direct application of guaranteed rights (Article 18), according to which “human and minority rights guaranteed by the Constitution are directly applied. The Constitution guarantees, and as such, directly applies human and minority rights guaranteed by generally accepted rules of international law, confirmed by international treaties and laws. Provisions on human and minority rights are interpreted in favor of the improvement of the values of a democratic society, in accordance with valid international standards of human and minority rights, as well as the practice of international institutions that supervise their implementation.” The next principle speaks about the purpose of constitutional guarantees (Article 19), according to which “guarantees of inalienable human and minority rights in the Constitution serve to preserve human dignity and achieve full freedom and equality of every individual in a just, open and democratic society, based on the principle the rule of law.” Then, the third principle refers to the limitations of human and minority rights (Article 20) and stipulates that “human and minority rights guaranteed by the Constitution may be limited by law if the limitation is permitted by the Constitution, for the purposes for which the Constitution permits it, to the extent necessary for the constitutional the purpose of the restriction is satisfied in a democratic society and without encroaching on the essence of the guaranteed right. The achieved level of human and minority rights cannot be reduced.” The principle of non-discrimination (Article 21) defines the position according to which “everyone is equal before the Constitution and the law. Everyone has the right to equal legal protection, without discrimination. Any discrimination, direct or indirect, on any basis, and especially on the basis of race, gender, nationality, social origin, birth, religion, political or other belief, financial status, culture, language, age and mental or physical disability is prohibited.” Finally, according to the principle of protection of human and minority rights and freedoms (Article 22), “everyone has the right to judicial protection if a human or minority right

guaranteed by the Constitution has been violated or denied, as well as the right to remove the consequences of the violation.”

According to Teofilović (2013), “the adoption of the new Constitution of the Republic of Serbia in 2006 was expected as the most significant innovation in the field of legal regulation in the domestic legal system in the last twenty years” (p. 126). According to the opinion of the same author, compared to the then valid Constitution from 1990, “the new constitution was expected to establish the foundations of Serbia as a new state, which will enable, on the one hand, its modernization and the beginning of the process of recovery of the entire, then already almost completely destroyed, society, and, on the other hand, harmonizing internal processes with current integrative processes at the regional and international level” (Teofilović, 2013, pp. 127-128). But the most important thing “that unites these two constitutions is the concept of the basic constitutional institutes, which is the same in most of them” (Marković, 2006, p. 8).

The Republic of Serbia is a state “based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and belonging to European principles and values” (Radovanović, 2020, p. 87). Due to the above, and in the light of these highest values, “The Constitution of the Republic of Serbia guarantees human and minority rights and freedoms and establishes at the very beginning the fundamental principles on which they are based. Regulating this matter shows and confirms their special value and priority in relation to the government system, which would have to be subordinated to them and in the function of their consistent realization, improvement and protection” (Radovanović, 2020, pp. 87-88).

Bearing in mind the topic of the work, next there will be more words about the development and determination of human and minority rights, some characteristic provisions of the Constitution related to the topic of the work will be analyzed, and then a review will be made of the legal provisions in Serbia regarding the treatment of persons who are in custody, and which have their basis precisely in Articles 28 and 29 of the Constitution of the Republic of Serbia (2006).

## 2. Development and concept of human rights

From a historical point of view, from the creation of the first states until today, bearing in mind both the abstraction of philosophical views and the practical circumstances that man has encountered throughout history, the concept of human rights has been the basis of the study of all problems,

phenomena and concepts of the entire society. According to Milosavljević and Popović (2008), “the simplest definition of human rights is that those are rights that belong to a person by birth. By his birth, by his biological and natural existence, man is a free person” (p. 141). As a social being “he enters into various social organizations and communities, which with their norms, no matter how democratic, customary, moral and legal, in a certain way limit human rights and his natural freedoms. With the emergence of the state and the creation of various international organizations, people also become special subjects, parts of those organizations. In this way, human rights and freedoms gain special importance and actuality (Bjelajac, 2017). With its norms, the state prescribes human rights and freedoms, determines their various legal protections, but also limits the freedom that man as a natural being possesses” (Vučković, 2010, p. 158). Vasić (2000) points out that “the concept of the rule of law arose from the understanding that it is not enough for state power to be limited by law, it is also important that the law be valid in its content, which leads to the binding of law to justice and moral laws” (p. 16).

According to Milenković (2010), “the development of human society, and above all of the state and law, is closely related to the idea of human rights and freedoms. We find the forerunners of the idea of human rights in the ancient history, but the idea of human rights came to the fore only in the Middle Ages in the conditions of absolute monarchy. Thus, one English ruler – John Lackland, was already forced to limit his unlimited power and ‘grant’ the primary body of human rights ‘to all free people and forever’ at the beginning of the 13th century. During the 17th and 18th centuries, the issue of certain religious communities was also actualized” (p. 7).

A lot can be written and talked about the development of human rights. For the purposes of this work, it is necessary to single out, the origin and importance of several important documents, the adoption of which represented a significant step in the establishment of the modern concept of human rights protection. Namely, the Constitution of the United States of America from 1787 should be mentioned. This document is still in force today, and “contains four essential features: federalism, democracy, division of powers and republican form of government. Already in 1791, ten amendments were ratified that proclaimed the basic rights and freedoms of man and citizen (Bill of Rights), which are still an integral part of the Constitution from 1787. In this way, this Constitution receives a fifth, essential feature – the generated corpus of basic human rights of the first generation – civil and political rights” (Milenković, 2010, p. 7).

Also, it is important to mention that “under the influence of the civil revolution of 1789, the first French Constitution was adopted in France in September 1791. The adoption of this Constitution was preceded by the adoption of the Declaration on the Rights and Freedoms of Man and Citizen in 1789, and after the adoption of the Constitution, it became its Preamble” (Milenković, 2010, p. 7). In its first sentence, the Declaration “emphasizes this idea of natural law and the fundamental principle of human freedom and equality: ‘People are born and live free and equal in rights.’ However, people necessarily live in certain social communities in which their natural rights and freedoms are restricted in various ways. This is particularly reflected in the state, which was the strongest social organization in the past and still is today, in which the restrictions on rights and freedoms are enforced to the strongest degree” (Dimitrijević, Paunović, & Đerić, 2004; Vučković, 2010, p. 159).

The concept of the rule of law as we know it today began to develop only in the 19th century.

Here it is important to mention one document “by which human rights finally acquired an international, international character. It is the Universal Declaration of Human Rights (1948). It represents so far the most complete codification of natural law that has been done in legal history. In terms of the number and content of human rights, the Universal Declaration represents a set of all rights that have been recorded in the past. And more than that, because this Declaration expanded the institution of human rights, adding the second generation of ‘economic, social and cultural’ human rights to the classic ‘political and civil rights’ of the first generation (Perović, 1998, p. 52). Analyzing the development of the concept of human rights, Milenković (2010) here emphasizes that this dynamic “in 1966 led to the creation of the Covenant on Civil and Political Rights (which our country ratified by the Law on the Ratification of the International Covenant on Civil and Political Rights (1971) and the Covenant on Economic, Social and Cultural Rights of the United Nations (which our country ratified by the Law on ratification of the international pact on economic, social and cultural rights (1971)). On the other hand, in Europe, the Council of Europe already adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (which includes civil and political rights) in 1950. The rights contained in the Convention are protected through a supranational protection mechanism embodied in the form of the European Court of Human Rights” (p. 10).

### **3. Conceptual definition of the national minorities term and the importance of protecting the rights of national minorities**

According to the provisions of Article 2, paragraph 1 of the Law on the Protection of the Rights and Freedoms of National Minorities (2002), “a national minority is any group of citizens of the Republic of Serbia that is sufficiently representative in terms of numbers, even though it represents a minority on the territory of the Republic of Serbia, belongs to one of the population groups that are in a long-term and strong connection with the territory of the Republic of Serbia and has features such as language, culture, national or ethnic affiliation, origin or religion, which differentiate it from the majority of the population, and whose members are distinguished by their care to maintain their common identity together, including culture, tradition, language or religion.” Defining the concept of a national minority, Marković (2015) points out that “a national minority means a part of the members of one nation that has formed its home state, and that lives on the territory of a state that was formed by another nation, whose home state it is” (p. 489).

When it comes to international law, “it is important to point out that there is no universal definition of a national minority, which is accepted by all states or organizations. The definition highlighted by the United Nations Subcommittee for the Prevention of Discrimination and the Protection of Minorities is interesting, in which it is stated that the term minority includes only those non-dominant population groups that have and wish to preserve stable ethnic, religious or linguistic traditions or characteristics that distinguish them from the rest of the population” (Divljaković, 2018, p. 6).

The protection of the rights and freedoms of national minorities is one of the most important issues in the entire field of protection of human rights and freedoms. Here, Divljaković (2018) notes that “belonging to a national minority is very often associated with a worse social position and discrimination, so throughout history, numerous documents of both national and international law have been passed that protect the position of members of national minorities” (p. 8). This is followed by the conclusion of Đorđević, Lončar, Miljković and Bašić (2018) that “rights that directly affect the inclusion of minorities in society are the right to work and the right to participate in political life, i.e. to decide (to vote and be elected) on issues that are related to personal plans and group identity. Both rights belong to basic rights, rights of the first generation of human rights. The realization of these rights, despite being indisputable, require states to take special measures and to adapt their political and legal systems to the nature of their multi-ethnicity” (pp. 19-20).

## 4. Human rights and freedoms in the Constitution of the Republic of Serbia

The Constitution of the Republic of Serbia (2006) contains a large number of provisions on human rights and freedoms. The Constitution guarantees all three generations of rights: civil and political rights (the first generation of rights), then economic, social and cultural rights (the second generation of rights), and the so-called third generation rights.

Kolednjak and Šantalab (2013) state that “the first generation of human rights includes civil and political rights such as the right to freedom of expression, freedom to enjoy, right to life, right to a fair trial, etc. The second generation of human rights includes economic, social and cultural rights such as the right to an adequate standard of living, the right to health, the right to education and similar rights. The third generation of human rights refers to the collective rights of society or people, such as the right to sustainable development, peace or a healthy environment. On the one hand, the third generation of human rights indicate that human rights are not just a mere institution, but that they develop and change. On the other hand, they recognize new problems that threaten the right to life of all people, and therefore these rights should and do find their place in the catalog of human rights” (p. 324).

The second part of the Constitution of the Republic of Serbia (2006), from articles 18 to 81, is devoted to human rights. It is further divided into three parts: 1. Basic principles (articles 18 to 22), 2. Human rights and freedoms (articles 23 to 74). and 3. Rights of members of national minorities (Articles 75 to 81). Also, “certain provisions on human rights are also found in other parts of the Constitution. For example, in the Third Part, which regulates the Economic Regulation and Public Finances, there is another number of constitutional guarantees that can be qualified as human rights (Articles 82 to 90). In total, almost 70 articles of the Constitution are dedicated to basic human rights, which actually represents one third of the constitutional text, out of the total number of 206 articles” (Tubić, 2018, p. 69).

Bearing in mind that the Constitution of the Republic of Serbia (2006) contains a large number of provisions governing the protection of human rights and freedoms, at this point only a brief overview of several human rights and freedoms will be analyzed that are close to the matter that will be analyzed in more detail in the following subheading – treatment of persons in custody.

Namely, Article 23 of the Constitution regulates the right to Dignity and free development of personality. Thus, “human dignity is inviolable and

everyone is obliged to respect and protect it. Everyone has the right to free personal development, if it does not violate the rights of others guaranteed by the Constitution.” According to the opinion expressed by Pajvančić, “as one of the basic values on which the constitutional system rests, the Constitution establishes that human dignity is inviolable and prescribes the obligation of all subjects to respect it (paragraph 1). Along with this principled constitutional guarantee, the dignity of the person is especially protected in the process of deprivation of liberty, and it prescribes the obligation to respect the dignity of the person in the treatment of the person deprived of liberty (Article 28, paragraph 1). Constitutional guarantees of the dignity of the person are absolutely protected rights (Article 202, paragraph 4), and are not subject to deviations even in times of war or state of emergency. Along with the dignity of the person, the right to free development of the personality is also guaranteed, and in principle it regulates the space of individual freedom, the framework of which is the freedom and rights of others (paragraph 2)” (Pajvančić, 2009, p. 36).

Article 24 of the Constitution regulates the Right to life. According to these provisions, “human life is inviolable. There is no death penalty in the Republic of Serbia. Cloning of human beings is prohibited.” According to the opinion expressed by Pajvančić (2009), “the constitution guarantees the inviolability of human life. Respecting European standards of human rights, the Constitution stipulates that there is no death penalty in the punishment system in Serbia. Directly related to the guarantee of the right to life is the prohibition of cloning of human beings (paragraph 3), and in a broader sense, the constitutional provisions that guarantee the freedom to decide on childbirth (Article 63, paragraph 1) and guarantee the right to legal capacity (Article 37, paragraph 1). The right to life belongs to the group of absolutely protected rights (Article 202, paragraph 4), and as such cannot be limited in any way, even during extraordinary circumstances or war” (pp. 36-37).

Article 25 of the Constitution regulates the right – Inviolability of physical and psychological integrity. According to these provisions, “physical and psychological integrity is inviolable. No one may be subjected to torture, inhuman or degrading treatment or punishment, or subjected to medical or scientific experiments without his freely given consent.” According to the opinion expressed by Pajvančić (2009), “the Constitution guarantees the inviolability of the physical and psychological integrity of the person as a general norm, and it is specified in several special constitutional provisions. The content that includes the general constitutional norm on the inviolability of physical and psychological integrity is defined more closely by the provisions

on the prohibition of torture, inhuman or degrading treatment or punishment (paragraph 2); prohibition of subjecting to medical and scientific experiments without the freely given consent of the individual (paragraph 2 *in fine*). The inviolability of physical and mental integrity is more closely defined by the prohibition of slavery or keeping an individual in a position similar to slavery (Article 26, paragraph 1); the prohibition of human trafficking (Article 26, paragraph 2), as well as the prohibition of forced labor (Article 26, paragraph 3), with which the Constitution equates the sexual or economic exploitation of persons who are in a disadvantageous position (Article 26, paragraph 3 *in fine*), so the prohibition of forced labor also includes such cases. Some rights belonging to this group have the status of absolutely protected rights, such as the right to inviolability of physical and psychological integrity, and the prohibition of slavery and positions similar to slavery (Article 202, paragraph 4). Deviation from these rights is not allowed even in war or during a state of emergency" (p. 37).

Article 27 of the Constitution regulates the Right to freedom and security. According to the provisions of this article, "everyone has the right to personal freedom and security. Deprivation of liberty is permitted only for the reasons and in the procedure provided for by law. A person who has been deprived of his liberty by a state authority is immediately informed, in a language he understands, of the reasons for the deprivation of his liberty, of the charges brought against him, as well as of his rights, and has the right to inform the person of his choice about his deprivation of liberty without delay. Anyone who is deprived of liberty has the right to appeal to the court, which is obliged to immediately decide on the legality of the deprivation of liberty and to order release if the deprivation of liberty was illegal. A sentence that includes deprivation of liberty can only be imposed by a court." According to the opinion expressed by Pajvančić (2009), "the Constitution guarantees every individual the right to freedom and security (personal freedom) as one of the basic rights and establishes several special guarantees whose purpose is to protect this right. Special guarantees refer to the explicit prescription of conditions under which the personal freedom of an individual can be limited; regulating the procedure of deprivation of liberty; determination of the body competent to decide on deprivation of liberty and, finally, guaranteeing certain rights that an individual can use in proceedings before state authorities when his personal freedom is limited. Among the special rights enjoyed by an individual at the moment of deprivation of liberty are: the right to immediate action ("immediately" as the Constitution states); the right to be informed about the reasons for deprivation of liberty; the right to be informed of the

charge against him; the right to have the reasons for the deprivation of liberty and the charge against him communicated in a language he understands; the right to inform a person of his choice about the deprivation of liberty; the right to be informed of his rights; the right to appeal to the court due to deprivation of liberty; the court's obligation to decide on the appeal in an urgent procedure" (p. 38).

Articles 28 and 29 of the Constitution regulate the rights of Dealing with a person deprived of liberty and Supplementary rights in case of deprivation of liberty without a court decision. According to Article 28, "a person deprived of liberty must be treated humanely and with respect for the dignity of his person. Any violence against a person deprived of liberty is prohibited. Coercion of statements is prohibited." According to Article 29, "a person deprived of his liberty without a court decision is immediately informed that he has the right not to declare anything and the right not to be heard without the presence of a lawyer of his own choosing or a lawyer who will provide him with free legal aid if he cannot pay for it." A person deprived of liberty without a court decision must be handed over to the competent court without delay, and within 48 hours at the latest, otherwise he will be released." According to the opinion presented by Pajvančić (2009), "deprivation of liberty is an act (factual act) of limiting personal freedom as one of the most important individual freedoms. This is the reason why the Constitution specifically regulates the relationship of state authorities when undertaking activities that limit personal freedom, as well as their treatment of a person deprived of their freedom. The constitutional regulation on dealing with a person deprived of liberty includes two express constitutional prohibitions. One refers to the use of any type of violence (physical, psychological) against a person deprived of liberty (paragraph 2). The second prohibition refers to coercion of statements (paragraph 3). It can be noted that the Constitution does not sanction the violation of these constitutional prohibitions, and does not expressly authorize the legislator to prescribe sanctions in case of their violation. The rules on dealing with a person deprived of liberty, as well as the prohibition of certain actions against a person deprived of liberty, belong to the group of absolutely protected rights. Deviation from these rights is not allowed even in the case of war or imminent threat of war (Article 202, paragraph 4)" (p. 40). Also, regarding the provisions from Article 29, the same author states that "the rights of persons deprived of their liberty are specifically regulated in the case where the general rule that deprivation of liberty is permitted only by court decision is violated, that is, in a situation where some other authority (police) directly limits the personal freedom of the individual. In that case, the person

deprived of liberty has additional rights, which include: the right not to declare anything (paragraph 1); the right to be heard in the presence of a defense attorney (paragraph 1); the right to choose a defense counsel (paragraph 1); the right to a defense attorney who will provide legal assistance free of charge if, due to his financial situation, he cannot pay for the assistance of a defense attorney (paragraph 1); the right to be brought before the competent court without delay, and within 48 hours at the latest (paragraph 2); the right to be released if custody is not ordered based on the decision of the competent court (paragraph 2)" (Pajvančić, 2009, pp. 40-41).

Finally, Articles 30 and 31 of the Constitution regulate the rights regarding Detention and Duration of Detention. Namely, according to the provisions of Article 30, "a person who is reasonably suspected of having committed a criminal offense may be detained only on the basis of a court decision, if the detention is necessary for the conduct of criminal proceedings. If he was not heard during the decision on detention or if the decision on detention was not carried out immediately after it was made, the detained person must be brought before the competent court within 48 hours of the deprivation of liberty, which then decides on detention again. The written and reasoned decision of the court on detention is delivered to the detainee no later than 12 hours after the detention. The decision on the appeal against detention is made by the court and delivered to the detainee within 48 hours". Then, Article 31 stipulates that "the court reduces the duration of detention to the shortest necessary time, taking into account the reasons for detention. The detention determined by the decision of the first-instance court lasts for a maximum of three months during the investigation, and the higher court can, in accordance with the law, extend it for another three months. If no indictment is filed by the end of this time, the defendant is released. After the indictment is filed, the court reduces the duration of detention to the shortest necessary time, in accordance with the law. The detainee is released to defend himself from freedom as soon as the reasons for which the detention was determined cease."

## **5. Provisions of the criminal legislation of the Republic of Serbia on dealing with persons in custody**

Since the defendant "is the main subject of criminal proceedings and a party in criminal proceedings with the presumption of innocence, the legislator specifically regulated the procedure with detained persons, i.e. it specifically regulated the position of the defendant in custody" (Milošević & Stevanović,

1997, p. 308). Based on the provisions of Articles 28 and 29 of the Constitution of the Republic of Serbia (2006), the criminal procedure legislation has regulated in detail the matter of dealing with persons in custody. A more detailed legal regulation of the rules “for dealing with detainees is necessary because in every democratic state a clear mechanism for controlling the way these persons are treated must be built and constantly applied (Matijašević Obradović, 2015, p. 264).

The Code of Criminal Procedure (2011) prescribes special rules for dealing with detainees in articles 217-222. These provisions are certainly harmonized with the provisions of the Law on the Execution of Criminal Sanctions (2014), which in Article 6, paragraph 1 stipulates that “a criminal sanction shall be executed in a way that guarantees respect for the dignity of the person to whom it is carried out.” According to what was said above, the provisions of the criminal procedure legislation of Serbia regulated the following rules, regarding the rules of dealing with persons deprived of their liberty:

“1. The basic rule is that during detention, the personality and dignity of the detainee must not be insulted;

2. The rule on the application of only necessary restrictions on the rights of detained persons, which means that only those restrictions that are necessary to prevent: 2.1.) escape, 2.2) inciting other persons to destroy, hide, change or falsify evidence can be applied to the detainee or traces of the criminal offense and 2.3.) direct or indirect contacts of detainees aimed at influencing witnesses, accomplices or concealers;

3. Rule on separation of certain detained persons. This rule applies to the following situations: 3.1.) persons of different genders will not be imprisoned in the same room, 3.2.) as a rule, persons suspected of having participated in the same criminal act will not be placed in the same room, 3.3.) as a rule, persons who are serving a criminal sanction consisting of deprivation of liberty will not be accommodated in the same room with persons in custody, 3.4.) persons for whom there is reasonable suspicion that they have committed a criminal offense will not, if possible, be placed in the same room place in the same room with other persons deprived of their liberty who could be adversely affected;

4. Rules relating to certain rights and obligations of detained persons. In this sense, the rights of the detainee are: 4.1.) the detainee has the right to a continuous night rest every day for at least eight hours, 4.2.) the detainee will be provided with exercise in the open air for at least two hours a day, 4.3.) the detainees have the right a.) to wear their own clothes, b.) to use their own

bedding and c.) to acquire and use food, books, professional publications, press, writing and drawing utensils and other things that correspond to their regular needs at their own expense, except for items suitable for causing injury, damage to health or preparation for escape. 4.4.) if the detainee requests it, the judge for the preliminary proceedings, i.e. the president of the chamber, with the consent of the director of the institution, may allow him to work within the institution on jobs that correspond to his mental and physical characteristics, provided that this is not detrimental to the conduct of the proceedings. For this work, the detainee is entitled to compensation determined by the director of the institution. In addition to the rights, the Code also prescribes the obligation of the detainee to perform work necessary to maintain the cleanliness of the room in which he is staying.

5. Rules on the communication of detained persons with other persons. Within this rule, the Code contains provisions on visits to detainees and provisions on correspondence with detainees. The rules related to visits to the detainee are as follows: 5.1.) with the approval of the judge for the preliminary proceedings and under his supervision or the supervision of the person he designates, within the limits of the institution's house rules, the detainee may be visited by his close relatives, and at his request – by a doctor and other persons. Certain visits may be prohibited if it is likely that they could interfere with the investigation. 5.2.) the diplomatic-consular representative of the state of which the detainee is a citizen, i.e. the representative of an authorized international organization of a public law character, if it is a refugee or a stateless person, have the right to, in accordance with the confirmed international agreement and with the knowledge of the judge for the preliminary proceedings, visit without supervisors talk to the detainee. 5.3.) the right to visit detained persons unhindered and to talk to them without the presence of other persons is guaranteed to: a.) defense counsel, b.) Protector of Citizens and c.) the National Assembly's Commission for Controlling the Execution of Criminal Sanctions, in accordance with the law, as well as g.) a representative of an authorized international organization of public law character, in accordance with a confirmed international agreement. The rules related to correspondence with the detainee are as follows: 5.4.) The detainee may correspond with persons outside the institution with the knowledge and under the supervision of the judge for the preliminary proceedings. The judge for the preliminary proceedings may prohibit the sending and receiving of letters and other correspondence if it is likely to interfere with the investigation.

6. Rule on disciplinary responsibility of detained persons. According to the provisions of the Code, for disciplinary offenses committed by detainees,

the judge for preliminary proceedings, or the president of the chamber, can impose a disciplinary punishment of restriction of visits. This limitation does not apply to defense counsel. A detainee cannot be punished 1.) before he is informed of the disciplinary offense he is charged with, 2.) before he has been given the opportunity to present his defense and 3.) before the court has thoroughly examined the case.

7. Rule on judicial supervision of detainees. According to the provisions of the Code, the supervision of detainees is carried out by a judge for the execution of criminal sanctions or a judge designated by the president of the court. The judge authorized to supervise the detainees is obliged to visit the detainees at least once every 15 days and, if deemed necessary, to find out how the detainees are fed, how they are supplied with other needs and how they are treated, even without the presence of the employees of the institution if deemed necessary. The judge is obliged to immediately inform the Ministry responsible for judicial affairs, as well as the Protector of Citizens, of the irregularities observed during the visit to the institute.”

## **6. Conclusion**

When considering the position and rights of persons deprived of their liberty, we are not talking about any special, specific rights and rules that are inherent to the status of a detainee (or an arrested person), but primarily about the realization of the basic guaranteed rights that every citizen should have. The Constitution of the Republic of Serbia guarantees respect for human rights and freedoms to all its citizens, and this is also confirmed by certain laws.

From a historical point of view, from the creation of the first states until today, bearing in mind both the abstraction of philosophical views and the practical circumstances that man has encountered throughout history, the concept of human rights has been the basis of the study of all problems, phenomena and concepts of the entire society. The Constitution of the Republic of Serbia (2006) contains a large number of provisions on human rights and freedoms. The Constitution guarantees all three generations of rights: civil and political rights (the first generation of rights), then economic, social and cultural rights (the second generation of rights), and the rights of the so-called third generation rights.

Articles 28 and 29 of the Constitution regulate the rights – Dealing with a person deprived of liberty and Supplementary rights in case of deprivation of liberty without a court decision. Basing the provisions on the aforementioned articles of the Constitution, the criminal procedure legislation has regulated in

detail the matter of dealing with persons in custody. This primarily refers to the provisions of the Code of Criminal Procedure (2011) and the Law on the Execution of Criminal Sanctions (2014).

Summarizing everything that has been said so far, the importance of the structure and content of the provisions of the Constitution of the Republic of Serbia (2006) is emphasized, especially in the domain of the principles and content of all guaranteed human and minority rights and freedoms, and it can certainly be said that the concept of the rule of law arose from the understanding that it is not enough for the state power to be limited by law, it is also important that the law is valid in its content, because then it is a solid foundation of just and moral behavior.

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## **ZAŠTITA LJUDSKIH I MANJINSKIH PRAVA U USTAVU SRBIJE SA OSVRTOM NA ZAKONSKE ODREDBE O POSTUPANJU SA LICIMA KOJA SE NALAZE U PRITVORU**

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**Ključne reči:** *Ustav, ljudska prava i slobode, prava nacionalnih manjina, krivičnoprocesno zakonodavstvo, postupanje sa pritvorenicima.*

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