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**UDK: 342.721**

Original scientific paper

DOI: 10.5937/ptp2301001L

Received: 14.02.2023.

Approved on: 14.03.2023.

Pages: 1–12


## **PERSONAL RIGHTS AND FREEDOMS – THE FORMS AND TRENDS OF PROTECTION**

**ABSTRACT:** In the paper, the authors analyze the history, application and effects, respectively the achieved level of personal rights and freedoms as a part of human rights. The right to life is an elementary human right, a right that is natural, permanent, unchangeable, inalienable and no one has the right to dispose of another's life. The European Convention prohibits the death penalty or the states undertake not to carry it out striving to remove the death penalty from the law. Personal rights include the right to respect and inviolability of the physical, moral and spiritual integrity of every person. A large number of multilateral conventions advocate the prohibition of slavery and human trafficking. The right to marry, start a family and have children is included in the family law, as well as the inviolability of the apartment and property relations of the spouses regarding the property acquired in marriage and before marriage. The inviolability of the secret of letters is recognized by the European Convention on the protection of the acquired rights and guarantees for their respect. The electronic communication network represents transmission systems that, for the sake of security, integrity and confidentiality of communications, should apply adequate measures. The right to protection of personal data represents an additional guarantee of inviolability of human integrity.

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In the paper, there has been used a normative method, supplemented with an analytical and deductive methodological approach, as well as a basic quantitative data analysis and the provisions of the Criminal Code. The achieved level of human and minority rights cannot be reduced. The paper itself represents a contribution to a higher development and application of the equal regulation at both the national and international levels.

**Keywords:** *Human rights, marriage, security of e-communications, secret letters, inviolability of integrity.*

## **1. Protection of human rights and freedoms**

The essence of the constitution is to ensure and provide adequate protection of human rights. The constitutional guarantee of human rights with an appropriate system of human rights protection has real significance.

Modern democratic constitutions provide for appropriate protective mechanisms and instruments for the protection of human rights when those are violated. There are some general principles of human rights protection, which include: a complex procedure for adopting and amending the constitution, which makes it impossible to easily change the constitutional guarantees of human rights; principle of constitutionality and legality, independence of courts, etc. There are also a certain instruments, as a means to achieve the goal, and forms of protection related only to human rights and freedoms. As a type of protection, protection before administrative bodies and protection before courts are mentioned. Constitutional-judicial protection is a special form of human rights protection, which is provided in parallel with forms of protection before the courts.

In addition to the primary form of protection that is realized within the framework of general control of constitutionality and legality, there are also some other forms of constitutional judicial protection of freedoms and rights guaranteed by the constitution, such as a constitutional appeal or the possibility of filing a lawsuit.

Some countries form special institutions (ombudsman) are being established, which in principle are not government bodies, and whose goal is the protection of human rights. Constitution of the Republic of Serbia advocates the principle of judicial protection of constitutional freedoms and rights. Every citizen has the right to court protection if he is denied or violated any of the rights guaranteed by the constitution. Every person has the right to remove the consequences (compensation) that arose from non-application

of rights. The novelty is the explicit constitutional provision that citizens have the right to turn to international institutions for the protection of their freedoms and rights guaranteed by the Constitution.

Of the usual forms of protection, in addition to judicial protection, constitutional judicial protection of the freedoms and rights of citizens is foreseen, in a classic way – through the assessment of the constitutionality and legality of general legal acts, as well as by deciding in other types of jurisdiction – on constitutional appeals submitted to the Constitutional Court.

## **2. The inviolability of human life**

The elementary human right is the right to life, that is, the inviolability of life, being recognized in all constitutions (Constitution of the Republic of Serbia, 2006). The human right to respect life is at the center of the human rights protection system. The human right to life is also guaranteed by international regulations on human rights (UN Declaration A/RES/217, 1948). In the International Pact on Civil and Political Rights (ICCPR/1966), the right to life is designated as an innate right of every human being (International Pact on Civil and Political Rights – ICCPR 1966/76).

The right to life is natural, permanent, unchangeable, inalienable and no one has the right to dispose of another's life, that is, no one can take it when and how they want to (Kuzmanović & Dmičić, 2002, p. 130). Along with the International Covenant on Economic, Social (Šipovac, Logarušić & Šipovac 2019, pp. 105-114) and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), the ICCPR is a part of the International Human Rights Law.

The right to life can be absolute or not. Absolute character, in application, can be in those countries where the death penalty is prohibited by the constitution. From the perspective of the legal regulations of individual countries, the application of the death penalty is foreseen, ie legally regulated. The development of human rights and freedoms in the world contributed to the tendency to increase the number of countries that do not apply this sanction.

The number of countries that strive to maintain is also increasing the inviolability of the right to life by strict and explicit prohibitions of the death penalty. A certain number of countries, which failed to omit the death penalty from the national legislation tend to, in this way pronounced sentences will not be carried out.

The European Convention from 1950 protects the right to life of every human being. National laws guarantee the right to life of people, unless there

is a judgment by which he was convicted of a crime, which is defined by the provisions of the law.

International legal regulation, that is, the constitutions of individual countries do not explicitly mention the right to the life of each person, but they assume it, either by guaranteeing the inviolability of the body integrity, whether by unconditional protection of life, i.e. absolute prohibition of the death penalty (Bataveljić, Logarušić & Šipovac, 2019, p. 152). The inviolability of life protects the right to life of every person, from his birth until his death.

In connection with this right, numerous issues arise controversial issues, primarily due to the existence of new biomedical possibilities. The greatest attention and controversy is caused by abortion, i.e. violent termination of pregnancy with the sacrifice of the fetus.

The question of the inviolability of life also includes the application of euthanasia, i.e. mercy killing or taking the life of a human being at his/her own request, turning off the life support apparatus of a person in a coma, as well as procedures for cloning of living beings, transplantation of certain human organs and other methods.

### **3. Respect for physical and psychological integrity**

The right to respect and to inviolability of the physical, moral and spiritual integrity of every person is one of the most important personal rights. Certain rights belonging to this group have the status of absolutely protected rights. The Universal Declaration of Human Rights (1948) defines that no human being shall be cruelly tortured or subjected to inhuman or degrading punishment.

International treaties, conventions and documents on human rights provide for the prohibition of torture, including the prohibition of forced labor (Škorić, 2019, pp. 377-390). The universal prohibition of this kind of behavior (torture), no matter where it happens and by whomever it is carried out, is firmly established in international law.

A significant number of multilateral conventions refer to the prohibition of slavery and the prohibition of human trafficking. The conventions were concluded at the beginning of the 20th century and after the First World War, when intensive international regulations were implemented in order to abolish and prohibit the institution of slavery, which brutally dehumanizes and humiliates humans, depriving them of their human rights and freedoms. In democratic, modern states, the constitution and corresponding legislation

expressly prohibit slavery and positions similar to slavery, but it cannot be denied that the institution of slavery still exists.

#### **4. The right to marry, start a family and have children**

Family law with an element of foreignness defines that the body of the Republic of Serbia is competent to conclude a marriage if one of the spouses is a citizen of the RS. A marriage validly concluded in another country is recognized in our country if it does not conflict with the public order of the Republic of Serbia.

International jurisdiction and determination of the relevant (competent) law with an element of foreignness in marital relations can be the citizenship, domicile or regular residence of one of the spouses who left the country after the termination of the marriage union. Which court will be competent for divorce depends on several elements, such as the place of marriage, joint residence or regular residence abroad.

Most modern constitutions define marriage as a useful social institution and protect it with their provisions (Krstinić, 2019, p. 67). The founding of a family and the birth of children result from marriage, so the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right to marry by stipulating that men and women of appropriate age have the right to marry and found a family in accordance with national laws, which regulate the exercise of this right.

Special attention is paid to the protection of the family, due to the importance that the family has for every society (increasing the number of the population through births). States develop policies related to marriage, family and children, because these are not private matters of individuals. The state must not undertake any measures that would harm the institution of marriage, family and children. Modern constitutions enable the state to adopt national regulations and provisions that regulate: marriage and family; conditions for entering into marriage; obstacles for entering into marriage; rights and duties of spouses; dissolution of marriage and the consequences of that dissolution; family protection; education and care of children etc.

The regulation of marital relations and the birth of children are defined by the provisions of the constitution from a general point of view, while more detailed regulation is entrusted to the corresponding laws, regulations etc. Competent authorities and institutions can participate in the regulation of elements that affect marriage and family growth, only if this area has been previously regulated by state norms. Slavery is defined as the social or legal

status of an individual (the slave), who has been deprived of their human rights, and are owned by another person or community (Law on Ratification of the International Covenant on Civil and Political Rights, 1971).

## 5. Inviolability of the home

Property relations of spouses regarding property acquired during marriage, as well as those before marriage (marital property regime) contain special norms of family law. Regarding the division of property acquired in marriage, which is most often initiated after a divorce, if an amicable divorce has been agreed, the court enters the agreement of the spouses on the division of joint property in the disposition of the judgement on divorce. The provision of the Constitution guarantees the inviolability of the apartment, preserves its privacy and integrity, and respects the ban on the possibility of other persons entering private premises.

International regulation, (International Pact, ICCPR, 1966/76; UN Declaration, 1948) from a legal point of view, it does not allow entering someone else's apartment without the presence of an official and two witnesses, it does not allow interference in private life, especially now in the era of information technology development, it is not allowed to read, disclose, receive or send other people's information (message) that can disrupt family relationships. The inviolability of the apartment implies respect for the right to privacy, i.e. respect and unhindered development of private and family life, personal house or apartment and correspondence of all kinds.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights define that "No one should suffer illegal and arbitrary interference with private life, housing, or attacks on people's honor and reputation contrary to the provisions of the law." The provisions of the European Convention on Human Rights and Fundamental Freedoms define basic guarantees and protect this range of rights.

The inviolability of the apartment is inseparable from personal freedom. Respect for the inviolability of the person ensures the security of man and his freedom.

In accordance with the scope of the right to the inviolability of the home, it should be said that the home is inviolable for public authorities and for third parties, who are not its users. Limitations of this right are admissible only in cases and under conditions which are in accordance with the principles of a free democratic order, i.e. someone else's home may be entered without a court order only in the case of the immediate capture of the perpetrator of the

crime (Criminal Procedure Code, 2021). and for the purpose of saving people and property (Matijašević Obradović & Ilić 2018, pp. 92-109).

## **6. Confidentiality of letters and correspondence**

Sending and receiving letters, conversations (correspondence) and their inviolability and protection are guaranteed by the provisions of the European Convention from 1950. Secrecy of letters and correspondence as an important personal (fundamental) right, i.e. the right which every person is constitutionally guaranteed the right to protect the secrecy of private letters and their content. The state administrative body and other persons are obliged not to violate legal rules in their work, when applying legal regulations, that is, to respect the confidentiality of documents guaranteed by the provisions of the 2006 Constitution.

The secrecy of the letter includes, apart from the mentioned telephone and computer communications, ordinary telephone conversations relying on the constitutional provisions on human rights (Constitution, art. 41) and other provisions of the Constitution that indirectly affect legal regulations, as defined by the provisions of the Handbook and the EU Charter (Handbook, 2014, 63-64), (EU Charter, 2017).

## **7. The right to protection of personal data**

The development of information and communication technologies has opened new ways of information flow from all areas of life. Personal data is stored in electronic files and can be misused in various situations. In order not to misuse data and endanger the private lives of individuals through the development of computer technologies and communications through the application of automatic data processing, when public authorities and their services can misuse the data they have on citizens, the Council of Europe adopted in 1981 the European Convention on the Protection of Individuals in relation to automatic processing personal data.

In order to improve the protection of personal data, a special Advisory Consultative Committee was established, whose main task is to provide assistance in the implementation of this Convention. The Committee of Ministers of the Council of Europe issued several recommendations with the aim of protecting the privacy of automatically processed data, among which are: data of a medical nature from 1981, data on police files from

1987, employment data from 1989, protection of personal data in the field of telecommunications, especially telephone services from 1995 etc.

The application of the right to the protection of personal data protects the integrity of a person, and all actions related to data collection are regulated by relevant laws.

Data can be protected in three ways, namely: 1) by ensuring the right of everyone to be apprised with the collected personal data that relate to him; 2) by guaranteeing the right to judicial protection in case of misuse of said data; 3) banning the use of collected data outside of the purpose for which they were provided, i.e. by prohibiting misuse.

## **8. Protector of Citizens**

The Protector of Citizens, as a new constitutional institution and an independent state body, was established to protect the rights of citizens. The ombudsman is one form of protection of citizens' rights against illegal acts and actions of state administration bodies.

The provisions of the Constitution of the Republic of Serbia established two control bodies of the Parliament, the Protector of Citizens, responsible for controlling the work of the state administration, and the State Audit Institution, responsible for controlling the work of public funds in the country. The Protector of Citizens (ombudsman) represents a special type of control of public institutions (state administration).

In many countries, it is achieved by introducing the institution of ombudsman (ombudsperson), whose task is to protect the rights of citizens. From a historical point of view, the institution of ombudsman was introduced in Sweden at the beginning of the nineteenth century by the Constitution of 1809. The turmoil created in the post-feudal society and the struggle between the Swedish absolutist king and the parliament as the representative of the people led to the need to establish the institution of a special commissioner (ombudsman) who was in charge of monitoring how the king and the administration implement the laws passed by the Swedish Parliament.

The ombudsman submitted a report on the findings to the Parliament, and the representatives of the Parliament could ask questions about trust in the king's ministers, that is, about their dismissal. The essence of the aforementioned powers of the ombudsman have remained until today with numerous changes to that institution depending on the legal system of a particular country. Although basically the ombudsman remained a commissioner of the parliament in charge of monitoring how the administration and the executive



power apply the laws, today he is an institution whose main task is to protect the rights of citizens from illegal and improper work of the administration. The effectiveness of the ombudsman in protecting the rights of citizens and controlling the administration is based on the ability to draw the attention of the public and the parliament to citizens' complaints based on the reports he submits to the parliament. The very fact and awareness of the ombudsman's supervision exerts a positive influence on the entire administrative system of the country.

The Protector of Citizens has the task of controlling state administrative bodies and protecting the property and other rights of citizens (Law on the Protector of Citizens, 2021).

The absence of coordination between national legislations on citizenship leads to the problem of positive and negative conflict of citizenships. Persons with two or more citizenships are called bipatrides and polypatrides, while persons without citizenship are apatrides.

## **9. Conclusion**

Efforts to preserve the achieved level of personal rights and freedoms are realized through the application of international and national legal regulations. International conventions, declarations and forms of their ratification contribute to a higher level of protection of human rights and the inviolability of life. Modern democratic constitutions strive to protect the right to life, and some still contain provisions on the death penalty. The realization and respect of the right to personal integrity includes the inviolability of physical, moral, spiritual, physical and psychological integrity and should be defined by precise constitutional provisions. Getting married means starting a family and having children.

The international provisions of the European Convention protect rights and freedoms, and within them also the conclusion of marriage, which is regulated by the provisions of national constitutions. The matrimonial property regime of acquisition and division of property is regulated by special norms of family law. The inviolability of the apartment, entry without a written court decision and other actions are guaranteed by the provisions of the Constitution. Secrecy of personal letters and other means of communication is one of the personal rights guaranteed by the Constitution with its provisions on the protection of the secrecy of letters and their contents from other third parties and public authorities. New ways of information flow, including personal data, move through Internet networks and electronic files and can be

misused. The European Commission on Personal Protection and the Advisory Consultative Committee strive to improve the protection of personal data and help implement the automatic processing of personal data. The control of the work of state administrative bodies towards citizens, the regularity of treatment and the proper application of positive legal regulations is entrusted to the protection of citizens-ombudsman.

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## **LIČNA PRAVA I SLOBODE – OBLICI I TENDENCIJE ZAŠTITE**

**REZIME:** Autori u radu analiziraju istorijat, primenu i efekte, odnosno dostignuti nivo ličnih prava i sloboda kao deo ljudskih prava. Pravo na život predstavlja elementarno pravo čoveka, pravo koje je prirodno, trajno, nepromenljivo, neotuđivo i niko nema pravo da raspolaže životom drugoga. Evropska konvencija, zabranjuje smrtnu kaznu ili se države obavezuju da ih neće izvršavati i da će nastojati da smrtnu kaznu uklone iz zakona. U lična prava spada pravo na poštovanje i nepovredivost fizičkog, moralnog i duhovnog integriteta svakog lica. Veći broj multilateralnih konvencija zalaže se za zabranu ropstva i trgovinu ljudima. Pravo na sklapanje braka, zasnivanje porodice i rađanje dece ubraja se u porodično pravo kao i nepovredivost stana i imovinski odnosi supružnika povodom imovine stečene u braku i pre braka. Nepovredivost tajne pisama priznata je Evropskom konvencijom o zaštiti stečenih prava i garancija za njihovo poštovanje. Elektronska komunikaciona mreža predstavlja sisteme prenosa koji radi bezbednosti, integriteta i tajnosti komunikacija, treba da primene adekvatne mere. Pravo na zaštitu podataka o ličnosti predstavlja dodatnu garanciju nepovredivosti integriteta čoveka. U radu je korišćen normativni metod, dopunjen analitičko-deduktivnim metodološkim pristupom, kao

i osnovna kvantitativna analiza podataka i odredbe Krivičnog zakonika. Dostignuti nivo ljudskih i manjinskih prava ne može se smanjivati, te rad predstavlja doprinos višem razvoju i primeni pravne regulative na nacionalnom i međunarodnom nivou.

**Ključne reči:** *ljudska prava, sklapanje braka, bezbednost e-komunikacija, tajna pisma, nepovredivost integriteta.*

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