

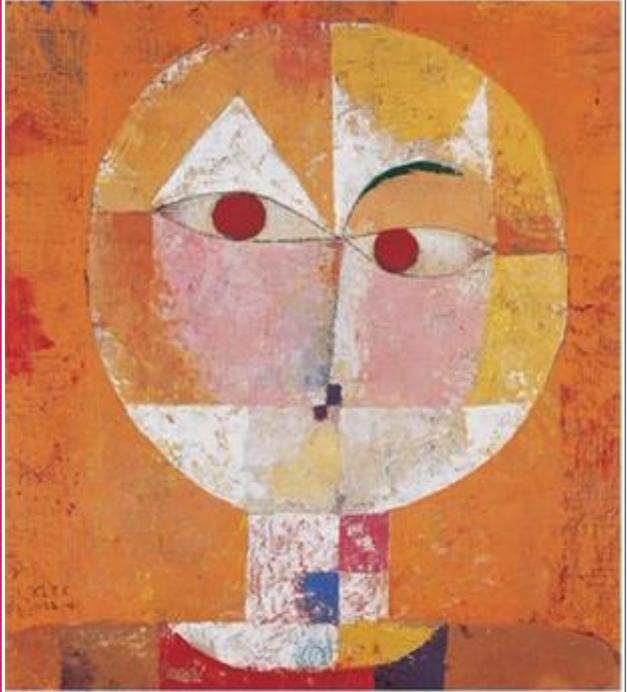
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# Constitutional rights and freedoms of national minorities: The Experience of Serbia

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## Abstract

The method of case study allowed a comprehensive review of the institution for the protection of the rights of national minorities in the system of constitutional rights and freedoms in Serbia. As a result, more than a third of the constitutional text is devoted to the regulation of the institution for the protection of rights and freedoms. The author concluded that the Republic of Serbia has created a reliable mechanism for protecting the national minorities' rights meeting the highest international standards; the Serbian legal system ensures sustainable development of its citizens.

**Keywords:** Constitutional, Principles, Court, Legal, Minority.

## Derechos y libertades constitucionales de las minorías nacionales: La experiencia de Serbia

## Resumen

El método de estudio de caso permitió una revisión exhaustiva de la institución para la protección de los derechos de las minorías nacionales en el sistema de derechos y libertades constitucionales en Serbia. Como resultado, más de un tercio del texto constitucional está dedicado a la regulación de la institución para la protección de los derechos y libertades. El autor llegó a la conclusión de que la República de Serbia ha creado un mecanismo confiable para proteger los derechos de las minorías nacionales que cumplen con los más altos estándares internacionales; El sistema jurídico serbio garantiza el desarrollo sostenible de sus ciudadanos.

**Palabras clave:** Constitucional, Principios, Corte, Legal, Minoría.

## **1. INTRODUCTION**

The most important stage in the development of modern constitutionalism in Serbia was the enactment of the 2006 Constitution. The new constitution laid the foundation for the modern legal system of the Republic of Serbia; this aggregate of fundamental principles regulates the most important aspects of the life of the Serbian state and society. Thus, the Preamble and Part One Constitutional Principles of the Constitution of the Republic of Serbia of 2006 contains the basic foundations of the constitutional order of the Republic of Serbia: sovereignty, territorial integrity, rule of law, priority of international law, social justice, political and economic pluralism, separation of powers, judicial independence, legal equality of citizens and ethnic groups.

In addition, Part One of the 2006 Constitution also contains a number of basic principles directly relating to individuals and social groups, including: the principle of gender equality, the right of citizens to regional autonomy and local self-government, the protection of national minorities, the protection of Serbian citizens and Serbs abroad, and the protection of the legal status of foreign nationals residing in Serbia. The Constitution attached prime significance to these humanitarian issues, whether at the same time it contains a separate Part Two Human and Minority Rights and Freedoms, consisting of 64 articles and forming the foundation of the Serbian legal status of the individual. Thereby, more than a third of the constitutional text is devoted to the total complexity of the regulation and protection of human and minority rights and freedoms. According to the Venice Commission, the Constitution of Serbia "...fully covers all areas of basic human rights. Its content meets European

standards and even exceeds it in some aspects” (VENICE COMMISSION OPINION ON SERBIAN CONSTITUTION, 2007: 19).

## **2. METHODOLOGY**

The object of the presented study was a set of constitutional legal relations arising in the implementation and protection of the rights of national minorities in the Republic of Serbia. The study was conducted using a number of methods of cognition and research. Thus, the charter of rights and freedoms presented in the Serbian Constitution of 2006 is a complex system of individual and group rights and freedoms, their guarantees, as well as means of protection. For this reason, the method of system analysis was essential for the conducted research because it allows a comprehensive review of the institution for the protection of the rights of national minorities in the system of constitutional rights and freedoms.

## **3. RESULTS AND DISCUSSION**

### *3.1. Fundamentals of legal status of the individual and legal status of minorities in Serbia*

The most important subject of regulation of the constitutions of modern states is constitutionally permissible limitations of civil liberties. The Serbian Constitution of 2006 laid the foundation and limits for the restrictions of human and minority rights and the principles for their definition. In such a way constitutionally defined boundaries were

established, which the authorities are not entitled to violate when forced to limit individual rights and freedoms.

At the same time, the 2006 Constitution also established several criteria for legitimizing limitations on human and minority rights. Thus, according to Part 1 of Article 20 of the Constitution, human and minority rights guaranteed by the Constitution may be limited only by law and only if such limitations and purposes for such limitations are provided for by the Constitution itself. The scope of limitations on rights and freedoms was also established by the 2006 Constitution; limitations are permissible to the minimum extent necessary for achieving constitutional goals in a democratic society, and without violating the essence of guaranteed rights. Thus, limitations on rights and freedoms should be minimized to ensure the achievement of goals for which the Constitution allows such limitations, which includes an assessment of whether the goal for which the law imposes a limitation or restriction can be achieved with less. Professor Stojanović referred this case to the application of the principle of proportionality in determining the necessary scope of limitations on rights and freedoms (STOJANOVIĆ, 2014).

The 2006 Constitution, along with the general criteria allowing for limitations on human and minority rights, also established special responsibilities of state bodies when making decisions on the restriction of rights and freedoms. Thus, the Constitution gave prominence to the courts as bodies that make decisions on the limitation of human and minority rights in specific cases. Professor Pajvančić emphasized the particular importance of these constitutional guarantees because they protect the space of personal freedom and set criteria that set limits for the activities

of state bodies in the field of human rights and minorities (PAJVANČIĆ, 2009). VILLALOBOS and RAMÍREZ (2018) maintain that Fourth generation human rights focus on human dignity, like all previous generations, but this time on the basis of the control of power over human life characterized by manipulation from the hegemonic center of power through biometric and biotechnological controls.

Considering the fundamental importance of the established charter of constitutional rights and freedoms in the development of modern Serbian constitutionalism, the 2006 Constitution included a number of constitutional guarantees ensuring the implementation and protection of individual liberties along with the general provisions regulating human and minority rights and freedoms. Thus, according to Article 22 of the Constitution, everyone has the right to judicial protection in the event of a violation or denial of human or minority rights guaranteed by the Constitution, as well as the right to eliminate the consequences caused by such a violation. Moreover, the 2006 Constitution established two forms of protection of human rights: protection conducted within the framework of domestic legislation and international legal protection conducted by global and regional institutions.

### *3.2. Structural features of the rights of national minorities in Serbia*

Persons belonging to a national minority, the quantitative composition of which reaches 2 or more percent in a total population of the Republic according to the last census, have the right to apply to state

authorities and receive an answer in their native language. A deputy of the National Assembly, belonging to a national minority representing at least 2 percent of the total population of the Republic, also has the right to use own native language in appeal to the National Assembly.

The 2006 Constitution of the Republic of Serbia guarantees persons belonging to national minorities the right to equality in the management of public affairs and the right to equal access to public office. According to Professor Marković, this duty of the state to ensure equality covers two components: first, the right of persons belonging to national minorities to participate in the management of public affairs on the same conditions as other citizens and hold a public office; and secondly, the employment of state, regional and municipal bodies and public services should respect the national composition of the local population and the corresponding representation in such bodies and services of persons belonging to national minorities (MARKOVIĆ, 2014). (HERNANDEZ de VELAZCO; CHUMACEIRO, RAVINA and DEL RIO, 2019; HERNANDEZ DE VELAZCO and CHUMACEIRO, 2018), At the same time, Professor Pajvančić rightly pointed out that responsibility for the violation of these obligations and the procedure for imposing of administrative sanctions are not stipulated by the Constitution; moreover, the 2006 Constitution does not even refer to the adoption of a special law on this issue (PAJVANČIĆ, 2014). However, a number of measures were taken to ensure the representation of national minorities in governing bodies at both the state and municipal levels. For example, the minority parties do not have to pass the 5% electoral threshold applicable to all other parties in parliamentary and local elections (POLOVCHENKO, 2013).

To protect the rights of national minorities, the Serbian Constitution of 2006 established a number of prohibitions aimed at arbitrarily changing the ethnocultural composition of the population of the Republic. Thus, activities aimed at the forcible assimilation of persons belonging to national minorities are prohibited in Serbia; it is also prohibited to implement measures that could result in an artificial change in the national composition of the population in areas of traditional close-together residence of national minorities.

*3.3. Legal mechanism for the protection of national minorities' rights in the Republic of Serbia*

Governing bodies, officials and organizations vested with public powers, which directly protect the rights of national minorities and their individual representatives in the territory of the Republic of Serbia include: The Constitutional Court, courts of general and special jurisdiction, administrative bodies, institute of the Protector of Citizens, the Commissioner for the Protection of Equality and others. Thus, according to Part 1 of Article 21 of the Constitution of Serbia, persons belonging to national minorities have the right to legal protection in the event of a violation or denial of the right of a minority guaranteed by the Constitution, as well as the right to eliminate the consequences caused by such a violation (POLOVCHENKO, 2017; RAMÍREZ, AVENDAÑO, ALEMAN, LIZARAZO, RAMÍREZ and CARDONA, 2018).

The supreme advocate for human and minority rights and freedoms in the Republic of Serbia is the Constitutional Court, which, according to

Part 1 of Article 166 of the Constitution, is an independent and discretionary state body that protects constitutionality and legality, as well as human and minority rights and freedoms. At the same time, the constitutional and judicial protection of rights and freedoms entrusted by the Constitution to the Constitutional Court may also be exercised as an abstract regulatory control, when, in the framework of both preliminary and subsequent control, Serbian constitutional justice authority decides on the compliance of laws and other normative acts with the Constitution and ratified international treaties, including compliance with the provisions on the rights of national minorities. This refers to the so-called indirect protection of rights of national minorities and their representatives, which is implemented in the process of abstract regulatory control (MARKOVIĆ, 2006; RAMÍREZ, ESPINDOLA, RUÍZ and HUGUETH, 2019).

As a general rule, the procedure of legitimacy and constitutionality verification can only be initiated by public authorities, bodies of territorial autonomy or local self-government, deputy group consisting of at least 25 people's deputies, as well as the Constitutional Court itself. However, the process of abstract compliance assessment may also well be initiated by any respective individual without the need to prove the existence of personal legal interest; the latter action is commonly referred to the institution of *action popularis*. In the process of abstract compliance assessment, the Constitutional Court has the right to repeal both the law and any other regulatory act that violates or diminishes the rights of national minorities guaranteed by the Constitution, while the court decisions are final and binding (POLOVCHENKO, 2018).

Another means of constitutional judicial protection of rights and freedoms of the individual in the Republic of Serbia is their direct protection within the framework of a specific constitutional dispute on a constitutional complaint. Thus, a constitutional complaint is a special remedy for the rights and freedoms guaranteed by the Constitution, which provides individuals and legal entities with access to the Constitutional Court to protect their individual and group rights. According to Article 170 of the Constitution, particular acts or actions of state bodies or organizations endowed with public powers that violate or limit human and minority rights and freedoms may be appealed within the framework of the institution of a constitutional complaint if the other means of protection are exhausted or not provided at all. Despite the fact that, in accordance with the Constitution, the constitutional complaint is an exclusive and subsidiary institution for the protection of human rights, the Serbian constitutional legislators provided for ample opportunities for the protection of subjective rights within this institution and without any applicant expenses (VUČIĆ, 2010).

As a result, the Constitutional Court of Serbia for a long time was packed out with constitutional complaints; this issue also seriously reduced its functionality. But with the introduction of 2012 amendments to the Law on the Constitutional Court, the proceedings on constitutional complaints were supplemented with new organizational units of the Constitutional Court: large and small *veche* (open meetings, a popular assembly similar to the Norse Thing), as well as extra committees. As a result, the institution of constitutional complaint has become an essential component of the mechanism for the protection of rights of national minorities in the Republic of Serbia.

The protection of rights of national minorities in the Republic of Serbia is also conducted by administrative bodies. Thus, the structure of the Ministry of Public Administration and Local Self-Government of the Republic of Serbia has a branch on human and minority rights, which includes the unit referred to as Human and Minority Rights Group. This unit has the authority to participate in the preparation of laws and other normative acts in the sphere affecting national minorities interests; to provide legal assistance to national minorities; to maintain the register of national councils and holding elections to national councils of national minorities; to maintain a special electoral register of national minorities; to supervise the legitimacy of the activities of national councils of national minorities, etc.

The charter of means of protecting the individual rights in Serbia at the beginning of the noughties was supplemented by introducing into the constitutional system of Serbia the special independent institutions such as the Protector of Citizens and the Commissioner for Protection of Equality. Thus, for instance, for the first time in the history of the Republic of Serbia, the institution of the Protector of Citizens emerged in 2002 at the municipal level, as well as in Serbian autonomous provinces. In fact, this refers to a well-known institution, the creation of which was aimed at protecting human and civil rights; such institution received European and world fame by its original Swedish name – ombudsman. However, already in 2005, the Law on the Protector of Citizens introduced the All-Serbian Institute of the Protector of Citizens; in accordance with Article 138 of the Constitution of Serbia, the Protector of Citizens later became a constitutional institution.

By now, this constitutional legal institution has existed in Serbia for over fifteen years. In accordance with the acting constitutional legislation governing the legal status of the Protector of Citizens of the Republic of Serbia, it is the body of non-jurisdictional protection of human and minority rights and freedoms. Accordingly, one of the vested duties of the Protector of Citizens is the protection of the rights of national minorities. Moreover, a number of municipalities in the Republic of Serbia introduced the position of local ombudsman, designed to oversee the protection of interests of local residents, including national minorities.

Along with the Protector of Citizens, the 2006 Constitution provided for the establishment of another body that provides direct non-jurisdictional protection of the rights of minorities – the Commissioner for Protection of Equality. Its status is regulated by a special Law of 2009, according to which the Commissioner for Protection of Equality is an independent, discretionary and designated state body to which individuals or associations can directly apply in reference to the discrimination experienced. Both the Protector of Citizens and the Commissioner for Protection of Equality are authorized to conduct proceedings and decide on complaints within the framework of their human rights protection competence, as well as express their opinions and issue recommendations to public authorities and organizations exercising public authority, and inform the public about compliance and implementation, in particular, of rights of persons belonging to national minorities.

#### 4. CONCLUSION

The institution for the protection of rights and freedoms is one of the major components of the 2006 Constitution of the Republic of Serbia. Thus, more than a third of the constitutional text is devoted to the regulation of this issue. The charter of rights and freedoms presented in the Serbian Constitution is a complex system of individual and group (collective) rights and freedoms and their guarantees, as well as ways and means of their protection. According to the Venice Commission, the Constitution of Serbia “...fully covers all areas of basic human rights. Its content meets European standards and even exceeds it in some aspects” (VENICE COMMISSION OPINION ON SERBIAN CONSTITUTION, 2007: 19). The Serbian constitutional legislators paid particular attention to the issue of the protection of rights of national minorities while developing a mechanism for implementation of protection of universal freedoms. Hence, the conception of human rights “is just a philosophical perspective of dignity that at the time is likely to be fractured by human nature itself, thereby introducing us to one of the greatest paradoxes of the era of techno knowledge” (VILLALOBOS and RAMÍREZ, 2018; VILLALOBOS, RAMÍREZ and DÍAZ-CID, 2019).

Thus, the protection of the rights and freedoms of minorities is one of the foundations of the constitutional order of the Republic of Serbia. In addition, in accordance with Article 14 of the Constitution, the Republic of Serbia protects the rights of national minorities by guaranteeing their special protection. Moreover, Part 2 of the 2006 Constitution has a special Chapter 3 regulating the rights of persons belonging to national minorities. The guarantees for the protection of rights and freedoms of national

minorities provided for in the Constitution are complemented by developed legislation governing the creation of instruments designed to ensure the protection of rights of national minorities to self-governance in the field of language, education, and cultural development.

In addition, Serbian legislation established the procedure for the creation and functioning of bodies that facilitate the participation of national minorities in the management of public affairs, and are also designed to protect national minorities from all kinds of discrimination in the exercise of rights and freedoms by the immediate minorities or their representatives. Thus, it can be confidently stated that for the time being the Republic of Serbia has created a reliable mechanism for the protection of rights of national minorities that meet the highest international standards; acting legal system covers all aspects of the life of national minorities ensuring the sustainable development of all resided members.

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