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THE LEGACY OF MAGNA CARTA AND THE RULE OF LAW IN THE REPUBLIC OF MACEDONIA

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ABSTRACT

The rules as we know today in modern societies have their base in the Magna Carta from 1215. In that time people declared that the rights of the king and nobles must be limited and that was the first step toward as we know today “democracy”. The rights incorporated in the Magna Carta defined the limits what a state can do and also set boundaries in order to achieve equality between the state and the individual.

The rights proclaimed with Magna Carta found their path in the French Revolution from 1789 as “Liberty, Equality and Fraternity” became symbol of democratic freedom and afterwards gave value in the conventions and other international instruments. The main purpose that was achieved with Magna Carta from today’s perspective is that the rules have been implanted in the conscience of people, so they learn to obey and practice them.

The Magna Carta rights are integral part of international conventions and on that way they have been taken from the states on national level so they become inevitable incorporated segment of the constitution and the laws of states. Those rights have achieved their purpose, because 800 years after their proclamation, some of them are still on force and have been provided in the constitutions of many countries including the Western Balkan countries.

The rights that derived from Magna Carta concerning the rule of law, independence of the judiciary, equality before the law and prohibition of discrimination are integral part of the Constitution of Macedonia which makes efforts for their implementation into practice – because contrary, words will be just words on paper and nothing else.

INTRODUCTION

Magna Carta Libertatum or the Great Charter of the Liberties of England was sealed under oath by King John at Runnymede, on the bank of the river Thames near Windsor, on 15 June 1215. King John of England, an absolute monarch, signed the Magna Carta in order to end the rebellion of a group of barons who had tired of his abuses. Magna Carta was the first document imposed upon a King of England by a group of his subjects, the feudal barons, in an attempt to limit his powers by law and protect their rights.

The origins of Magna Carta gave little hint of its subsequent importance. King John acceded to the demands of the barons in an unsuccessful effort to ward off a civil war. Some of the specific clauses of Magna Carta, it is fair to say, reflected a self-interested effort by rebellious barons to restore feudal custom and to protect themselves from the king (Magraw and Martinez, 2015, p.2).

The Magna Carta was in essence an agreement between the barons of England and King John that consisted of a series of written promises between the king and his subjects. It has been viewed by historians as being important as it was one of the first time an attempt has been made by the barons to stop a king, in this case John, abusing his power with the people of England suffering as a result. This is extremely relevant for us today as it was one of the first times laws were promised to be fair to everybody and not just the rich and powerful (Lewis, 2014, p.1).

The Magna Carta contained 63 articles that were divided into various sections with the most famous stating that everyone should have access to courts regardless of wealth or background. The articles also included mention that no-one will be imprisoned or punished without first going through the proper legal system, an acceptance that the laws was not only for the privileged and the prosperous was truly an historic moment.

This charter is one of the most important political developments in English history and indeed Western constitutional history (D'Amico, 2015, p.1). The creation of Magna Carta closely mirrors that of the United States' foundation nearly 600 years later. In both instances, groups of educated and civil-minded men stood up against an oppressive government not only for their own benefit, but to improve the livelihoods and guarantee the freedoms of all citizens.

Magna Carta relied on the "law of the land" to secure the citizen against the arbitrary from action of the Crown. The underlying idea of written fundamental law that protects the people from excesses by their government profoundly influenced and still continues to guide the constitutional development.

1. THE IMPORTANCE OF MAGNA CARTA THROUGH HISTORY

Magna Carta should be celebrated because marks the beginning of the process that would define the limits of what a state can do and cannot do, and it began to chart the boundaries of the relationship between the state and the individual. That is a process that is still under way, and is a perennial challenge for governments most especially for democratic governments.

Magna Carta has endured ever since as perhaps the world's first and best declaration of the rule of law, a thrilling instance of a people' limiting a rule's power by demanding right for themselves. The importance of Magna Carta can be seen also from the perspective of many other international documents regarding the limitation of the power in favor of the guaranteed human rights. In this sense, we must emphasize the importance of Magna Carta in the creation of the Constitution of the United States of America. The founders of USA while they were drafting the Constitution and the Bill of Rights, adopted certain concepts found in Magna Carta and the more general notion of a written statement of fundamental law binding upon the sovereign state (Barstow Magrow, 2015, p.6). also, Americans embedded principles of Magna Carta into the laws of their states and later into the Constitution and the Bill of Rights. The Fifth Amendment to the Constitution stipulates: no person shall... be deprived of life, liberty or property, without due process of law: is a direct descendant of Magna Carta's guarantee (www.lawday.utahbar.org).

Magna Carta was also inspiration for the French revolution in 1789. The ideas of the French Revolution, coined in the phrases "Liberty", "Equality" and "Fraternity", triggered an enormous enthusiasm all over the Europe such as the thoughts that the individuals must be liberated from their old restricting contexts of village communities, guilds, monasteries and large families. The privileges of nobility and church should be abolished. Everybody should become free and equal individuals only bound together as

brothers in the nation. (www.dandebate.dk). “Man is born free and everywhere he is in chains: declared Jean-Jacques Rousseau in his “The Social Contract”. The revolutionary French constitution was precisely such a contract, which allowed the free individuals to pursue their selfish goals restricted by the framework of the society contract only.

The problem with which world is facing nowadays is the fact that all states, even the most democratic, have natural tendency to accumulate more power than they need, and to impose more restrictions that are strictly and sensibly necessary. But the answer to every problem is not a new law, and the answer to every risk is not a new restriction. If laws become too numerous, or intrude too deeply into our private lives, than it may be necessary to review and even unmake laws previously thought useful (<http://magnacarta800th.com>).

In June 2015 we celebrated 800 years from the proclamation of Magna Carta. It’s precisely from the capacity it’s had over this 800-year period of functioning as a rallying cry, a symbol

An ideal of the rule of law that it’s important. As Dr. Feldman said: No other document in world history has been able to function in so many times and places as the epitome of that ideal” (Lyall, 2015). In that sense we must point the fact that Magna Carta became “law”, it created rights bestowed by the King, it has been constructed and applied ever since and it is the source of much that is good in government and public administration – including democracy, the rule of law, the separation of powers, the independence of the judiciary, trial by jury, equality before the law and even habeas corpus (Cowdery, 2015, p.1).

The importance of Magna Carta can be seen also in the fact that those rights survived 800 years from their proclamation. They passed over different circumstances, many civil and world wars, many destruction of the humanity and also many changes in the constitutional order of many states in the world, but still remember of the rights of Magna Carta. Hence, the conclusion is that those rights still can give knowledge to people, to remind us that we need to obey and apply them and the most important that no one is above the law, no matter if it is a king, a president or member of Parliament, Government or even judge.

Some of the rights that derived from Magna Carta are still on force nowadays and they still apply. One of them is the rule 40 which address to: “*To no one will We sell, to no one will we deny or delay right or justice*”. This means that everyone is equal before the law and no one is above the law. Everyone has right to seek for justice before independence judiciary, to have faith and to believe in judicial system.

Although Magna Carta in that time considered as a practical solution to a political crisis of the highest ranks of feudal society, it became an iconic document and a lasting declaration of legal principles. As Lord Bingham said: “*The significance of Magna Carta lay not only in what it actually said but, perhaps to an even greater extent, in what later generations claimed and believed it had said. Sometimes the myth is more important than the actuality*” (Rozenberg, 2015, p.1).

2. MAGNA CARTA AND THE CONCEPT OF RULE OF LAW

The significance of Magna Carta lies not so much in the text, but in the principles behind the text – the values and concepts that support it, the idea of Magna Carta itself.

The rule of law is one of those concepts and its modern meaning may conveniently be described in the words of the Secretary-General of the United Nations, Kofi Annan, in 2004 : “*For the United Nations, the rule of law refers to a principles of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally*

enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (Cowdery, 2015, p.5).

The greatest contribution from the legal system regarding the rule of law toward peace in the world has been the principle that all nations should live under the Rule of Law. The concept of Rule of Law – that laws should be enacted by democratically elected legislative bodies and should be enforced by independent judiciaries – is fundamental to a free society. The knowledge that there are certain basic human rights of the individual that are enforceable even against the state has been the hallmark of our system of governance (Magraw and Martinez, 2015, p.4).

As it was stated before, in this paper, the rule of law has its basis in Magna Carta. This concept, fundamental to democratic forms of government, asserts that all-including a king, prime minister, or president-must abide by the laws of the nation. While Magna Carta does not specifically state that the king is subject to the rule of all, the provisions of this document establish that principle by imposing limits on the king’s power (www.edsitement.neh.gov). The fact that the barons are given the authority to enforce this document in Chapter 61 of the original version reinforces the principle that the king could no longer ignore or violate established laws, traditions, or customs, nor could he arbitrarily infringe on the rights of his subjects. The king would be compelled to abide by the rule of law.

Beside the rule of Magna as one constitutional principle, Magna Carta is the origin of many other such as: right to a jury, the right to a speedy trial, freedom from unlawful imprisonment, protection from unlawful seizure of property, the theory of representative government, the principle of no taxation without representation and the most important, the concept of fundamental law - a law that not even the sovereign can alter.

The principles inherent in these rules were established and affirmed by Magna Carta by its content and context in a concrete form. It is these rules, as developed and applied in changing circumstances over the centuries that gave the Magna Carta the significance we commemorate today. With the rule of Magna Carta, the king for the first time was a subject to the law. The majority of provisions of the Magna Carta require the King to cease or modify particular conduct. The most significant field in which it was required the King to do more-rather than less – is in the provisions of justice (Spigelman, 2015, p.1). The Magna Carta contains a range of promises directed to preventing abuses and improving the institutions of the rule of law. Their very scopes manifest an intention to benefit the whole community.

3. THE INFLUENCE OF MAGNA CARTA RULES TO THE CONSTITUTIONAL ORDER OF THE REPUBLIC OF MACEDONIA

The Magna Carta set out terms of a de facto constitutional settlement between the crown, the country’s most powerful families and the community as a whole. While it affirmed numerous social distinctions, it nevertheless assumed a rough legal parity among those people designated as free men.

Magna Carta took the form of a legal letter recording agreements which the parties had already made verbally (Breay, 2002, p.34). Even 800 years after, some of the articles still apply, and even great part of them are considered as inviolable human rights. For framers example article 39 concerned what we know as due process and habeas corpus. It did not intend for its promises to apply beyond the ranks of a fraction of the population. Only subsequent developments make it possible for us to read article 39 as an assertion of universal human rights: *“No freeman shall be taken or imprisonment or disseised or*

outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land”.

Article 40 “to no one will we sell, to no one deny or delay right or justice” refers to the fact that everybody has to abide by the same rules, independence of judiciary, equality before the law, and many others have derived from Magna Carta and have found their way of becoming universal and fundamental for contemporary societies. The message that Magna Carta transfers from the above mentioned article is timeless.

The rules from Magna Carta were inspiration and guidance for preparation of many constitutions of European countries and especially to Western Balkan countries. After the dissolution of the former Yugoslavia in 1990s begun the process of creation of six new and democratic countries. Republic of Macedonia as one of those countries, in the process of writing its Constitution included the basic and inviolable human rights and some of them had their basis exactly from the rules contained in Magna Carta. Hence, the great impact on the development of the Macedonian democracy and the fact that the citizens should be a center from whom will arise all rights and liberties were prescribed in the higher act of the state – the Constitution (Constitution of the R.Macedonia, 1991).

The process of transition of the Republic of Macedonia towards an economically developed, modern, democratic and legal state and civil society encountered certain weaknesses, hence, the need to intensify the reforms in all of the segments of societal life. EU and NATO membership of the Republic of Macedonia is conditioned with the existence of operational democratic institutions and legal State thereby the efficient and independent functioning of the judiciary is one of the most important attributes. These requirements are explicitly laid down in the Copenhagen criteria of the European Union, underpinning stable institutions and ensuring democracy, rule of law, protection of human rights and the rights of the communities.

The Universal Declaration of Human Rights in its Article 10 stipulates that everyone has the completely equal right to a fair and public trial in front of an independent and unbiased court, during the determination of its rights and obligations and in the case of any criminal charges against it. Also, the European Convention on the *Protection of Human Rights and Liberties with the Protocols 1,4,6 and 7* defines even more precisely the principle of reasonable duration of the trial. It states in Article 6 of the Convention that everyone has the right to a fair and public, *in a reasonable period of time*, in front of an independent, unbiased and established by law court, review and establishment of its civil rights and obligations or the foundation of any criminal charges against it (Naumovski, 2001,p.3)

In the judicial system in the Republic of Macedonia, the principle of fair trial takes a central role which among other things covers: the right of everyone to a lawful, unbiased, honest trial within a reasonable period of time, the right of everyone to an equal access to the courts for the protection of their rights and legally based interests, even in the case of a lack of material means, the duty of the court is to decide upon requests for the accomplishment of a certain right when there is a legal void and the right of the court to directly implement the Constitution.

Every human being, regardless of the time in which he lived, strives for freedom, protection, equality, independent judiciary, having faith in governmental institution and the most important in the right to seek for justice.

In article 8 of the Constitution, it is prescribed the rule of law as one of the fundamental values of the constitutional order of the Republic of Macedonia. According to the above mentioned citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of gender, race, color of skin, national and social origin, political and religious conviction, property and social status. Citizens are equal before the Constitution and the law.

The Constitution as higher normative act of one state provides some of the most fundamental human rights and liberties, stating that human rights are inviolable and that human physical and moral dignity is inviolable (Article 10 and 11 of the Constitution). Presumption of innocence as one of the most important legal institute is included in the Constitution stating that a person indicated for an offence shall be considered innocent until his/her guilt is established by a final court decision (article 13).

The rule of law prescribes many rights such as the equality before the law, right not to be discriminated and of course the independence of judiciary. According to Macedonian Constitution, the judicial power is the third autonomous sphere of power, beside the legislative and the executive power. Judicial power is exercised by courts. Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution (amendment XXV of the Constitution). The independence of each individual judge safeguards every person's right to have their case decided solely on the basis of the law.

4. REFORMS TOWARD CREATING JUDICIARY AS AN ESSENTIAL REQUIREMENT FOR THE FAIR, CONSISTENT AND NEUTRAL ADMINISTRATION OF JUSTICE

Any European country that respects the principles of liberty and democracy, human rights and fundamental freedoms and rule of law, may apply to become a member of the European Union. This process requires tangible results that are likely to bring sustained improvements in the application of the rule of law.

In fact, republic of Macedonia was the first country in the Western Balkans to sign the Stabilization and Association Agreement (SAA) in April 2001. The Agreements entered into force in 2004. In the same year, it applied for membership and was granted candidate status in December 2005 (9EU and Berenschot, 2013, p.225).

Independent and efficient judiciary, fight against corruption and organized crime are key challenges to the rule of law. In the accession process of the Western Balkan countries strengthening the rule of law is "identified as continuing major challenge and a crucial condition" (EC 2011a, p.4.23). In the Republic of Macedonia while progress in key reforms has been made there are significant challenges in strengthening the independence of the judiciary and fighting against corruption. In this field, the country has adopted a number of documents relevant for the accession such as the National Strategy for European Integration which represents a sort of an umbrella document on EU integrations, the National Programme for the adoption of the Acquis (NPAA) also identifying measures in the Rule of Law as well.

Republic of Macedonia possesses a comprehensive set of rules which, if fully observed, should generally ensure a proper functioning of the judicial system to high standards, although there is a need for some further reform, particularly in relation to the appointment, promotion and removal of judges and prosecutors. Highly qualified and experienced judges, prosecutors and judicial staff are available in sufficient numbers to enable the judicial system to function effectively (European Commission, 2015, p.9).

Hence, it means that the judiciary and the prosecution services should be able to act in an independent and impartial manner and in many areas, this seems indeed to be the case. On the other hand, there is a perception, that in some areas and in particular with regard to cases considered to have a political dimension or believed to be of interest to politicians, the usual standards are set aside. So, a well-functioning judiciary which is impartial and effective represents a key criterion for the EU integration. So in 2012 has been noted that the legislative and institutional framework is in place through further efforts to guarantee independence and impartiality in practice are needed.

Regarding the above mentioned, Republic of Macedonia has made progress in the legal framework, but more has to be done in implementation in regards to judicial reform (EC 2011a, p.38). the legislative framework in judicial reforms includes among other the amendment of the Constitution with regard to the Judicial Council as well as number of laws being adopted and amended such as the: Law on Courts, Law on Judge's Salaries, Law on the Academy for training of Judges and prosecutors, Law on Public Prosecutors, Law on Civil Procedure, Law on Criminal Procedure (EU and Berenschot, 2013, p.229).

In relation with the relevant institutional reforms in the judiciary it is important to refer to the establishment of the Administrative Court and the High Administrative Court, the Judicial Council, the Prosecutorial Council, the Academy for training of Judges and Prosecutors.

5. EFFECTS OF THE REFORMS IN THE JUDICIAL SYSTEM AND THE RULE OF LAW

The concept of the Rule of Law is founded on the idea that governmental decisions should be made by applying known legal principles, and that every citizen is subject to the law and nobody stands above it. It is now extended by referring to the international conventions that should address what are considered to be basic human rights- that the Rule of Law, in order to be legitimate, must adhere to and be in compliance with these basic precepts of rights.

The legal philosophy of the judiciary has undergone a fundamental change, moving from being an instrument of state power during the Yugoslav era to becoming a key aspect of a modern state built on the principles of separation of powers and thus the importance of an independent effective and quality judiciary, in some countries also moving from an inquisitorial system based on civil law towards an accusatorial system and common law principles. Also, it is clear that corruption and organized crime are becoming more sophisticated in their forms and linkages, and that modern business instruments are used to shield activities from insight and assets from seizure. The pervasiveness of political elites and organized crime to try to intimidate and influence the judiciary is of major concern.

Republic of Macedonia in the past decade has conducted serious reforms in the judicial sphere, but still the judiciary is evaluated as vulnerable to corruption and other forms that must be overcome. Those reforms included reorganization of the structure of a country's legal system (independence of the courts, clarification in division of responsibilities between different actors in the legal process), the laws, rules and regulations that govern society, the court structure, procedures for prosecuting, sentencing, appeals and execution of sentences, training, selection, empowerment and disbarment of judges and prosecutors, the management of the courts, record keeping, case materials and in general how the doctrine of the separation of powers is upheld through transparent and accountable roles and rules.

Regarding the above mentioned, the main problems with which Republic of Macedonia confronts are concerning the interference in judicial affairs especially the lack of separation between the judicial and executive sphere of power. Because of this, exists a feeling that people do not have trust in the judiciary and this was confirmed by the expert bodies from the European Union in the reports. Several court cases has shown a big vulnerability of the Macedonia judiciary especially towards the principle of presumption of innocence, equality before the law and no-separation of the judicial from executive power.

The analyses on the functioning of the judiciary in the Republic of Macedonia up to date identify a significant number of weaknesses, which address judicial independence, judicial efficiency and judicial accountability. The biggest problem seems to be the judicial inefficiency that reflects on: slow procedures and inaccessibility of justice; difficult and prolonged enforcement of final decisions in the civil cases etc.

First of all Judicial Council should be strengthened, because it plays a central role in making the judiciary system function efficiently and in ensuring the independence of the judiciary. Members of the Judicial Council have to be selected only from amongst the most skilled distinguished and experienced judges in the country. This means that the judiciary and the prosecution services should be able to act in an independent and impartial manner and in many areas. Although with the reform in the judiciary resulted with the removal of the vote of the Minister of Justice in the Judicial Council. In addition, the Minister of Justice has been removed from membership in the Council of the Public Prosecutors. However, these reforms did not help a lot regarding the independence of judiciary and the rule of law in the practice of the Republic of Macedonia.

From all of the above mentioned, beside all reforms that has been made and achieved, there is a lot of work in front, especially in the area of independence of judiciary. First of all, it should be returned the faith of people in the judicial organs and to raise the authority and dignity of the judges in order of respecting the Constitution and enforcing the laws in practice.

Having in mind the weaknesses of the judicial systems, the reforms should continue in direction of strengthening the rule of law, guaranteeing independence of the judiciary and the Public Prosecution, protection of citizen's rights, ensuring equal access to justice, prevention of abuse and unconscientiously acts or corruption, equitable and appropriate representation of the communities in the judicial institutions adhering to the rules of professional conduct in order to achieve a greater goal with adopting the European standards in the field of justice.

CONCLUSION

This paper analyses first of all the significance of Magna Carta from today's perspective on international level and the importance of the rules incorporated in the documents for Republic of Macedonia, as a country in a process of searching for democracy and achieving bigger standards for its own citizens.

The Magna Carta has provided inspiration and support for progressive development in governance worldwide since at least its 17th century resurrection. It has been invoked in the context of more charters of rights as we now understand them – in 1948 in the United Nations Eleanor Roosevelt, the champion of the Universal Declaration of Human Rights described that instrument as a “declaration that may become the international Magna Carta for all men everywhere”.

As it was mentioned in the paper, the fact that Magna Carta this June 2015 celebrated its 800th birthday that from one sides that democracy is still alive and still exists. The ideas of Magna Carta for triumph of liberties over tyranny and limits upon sovereign power, the rule of law, independence of judiciary, rights to property etc, shows us that the rules from Magna Carta are still important and impose some rights that should be respected, but from the other side, the fact that Magna Carta exists 800 years means that there are rights which are not respected, the rights of individuals are diminished.

Nowadays there are many examples of states that became too authoritarian and over years have abused and eroded fundamental human rights and historic civil liberties. We need to restore the rights of individuals in the face of encroaching state power. Regarding the situation with the Republic of Macedonia, we must admit that in this period we are facing with serious doubts about the rule of law and does it functioning in our state are especially when it comes to independence of judiciary. We must return the faith of citizens into the judicial organs and for that purpose we must remind ourselves what the Constitution of Republic of Macedonia stipulates regarding the independence of judiciary and their autonomy.

REFERENCES

- Amendment XXV toward the Constitution of the republic of Macedonia (Official Gazette of the Republic of Macedonia no.107/205)
- Barstow Magrow, Daniel. "Magna Carta and the Rule of Law". American Bar Association, 2015
- Breay, Cleare. "Magna Carta: Manuscripts and Myths". British Library, 2002
- Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012, Brussels, 2011
- Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no.52/1991)
- Cowdery, Nichola. "Magna Carta – 800 years Young". St.James Church, 2015
- D'Amico, Nathaniel. "800 years of Magna: Rule of Law and the Property Rights", 2015
- European Commission, "The former Yugoslav Republic of Macedonia: recommendations of the Senior Experts-Group on systematic Rule of Law issues relating to the communications interception revealed in Spring 2015". Brussels, 8 June 2015
- European Union and Barendschot Imagos. The European Union's IPA Program for Western Balkans. "Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organizes crime in the Western Balkans" – Final Main Report, Secure Contract Ref.no.2010/256 638, February 2013
- Lewis John. "What Relevance is the Magna Carta today". Political Studies Association, 2014
- Lyall, Sarah. "Magna Carta, still posing a Challenge at 800". The New York Times, 2015
- Naumovski, Branko. "The role of the ombudsman in the court and administrative court procedure in accordance with normative regulations and practice in the Republic of Macedonia", 2001
- Rozenburg, Joshua Matthew. "Magna Carta in the Modern Age". The British Library, 2015
- Spigelman, James. "Magna Carta: The Rule of Law and Library", 2015
- www.danebat.dk
- www.edsitelement.noh.gov
- www.lawday.utambat.org