Blerton Sinani*

SOME REFLECTIONS ON NORTH MACEDONIA'S "ROAD TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS"

Abstract

The European Convention on Human Rights has been heralded as the most effective system in the world for judicial protection of human rights. This research paper aims to analyze North Macedonia's constitutional framework for the juridical status (position) of international treaties, confirming that there is a considerable scale of similarity, homogeneity and convergence between the catalogue of fundamental freedoms and rights of the individual and citizen in the Constitution of the RNM and in the European Convention on Human Rights. Furthermore, North Macedonia's journey to the European Convention on Human Rights has been followed by particular steps that are considered relevant for creating the formal assumptions which enabled or provided the Convention to produce binding legal effects in the constitutional order of the RNM. Regarding the European Court of Human Rights, when dealing with issues related to the legal protection of human rights and freedoms included in the Convention and its additional protocols, it is especially emphasized when it hears and decides on individual applications lodged by citizens of the Republic of North Macedonia.

Keywords: human rights; constitutional framework; European Convention on Human Rights; European Court of Human Rights; rule of law.

I. INTRODUCTION

The twentieth century's most important proclamation of human rights, the Universal Declaration of Human Rights, was adopted by the United Nations General Assembly on 10 December 1948. It provided not only the inspiration but also the basis for the drafting of the European Convention on Human Rights, which was adopted less than two years later. Between them, the two instruments enabled the work of building a European community to proceed without a separate human rights foundation. Moreover, the European Convention on Human Rights intended to represent the transposition into positive law of "a common standard of achievement for all peoples" heralded by the Universal Declaration of 1948.[1]

* Blerton Sinani, PhD., Associate Professor at the Faculty of Law of the South East European University; Republic of North Macedonia; e-mail: blerton.sinani@seeu.edu.mk

[1] Philip Alston, *The EU and Human Rights*, Oxford, 2000, p. 3, 92.

The Council of Europe is the oldest of the European organizations. The promotion and protection of human rights always constituted the main activity of the Council of Europe, with the European Convention on Human Rights as its flagship.[2] The European Convention on Human Rights was signed in Rome on 4 November 1950. It entered into force on 9 September 1953. Originally signed by twelve States the Convention has now been ratified by most European States, and pursuant to recent changes in Eastern Europe, its territorial scope has been extended considerably. Thus, at the present moment, all forty-seven member States of the Council of Europe have ratified the Convention. It covers with its various Protocols mainly civil and political rights. The Convention has proved to be a very successful treaty, a "constitutional instrument of European public order in the field of human rights". More recently, the European Court of Human Rights, in a landmark judgment of 23 March 1995 referred to the Convention as "a constitutional instrument of European public order (*ordre public*)".[3]

II. NORTH MACEDONIA - CONSTITUTIONAL FRAMEWORK FOR THE JURIDICAL STATUS (POSITION) OF INTERNATIONAL TREATIES

The constitutional law determines the position of the norms of international law in the hierarchical structure of the internal constitutional order of a state. Constitutional law serves as a "connecting bridge" between international and the municipal law of a state. The relationship that an international treaty creates with the domestic law depends on the constitution of the state that has agreed to accede to the respective treaty. Therefore, it is a necessity to refer to the constitutional norms of a certain state in order to draw valuable conclusions on the relationship between international and domestic law. Likewise, the Constitution of the Republic of North Macedonia, adopted on 17 November 1991, contains provisions that regulate the relationship between international and domestic law. These provisions are located in Chapter I (Basic Provisions) and Chapter VI (International Relations). The former has a more general character and the latter a more specific one. For a general thematic treatment of the status of international law as well as the legal position of international treaties, including the legal position of the European Convention on Human Rights and Fundamental Freedoms in correlation with the constitutional order of the Republic of North Macedonia, Article 8 (paragraph 1, line 1 and 11), as well as Article 118 and 119 of the Constitution of the RNM, have particular importance.

First, *the basic freedoms and rights of the individual and citizen recognized in international law*[4] *and set down in the Constitution* (Article 8, paragraph 1, line 1 of the Constitution of the RNM). In essence, this provision implies that international law of

[2] Wolfgang Benedek *et alia*, *European Yearbook on Human Rights*, Graz, 2010, p. 35.

[3] Philip Alston, *The EU and Human Rights*, Oxford, 2000, pp. 757-758.

[4] From the perspective of comparative constitutional law, the Constitution of Portugal (1976), Article 16, paragraph 2, the Constitution of Spain (1978), Article 10, paragraph 2 and the Constitution of Romania (1991) Article 20, paragraph 1, stipulate that the constitutional provisions related to "the rights and freedoms of man and citizen will be interpreted and applied in accordance with the Universal Declaration of Human Rights and other related international conventions" and not according to the internal positive law. Moreover, the constitutions of Portugal, Spain and Romania are the first constitutions in the comparative constitutional law that treat international conventions and treaties related to the area of human rights and freedoms in general and "the Universal Declaration on Human Rights" in particular as basis and criterion for the interpretation and application of constitutional provisions related to the human rights in the internal plan.

human rights[5] has served as a measure as well as a guiding pattern for the normative text of the Constitution of the RNM in the regulation of the catalogue of basic freedoms and rights of the individual and citizen. The constitutional regulation of human rights and freedoms in post-communist North Macedonia can be qualified and treated as a unification of what is generally accepted as essential in most international normative instruments for human rights and in the constitutions of the majority of western countries.

Second, respect for the generally accepted norms of international law is a fundamental value of the constitutional order of the Republic of North Macedonia (Article 8, paragraph 1, line 11 of the Constitution of the RNM). This means that the Republic of North Macedonia has undertaken the duty to respect the sources of international law: 1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; 2) international custom, as evidence of a general practice accepted as law; 3) the general principles of law recognized by civilized nations; 4) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[6] Examples of *jus cogens* norms include: the peaceful settlement of disputes between States; the prohibition of aggressive use of force in international relations; the right to self-defence; the prohibition of genocide; the prohibition of torture; crimes against humanity; rules prohibiting trade in slaves or human trafficking; the prohibition of piracy; the prohibition of racial discrimination and apartheid, the prohibition of hostilities directed at civilian population, etc. These *jus cogens* rules are contained in the following basic international normative documents: The UN Charter (1945); The Universal Declaration of Human Rights (1948); The International Covenant on Civil and Political Rights of the United Nations (1966); The European Convention on Human Rights (1950); European Convention for the Peaceful Settlement of Disputes (1957); The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture) (1984); The Geneva Conventions and their Additional Protocols (1949)[7] that regulates the conduct of armed conflict and seeks to limit its effects; The Charter of the International Military Tribunal – Charter of the Nuremberg Tribunal (1945); and the Rome Statute of

[5] The growing consciousness for human rights after the Second World War contributed to the adoption of a considerable number of international treaties related to the protection of human rights and freedoms. In this respect, with the aim of protecting human rights and freedoms on an international plane the new applicative discipline of "*International Human Rights Law*" was created. This includes a body of legal principles and rules that are part of international treaties (conventions, pacts), which impose obligations on states, to respect, protect and guarantee rights and freedoms of man and citizen in their territories in conformity with universal legal values. These international normative documents set the fundamentals of the functioning of global politics, as well as the standards of conduct of state authorities and their political legitimacy. – See: Oliver De Schutter, *International Human Rights Law*, Cambridge University Press, 2010, pp. 49-51.

[6] The sources of international law are formulated in Article 38 of the Statute of the International Court of Justice. For more, see: Andreas Zimmermann, Christian Tomuschat, Karin Oellers Fram, *The Statute of the International Court of Justice*: *A Commentary* (Oxford Commentaries on International Law), USA, 2006.

[7] The Geneva Conventions and their Additional Protocols (1949) constitute the core or "basic rules" of international humanitarian law. They specifically protect people who are not taking part in the hostilities (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as wounded, sick and shipwrecked soldiers and prisoners of war. The Conventions and their Protocols call for measures to be taken to prevent or put an end to all breaches. They contain stringent rules to deal with what are known as "grave breaches". Those responsible for grave breaches must be sought, tried or extradited, whatever nationality they may hold.

the International Criminal Court (1998).[8] These generally recognized principles and rules of contemporary international law exist independently from the will of states because they are designated as universal values of the international community and they are considered as direct sources of constitutional law, for the reason that they are designated as fundamental values of the internal constitutional order and they have a superior legal effect on the content of the internal constitutional order of the Republic of North Macedonia. Also, they have peremptory character (*jus cogens*)[9] for North Macedonia and all other states in the world. Consequently, these norms cannot be altered with internal legal acts, or with treaties between states. In accordance with Article 53 of the Vienna Convention on the Law of Treaties (1969), *a treaty is null and void if it is concluded in conflict with a peremptory norm*[10] *of general international law* (i.e. *jus strictum*-strict law). Finally, the generally recognized principles and norms of international law are the basis for the survival and development of the international community. Hence, they are peremptory norms for all states, that constitute *obligatio erga omnes* (obligations "flowing to all") upon states and no derogation is permitted regardless of whether or not they accept them. For example, in Article 19, paragraph 2 of the Constitution of Kosovo (2008), it is unequivocally formally sanctioned that "*ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo*". These norms on one hand help to establish the interdependence between internal and international law, and on the other, they determine the interdependence of democracy, nation-state and globalization.[11]

[8] See: Ian Brownlie, Guy S. Goodwin-Gill, *Basic Documents on Human Rights*, Oxford, 2002.

[9] *Jus cogens* is a body of the norms of international law, customary or contractual, from which no derogation is permitted and which can be modified only by subsequent norms having the same character. Their nonperformance or fraudulent conduct is an international delict, and the legal transactions that are in breach of peremptory norms legally are null and void. – cited by Vladimir Ibler, *Rječnik Međunarodnog Javnog Prava*, Zagreb, 1972, p. 113; Juraj Andrasi, *Međunarodno Javno Pravo*, Zagreb, 1971, p 7. The term "*jus cogens*" means "the compelling law" and, as such, a *jus cogens* norm holds the highest hierarchical position among all other norms and principles of the International law. As a consequence of that standing, *jus cogens* refers to certain fundamental, overriding principles and norms of international law, from which no derogation is ever permitted. – See: Christian J. Tams, *Enforcing Obligations Erga Omnes in International Law*, Cambridge University Press, New York, USA, 2010, p. 117-156; Elena Katselli Proukaki, *The Problem of Enforcement in International Law*, USA, 2010, pp. 45-53; Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes*, UK, 2010, pp. 1-30.

[10] "Peremptory" is defined as: "Imperative; final; decisive; absolute; conclusive; positive; not admitting of a question, delay, reconsideration or of any alternative. Self-determined; arbitrary; not requiring any cause to be shown." – *Black's Law Dictionary* (Sixth Edition, 1990), p. 1136

[11] F. A. Mann, *Further Studies in International Law*, UK, 1990, p. 86.

Third, "*the international agreements*[12] *ratified*[13] *in accordance with the Constitution are part of the internal legal order and cannot be changed by law*" (Article 118 of the Constitution of the RNM). Consequently, this provision confirms a clear manifest intention of the constitution-makers that the Constitution retains its legal supremacy over all other legal acts, including international treaties ratified by an act of Parliament. Indeed, according to this constitutional solution ratified international treaties acquire an authority superior to that of laws, with the obvious consequences that, they cannot be changed by law. Clearly, in the hierarchy of municipal sources of law of the Republic of North Macedonia, international treaties have acquired the specific juridical position; they are above national laws, but below constitutional acts. Hence, within the framework of the constitutional order of the Republic of North Macedonia, the international treaties possess a higher rank than legal acts, precisely, the supra-legally status and lower rank than constitutional acts, to be exact, the sub-constitutional status. This means that international treaties have legal primacy overall legislative corpus of the internal law of the state, including the existing legal acts and the future ones (*the principle of primacy of international treaties over national legislation*). This approach is reflected in "The Law on Courts of the Republic of North Macedonia" adopted in 2006,[14] according to which: "*when the court deems that the law that is to be applied in the particular case is not in compliance with the provisions of an international treaty ratified in conformity with the Constitution, it shall apply the provisions of the international agreement provided that they are directly applicable*" (Article 18, paragraph 4). In addition, "The Law on Courts of the RNM" entitles courts to use "*the exception of unconventionality*" (*l'exception d'inconventionnalité*) while delivering decisions in particular cases. The phrase "*the*

[12] According to Article 2 of Law on Conclusion, Ratification and Enforcement of International Treaties of the RNM (Official Gazette of the RNM, no. 5/1998), as an international treaty is considered the treaty signed by the Republic of North Macedonia in written form with one or more countries or international organizations, which determines the rights and obligations for the state, in accordance with the Constitution of the RNM and the international law, irrespective of whether it is designated in one or more mutually tied documents. It is not considered an international treaty, an act concluded by the competent state authorities of the Republic of North Macedonia for the enforcement of an international treaty that does not create new obligations for the state. In this context, it should be emphasized that I join the opinion of the legal scholar Aurela Anastasi that international law cannot be understood only as conventional law, but it is necessary that the term "*ratified international treaty*" (referred to Article 116 of the Constitution of the Republic of Albania as does the Article 118 of the Constitution of the Republic of North Macedonia) should be interpreted more extensively and thus expanding its scope to include all international normative acts, which from the formal perspective can be categorized as conventions, treaties, covenants, declarations, statutes or charters, acts, protocols, compromises, concordats, *modus vivendi*, final acts, etc. Each of these designations has its own specific meaning, and as such, they are used to indicate the object and normative content of the international treaties in general. See: Jan Klabbers, *The Concept of Treaty in International Law*, Kluwer Law International, 1996, pp. 15-38; Arben Puto, *E Drejta Ndërkombëtare Publike*, Tirana, 2010, pp. 362-365; Zejnullah Gruda, *E Drejta Ndërkombëtare Publike*, Prishtina, 2007, pp. 289-293.

[13] The act of ratification is characterized by the interference of international law and national law, i.e. the creation of an interrelationship between international law and national law. Ratification is an act by which competent state authority formally approves a treaty that has already been signed by an official representative of the respective states. After this, that treaty becomes legally binding. – P.H. Collin, *Dictionary of Law*, London, 2004, p. 247. The Vienna Convention on the Law of Treaties (1969) give the definition of the ratification: "*ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty* (Article 2 (b)).

[14] *Law on Courts*, Official Gazette of the Republic of North Macedonia, no. 58/2006.

exception of unconventionality" indicates that a court will not apply a legal act in a particular case because of its noncompliance with the provisions of an international treaty. In this context, every judge when confronted with laws he deems to be contrary to an international treaty, he is bound not to apply them, invoking instead the provisions of the international treaty. Furthermore, the judiciary of the RNM are entitled in particular cases to enforce the final and effective decisions of the European Court for Human Rights, the International Crime Tribunal or of any other court whose competence has been recognized by the Republic of North Macedonia, provided that the respective decisions can be directly applied[15] (Article 18, paragraph 5). The European Convention on Human Rights adopted in 1950 by the Council of Europe[16] and the decisions of the European Court of Human Rights are considered as internal specific sources of the constitutional law as a particular juridical branch within the law system of the Republic of North Macedonia, and as such, they serve as mechanisms for the settlement of legal disputes between the Republic of North Macedonia as state and its citizens, in cases when their rights and freedoms have been violated by final and enforceable decisions of the courts of the Republic of North Macedonia.

A weakness of the Constitution of RNM is that it does not categorically entrust any competence to the Constitutional Court of the RNM to review the constitutionality of laws that ratify international treaties. As a result, the Constitutional Court for more than a decade has rejected the initiatives for revision of the laws that ratify international treaties. In order to eliminate this constitutional omission (*lacuna constitutionalis*), it is recommended that the constitution-maker supplement Article 110 of the Constitution with a constitutional amendment,[17] transposing in the list of the court's jurisdiction with an innovative competence, that of *ex ante* control of the preliminary conformity of international treaties with the spirit and textual content of the constitution. There is no doubt that the *ex ante* control by the Constitutional Court has a preventive function,[18] since it prevents the

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[15] *A foreign court decision will not be recognized if the legal effect of its recognition is contrary to the public order of the Republic of North Macedonia* (Article 107 of *The Law on International Private Law of the RNM*, Official Gazette of the Republic of North Macedonia, no. 87/2007). Accordingly, the foreign court decision will not be enforced when the legal effects of its enforcement are contrary to the constitutional order or incompatible with the fundamental principles defined in the Constitution of the RNM.

[16] The European Convention on Human Rights (ECHR) entered into force in 1953 with binding legal effect on all Member States of the Council of Europe. As a common European endeavour, it marks a capital and impressive achievement for the Council of Europe, because it has created a common European legal space for over 820 million citizens throughout the continent, establishing universal standards in the area of international protection of human rights and freedoms. ECHR, for the first time in the history of international law, established the right to an individual petition which through "supranational complaint may suspend or strike down national judgments" making states directly accountable to the European Court of Human Rights for violating the provisions of the Convention. The individual who is given the right to supranational appeal gains a consolidated and powerful position, indeed he is closer to the status of a legal entity of international law. The right of individual petition and the Court's ability to offer individuals judicial protection are cornerstones of the Convention system. – Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights*, UK, 2012, pp. 1-10; Christoph Grabenwarter, *The European Convention for the Protection of Human Rights and Fundamental Freedoms – Commentary*, UK, 2013, pp. 1-7.

[17] Article 129 of the Constitution of the RNM (1991) says: *The Constitution of the Republic of North Macedonia is amended and supplemented by constitutional amendments*.

[18] A proverb says: "*Prevention is better than cure*" (read the: It's better to be careful not to enact an unconstitutional legislative act of the ratification of an international treaty than to nullify and invalidate it

unconstitutionality of the content of the international treaty, before its ratification by the Assembly. This model is applied in France, Bulgaria, Spain, Hungary, Portugal, Albania, etc. Another drawback of the Constitution of the RNM is that it has not entitled the Constitutional Court with explicit competence to control the conventionality of parliamentary statutes and other general legal normative acts. However, even though the Constitutional Court[19] does not have the competence to control the conventionality/compliance of statutes and other general normative legal acts with the ratified international treaties (conventions, covenants, etc.), this competence could be indirectly or implicitly extracted from Article 118 of the Constitution of the RNM. In cases of conflict, between a national legislative act and a ratified international treaty, the international treaty prevails over subsequent contrary domestic legislation according to the principle "*lex superior derogate legi inferiori*" (superior law overrules inferior law). Consequently, the Constitutional Court of the RNM should offer legal protection to the international treaty by abrogating (*ex nunc*) or annulling (*ex tunc*)[20] the provisions of a certain parliamentary statute when they infringe Article 118 of the Constitution. Finally, another disadvantage of Article 118 is that it can be applied only to ratified international

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and its legal consequences, or "*It is much easier to deal with causes rather than consequences*" (read the: It's easier to stop enacting unconstitutional legislative act of the ratification of an international treaty than to declare null and void it and its legal consequences after it has been enacted).

[19] The prominent Austrian jurist Hans Kelsen affirmed the view that the main criterion for the evaluation of the democratization of a state and its possible qualification as a state of the law is the compliance of general normative acts with the constitution that is realized through a *sui generis* court. It serves to the institutionalized judicial review of constitutionality and it is considered as one of essential characteristics of the modern state of law. Constitutional justice is an important mean, designed to guarantee the hierarchy of legal sources and the supremacy of constitution over all other legal acts. - See: Hans Kelsen, *General Theory of Law and State*, Cambridge University Press, 1949, pp. 155-158. Moreover, the Constitutional court is an autonomous state institution that does not belong to the three branches of state power, and whose creation, organization, competence and functions are fixed by Constitution. It safeguards, substantively and formally, the supremacy of the constitution over legislative acts and all other general normative acts in the internal legal order and protects the constitution from general normative acts *contra constitutionem* that may degrade its superior authority and juridical force. Accordingly, the institution of Constitutional Court is considered as "*a vigilant guardian*" and "*legal shield*" of the "constitution".

[20] Because the goal of the judicial review of constitutionality is to safeguard the compliance of all general normative acts with the constitution, for the constitutional theory, the legal effects of the judicial review of constitutionality of legal norms is a crucially important issue. As a result, from a temporal perspective, there could be two types of sanctions. *Firstly*, *ex nunc* is a latin phrase meaning "*from now on*". It is used as a legal term to indicate the abrogation of a legal act from the legal order, from the moment when its unconstitutionality is verified by the institution of the Constitutional Justice; "*from now on*", i.e. that law is declared legally null and void and will not be applied only *pro future* (for the future and not affect the past actions or events) from the day of the publication of the judicial decisions of the Constitutional Court of the given state in the Official Gazette. This means that *ex nunc – abrogation* as a sanction for *contra constitutionem* legal acts does not have retroactive legal effect. *Secondly*, *ex tunc* is a latin phrase meaning "*from the outset*". It is used as a legal term to signify "void *ab initio – from the beginning*" of the law, which means "to treat a law as invalid from the moment of its entry into force". In fact, *ex tunc* is the annulment of an unconstitutional legislative act from the legal order by the institution of the Constitutional Justice, and at the same time the avoidance of its legal effects caused by it at the time period when it had been in force and applied in practice. This means that *ex tunc – annulment* as a sanction for unconstitutional legislative acts has retroactive legal effect, and it is treated as the respective law never legally existed. – See: Kurtesh Saliu, *E Drejta Kushtetuese*, Prishtina, 2004, pp. 198-200.

treaties.[21] In other words, a "rigid" and "restrictive" interpretation of this article means, that it cannot be applied to international treaties that are not subject to ratification by the Assembly of the RNM. Thus, it may be concluded that the Constitution of the RNM does not give "legal primacy *carte blanche*" to the international law in its entirety but only to international treaties that the Republic of North Macedonia has explicitly given consent by the acts of signature and ratification by the competent state authorities that are prescribed in the Constitution.

Fourth, "*International agreement concludes in the name of the Republic of North Macedonia by the President of the Republic of North Macedonia. International agreements may also be concluded by the Government of the Republic of North Macedonia when it is so determined by law*" (Article 119 of the Constitution of the RNM). This constitutional provision confirms that the competent state authorities to conclude international treaties on behalf of the Republic of North Macedonia are: 1) the President of the state, and 2) the

[21] From the way the international treaties are incorporated in the domestic law, The Constitution of the RNM (1991) does not make any clear distinction of international treaties in two main categories: *first*, international treaties that ratified in the form of law by the Assembly, and, *second*, international governmental treaties, that are not ratified by the Assembly, as they are regulated in Article 121 of the Constitution of the Republic of Albania (1998). Meanwhile, in the domestic legal doctrine and practice, a "demarcation line" between these two categories of international treaties has not been drawn, and no criteria have been laid down to make the difference between the ratified international treaties and non ratified international treaties. Furthermore, it is interesting that the legal normative solution of this issue is not found in the textual content of the "*Law on the Conclusion, Ratification and Enforcement of International Treaties of the Republic of North Macedonia*". This means that the lawmaker has not been enough decisive and clear in the regulation of the types of international treaties, as has been the case with a lawmaker in the Republic of Moldova where the *Law on International Treaties* (1999), classifies the types of international treaties (Article 3) and gives a detailed list of the categories of treaties that are subject to ratification by the Assembly and others that are not (Article 11, 12 and 13). The lawmaker in the Constitution of the Republic of Croatia has acted in a similar way (Article 139). Likewise, the distinction between self-executing and non-self-executing provisions of international treaties was taken up, in practice, in the Russian Federal Law on International Treaties of the Russian Federation, adopted by the Duma on 16 June 1995 and entered into force on 21 July 1995. Article 5 of the Law provides *inter alia* that: "*The provisions of the officially published international treaties of the Russian Federation which do not require the adoption of internal acts for their application are directly applicable. Corresponding legal acts shall be adopted for their application of other provisions of the international treaties of the Russian Federation*". In the Republic of North Macedonia, the Assembly adopts a law for the ratification of an international treaty when the state accepts international obligations that require the amendment of existing laws or the adoption of new laws. The act of ratification has determinative importance on this type of treaties because it is condition for their enforceability in the national legal order imposing the need for amendments or supplements in the domestic legislation. This is called treaty in broader meaning (*lato sensu*). On the other hand, international treaties which enter into force after the moment of their signing, without being subject to ratification from the Assembly can be considered as self-executing international treaties. In this category of international treaties, crucial importance has the act of signing, because *ipso facto* after their signing they become effectively operative in the domestic legal order. It is to be noted that this type of international treaties can be signed by the President and the Prime Minister of the RNM in the fields coming within their area of competence. Moreover, self-executing treaties do not require the adoption of new laws by the Assembly or amendments and supplements of the existing legislation. As agreements "in the simplified form" (for instance through an exchange of diplomatic notes), these are "treaties" in the narrow meaning (*stricto sensu*). Nevertheless, self-executing international treaties do not have equal constitutional status with the ratified international treaties, and consequently, they have weaker legal force. – See: Anthony Aust, *Modern Treaty Law and Practice*, Cambridge University Press, 2000, pp. 158-159; Antonio Cassese, *International Law*, London, 2001, pp. 172-181; Malcolm M. Shaw, *International Law*, 6th ed., Cambridge University Press, 2008, pp. 69-71; Jordan J. Paust, *Self-Executing Treaties*, American Journal of International Law, Vol. 84, no. 4, (Oct. 1988), pp. 760-783.

Government, in situations that are explicitly determined by law. The President of the RNM is the primary subject for the conclusion of international treaties because he represents North Macedonia as a particular sovereign entity in an internal and international plane and his treaty-making power is confirmed by the generally accepted norms of international law. Meanwhile, the Government of the RNM is a complementary subject for the conclusion of international treaties, because it can conclude them only in the areas designated by law. In fact, the Government of the RNM can conclude international treaties in the areas of the economy, finance, science, culture, education and sport, transport and communications, urbanism, construction and protection of the environment, agriculture, forestry, hydro economy, healthcare, energetic, justice, labour and social policy, human rights, diplomatic and consular relations, defence and state security, except issues related to the borders of the RNM, association in or dissociation from a union or community with other states, and other international treaties which according to international law, are concluded by the head of states,[22] the Assembly of the RNM ratifies international treaties in the form of law (Article 68, paragraph 1, line 6 of the Constitution of the RNM). After their publication[23] in the State's Official Gazette of the RNM and their entry into force, they are transformed into "*legs speciales*" (special laws) and at the same time, they constitute an integral part of the constitutional order of the RNM. Under this viewpoint, when interpreting and applying international treaties that might be inconsistent with national legislation, one ought to proceed on the notion that the legislation implementing the treaties makes up "special" law. This special character does not lie in the fact that legislation governs a class of facts or persons more limited than the envisaged by the general rule (the usual notion of speciality). Rather, it lies in the origin and the role of the rules implementing the treaty at the national level. These rules differ from ordinary municipal legislation in that they have the particular aim of adjusting the national legal order to an international treaty. They derive their origin and *raison d'être* from the existence of the treaty and are designed to put into practice in municipal law. This is the sort of "speciality" that should make them prevail over subsequent legislation, on the strength of the traditional principle "*lex posterior generalis non derogate legi priori speciali*" – that a later and general rule does not supersede an earlier and special rule.[24] It follows that the latter declares all domestic rules or acts contrary to a ratified international treaty to be null.

In sum, in the national constitutional and parliamentary practice of the Republic of North Macedonia, the transposition and implementation of international treaties in the constitutional order of the RNM is conducted through laws, in the order to produce binding legal effects at the municipal level.[25] The Government and the President of the RNM are

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[22] *Law on Conclusion, Ratification and Enforcement of International Treaties*, Article 3, Official Gazette of the Republic of North Macedonia, no. 5/1998.

[23] There is no doubt that the goal of publication of laws in the "Official Gazette" is to formally announce about their content to the public and to arouse their legal conscience. The popularization of the laws of a state among its general audience (*urbi et orbi*), contributes to citizens' legal education and voluntary application of law in practice. The period between the promulgation of law and the time its entry into force is called "*vacatio legis*" (law-in-pending). The publication of laws and *vocatio legis* is based on the generally recognized principle of law: "*Ignorantia iuris nocet*" (Ignorance of the law is no excuse/Not knowing the law is harmful) and "*Lex non obligat nisi promulgate*" (A law is not obligatory unless it is published and entered into force/Law which has not been published and entered into force is not valuable).

[24] Antonio Cassese, *International Law*, London, 2001, p. 177.

[25] The well-known legal scholar Radomir Lukić says that international treaties, from the perspective of internal law, are laws, which are transformed in the form of internal legal acts after their ratification by

responsible for the enforcement of international treaties.[26] The original copies of international treaties are registered and deposited in the Ministry of Foreign Affairs of the Republic of North Macedonia.[27] By becoming a party to international treaties through the process of signing and ratification, the Republic of North Macedonia assumes obligations that it is bound to perform. The Vienna Convention on the Law of Treaties (1969) stipulates two main criteria for the enforcement of international treaties: 1) the legal principle *pacta sunt servanda* (Article 26), according to which "*every treaty in force is binding upon the parties to it and must be performed by them in good faith*"; and, 2) the legal principle that "*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*" (Article 27).[28] The successful application of the principle "*pacta sunt servanda"* has promoted cooperation between states and it has been historically considered a *conditio sine qua non* (an indispensable condition) for the existence and function of international law.[29]

III. NORTH MACEDONIA'S JOURNEY TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Seen *in concreto*, North Macedonia's journey to the European Convention on Human Rights has been followed by some "colossal steps".

The first step of the Republic of North Macedonia as a member state of the Council of Europe *vis-à-vis* European Convention on Human Rights was its political will to accept the Convention through the act of signing on 11 November 1995 in Strasbourg by the Minister of Foreign Affairs of the RNM. However, the signatory act did not immediately have operative legal force, but it confirmed the goodwill of the Republic of North Macedonia to be part of the Council of Europe and to verify its obligation to harmonize the national legislation with the standards and postulates of the Convention in a reasonable period of time. In this context, in October 1997 the working group of experts of the Government of the Republic of North Macedonia prepared "The Report on the Compliance of the Legislation of the Republic of Macedonia with the Standards and Requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms". In the course of their work which lasted eight months, by applying the analytical-legal approach and the comparative-legal method from the perspective of the Convention and the case-law of the European Court of Human Rights, the working group highlighted the necessary amendments to the legislation of the Republic of North Macedonia. This study

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legislative state bodies. However, seen from the prism of international law, international treaties are specific international normative acts. In this case, *in substance*, sources of law are only national legal acts, because a state receives and incorporates the rules of an international treaty when it ratifies it through a national legal act. The adoption of such law, i.e. international treaty, which ultimately takes the form of a law, is called ratification. – Cited from Radomir Lukić, *Uvod u Pravo*, Beograd, 1975, pp. 248-249.

[26] *Law on Conclusion, Ratification and Enforcement of International Treaties*, Article 23, Official Gazette of the Republic of North Macedonia, no. 5/1998.

[27] *Law on Conclusion, Ratification and Enforcement of International Treaties*, Article 25, Official Gazette of the Republic of North Macedonia, no. 5/1998.

[28] See: R. Jennings and A. Watts, eds., *Oppenheim's International Law*, 9th ed., vol. I, Peace (London, Longman, 1992), pp. 81-83; Anthony Aust, *Modern Treaty Law and Practice*, Cambridge University Press, 2000, pp. 144-146; Vesna Crnić-Grotić, *Pravo Međunarodnih Ugovora*, Rijeka, 2002, p. 318.

[29] Malcolm M. Shaw, *International Law*, 6th ed., Cambridge University Press, 2008, p. 829; Ian Brownlie, *Principles of Public International Law*, 5th ed., Oxford University Press, 1998, p. 620.

confirms the enormous implications of the Convention for the constitutional order of the RM in general and the mechanisms for the protection of human rights and freedoms in particular.[30]

The second step was the adoption of the Law on the Ratification[31] of the European Convention on Human Rights (Official Gazette of the RM no.11/97) by the Assembly of the RNM and its entry into force on 19 March 1997. From that calendar date, the Convention became law of the land or an organic component of the domestic legal order of the RNM with the possibility of its direct application by the courts as an internal formal source of positive national law. Even though the Constitution of the RNM in Article 98, paragraph 2 stipulates that: "*Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution*". The reality is quite different, however. In fact, the discrepancies between normative aspect and factual reality/social practice is quite huge. The courts have not decided any case directly invoking a provision of the European Convention on Human Rights. As a matter of fact, judges have not broken the myth of issuing their decisions only on the basis of laws, without invoking the provisions of international conventions as well. There is no doubt that in the practice of the courts of the RNM there is still considerable hesitation to refer their internal actions or operations to international normative acts. As a consequence, unless the provisions of international treaties are invoked in the practice of the courts, they will remain only theoretical fictions or syntagmatic farce without any empirical-pragmatically meaning and value in the real life. Clearly, the rationale behind this is that the status that international human rights law enjoys in a certain country does not depend only on the content of its constitutional norms but also on the commitment of the judiciary to implement them in practice. This is best confirmed by the Latin legal maxim: *Applicatio est vitae regulae iuris (The application in practice is the life of a juridical norm*). Moreover, the prominent French philosopher Montesquieu affirms the applicative aspect of law in his impressive and meaningful saying: "*Quand je vais dans un pays, je n'examine pas s'il y a des bonnes lois, mais si on execute celles qui y sont, car il y a des bonnes lois partout*"; (*When I go to a country, I do not examine whether there good laws, but whether they are enforced there because there are good laws everywhere*).

The third step that the Republic of North Macedonia took was the deposition of the instruments of the ratification to the Secretary-General of the Council of Europe on 10 April 1997. It is important to keep in mind the fact that the Council of Europe as the date of ratification of the Convention considers the time of the deposition of the instruments of ratification to the Secretary-General of the Council of Europe[32] (Article 59, paragraph 4 of

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[30] See more: The working group, *The Report on the Compliance of the Legislation of the RM with the Standards and Requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Government of the Republic of Macedonia, Skopje, 1996, p. 3-262. See Steven Greer, *The European Convention on Human Rights*: *Achievements, Problems and Prospects*, Cambridge University Press, 2006, pp. 28-30.

[31] In the case of treaties, normally parliament is associated with their birth, at least in that it authorizes their ratification or their implementation, and such association gives an imprint of popular legitimation to the rules contained in the treaty. – cited by Antonio Cassese, *International Law*, London, 2001, p. 180.

[32] The Secretary-General is the depositary of the conventions of the Council of Europe. He is the custodian of these conventions and presides over their signature and the deposit of the instruments of ratification, acceptance, approval or accession. It is also the Secretary-General who is responsible for the notifications prescribed in the final clauses of the conventions, and who arranges for their registration with the Secretariat of the United Nations.

the Convention) and not the date when the national legislative act for the ratification entered into force.[33] These events created the formal assumptions which enabled or provided the Convention to produce binding legal effects in the constitutional order of the RM, among which the most essential are: *firstly*, the duty of the courts to directly interpret and apply the propositions of the Convention in practice, and *secondly*, the right of the citizens to directly invoke the provisions of the Convention in the proceedings before state institutions and individually lodge an application before the European Court of Human Rights[34] when they consider that the final and enforceable decisions of state institutions have allegedly violated a right or freedom guaranteed by the Convention or its additional protocols. Thus, it may be concluded that ECHR gives an affirmative tone to the classical legal maxim *Ubi jus*, *ibi remedium* (Where there is a right, there must be a legal remedy). The logic semantic essence behind this metaphor is that where a right is guaranteed, there should always exist a remedy for its protection, more precisely there is no right without the possibility of recourse to its protection. Otherwise, rights without protection, remain unenforceable in the real life. Legal recourses are a universal legal category of constitutional and international law because they are stipulated and guaranteed by the constitution and international conventions on human rights. The value and relevance of legal remedies consist in the fact that they are a mean for legal protection of subjective rights of the parties. The subjective rights of citizens are of little value if citizens do not have a real opportunity to use effective legal remedies for their protection in case of their violation. Therefore, citizens may use legal remedies when they consider that a state institution illegally jeopardizes a right or legal interest, contributing to the process of the consolidation of the rule of law within the framework of the legal system of a certain state. On the other side, according to Article 35 of the Convention, a citizen of a member state of the Council of Europe has the right of direct protection of the rights and freedoms prescribed by the Convention and its additional protocols, before the European Court of Human Rights, when two conditions are fulfilled cumulatively: *firstly*, there is an exhaustion of all remedies available in the national legal order, and *secondly*, the individual appeal has to be made within six months from the date on which the final decision was

[33] *The Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms* entered into force on 19 March 1997 (Official Gazette of the Republic of North Macedonia, no. 11/1997). Similarly to other states, in the Republic of North Macedonia, international treaties are not published in the same Official Gazette with other laws, but they are published in a special official gazette that exclusively serves for publishing international treaties. For example, in the Republic of Albania international treaties are published on a special official gazette that is called "*Official Bulletin of the Republic of Albania – International agreements*", in the Republic of North Macedonia "Official Gazette of the Republic of North Macedonia"- International Agreements; in the Republic of Croatia "*Official Gazette of the Republic of Croatia – International Treaties*", in the USA "*Official Bulletin of the USA – International Treaties*".

[34] During half a century this body has been the foremost regional mechanism in the world for enabling disputed questions of fundamental rights to be decided in a judicial forum. The Court derives its existence from the European Convention on Human Rights. The European Court of Human Rights is a unique institution that has played a central role in strengthening democracy and the rule of law in European continent, as well as has long been part of the most advanced human rights regime in the world. - Spyridon Flogaitis, Tom Zwart, Julie Fraser, *The European Court Of Human Rights And Its Discontents*, UK, 2013, pp. 2-7.

taken.[3536] In other words, if a citizen exhausts all domestic remedies before national courts, then he can exercise the right of individual appeal to the European Court on Human Rights (Article 34) as a subsidiary legal recourse, namely as "*ultima ratio*" (as a last resort) legal remedy in the cases when they are not satisfied from the efficacy or equity of national court proceedings.[37] For justice as a fundamental juridical value, the right of the citizen to sue his state before an institution of international judicature confirms the century-old experience that the truth comes to light, even though it is always oppressed (*Veritas laborat nimis, extinguitur numquam*). In addition, Article 34 of the Convention not only stipulates the duty of the states to allow their citizens to lodge individual applications to the European Court of Human Rights, but it obligates them not to "*hinder in any way the effective exercise of this right*".[38] In relation to this, it should be noted that from the constitutional perspective, the Constitution of Montenegro (2007), in Article 56 explicitly stipulates that

[35] Protocol No. 15 amending the European Convention on Human Rights is adopted by the Council of Europe on 24 June 2013 and shall enter into force after ratification by all the state contracting parties to the Convention. Summary of the treaty: To maintain the effectiveness of the European Court of Human Rights, this Protocol makes the following changes to the Convention: *firstly*, adding a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the Preamble of the Convention; *secondly*, shortening from 6 (six) to 4 (four) months the time limit within which an application must be made to the Court; *thirdly*, amending the "significant advantage" admissibility criterion to remove the second safeguard preventing rejection of an application that has not been duly considered by a domestic tribunal that *in ultima linea* intend to give greater effect to the ancient maxim *de minimis non curat praetor* ("*the law cares not for small things*"; - *a principle of law, that even if a technical violation of a law appears to exist according to the letter of the law, if the effect is too small to be of consequence, the violation of the law will not be considered as a sufficient cause of action, whether in civil or criminal proceedings*; or, *a legal doctrine by which a court refuses to consider trifling matters.* In a lawsuit, a court applies the *de minimis doctrine* to avoid the resolution of trivial matters that are not worthy of judicial scrutiny. Its application sometimes results in the dismissal of an action, particularly when the only redress sought is for a nominal sum, such as one euro. Appellate courts also use the *de minimis doctrine* when appropriate.); *fourthly*, removing the right of the parties to a case to object to relinquishment of jurisdiction over it by a Chamber in favour of the Grand Chamber; *fifthly and finally*, replacing the upper age limit for judges by a requirement that candidates for the post of the judge be less than 65 years of age at the date by which the list of candidates has been requested by the Parliamentary Assembly.

[36] A transitional provision appears in Article 8, paragraph 3 of Protocol No. 15. It was considered that the reduction in the time limit for applying to the Court should apply only after 6 (six) months following the entry into force of the Protocol, to allow potential applicants to become fully aware of the new deadline. Furthermore, the new time limit of 4 (four) months will not have a retroactive effect, since it is specified in the final sentence of Article 8, paragraph 4 of the Protocol No. 15 that it does not apply to applications in respect of which the final decision within the meaning of Article 35, paragraph 1 of the Convention was taken before the date of entry into force of the new rule.

[37] Article 13 of the European Convention on Human Rights requires states to provide a national remedy for complaints made under the Convention. The principle of subsidiarity places the primary responsibility on states to ensure their compliance with obligations under the European Convention on Human Rights, leaving recourse to the European Convention on Human Rights as a last resort. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at a national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State's margin of appreciation.

[38] For more: Steven Greer, *The European Convention on Human Rights*: *Achievements, Problems and Prospects*, Cambridge University Press, 2006, pp. 144-148.

"*Everyone shall have the right of recourse to international institutions for the protection of own rights and freedoms guaranteed by the Constitution*".
Finally, the Republic of North Macedonia has *a priori* made a declaration in accordance with Article 46 of the Convention which confirms the acceptance of the "*compulsory jurisdiction*" of the European Court of Human Rights, when it deals with the issues related to legal protection of human rights and freedoms included in the Convention and its additional protocols, especially when it hears and decides on individual applications lodged by citizens of the Republic of North Macedonia.

IV. CONCLUSION

Being the oldest of the European organizations, the Council of Europe is the main organization that develops regional human rights standards and monitoring mechanisms and that provides an individual remedy in case of violations of civil and political rights. The right of direct access to lodge an individual human rights complaint directly relates to the European Court of Human Rights in Strasbourg. The promotion and protection of human rights always constituted the main activity of the Council of Europe, with the European Convention on Human Rights as its flagship. The Convention is the first regional human rights treaty, adopted already in 1950. Together with various Additional Protocols, it contains a broad range of civil and political rights. From the very beginning, the ECHR established a system of inter-state and individual complaints which became a model for later treaties in other regions and in the United Nations. Although this system was optional, most Council of Europe member states gradually accepted the jurisdiction of the European Court on Human Rights to examine individual complaints established in 1959. During the first 30 years of its existence, the Court and its jurisprudence gained solid authority and recognition among Council of Europe member states due to its progressive and dynamic interpretation of human rights which at the same time recognized legitimate state interests in restricting human rights. Consequently, the degree of popularity regarding the legal protection system provided for by the Convention since its coming into force in 1953 for cases that have exhausted all domestic remedies is remarkable. The right of individual application serves as a safety anchor when national legal protection fails. The "road to Strasbourg" after all domestic remedies have been exhausted has to a growing degree been taken as given. This is why the number of individual applications registered by the European Court of Human Rights is increasing each year. Furthermore, the substantive rights enshrined in the Council of Europe are a well-known part of all European legal systems. Due to the European Court of Human Rights, even fully developed bills of rights were significantly enriched. The application of the European Convention on Human Rights and its review by the Court have made an indisputable contribution to improving human rights in Europe, in particular by raising the standards of protection required and gradually harmonizing legislation and practice.
The European Convention on Human Rights has an intermediary legal position within the framework of the constitutional order of the RNM between the Constitution and laws, i.e. from a formal perspective, it is above laws but below the Constitution. On the other hand, from a substantive/material perspective, the European Convention on Human Rights it has an equivalent legal status with the Constitution of the RNM. This is because the fundamental human rights designated by the Constitution of the RNM (quantitatively, they

include 1/3 of the normative text of the Constitution) are inspired and received from the provisions of the European Convention on Human Rights, respectively they are identical with the respective articles of the Convention and, with few exceptions, they represent "*ad litteram* transcription" or textual reproduction of the chapters of the Convention.[39] Indeed, there is a considerable scale of similarity, homogeneity and convergence between the catalogue of basic freedoms and rights of the individual and citizen in the Constitution of the RNM and in the European Convention on Human Rights. This situation facilitates the work of judges when they rule on issues related to individual rights and freedoms because they may simultaneously invoke the symmetrically formulated articles from the Constitution and the Convention. Due to this, it appears perfectly obvious that the European Convention on Human Rights has exerted a profound impact on the substantial nature of the catalogue of basic freedoms and rights of the individual and citizen in the Constitution of the RNM.

[39] As a consequence, every violation and restriction of the rights and freedoms of man and citizen, which is contrary to the European Convention on Human Rights, at the same time is contrary to the Constitution of the RNM and *vice versa*.