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The Suspect's Right to Information in Police Proceedings

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ABSTRACT

In the paper, the subject of analysis is the right of the suspect, when he is brought to the police station for the first time, the right to get the opportunity to be informed about their rights so that he would know which next steps to take to protect their constitutionally guaranteed rights. Through the prism of informing the suspect, his status in Macedonian criminal law and Macedonian criminal law practice, the conditions he faces when he is brought to the police station, the degree of respect for their rights and the personality of the suspect are presented.

Furthermore, an overview of the international documents governing this issue is given, where in the European Union system the suspect is classified and how much their natural rights come to the fore when needed. The principles that rule in the European Union can also give a general picture, albeit with a dose of reserve, for the regulation of the respective issue in the other members of the European Union.

The main emphasis is on the position of the suspect in the criminal justice system of Republic of North Macedonia, the degree of respect for their constitutionally guaranteed rights, the real problems that are present and whose presence is an obstacle to realizing the suspect's right to information.

In the final part, as a concluding observation, I would raise the question of how far the institutions that are responsible for protecting human rights in general, and hence this specific right that belongs to the suspect, are up to their task and actively participate in the direction of improving the status enjoyed by the suspect in the criminal justice system.

Keywords: law, information, suspect, police, protection.

I. INTRODUCTION

The role and significance of respecting the right to information was the result of a long, evolutionary process, through which the foundations of today's level of acceptance of the suspect's rights were laid. History records several periods of particular importance for the personality of the suspect.

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In primitive society, crime was considered an offense to the gods and the punishment of the criminal was intended to appease the wrath of the gods. Therefore, there was no concept of "state" in primitive societies.

However, as the community became more and more solid and cohesive, it was inevitable that it would become involved in the repression and prevention of deviant acts. The assumption of social control leads to the investigation of the crime and the "treatment" of its consequences being regulated and controlled by the state.²

Through the accusatory and inquisitorial procedure, the suspect gets a new role and a new direction through which the realization of their rights will move. The accusatory system, with an emphasis on the equality of weapons and the orality of the procedure, led the suspect to get the opportunity to be informed of what he is accused of, but the inquisitorial model, with the established distrust of the suspect and incitement to torture as a basic mechanism for extorting a confession of guilt, represents regressing on the way to confirmation of the suspect as a subject in the procedure.³

From today's point of view, although in many cases declaratively, the suspect has the full right to know what he is charged with, to be informed and to be given the opportunity to understand the meaning of the crime for which he is suspected, as well as to be protected from blackmail, threats, and misrepresentations by the authorized persons.

Furthermore, the paper analyzes the suspect's right to information at the police station. Several methods have been used for this purpose. Through the normative-legal method, the arrangement of the specific issue in the regulation on the right to information of the suspect in the Republic of North Macedonia, and through the comparative legal method, the regulation in the respective legal systems of the member states of the European Union is analyzed, and a special subject of interest is the practical application and appropriate experiences in the direction of affirming the right to information of the suspected person. The synthesis method is used in the final part of the preparation of the topic, specifically in the conclusion, to make final observations and give directions for the future.

II. THE SUSPECT'S RIGHT TO INFORMATION UNDER EUROPEAN UNION LAW

(A) Letter of Rights

²Fawzia Cassim, The right to meaningful and informed participation in the criminal process, University of South Africa, 10 (2003).

³Christopher Snyman, The accusatorial and inquisitorial approaches to criminal procedure: some points of comparison between the South African and continental systems, *The Comparative and International Law Journal of Southern Africa*, 100 - 101 (1975).

A proposal to inform suspects about their rights for the first time was foreseen in the so-called "Green Paper", for guaranteeing the procedural rights of suspects in police proceedings, from 2003. There are five fundamental rights: the right to legal aid and representation, the right to an interpreter, the right of vulnerable groups to adequate protection, the right of nationals of other Member States and third countries to consular assistance and the right to a "Letter of Rights".⁴

All these rights must be presented to the suspect, and he must be given the opportunity to understand the meaning of each of these rights so that he can invoke them for protection in the proceedings. Therefore, special importance is given to the "Letter of rights".

"Letter of rights" must be granted to all suspects, be written in a language that the suspect understands and contain the following rights: right to counsel, right to remain silent, right to medical assistance, if needed, right to report to the consular authorities for their arrest, if he is a foreigner, the right to free legal aid, the right to be brought before a court in the shortest possible time and to be notified of the maximum period of possible detention if imposed, the right to free access to documents.⁵

The letter of rights should be made available to the suspect at a time when their rights are at risk and in need of protection. A problem arises in determining that moment. It should happen at the time of arrest or earlier. Letter should be provided to him as soon as the suspect is detained at the police station or before, but not later than, in order to be relevant. If this is not ensured by the time the suspect arrives at the police station, the question arises as to whether he is aware of their rights. For practical reasons, it seems logical to put it for inspection at the police station, since the samples of the letters are supposed to be kept there, together with the different language versions.⁶

A very important moment that determines the behavior of the suspect in the further course of the procedure is when he will be presented with the "Letter of Rights". It depends on whether their natural rights will be recognized and respected in the specific situation, or whether the suspect will be denied the right to information about their rights in the future.

Whether a defendant should be required to sign a "Letter of Rights" is difficult to judge. The European Commission consulted representatives from several member states on the specific

⁴Eur-lex, Green paper on criminal proceedings 1, Access to European Union law, 2008
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0811>.

⁵Id at 3.

⁶Eur-lex, Green Paper from the Commission - Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union, 53, Access to European Union law, Commission of the European Communities, Brussels, (2003).

<<http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52003DC0075&from=EN>>

issue. Most argued over the question of what would happen to the status of the "Letter of Rights" if it was not presented to the suspect and what the consequences would be.⁷

The immediate question is whether member states are obliged to consistently implement the rights contained in the "Bill of Rights" and adhere to them whenever necessary? Although the rights contained in the Letter of rights model have their basis in the ECHR and its practice, however, in the general national standards of the member states, almost all rights may be subject to limitations if there are strong reasons that would justify exceptions.

What are the reasons that can prevent the suspect from being informed about their fundamentally guaranteed rights?

Suspects should be aware when their rights are restricted in order to be able to seek legal remedies, and authorities must be required to explain why rights are restricted.

(B) The suspect's right to information through ECtHR practice

Violation of the suspect's fundamental rights in the police procedure has been observed in many cases before the European Court of Human Rights in Strasbourg. The largest number of applications to the ECtHR are submitted due to a violation of Article 3 of the European Convention on Human Rights.

In the case of *Dinu v. Romania*, the Court found a violation of Article 3 of the European Convention on Human Rights. The applicant was reported by his sister that he disturbed the peace in the home and insulted his parents. The police officers who arrived at the applicant's home immediately handcuffed him and pushed him to the ground with his face facing the ground, although he did not resist the arrest. When leaving the home, they hit his head against the neighbor's metal fence, dragging him to the police car. When entering the ambulance, the appellant had blood on his face, but the police officer still had him handcuffed and with his face turned to the floor. When he was discharged from the hospital after eight days, the doctor informed the applicant's father that he had been beaten and suffered a spinal injury. The government agent representing Romania claimed that the applicant was aggressive, drunk and a danger to his loved ones. The injuries he sustained were the result of the police officers taking legal action to protect him and his loved ones from his aggressive behavior. The court accepted the medical evidence of the injuries sustained and found that although the applicant did not cooperate with the police officers and was agitated, his behavior was neither violent nor disproportionate at all.

⁷Id at 54.

Therefore, the Court found that there was a violation of Article 3 of the European Convention on Human Rights, because the police officers could have used force only to calm the applicant's anxiety, but the treatment of seven to eight days in the hospital as a result of the handling in the specific situation is an undoubted violation of Article 3 and establishing a violation of the suspect's right.⁸

III. THE SUSPECT'S RIGHT TO INFORMATION IN THE REPUBLIC OF NORTH MACEDONIA

Republic of North Macedonia fully respects the adopted international documents that refer to the suspect in the police procedure. The highest legal act of the Republic of North Macedonia, the Constitution⁹, stipulates that human freedom is inviolable. The person summoned, detained, or deprived of liberty must be immediately informed of the reasons for their summons, detention or deprivation of liberty and their rights established by law and he cannot be required to make a statement. The person has the right to a lawyer in the police and court proceedings. The person deprived of liberty must immediately, and no later than within 24 hours from the moment of deprivation of liberty, be brought before a court, which will decide without delay on the legality of the deprivation of liberty.¹⁰

In that direction, in Republic of North Macedonia, in the Law on Criminal Procedure¹¹ and in the Law on Police¹², changes have been made in the direction of approximation to EU law. However, there are some inconsistencies in the way of implementation.

The inconsistencies relate primarily to the frequent violation of the suspect's rights and disregard for the suspect's personality.¹³

The right to medical assistance, i.e. the right to a doctor, is generally provided if the suspect requests it. The Macedonian legislation specifically in the Law on Criminal procedure, in article 60 paragraph 3 stipulates: "If necessary or upon request, the person detained or deprived of liberty will be provided with appropriate medical assistance." A medical examination will be

⁸European Court of Human Rights, Case of Dinu v. Romania, Case law, Strasbourg, 7 February 2017.
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⁹Constitution of the Republic of North Macedonia, Official Gazette of the Republic of North Macedonia, number 52/1991 of 22.11.1991.

¹⁰Id at article 12 paragraph 1,3,4.

¹¹Law on Criminal Procedure, Official Gazette of the Republic of North Macedonia, number 150/2010 of 11/18/2010.

¹²Police Law, Official Gazette of the Republic of North Macedonia, number 114/2006 of 3 November 2006.

¹³National Preventive Mechanism, Annual Report, page 16, Ombudsman, Skopje, May 2013,
http://www.varuh-rs.si/fileadmin/user_upload/NPM/SEE_NETWORK/NPM-LP-MAC-2012.pdf

approved if the suspect complains of an injury or pain."¹⁴

According to the European Court of Human Rights¹⁵, the right to medical assistance includes the suspect's right to leave the police station as he entered it, i.e. if he complains of certain injuries that he did not have at the time of admission, it is assumed that he received them in the police station. If there is no good explanation for these violations, a violation of Article 3 of the ECHR¹⁶ is established for inhuman and degrading treatment, as well as presumptions of torture. By strengthening the credentials of the defense attorney with the updates from the Criminal Code, the suspect gets full access and use of the rights that are legally determined for him. The suspect will be provided with a list of duty lawyers who will be available at all times. The suspect cannot refuse a lawyer if it is mandatory depending on the crime committed.¹⁷

The problems with the suspect and their rights appear when the police officers want to take advantage of the suspect's innocence, the special psychological state of fear in which he is in the police station, so through various offers, "facilitation", they want to bring the suspect to make a statement to the detriment of their rights. It is precisely in this aspect that there are constant criticisms from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹⁸ at the Council of Europe, which has the authority to monitor the situation in the Republic of North Macedonia with persons deprived of their liberty, their status, and conditions under which are held in police stations.

In addition to practical shortcomings, our legislation in relation to the analyzed problem is also faced with normative inconsistencies. Namely, in Article 34 of the Police Law it is stated "to inform a member of their family or a person close to him".¹⁹ The Law on Criminal Procedure suggests that, in addition to notifying a member of their family, "the diplomatic-consular representation of the state of which the person is a citizen should be notified of their detention or deprivation of liberty".²⁰

¹⁴Law on Criminal Procedure, Official Gazette of the Republic of North Macedonia, number 150/2010 of 18.11.2010, article 60, paragraph 3.

¹⁵Council of Europe, European Court of Human Rights, Strasbourg

<http://www.echr.coe.int/Pages/home.aspx?p=court&c=#newComponent_1346149514608_pointer>

¹⁶Council of Europe, European Court of Human Rights, European Convention on Human Rights, Article 3 Strasbourg, 1 June 2010.

<http://www.echr.coe.int/Documents/Convention_ENG.pdf>

¹⁷Law on Criminal Procedure, Official Gazette of the Republic of North Macedonia, Article 74, number 150/2010 of 18.11.2010.

¹⁸Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Strasbourg.

<<http://www.coe.int/en/web/cpt/home>>

¹⁹Police Law, Official Gazette of the Republic of North Macedonia, Article 34, number 114/2006 of 3 November 2006.

²⁰Law on Criminal Procedure, Official Gazette of the Republic of North Macedonia, Article 69 paragraph 3,

This omission is not mentioned by chance, because for the same factual situation, two laws that are important for the actions of the suspect determine the suspect's right to report differently, and here already a free space is created for a different interpretation of the laws by the police officers and the occurrence of possible abuses.

A similar situation exists with the suspect's right to a translator and interpreter, where the Law on Police states that a person deprived of liberty or detained will be informed in a language he understands about the reason for that detention, while the Law on Criminal Procedure, a free interpreter determines only the court procedure. Efforts should be made to harmonize the legislation of the Republic of North Macedonia with the Directive on the right to a translator and interpreter in criminal proceedings from 2010²¹, when it comes to this right.

The recommendations of non-governmental organizations for the protection of human rights, which constantly appeal for abuse of persons deprived of their liberty, should be followed with particular care.

The Helsinki Committee for Human Rights of the Republic of North Macedonia in its annual and monthly reports, constantly notes the excessive use of physical force against persons deprived of liberty and their exposure to inhumane and degrading treatment by police officers. For this conclusion there is a fact that the European Court of Human Rights issued five decisions against the Republic of North Macedonia during 2015. In the judgments, it is noted that there are violations of procedural and substantive protection, which is provided by Article 3 of the European Convention on Human Rights. In other words, not only did the police officers use inhumane actions towards citizens, but also the internal control mechanisms failed in any case to determine the illegal behavior of the police officers and to conduct an effective investigation. This situation is also a consequence of the excessive employment of new police officers in the Ministry of Internal Affairs, where there is an increase in quantity at the expense of the quality of the employed staff.²²

IV. CONCLUSION

The research so far leads to several important recommendations about the rights of the suspect in the police procedure.

number 150/2010 of 18.11.2010.

²¹Official Journal of the European Union, Directive 2010/64/EU of the European Parliament and of the Council, European Union, 20 October 2010.

<<http://eur-lex.europa.eu/eli/dir/2010/64/oj>>

²²Helsinki Committee for Human Rights of the Republic of North Macedonia, Annual report on the situation in the field of human rights in the Republic of North Macedonia in 2015, page 23, Urania Pirovska, Skopje, 2016. http://mhc.org.mk/system/uploads/redactor_assets/documents/1929/GODISEN_IZVESTAJ_2015_mk.pdf

Active role of the public prosecutors in the direction of control of the police officers in the way of dealing with the suspected persons.

The Department for Internal Control and Professional Standards at the Ministry of Internal Affairs has a strong protective role for the suspect in exercising their rights. Their constant monitoring of the work of police officers, in this regard, should be an emphasized function, because the area of abuse and violation of the suspect's rights is large. In any complaint against a police officer, their task will be to thoroughly and in detail study each case and consider it from all possible angles in order to determine whether the rights of the suspect were fully respected or whether there was room for abuses.

Taking initiatives to increase citizens awareness of the existence of national institutions for the protection of human freedoms and rights is the next step that should be taken. In the first place, the Ombudsman is the most important person here, as the most zealous guardian of the rights of the individual against violations and abuses by state institutions. Their role for the specific topic is great, starting from cooperation with the people who are involved in the police procedures, their relatives, visiting the police stations to get to know directly the conditions under which the suspects are kept, using all the constitutional and legal powers when it is necessary to react to a certain complaint, application or procedure.

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