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NATIONAL SECURITY AND HUMAN RIGHTS WITH REFERENCE TO THE RIGHT TO PRIVACY AND THE PROTECTION OF PERSONAL DATA

Abstract: The highest ranked value in each state is national security. The fight against terrorism and the achievement of the highest level of national security is the highest goal of the Republic of Macedonia and of every country, as well as of the European Union. National and individual security of the state depends on the level of national security.

In addition, the state is obliged to protect the human rights guaranteed by the Constitution as the highest act in the country. The Republic of Macedonia has also ratified the European Convention on Human Rights and at the same time have a Law on Personal Data Protection. The state could find a strong instrument that would protect the human rights and personal data of the citizen from abuse

With this paper we will consider what is national security in which way it is protected, we will process the right to privacy and personal data, how they are protected, and when the state itself invades the fundamental human rights because of the protection of national security, it comes to overlapping national security with human rights, although human rights also represent human security.

Keywords: national security, human rights, personal data, right to privacy, law

In any country in the world, national security holds the highest ranking. It determines the existence, stability, and proper functioning of a country. National security represents a particular social process of certain societies, where everyday life and functioning lack any kind of fear of foreign attack, threat to material and spiritual values and interests, or any kind of attack by a neighbouring country or alliance of countries.¹

National security today takes root in: national values and the country's interests derived from them, the respect of laws and the Constitution, the equality of all citizens under the law, the democratic foundations of the country, the rule of law, the respect of human rights and freedoms, market economy, the respect of international treaties and agreements, as well as international law.² The very term "national security" implies a connection to the military, political, societal and economic factors in the internal, external, societal and ecological security.³

All modern civilized societies create a system for the protection of their national security, and the establishment of the optimal form of security in such a way and magnitude that adheres to the nature of their needs and capabilities. This system is supposed to remove, neutralize and prevent any internal or external threat to the national security of a country, that is to protect the national values and interests. When we say "values", which can be life life, ethical or social, we mean that people should live well and virtuously.

1. Gorgi Tonovski (Ѓорѓи Тоновски), Меѓународни односи, авторизирани предавања, Faculty of Humanities, Skopje, p. 258

2. Aleksandar Doncev, Ph. D. (Д-р Александар Дончев), Современи безбедносни системи, Skopje 2007, pp. 48-49

3. Ibid.

Economic well-being within the complete development of a country, low unemployment rates and high living standards are among the greatest assurances of national security.⁴ The economic power of any country lies within its natural riches, capacity, production, etc. A country must provide its citizens an acceptable and dignified living standard as well as more wealth. This means that a substantial part of the power of a country is its economic power.

Besides standard, a country should provide the protection of basic human rights, freedoms and personal information from any kind of abuse, though sometimes the country itself imposes on these with the intent of safeguarding its national security. Before the appearance of supranational and international organizations who are today the greatest proponents of basic human rights, the country was the sole warrant in this issue, which resulted in the assurance of national security at the cost of individual security. Indubitably there is an extensive overlap between human rights on the one hand and national security on the other. This is logical as well, in line with the fact that these two fields complement each other.⁵ Both the fields of individual and national security complement each other, and as we have stated above, national security means the respect of human rights and freedoms, their protection being in the interest of the country.

When national security is at risk of attack, or is already attacked, the country itself imposes on human rights and freedoms, especially the right to privacy and family life.

The right to privacy refers to a person's right to a private life without monitoring, regardless of whether or not this right includes relations with other persons, while the right to protection of personal information protects this information as well as any other information, regardless of whether or not it is personal, under the condition that it is relevant to personal identification. Personal information does not always have to do with the right to privacy because the very concept of personal information is much broader than the concept of a private life.⁶

According to the Constitution of the Republic of Macedonia, "each citizen is guaranteed the respect and protection of the privacy of his/her personal and family life and of his/her dignity and repute."⁷ On the whole, the Republic of Macedonia has ratified the European Convention on Human Rights, which in its Article 8 states that "everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."⁸ But this human right is infringed when someone infringes the law, with the usage of special investigative measures which delve directly into the privacy of the person, such as the tapping of conversations and Internet communication, recording and photographing homes and vehicles, following through informants, etc. However, this should all occur as I have said with the warrant from the court

4. Oliver Bakreski, Dragan Trivan, Saso Mitevski (Оливер Бакрески, Драган Триван, Сашо Митевски), Корпорациски безбедносен систем, Скопје 2012, p. 157

5. Assistant Olga Gurkova, LL.M (Асс. м-р Олга Гуркова), Правото на приватен живот и правото на заштита на лични податоци во Европското законодавство во судир со националната безбедност, p. 2, <https://eprints.ugd.edu.mk/1380/1/Pravoto%20na%20privaten%20zivot%20i%20pravoto%20na%20zastita%20na%20licni%20podatoci%20vo%20EU%20zakonodavstvo%20vo%20sudir%20so%20nacionalnata%20bezbednost.pdf> last visited on 15.03.2018 23:38

6. The Constitution of the Republic of Macedonia, Article 25

7. Ibid.

8. European Convention on Human Rights, Article 8

if there are grounds for suspicion that a person might commit a crime that in this case would threaten national security.

Furthermore, in Article 26 of the Constitution, “the inviolability of the home is guaranteed. The right to the inviolability of the home may be restricted only by a court decision in cases of the detection or prevention of criminal offences or the protection of people’s health.”⁹ The country may also infringe on this article with the investigative action of searching or as I have written above, taking pictures or recording in an enclosed space, i.e. the home as well, if there has been a breaking of the law on part of the individual.

Therefore, from this we may conclude that to preserve a country’s national security, the country itself conducts infringements upon the privacy and home of the individual, though naturally if there are grounds for suspicion that the law has been broken, that there are indications that a person will commit acts that will threaten national security and that also includes the individual security of the rest. Or, every “infringement” of the right to privacy should be in accordance with the legal standards and should be compatible with the principles of the rule of law. This especially pertains to the special investigative measures, in cases when government organs legally overwrite the right to privacy by undertaking actions which significantly limit the guaranteed rights and freedoms, insisting that with such overwriting the so called principle of “predictability” of laws will be maintained.¹⁰

The Republic of Macedonia has a law that protects personal information. This means that: “This law regulates the protection of the basic freedoms and rights of citizens, and especially the rights of privacy with regard to the procession of personal data.”¹¹ This means that “personal data” is “any bit of information that refers to an identified or identifiable natural person, the identifiable person being a person whose identity may be determined directly or indirectly, especially based on the Personal Identification Number of the citizen, or on the basis of one or more characteristics specific to their physical, physiological, mental, economic, cultural or social identity,”¹² while procession of personal information means that it is an operation or operations conducted in an automatic or other way such as: collecting, accounting, organizing, storing, adapting or changing, withdrawing, consulting, using, revealing through transferring, publishing or making it otherwise available, equalizing, combining, blocking, deleting or destroying. Personal data is managed by a controller, and with the written consent of the entity or person demanding procession of their data. Personal data may be processed without the consent of the carrier only with a court order, as we have stated, if the individual has broken the law.

“The transfer and publishing of data that could threaten national security do not fall under the realization of the right to free speech. Therefore, one should keep in mind that the term “national security” includes threats to the territorial and national integrity, but does not encompass all threats towards a strictly defined government.”¹³

9. The Constitution of the Republic of Macedonia, Article 26

10. Assistant Olga Gurkova, LLM (Асс. м-р Олга Гуркова), Правото на приватен живот и правото на заштита на лични податоци во Европското законодавство во судир со националната безбедност, р. 2, <https://eprints.ugd.edu.mk/1380/1/Pravoto%20na%20privaten%20zivot%20i%20pravoto%20na%20zastita%20na%20licni%20podatoci%20vo%20EU%20zakonodavstvo%20vo%20sudir%20so%20nacionalnata%20bezbednost.pdf> last visited on the 17. 03. 2018 at 00:44

11. Law on Personal Data Protection, Article 1

12. Ibid., Article 2

13. <https://www.pravdiko.mk/granitsite-na-pravoto-na-sloboda-na-izrazuvan-e/> last visited on 17.03. 2018 at 20:12

“Thus, it is clear that a government cannot plead the principle of national security to limit the right to free speech when it comes to criticism of the government, revelation of crime, and preservation of public order and peace.”¹⁴

The conclusion of this essay is that to protect its national security, the country imposes on the human rights and freedoms of the individual, especially their right to privacy, right to a home, personal information, respectively infringing on individual security. With this we may confirm that national and individual security contradict each other. If the law is broken the country can only hurt these rights with a court order.

“The list of reference objects of protection, as well as the list of values protected by the system of national security, has been changed significantly in past decades, which of course has, as a consequence and change to the entities, an endangerment of the segments of national security. For example, the danger of terrorist activities, that is to say of organized crime groups, is greater and more real to most countries in the world than a military attack by another country. In regards to examining the phenomenon of security, and further still the concept of national security, we have tried to indicate, in accordance with the modern views on these issues, through understanding of segments, or constituent elements of national security, which values are protected from the system of national security, which entities are carriers of this protection, and which entities are potential carriers of endangerment, and to indicate the need and purpose for the implementation of forensic knowledge, methods, measures and means to protect national security.”¹⁵

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