

Introduction to Fundamental Rights

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In this lecture, we will explore the topic of fundamental rights, a cornerstone of constitutional law and a vital aspect of every democratic society. Throughout this session, we will examine not only the **definition** of these rights but also their **historical evolution** and **legal significance** in various constitutional frameworks. We will explore how these rights have shaped modern legal systems and discuss the mechanisms through which they are **protected** and enforced in contemporary constitutions.

Specifically, we will begin by defining what we mean by **fundamental rights** and distinguish them from other categories of rights, such as private and public rights. From there, we will delve into their **historical development**, looking at key moments like the Magna Carta, the French Revolution, and the drafting of the U.S. Constitution. Then, we will turn our attention to **Greece's constitutional history**, tracing how fundamental rights have been enshrined and expanded over time, and explore the current **Greek Constitution** of 1975, which offers comprehensive protection of individual, social, and political rights.

Lastly, we will discuss how these rights are **safeguarded** through judicial review and other mechanisms.

Definition of Fundamental Rights

In describing the subject matter of the course, a variety of terms are used both in Greece and internationally. In addition to the term "individual and social rights," we encounter terms such as "constitutional freedoms," "individual or public freedoms," "fundamental rights," "human rights," "constitutional rights," and others. This diversity of terms is due to the multifaceted nature of the phenomenon of enshrining similar rights and the various stages of their historical evolution

The concept of a right is inseparably connected with the concept of a person, that is, one who holds rights and obligations and possesses legal capacity. A right is the

authority which the law grants to a person to realize a legally protected interest by the legal order. To one person's right, there always corresponds the obligation of another to respect it, namely to not infringe upon it.

Rights are distinguished into private and public. Some rights are recorded in the constitution due to their significant importance for individuals and the legal order at large. These are called constitutional rights or fundamental rights. The constitution enshrines these rights to surround them with its heightened formal authority.

Historical Context

I. Europe-USA

Medieval England was the cradle of the recognition of fundamental rights as we understand them today, positioned in opposition to state power. The Magna Carta Libertatum of 1215, a contractual document between the king and the lower nobles and clergy, established guarantees against arbitrary prosecutions, prohibited the removal of property without compensation, recognized the freedom of movement and residence, as well as the freedom of trade, secured the autonomy and the property of the church, and institutionalized the consent of representative bodies for the imposition of taxation (no taxation without representation). Ultimately, it secured the right of resistance aimed at ensuring the law is upheld by rulers and respecting the granted freedoms and agreed rights. The Magna Carta was ratified and reiterated in other legal documents. In the Petition of Rights of 1628, which made parliamentary consent mandatory for the levy of taxes, the Habeas Corpus Act of 1679 that protected personal security from arbitrary prosecutions, and the Bill of Rights of 1689 which recognized the supremacy of law, freedom of speech within the parliament, and the proportionality between crime and punishment. Declarations of rights and freedoms had preceded in Spain from 1188, in Hungary and Saxony from 1222, in Bavaria from 1302, in Flanders from 1312 and 1356, and also in Prussia, Aragon, and Denmark.

In modern times, the recording of fundamental rights was incorporated into the constitutions of the United States of America (Virginia, Maryland, Pennsylvania 1776, Vermont 1777, Massachusetts) and in the French Declaration of the Rights of Man and of the Citizen in 1789. The rights included in the French declaration constitute the

so-called classical catalog and are personal liberty and security, the sanctity of the home, freedom of religious expression, the right to property, and equality. These rights have been adopted by all modern states.

II. Greece

Greek constitutions have always enshrined fundamental rights, beginning from the time of the Greek Revolution, during which three revolutionary constitutions were enacted in 1822, 1823, and 1827. Regarding rights, the third constitution, established during the revolution in 1827, guaranteed many individual rights and freedoms, making it one of the most liberal constitutions of its time. In this context, many ideas from the liberal and democratic revolutions of Europe were incorporated, particularly from the French Revolution and Enlightenment thought. For instance, this constitution enshrined the fundamental principle of equality of all citizens before the law, the protection of personal liberty, the inviolable right to property, freedom of speech and press, the right of citizens to participate in political life, and the complete prohibition of slavery, which was a significant advancement for the time.

In the free Greek state, the constitutional protection of fundamental rights progressively increased with each enacted constitution. For example, the constitution of 1864 introduced political equality, meaning universal suffrage for all men. In the 1911 constitution, the protection of individual rights was enhanced, such as the sanctity of the home, personal security, and compulsory expropriation, and the social right to education was introduced. In the 1927 Constitution, provisions were made for the protection of labor by the state as well as the protection of the family. The 1952 constitution granted voting rights to women. Each newer democratic constitution or subsequent revision added new rights or improved the existing legal protections. The most comprehensive legal protection of fundamental rights is found in the current constitution, which in terms of declaration and formulation, is comparable to modern European constitutions and international treaties.

The Current Greek Constitution

Today in Greece, the Constitution of 1975 is in effect, as revised by the amendments of 1986, 2001, 2008, and 2019. The safeguarding of rights in the current Greek

Constitution is one of the most significant chapters of the constitutional text, ensuring the protection of individual, social, political, and economic rights. The Greek Constitution enshrines individual, social, and political rights.

1. Individual rights

Individual rights are primarily protected in Articles 4 to 25 of the Constitution, with key examples as follows:

- **Equality of citizens (Article 4):** All Greeks are equal before the law. Equality between men and women is guaranteed, as well as equal treatment of citizens in various sectors of public life.
- **Personal freedom (Article 5):** The right to free development of personality, free movement and residence, and protection from arbitrary arrest or restriction.
- **Security of private life (Article 9):** Private and family life are considered inviolable, and the sanctity of the home is guaranteed.
- **Freedom of expression (Article 14):** Freedom of speech and press is protected, albeit with certain restrictions for matters of public interest, defamation, and the protection of the rights of others.
- **Freedom of religion (Article 13):** Freedom of religious conscience and the protection of religious worship are guaranteed.

2. Social Rights

Social rights aim to ensure social justice and equality of opportunities, safeguarding human dignity and improving living conditions:

- **Education (Article 16):** The right to free education at all levels. The state is obligated to provide and ensure public education.
- **Health and social welfare (Article 21):** The Constitution guarantees the protection of the family, children, the elderly, and the disabled, while also providing for social security and health care.

- **Environmental protection (Article 24):** The Constitution recognizes the protection of the environment as both a state obligation and a citizen's right.

3. Political Rights

The participation of citizens in political life is guaranteed through various articles of the Constitution:

- **Electoral rights** (Articles 51 and 52): All Greek citizens have the right to vote and be elected, with universal and secret ballots, regardless of gender, religion, or other characteristics.
- **Freedom of assembly and association** (Articles 11 and 12): The rights to assemble and to form associations are protected, subject to certain restrictions for the protection of public order.

In the current Constitution, with the 2001 revision, the list of individual rights was expanded. Specifically, the right to Information and participation in the information society was established, as well as the right to the protection of personal data, and the right to the protection of genetic identity. Additionally, the principle of the social rule of law was explicitly secured.

The protection of Rights

The protection of rights in the current Constitution of Greece is a central element of the democratic order and is ensured through a system of legal mechanisms that guarantee the defense of individual and collective freedoms. These rights are inherently inalienable and non-transferable, and their protection is considered an obligation of the state.

The Constitution defines mechanisms for the protection of rights, such as, the recognition of the separation of powers (Article 26) and the independence of the judiciary (Article 26), the ability of citizens to appeal to the judiciary for the protection of their rights (Article 20). Additionally, it provides the possibility of amending the Constitution when it is necessary to adapt its provisions to contemporary social needs.

Let's examine in detail the main mechanisms and guarantees included in the Constitution through which rights are protected.

1. Principle of the Rule of Law

The protection of rights is founded on the principle of the rule of law, which stipulates that all acts of state power (legislative, executive, judicial) must be subject to legality control and be governed by the Constitution and laws. This means that state power is obligated to respect the constitutionally guaranteed rights of citizens and cannot arbitrarily violate them.

2. Judicial Protection

Article 20 of the Constitution provides for the right of citizens to appeal to the judiciary for the protection of their rights. Every individual has the right to judicial protection against any act or omission of state power that affects their rights. The decisions of the courts are binding on the administration, and citizens have the right to seek compensation or restitution for any damage they have suffered.

Judicial protection includes appeals to administrative, civil, and criminal courts, while higher jurisdictions, such as the Council of State, have the ability to review the constitutionality of laws and annul administrative acts that violate citizens' rights.

3. The Separation of Powers

The separation of powers is fundamental for the protection of rights, as it ensures that the legislative, executive, and judicial branches operate independently from one another, checking and limiting arbitrary exercise of power. The judicial branch reviews legislation and administration, preventing abuses that may violate citizens' rights.

4. Prohibition of Abusive Exercise of Rights

According to Article 25, the exercise of constitutionally guaranteed rights is subject to the principles of the rule of law and social justice. Any abusive exercise of rights is prohibited. This means that individual rights must be exercised with respect for the rights of others and the public interest.

Additionally, the Constitution recognizes that rights and freedoms are not absolute and can be restricted in certain cases when mandated by the general interest or the protection of other rights. However, these restrictions must be lawful, proportional, and compatible with the nature of the protected right.

5. The Principle of Proportionality

The principle of proportionality, as enshrined in the Greek Constitution, is one of the fundamental mechanisms for the protection of individual rights against state authority. According to Article 25(1) of the Constitution, any restriction on rights must be proportional to the objective pursued, meaning that it must be suitable, necessary, and maintain the best balance between the imposed measure and the restricted right. First, proportionality requires a clear connection between the measure taken and the objective sought, ensuring that the measure is appropriate for achieving that goal. Second, the measure must be necessary, meaning there should be no milder alternative that could achieve the same objective without excessively burdening citizens' rights. Finally, a fair balance must be struck between the benefit gained from the measure and its impact on individual rights, so that disproportionate sacrifices are not imposed on citizens. This principle, which governs the exercise of all state authority, embodies a liberal approach to state intervention, ensuring that citizens' rights are not undermined without serious justification and limiting arbitrary or excessive exercise of power. Thus, proportionality is a key factor in the constitutional protection of fundamental rights, creating a framework for state action and safeguarding democratic legitimacy and the rule of law.

6. Constitutional Review of Laws

The constitutional review of laws is a critical mechanism for the protection of constitutional rights in Greece. It is the process by which a law or regulatory act is examined to determine whether it complies with the Constitution. If a law is deemed unconstitutional, it is not applied. This review ensures that legislation does not violate the fundamental rights and freedoms of citizens and is also essential to ensure that the laws passed by Parliament do not violate the fundamental rights and freedoms enshrined in the Constitution.

Diffuse and Centralized Constitutional Review of Laws

In Germany, the constitutional review of laws is centralized and conducted by a specialized court, the Federal Constitutional Court (Bundesverfassungsgericht). In Germany, the Constitutional Court has the exclusive authority to rule on the constitutionality of laws, and its decisions have general binding effect, meaning that a law declared unconstitutional is annulled in its entirety. This centralized process prevents the dispersal of review across all courts.

Constitutional review in Germany can be both preventive (i.e., before the implementation of a law) and repressive, and it involves central cases related to the fundamental rights of citizens. The decisions of the Constitutional Court are binding on all other courts and legislative bodies in the country.

In Greece, the constitutional review of laws is diffuse. This means that every court in the country, regardless of level (first-instance courts, appellate courts, supreme courts), has the authority to examine the constitutionality of laws in the cases they adjudicate. If a court finds that a law contravenes the Constitution, it can declare it unconstitutional and not apply it to the specific case. This form of review is specific (or incidental), meaning it occurs only within the context of a particular case, and does not annul the law entirely. The law ceases to apply only to the case in question.

The diffuse nature of the review means there is no specialized court dedicated exclusively to reviewing the constitutionality of laws. Instead, all courts have the capacity to rule on constitutional matters. Additionally, the review is repressive, meaning it occurs after the law has been passed and implemented.

The higher courts of the country, such as the Council of State, the Supreme Court (Areios Pagos), and the Court of Audit (Elenktiko Synedrio), play a particularly significant role in constitutional review, as their decisions are binding on lower courts and often shape the general direction of case law.

7. Independent Authorities

The Constitution also provides for the existence of independent authorities, which function as institutional oversight mechanisms for the protection of citizens' rights. Examples of such authorities include the Ombudsman, the Data Protection Authority,

and the National Commission for Human Rights. These authorities are tasked with investigating citizens' complaints and intervening when violations of rights are identified.

8. International Protection of Rights

The Greek Constitution guarantees the right of citizens to appeal to international bodies for the protection of their rights, such as the European Court of Human Rights (ECHR). Greece has ratified various international treaties and conventions that enshrine human rights, such as the European Convention on Human Rights (ECHR), which provides additional guarantees for the protection of individual and collective freedoms.

9. Democratic Legitimacy and Political Control

Democratic legitimacy is also an important mechanism for the protection of rights. The executive branch is subject to oversight by the legislative branch, and government policies can be scrutinized through parliamentary procedures. Citizens have the right to participate in democratic processes and influence decisions that affect their rights.

Conclusion

In conclusion, the foundation of rights in constitutions, international treaties, and other supralegal documents is shaped by the historical and social developments of each era. Although fundamental rights are widely enshrined in constitutions, it is evident that modern social changes demand the protection of an ever-growing range of rights. For instance, the recognition of animal rights has not yet been integrated into most constitutions. Moreover, new technological advancements, particularly in the field of artificial intelligence, will inevitably create the need for additional constitutional safeguards. Therefore, despite the constitutional protection of rights, the judiciary plays a crucial role in ensuring their defense. The key to protecting fundamental rights is a truly independent judiciary, free from the influence of the legislative and executive branches.

