

# **The Right to Resistance and Article 23 of the Charter of Fundamental Rights and Freedoms**

## **Abstract**

The aim of this diploma thesis is a thorough analysis of Article 23 of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter"), its issues, analysis of current sub-constitutional legislation and international comparison. Following on from the research project, the diploma thesis aims to find out to what extent the wording of Article 23 of the Charter corresponds to our historical experience, or whether Article 23 of the Charter is aimed at other situations (i.e. whether the wording of Article 23 of the Charter reflects our history in connection with by defining the right to protest in the Charter).

The main methods chosen for writing the thesis were analysis, international comparison of foreign constitutions, and statistics. When writing the thesis, I drew on professional literature, professional articles, legal regulations, relevant jurisprudence and, last but not least, Internet sources that were the basis for the statistics of participants in the resistance against communism.

The diploma thesis is divided into four main parts. The first part of the thesis is devoted to a historical excursion. For better understanding and context, various approaches to the right to resistance are presented, from the thinkers of Ancient China, Greece and Rome to approaches to the right to resist in the 19th and 20th centuries. This section contains, among others, the ideas of Bartolomé de las Casas, Martin Luther and other reformers. The work also devotes space to Czech thinkers (J. Hus, J. A. Komenský, Šimon Partlic and Karel Havlíček Borovský). In addition to the philosophical approaches themselves, contemporary legal documents relating to the right to resist are also presented.

The second part is devoted to the analysis of the concept of the right to protest in its historical, religious, anthropological, international legal contexts, etc., including its ambiguous definition. Included are, for example, selected positions of the churches on the right to resistance, an anthropological point of view with an emphasis on the work of Professor Richard Wrangham. Next, related institutions of the right to resistance (civil disobedience, etc.), related terms and institutions in the legal system of the Czech Republic and the right to resistance from the point of view of international law are described and analyzed.

The third part deals in detail with the individual components of Article 23 of the Charter, while each component is compared with the wording of the right to resistance in foreign

constitutions. The following was subjected to analysis: the issue of subjects (to whom does the right belong?), the right to resist as an obligation, resistance according to Article 23 of the Charter (form), against whom can resistance be directed in the regime of Article 23 of the Charter?, conditions for using the right of resistance, and positivization of the right to resist.

The work of T. Ginsburg, G. Lansberg-Rodriguez and M. Versteeg was used as a basis for comparing the wording of Article 23 of the Charter with the wording of the right to resistance in foreign constitutions, which provides an overview of the individual wordings of the right to resistance in constitutions around the world. In the analysis of Article 23 of the Charter, consideration of the sufficiency of the legal regulation is not missing. Furthermore, an overview of the jurisprudence relating to Article 23 of the Charter and the right to resist is given.

The fourth part contains an overview of laws relating to the right to resistance in response to independence from Austria-Hungary, Nazi occupation and the fall of the communist regime in Czechoslovakia. For the needs of this diploma thesis, statistics of awarded participants for resistance against the communist regime were drawn up, the aim of which was to find out whether the wording of Article 23 of the Charter reflects the historical experience of the Czech Republic, or whether Article 23 of the Charter is aimed at other situations (i.e. whether the wording of Article 23 of the Charter reflects our history in connection with the definition of the right to protest in the Charter). Based on the analysis of 390 award-winning medallions, it was shown that the resistance was conceptually consistent, long-term and most often the activity of individuals and their groups. In conclusion, it can be summarized that the wording of Article 23 of the Charter does not reflect historical experience, as it would probably be applied in a situation in the form of a mass action of citizens. If it were necessary for citizens (people) to resist, it would most likely be necessary in the case of a successful restoration of the order of human rights and freedoms to adopt new legislation that would deal with individual cases of individual resistance, as in the past.