Wawrzyniec Kowalski¹

Freedoms and Human Rights in the Venezuelan Constitution in the Context of the Functioning of an Authoritarian State

Keywords: human rights, Latin America, authoritarian regime, Venezuela, Nicolas Maduro

Słowa kluczowe: prawa człowieka, Ameryka Łacińska, rządy autorytarne, Wenezuela, Nicolas Maduro

Abstract

The purpose of the article is to draw attention to the functioning of constitutional guarantees of human rights and freedoms contained in the Constitution of the Bolivarian Republic of Venezuela. The author addresses the issue of human rights protection, including the development of institutions guaranteeing their protection in the context of the authoritarian model of governance in Venezuela. The paper is a theoretical attempt to present the problem of the functioning of human rights institutions in Venezuela at the constitutional level after the seizure of power by President Nicolas Maduro. It also attempts to determine to what extent the Chavista camp suspended constitutional guarantees of protection of human rights and freedoms in Venezuela. At the same time, the article describes how the petrification of the system of power by Nicolas Maduro affects the state of human rights protection in the country.

¹ ORCID ID: 0000-0002-7426-9593, Ph.D., Institute of Security and Defense, Department of Security, Logistics and Management, Military University of Technology. E-mail: wawrzyniec.kowalski@wat.edu.pl.

Streszczenie**Wolności i prawa człowieka w Konstytucji Wenezueli –
uwagi na tle funkcjonowania państwa autorytarnego**

Celem artykułu jest zwrócenie uwagi na funkcjonowanie konstytucyjnych gwarancji wolności i praw człowieka zawartych w treści konstytucji Boliwariańskiej Republiki Wenezueli. Autor odnosi się do problematyki stanu ochrony praw człowieka, w tym rozwoju instytucji gwarantujących ich ochronę w kontekście autorytarnego modelu sprawowania władzy w tym państwie. Praca stanowić ma teoretyczną próbę ujęcia problemu funkcjonowania instytucji ochrony praw człowieka w Wenezueli na szczeblu konstytucyjnym, w okresie następującym po zdobyciu władzy przez prezydenta Nicolasa Maduro. Artykuł ma umożliwić odpowiedź na pytanie, w jakim stopniu w Wenezueli nastąpiła erozja konstytucyjnych gwarancji ochrony wolności i praw człowieka w kontekście sprawowania władzy przez obóz chawistów. Wskazuje jednocześnie, jak petryfikacja systemu władzy przez Nicolasa Maduro oddziałuje na stan ochrony praw człowieka w tym państwie.

Human rights, their constitutional grounds, and, most importantly, their actual status are particularly important in authoritarian states. Although it may sound like a truism, it adequately reflects the reality of how the system of human rights protection functions in many countries around the world. The issue in question is fundamental in countries where an authoritarian regime is characterized not only by the frequent use of mechanisms typical of totalitarian states by groups in power, such as state violence and terror but also by such forms of petrification of an illiberal political system as the use of legal nihilism, election manipulation or corruption. The choice of Venezuela as a case study for this paper was by no means random. The humanitarian and constitutional crisis in Venezuela triggered by the appointment of the head of state, which has been ongoing for over two years, one of the highest crime rates in the world, or the notorious human rights violations by the government provoke thought as to the reasons for the ineffectiveness of constitutional guarantees of human rights.

Compared to the countries such as Chile, Argentina, Bolivia, and Paraguay, which had experienced the tragic consequences of illiberal governments, the Venezuela of the 1960s appeared to be an exceptionally stable state with implemented democratic forms of government. The citizens of Venezuela did not experience violence and terror committed by military juntas, death squads, or pro-government paramilitary forces. The situation changed in 1999, after the democratically elected President of the Republic, Hugo Chavez², assumed power and was further aggravated after 2013, when Chavez's political successor Nicolas Maduro, took office. Under the rules of Chavez and Maduro, Venezuela came to be seen as an authoritarian state³.

Although it might seem that the political conditions in contemporary Venezuela are rather an unusual subject of research, especially from the Polish perspective⁴, the academic literature – both domestic and foreign – abounds in articles and monographs devoted to this topic. However, research on the functioning of the constitutional catalog of human rights and freedoms is still relatively limited, especially in the context of the rule by the Chavista camp.

The author intends to demonstrate how the system of legal guarantees of human rights is shaped in the Venezuelan Constitution. At the same time, the author addresses the issue of human rights protection, including the functioning of institutions guaranteeing their protection in the context of the authoritarian model of governance in Venezuela, focusing on the system of justice.

There is no doubt that the concept of constitutional guarantees of human rights and freedoms plays an exceptionally important role, in particular in

² Publications on the figure of H. Chavez: K. Barcik, *Myśl społeczna Hugo Chaveza*, "Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia Sectio I" 2014, vol. XXXIX, No. 2; R. Carroll, *Comandante: Hugo Chávez's Venezuela*, New York 2014; M. Derham, *Politics in Venezuela: Explaining Hugo Chávez*, Bern 2010; D. Hellinger, A. Petros Spanakos, *The legacy of Hugo Chavez*, "Latin American Perspectives" 2016, vol. 44, No. 1.

³ C. de la Torre, *Hugo Chávez and the diffusion of Bolivarianism*, "Democratization" 2017, vol. 24 No. 7, pp. 1271–1272; M. Glasius, *What authoritarianism is... and is not: a practice perspective*, "International Affairs" 2018, vol. 94, No. 3, p. 532.

⁴ In the Polish literature on the subject, the issue of the Venezuelan political system has been addressed by: A. Chojnacki, *Demokracja w Wenezueli. Krótki zarys historyczny*, "Ameryka Łacińska" 2010, No. 1; K. Krzywicka, *Pozycja i rola sił zbrojnych w procesie przekształcania państwa – casus Wenezueli*, "Ameryka Łacińska" 2012, vol. 75, No. 1; Idem, *Partie polityczne i partycypacja obywatelska w Wenezueli*, "Teki Komisji Politologii i Stosunków Międzynarodowych" 2010, vol. V.

countries that have undergone a significant political transformation. From the Polish or Central European perspective, we perceive the process of constitutional transformation as an indispensable element of the change from an illiberal regime to a democratic one, which is accompanied by a significant gain in the importance of individual rights in the system of domestic law. The culmination of this process in the vast majority of cases is the adoption of a new constitution. Frequently, especially in the case of Latin American countries, the entry into force of an entirely new constitution marks a turning point, indicative of a change of the political system. Therefore, it seems reasonable to assume that the enactment of a new, democratic constitution and the creation of an extensive system of standards for the protection of human rights can be regarded as a kind of test of the degree of democratization of the state. Nevertheless, in the case of Venezuela, the process ran in the opposite direction. Paradoxically, Chavez came to power legally. The state avoided a bloody dictatorship, and the Constitution was adopted in 1999⁵. The entry into force of the new Constitution was one of the key elements of the social and political process that was pompously called the “Bolivarian Revolution”. Over the years, however, Venezuela turned into an illiberal state with a decisive role played by the military.

The current view is that most Latin American countries are increasingly committed to developing democratic institutions, with democratically elected bodies replacing authoritarian or quasi-authoritarian leaders. As C. Botero points out, in terms of the degree of democratization, “Latin America is doing well. Of 19 countries, Cuba alone lacks a democratic constitution and has not held free elections this century. All others have, at least nominally, multiparty regimes and a vibrant political debate”⁶.

⁵ According to A.R. Brewer-Carías: “Moreover, the constitution-making process became an endless coup d’état, when the constituent assembly, elected in July 1999, began to violate the existing 1961 constitution”. As quoted in: A.R. Brewer-Carías, *The 1999 Venezuelan Constitution-Making Process as an Instrument for Framing the Development of an Authoritarian Political Regime*, [in:] *Framing the State in Times of Transition*, ed. Laura E. Miller, Washington 2010, p. 507.

⁶ C. Botero, *The Rule of Law in Latin America: From Constitutionalism to Political Uncertainty*, [in:] *Unfulfilled promises. Latin America Today*, eds. M. Shifter, B. Binetti, Washington 2019, p. 13. In 2014, G. Negretto optimistically remarked that in Latin America: “democracy is well entrenched”. G. Negretto, *Authoritarian constitution making: The role of the military in Latin*

The 1999 constitution of Venezuela, which is a manifestation of the tradition of presidentialism typical of the continent and one of the most extensive constitutions in the world, contains a surprisingly comprehensive catalog of human rights and their guarantees. Article 2 clearly emphasizes the importance of human rights⁷. It is noteworthy that in Art. 23 the legislator explicitly highlights the importance of the international conventions on the international human rights law adopted by Venezuela.

The Constitution guarantees personal, political, economic, social, and cultural freedoms and rights. It also contains a catalog of constitutional means of protecting those freedoms and rights. The legislator has classified personal freedoms and rights in an exceptionally extensive third section of the Constitution, entitled “Duties, human rights, and guarantees”. The section is further divided into chapters. Chapter I contains general provisions. Chapter II regulates issues related to nationality and citizenship. Chapter III contains a catalog of civic rights. Chapter IV is devoted to political rights and the institution of a referendum. Chapter V defines social and family rights, Chapter VI defines culture and educational rights, while Chapter VII defines economic rights. The rights of native people are set out in Chapter VIII. A particularly noteworthy type of rights – the so-called third-generation human rights (i.e., Environmental Rights) – are contained in Chapter IX. The last chapter defines the duties of citizens.

From the point of view of the analyzed issue, special attention should be paid to those rights that the public administration most frequently violates. One should mention here the freedom of expression (Art. 57), the right to peaceful demonstrations, and the prohibition of controlling them using firearms and toxic substances (Art. 68). Moreover, the right of every individual to receive protection from the state and to have one’s dignity respected by the state’s security forces, mentioned in Art. 55, the right to a fair trial before a competent and independent court, as well as the right to be presumed innocent until proven otherwise, mentioned in Art. 49, is not always respected. One should also mention here the guarantee mentioned in Art. 49 (4), which

America, [in:] *Constitutions in authoritarian regimes*, eds. T. Ginsburg, A. Simpser, Cambridge 2014, p. 108. Quite an opposite view is held by Paul Lewis in: *Authoritarian Regimes in Latin America*, Oxford 2006, p. 248.

⁷ The Constitution of the Bolivarian Republic of Venezuela of December 20, 1999, Art. 2.

reads that: “No person shall be put on trial without knowing the identity of the party judging him or her, nor be adjudged by exceptional courts or commissions created for such purpose”⁸.

The Basic Law also guarantees so-called social rights, including the right to housing, employment, or health care. It is a legacy of Chavez, who wanted to transform the poorest social groups into politically engaged citizens⁹. Articles 83–85 guarantee the right to health care, calling it a “fundamental social right and the duty of the State”. This right is regarded as an elaboration of the right to life, with the state being its guarantor (Art. 83). As demonstrated, the extensive, normative regulation of individual rights in Section III of the Constitution precisely defines the limits of state interference in the indicated rights and freedoms.

Even the most perfect human rights system under domestic law will not function properly without an effective mechanism of checks and balances ensuring the separation of powers. It is worth noting that, instead of the conventional tri-partite system of separation of powers, Venezuela has a five-element model with additional citizen and electoral powers. Regarding this elaborated modification of Montesquieu’s concept of the separation of powers, P. Daroszewski comments that: “The establishment of citizen power should be linked to the idea of participatory democracy, which in Venezuela has risen to the rank of a basic political principle”¹⁰. In turn, K. Krzywicka observes that the growing importance of direct democracy mechanisms may, conversely, pose a threat to democracy due to the “de-institutionalization and decomposition of the Venezuelan political system”¹¹.

Undoubtedly, it is a political practice that shapes the political system, leading – as is the case in Venezuela – to the progressive erosion of the legal system and decreasing respect for human rights. This process directly impacts the increasingly ineffective functioning of the constitutional guarantees of

⁸ Art. 49, The Constitution...

⁹ Ibidem, Art. 82.

¹⁰ P. Daroszewski, *Władza obywatelska w horyzontalnym modelu podziału władzy w Wenezueli*, “Przegląd Konstytucyjny” 2020, No. 3, p. 43.

¹¹ K. Krzywicka, *System partyjny Wenezueli: dylematy reprezentacji i partycypacji*, [in:] *Latynoameryka u progu trzeciego stulecia niepodległości: przywództwo, idee i systemy polityczne*, ed. P. Łaciński, Warsaw 2011, p. 52.

human rights and freedoms, which is accompanied by radicalization and increasing brutality of the bodies responsible for internal security.

A good indicator of the political situation in a given country is the growing role of the armed forces. It should be remembered that under the government of Maduro, the role of the military, which is a guarantor of the survival of the ruling camp, is even greater than under his predecessor.

The situation looked utterly different during the rule of Chavez's successor and personal nominee – Nicolas Maduro, who lacked the charisma of his predecessor. Maduro's rule is characterized by mounting anti-government protests against pervasive crime, hyperinflation, and political corruption. A factor that contributed to the radicalization of the polarization of the political scene into the Chavista camp and the opposition, in its broad sense, was Maduro's victory in the 20 May 2018 presidential election, widely regarded as fraudulent. The United States, numerous countries in the region, and the European Union instead recognized the President of the National Assembly, Juan Guaido, as acting head of state.

Faced with the threat of civil war and loss of power, the President and the government are increasingly resorting to methods characteristic of legal nihilism. According to A. Bosiacki, actions of legal nihilism include arbitrary shaping of the system of norms by people in power, using violence and terror to strengthen the existing power structures¹². All of the examples can be observed in the case of Venezuela. The significant decline in the observance of the rule of law in the country is addressed by J. Corrales, who attributes the rise of autocratic legalism to the period of *chavismo*¹³.

The annual reports of the UNHCR provide alarming data on human rights violations in Venezuela. The 2019 report identified numerous violations of the right to freedom of opinion and expression, including arbitrary detentions for public speeches¹⁴. Other violations highlighted in the report include repres-

¹² A. Bosiacki, *Między nihilizmem prawnym a socjalistycznym normatywizmem. Z rozważań nad koncepcją prawa państwa stalinowskiego*, [in:] *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin*, Białystok–Katowice 2010, vol. II, p. 117 et seq.

¹³ J. Corrales, *Autocratic Legalism in Venezuela*, "Journal of Democracy" 2015, vol. 26, No. 2, p. 38.

¹⁴ *Human rights in the Bolivarian Republic of Venezuela*, Report of the UNHCR on the situation of Human rights in the Bolivarian Republic of Venezuela, 2019, A/HRC/41/18, p. 6

sion and harassment of political opponents. Neglect of public infrastructure, continuing underinvestment, and deterioration of the public services sector make the right to a decent life unfeasible. The health service is also in a tragic situation, which makes it impossible to guarantee the right to health, so emphasized during the Bolivarian revolution.

An infamous symbol of the rule of the PSUV is the Chavista-controlled Supreme Court. Problems with its independence are the consequences of the adoption in violation of the Constitution (Article 203) of the Supreme Court Organic Law in May 2004. T. Moustafa points to an observable feature that authoritarian states have in common – courts in such countries can serve as a kind of counterbalance to democratically elected institutions, obviously following the will of the ruling camp¹⁵.

The first signs of the decay of the judiciary could be seen as early as 1999 after Chavez came to power. The Constituent Assembly at that time issued a decree, under which a commission was created, vested with the power to remove judges from office immediately for reasons such as corruption and judicial delays. The report indicates that the judiciary, an informal ally of the ruling camp, is one of the main factors leading to the growing lack of respect for human rights in the country.

It would be justified to say that as the process of centralization of state structures around the Chavista camp continues, with both constitutional and extra-constitutional means of influence are concentrated in the hands of Nicolas Maduro, the importance of the rule of law is rapidly declining, and the ruling camp can increasingly rely on the support of the judicial authorities. The institutionalization of authoritarian power is thus becoming a fact.

It should be remembered that ever since the 1990s, the principles of autonomy and independence of the judiciary in Venezuela have been called into question. A 2004 report by HRW indicated that “only 20 percent of the country’s 1,732 judges currently hold permanent appointments and enjoy the rights established in the constitution”¹⁶. The remaining 80% hold positions as ‘pro-

and the following.

¹⁵ T. Moustafa, *Law and Courts in Authoritarian Regimes*, “Annual Review of Law and Social Science” 2014, vol. 10, p. 286.

¹⁶ *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Human Rights Watch, 2004.

visional' or 'temporary' judges. Commenting on the contemporary judiciary in Venezuela, it would be accurate to recall the observation of M. Shapiro, who pointed out that courts which obey the regime "undermine any public perception of their independence and thus lose their perceived legitimacy"¹⁷.

What is observable is the extreme brutality of the police, the Bolivarian National Guard, and notorious *Colectivos* (which operate entirely outside the system of law) against the demonstrators. Their criminal activities, carried out with the ruling camp's unofficial consent, are one of the many factors contributing to the demise of the human rights protection system.

The complete economic collapse of the country, constant hyperinflation, the polarization of the political scene unseen in any other countries of the region, combined with a completely inept and extremely corrupt public administration, have led to a combination of violence and destitution that is the everyday reality of the citizens of Venezuela.

It seems justified to conclude that the fundamental reason for the permanent lack of respect for human rights and freedoms in Venezuela are the aspirations of the ruling camp centered around Maduro to centralize the system of power, subordinating the legislative, executive, and judicial power to the Chavistas. The lack of respect for human rights is growing exponentially as the economic crisis in the country deepens. Maduro, who feels threatened with the loss of power, is currently treating the armed forces to guarantee his staying in office. A common feature characterizes all authoritarian regimes, namely that successors of individuals who enjoy great authority from the very beginning of their rule face the problem of the legitimacy of power. That, in turn, triggers continued erosion of the legal system and human rights and freedoms.

Many factors contribute to the current exceptionally low level of respect for human rights. These include the lack of an independent judiciary and the feeling of insecurity experienced by the judges in terms of their position. This peculiar state of emergency in the judiciary purposefully maintained over the years has a destructive impact on implementing constitutional guarantees of rights and freedoms. The situation is exacerbated by the omnipotence of the

¹⁷ M. Shapiro, *Courts in Authoritarian States*, [in:] *Rule by Law. The Politics of Courts in Authoritarian Regimes*, eds. T. Ginsburg, T. Moustafa, Cambridge 2008, p. 334.

executive power, which, opposing the model of liberal democracy, is trying by all means to legitimize its actions.

In conclusion, it should be pointed out that even the most complex system of constitutional guarantees is defenseless unless protected by an independent and autonomous judiciary system.

Literature

- Barcik K., *Mysł społeczna Hugo Chaveza*, "Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia Sectio I" 2014, vol. XXXIX, No. 2.
- Bosiacki A., *Między nihilizmem prawnym a socjalistycznym normatywizmem. Z rozważań nad koncepcją prawa państwa stalinowskiego*, [in:] *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin*, Białystok–Katowice 2010, vol. II.
- Botero C., *The Rule of Law in Latin America: From Constitutionalism to Political Uncertainty*, [in:] *Unfulfilled promises. Latin America Today*, eds. M. Shifter, B. Binetti, Washington 2019.
- Brewer-Carias A.R., *The 1999 Venezuelan Constitution-Making Process as an Instrument for Framing the Development of an Authoritarian Political Regime*, [in:] *Framing the State in Times of Transition*, ed. Laura E. Miller, Washington 2010.
- Carroll R., *Comandante: Hugo Chávez's Venezuela*, New York 2014.
- Chojnacki A., *Demokracja w Wenezueli. Krótki zarys historyczny*, "Ameryka Łacińska" 2010, No. 1.
- Corrales J., *Autocratic Legalism in Venezuela*, "Journal of Democracy" 2015, vol. 26, No. 2.
- Daroszewski P., *Władza obywatelska w horyzontalnym modelu podziału władzy w Wenezueli*, "Przegląd Konstytucyjny" 2020, No. 3.
- Derham M., *Politics in Venezuela: Explaining Hugo Chávez*, Bern 2010.
- Glasius M., *What authoritarianism is... and is not: a practice perspective*, "International Affairs" 2018, vol. 94, No. 3.
- Hellinger D., Petros Spanakos A., *The legacy of Hugo Chavez*, "Latin American Perspectives" 2016, vol. 44, No. 1.
- Krzywicka K., *System partyjny Wenezueli: dylematy reprezentacji i partycypacji*, [in:] *Latynoameryka u progu trzeciego stulecia niepodległości: przywództwo, idee i systemy polityczne*, ed. P. Łaciński, Warsaw 2011.
- Krzywicka K., *Partie polityczne i partycypacja obywatelska w Wenezueli*, "Teki Komisji Politologii i Stosunków Międzynarodowych" 2010, vol. V.

- Krzywicka K., *Pozycja i rola sił zbrojnych w procesie przekształcania państwa – casus Wenezueli*, “Ameryka Łacińska” 2012, vol. 75, No. 1.
- Lewis P.H., *Authoritarian Regimes in Latin America*, Oxford 2006.
- Moustafa T., *Law and Courts in Authoritarian Regimes*, “Annual Review of Law and Social Science” 2014, vol. 10.
- Negretto G., *Authoritarian constitution making: The role of the military in Latin America*, [in:] *Constitutions in authoritarian regimes*, eds. T. Ginsburg, A. Simpser, Cambridge 2014.
- Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Human Rights Watch 2004.
- Shapiro M., *Courts in Authoritarian States*, [in:] *Rule by Law. The Politics of Courts in Authoritarian Regimes*, eds. T. Ginsburg, T. Moustafa, Cambridge 2008.
- de la Torre C., *Hugo Chávez and the diffusion of Bolivarianism*, “Democratization” 2017, vol. 24, No. 7.