

# **An Introduction to Iranian Constitutional Law**



Research Institute of the Constitutional Council

عنوان قراردادی: ایران. قانون اساسی (جمهوری اسلامی)، (Iran. Qanun assasi) Jomhuri Eslami  
ایران. قانون اساسی (جمهوری اسلامی). انگلیسی  
عنوان و نام پدیدآور: [Book]/ [translator Al-Mustafa International  
Research Institute (P.)].  
مشخصات نشر: تهران: شورای نگهبان، پژوهشکده شورای نگهبان، ۱۴۰۴ = ۲۰۲۵ م.  
مشخصات ظاهری: ۲۰۴ ص؛ ۱۴ × ۲۱ س م.  
شابک: ۹۷۸-۶۲۲-۵۰۶۸-۷۵-۹  
وضعیت فهرست نویسی: فیپا  
یادداشت: زبان: انگلیسی.  
موضوع: قانون اساسی -- ایران، Iran -- Constitutions  
موضوع: قانون اساسی -- ایران -- تفسیر و استنباط، Interpretation and construction -- Iran -- Constitutions  
شناسه افزوده: پژوهشگاه بین المللی المصطفی (ص)  
شناسه افزوده: شورای نگهبان. پژوهشکده  
رده بندی کنگره: KMH۲۰۶۴/۵۱۳۶۸  
رده بندی دیویی: ۳۴۲/۵۵۰۲۳  
شماره کتابشناسی ملی: ۱۰۲۹۱۹۹۶

## An Introduction to Iranian Constitutional Law

Author: Constitutional Council Research Institute

Translated by: Al-Mustafa University Research Center

Publisher: Constitutional Council Research Institute Publication Center

First Edition: Winter 2025

Print Run: 500

ISBN: 978-622-5068-75-9

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Printed in the Islamic Republic of Iran

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## Table of Contents

<b>Foreword</b>	<b>1</b>
<b>Chapter One: Sovereignty</b>	<b>3</b>
1. The Foundation of Sovereignty in the Constitution of the Islamic Republic of Iran	4
1-1: Divine Sovereignty in the Constitution	5
1-2: National Sovereignty in the Constitution	5
<b>Chapter Two: The Rights of the People</b>	<b>9</b>
1. Civil and Political Rights	11
1-1: The Right to Establish and Operate Associations	11
1-2: The Right to Assembly and Demonstrations	13
1-3: The Right to Freedom of Publications and the Press	14
1-4: The Right to Citizenship	15
2. Judicial Rights	16
2-1: The Right to Litigation	17
2-2: The Principle of Legality of Punishments	18
2-3: The Right of Access to Legal Counsel	18
2-4: The Principle of Presumption of Innocence	19
2-5: The Principle of Prohibition of Arbitrary Detention	20
2-6: Prohibition of Torture	20
3. The Economic, Social, and Cultural Rights	21
3-1: The Right to Choose One's Occupation	21
3-2: The Right to Free Education	22
3-3: The Right to Adequate Housing	23
3-4: The Right to Social Security	23

4. Personal and Individual Rights -----	24
4-1: Immunity from Assaults (on Dignity, Life, and Property) -----	25
4-2: Prohibition of Violating Dignity and Honor -----	26
4-3: Prohibition of Inquisition of Beliefs -----	27
4-4: Immunity from Disclosure of Private Matters -----	27
4-5: Prohibition of Harm to Others -----	28
5. Women’s Rights and the Family-----	29
6. Rights of Religious Minorities -----	31
 <b>Chapter Three: Leadership -----</b>	<b>33</b>
1. The Position of the Leader in the Current Political System -----	35
1-1: The Guardian of the Affairs and Leader of the Ummah-----	35
1-2: The Highest Official Authority in the Islamic Republic-----	36
1-3: The Head and Direct Executor of “Part of” the Executive Power	36
2. Qualifications and Attributes of the Leader and the Manner of His Selection-----	37
3. Duties and Authorities of the Supreme Leader in the Constitution--	37
4. Responsibilities of the Supreme Leader -----	39
4-1: Political Responsibility -----	40
4-2: Legal Responsibility -----	40
4-3: Financial Responsibility -----	41
 <b>Chapter Four: The Assembly of Experts for Leadership-----</b>	<b>43</b>
1. Criteria for the Election of Members of the Assembly of Experts----	45
2. Powers and Authorities of the Assembly of Experts for Leadership -	46
2-1. Selection of the Leader -----	46
2-2. Establishment of the Commission on Articles 107 and 109 -----	46
2-3. Supervision Over the Supreme Leader -----	47



<b>Chapter Five: The Islamic Consultative Assembly</b>	<b>49</b>
1. The Position of the Islamic Consultative Assembly in the Islamic Republic of Iran	51
1-1. The Position of the Islamic Consultative Assembly in the Constitution of the Islamic Republic of Iran	51
1-2. The Islamic Consultative Assembly and Other Legal Institutions in the Islamic Republic of Iran	52
2. Manner of Election, Qualifications, and Duties of the Representatives of the Islamic Consultative Assembly	55
2-1. Manner of Election of Representatives	55
2-2. Number of Representatives of the Assembly	56
2-3. Oath of Office of Representatives	56
2-4. Characteristics of Membership in the Assembly	56
2-5. Termination of the Representative's Term	58
3. Structure of the Islamic Consultative Assembly	59
3-1. Committees of the Assembly	59
3-2. Affiliated Institutions	61
4. Powers of the Islamic Consultative Assembly	62
4-1. Legislation	63
4-2. Oversight	65
 <b>Chapter Six: The Guardian Council</b>	 <b>77</b>
1. Structure and Organization of the Guardian Council	79
1-1. Members of the Guardian Council	79
1-2. Sessions of the Guardian Council	80
1-3. Organs of the Guardian Council	82
2. Duties and Powers of the Guardian Council	82
2-1. Supervision of the Enactments of the Islamic Consultative Assembly	83

2-2. Supervision of Elections-----	85
2-3. Interpretation of the Constitution -----	86
2-4. Religious Supervision over Laws and Regulations -----	86
2-5. Other Powers of the Guardian Council -----	87
 <b>Chapter Seven: The Expediency Discernment Council-----</b>	<b>89</b>
1. Structure and Organization of the Expediency Discernment Council -----	91
1-1. Authority for Convening the Expediency Discernment Council-----	91
1-2. Authority for Appointing the Members of the Expediency Discernment Council and the Composition of Its Membership -----	92
2. Duties and Powers of the Expediency Discernment Council -----	93
2-1. Determination of the Expediency of the System-----	93
2-2. Advising the Supreme Leader -----	94
2-3. Supervision over the Proper Implementation of the General Policies of the System-----	94
2-4. Other Duties Provided in the Constitution -----	95
 <b>Chapter Eight: The Executive Branch -----</b>	<b>97</b>
1. The Nature of the Executive Branch-----	98
2. The Position of the President in the System of the Islamic Republic of Iran-----	99
2-1. Legal Analysis of the Position and Status of the President in the Legal System of the Islamic Republic of Iran -----	100
2-2. The Manner of the President's Relations with Other Legal Institutions in the Islamic Republic of Iran -----	105
2-3. Legal Analysis of the Structure of the Executive in the Islamic Republic of Iran-----	107

2-4. The Process of Electing the President in the Legal System of the Islamic Republic of Iran -----	108
2-5. The Process of Termination of the Presidential Term of Office --	111
2-6. The President's Associates -----	113
3. Duties and Powers of the President in the Islamic Republic of Iran	116
3-1. Duties and Powers of the President as the Second-Highest Official of the Country -----	116
3-2. Duties and Powers of the President as Head of the Executive Branch -----	121
3-3. Position, Duties, and Powers of the Council of Ministers and the Ministers in the Legal System of Iran -----	124
3-4. Ministers-----	129
 <b>Chapter Nine: The Judiciary -----</b>	<b>135</b>
1. Structure and Organization of the Judiciary-----	137
1-1. Judicial Organizations and Structures of the Judiciary -----	137
1-2. Non-Judicial Institutions -----	140
2. Duties and Powers of the Judiciary -----	141
2-1. Adjudication and Issuance of Judgments in Lawsuits and Complaints -----	142
2-2. Restoration of Public Rights and Promotion of Justice and Legitimate Freedoms-----	142
2-3. Supervision over the Proper Implementation of Laws-----	143
2-4. Detection of Crimes and Prosecution and Punishment of Offenders	144
2-5. Prevention of Crime and Rehabilitation of Offenders-----	144
3. Duties and Powers of the Head of the Judiciary -----	145
3-1. Duties of the Head of the Judiciary under Article 158 of the Constitution-----	145

3-2. Duties and Powers of the Head of the Judiciary under Other Articles of the Constitution -----	145
3-3. Duties and Powers of the Head of the Judiciary under Ordinary Laws -----	147
4. The Relationship of the Judiciary with the Other Branches of Government -----	148
4-1. The Role of the Minister of Justice -----	148
4-2. Judicial Supervision over Political Officials -----	148
<b>Chapter Ten: Islamic Councils -----</b>	<b>151</b>
1. The Islamic Councils -----	153
2. Duties and Powers of the Islamic Councils -----	155
2-1. Decision-Making and Regulation in Local Affairs -----	155
2-2. Supervision over the Administration of Local Affairs -----	156
2-3. Cooperation and Coordination of the Councils with Other Authorities and Bodies -----	156
2-4. Administration of Local Public Affairs -----	156
2-5. Submitting Proposals to the Central Government Institutions --	157
<b>Chapter Eleven: The Armed Forces -----</b>	<b>159</b>
1. The Army of the Islamic Republic of Iran -----	161
2. The Islamic Revolutionary Guard Corps (IRGC) -----	162
3. The Law Enforcement Force of the Islamic Republic of Iran -----	163
<b>Chapter Twelve: The Supreme National Security Council -----</b>	<b>165</b>
1. Duties and Authorities -----	166
2. Structure and Organization -----	167
<b>Chapter Thirteen: Economy and Financial Affairs -----</b>	<b>169</b>

1. Private Ownership -----	172
2. Public Ownership -----	172
3. Regulations of the Economy of the Islamic Republic of Iran -----	173
4. Article 44 of the Constitution and the State, Cooperative, and Private Sectors -----	174
 <b>Chapter Fourteen: Foreign Policy -----</b>	<b>175</b>
1. Principles Safeguarding National Interests -----	177
2. Principles Safeguarding the Rights of All Human Beings, Particularly the Oppressed of the World-----	177
 <b>References -----</b>	<b>179</b>



## **Foreword**

The “Constitutional Council Research Institute”, as the legal advisory arm of the Constitutional Council, in addition to providing consultative opinions to the Council regarding the compliance or non-compliance of the Islamic Consultative Assembly’s legislation and government-approved statutes with the Constitution, also engages in theoretical and applied studies on various constitutional law matters.

This research institute, which operated under the name “Constitutional Council Research Center” from 1997 to mid-2013, underwent a rebranding and restructuring in 2013 to further enhance its research services to both the Constitutional Council and the country’s legal community. Upon this restructuring, it began new activities under the name “The Constitutional Council Research Institute.

In pursuit of its objectives, the institute employs young, talented scholars from both academic universities and Islamic seminaries (Ḥawzah ‘Ilmiyyah). Various research topics relevant to the Constitutional

Council's jurisdiction and the needs of the academic community were identified and prioritized accordingly. The results of these endeavors are presented to the nation's academic community in the form of academic research articles, reports, expert analyses, and various books.

The present book is part of a series of publications aimed at elucidating the various dimensions of the Islamic Republic of Iran's constitutional system, based on the principles and objectives of this legal framework. As one of the core initiatives of the Constitutional Council Research Institute, this work is structured into fourteen chapters, aiming to explain and analyze the principles governing the constitutional law of the Islamic Republic of Iran, based on the latest mandatory legal norms.

It is hoped that our esteemed readers will share their feedback on this work and other publications published by the Constitutional Council Research Institute in pursuit of its mission, thereby aiding us in fulfilling our responsibilities.

*And success comes from God, and upon Him do we rely*

The Constitutional Council Research Institute

June 2025



1

# **Chapter One: Sovereignty**

## Sovereignty

### 1. The Foundation of Sovereignty in the Constitution of the Islamic Republic of Iran

Political sovereignty, as one of the fundamental elements of State formation, has consistently been a focus of experts, with various proposed definitions of it. Political sovereignty refers to a supreme authority above which no higher authority exists in society. Accordingly, every State requires an authority superior to all other existing authorities within its territory and over its resident population to enforce its will in legislating laws and administering the State - this supreme power is called sovereignty. In addressing the concept of sovereignty, its foundations, and origins, the Constitution of the Islamic Republic of Iran uses the title “*The Right of National Sovereignty and the Powers Derived From it*” in Chapter 5. Therefore, it is essential to examine the concept of the right of national sovereignty and resolve its apparent contradiction with Divine sovereignty in the Constitution of the Islamic Republic.

### 1-1: Divine Sovereignty in the Constitution

Several Articles of the Constitution address the subject of Divine sovereignty and its boundaries. The Constitution of the Islamic Republic of Iran, while acknowledging Allah's absolute sovereignty over the universe and human beings, considers divine permission as the basis for the legitimacy of authority. It recognizes supreme political authority as belonging to Allah and His appointees, which during the period of Occultation is delegated to the qualified jurist (*Valī-ye Faqīh*). In other words, the root and foundation of sovereignty in the Islamic Republic system belong exclusively to "Allah"<sup>1</sup>, as evidenced in Articles 2, 4, and 5 of the Constitution. The exclusivity of divine legislation and the role of divine revelation in expressing divine law are referenced in Clause (2) of Article 2, while Article 4 guarantees the Islamic nature of all enacted laws in the Islamic system. Article 5 also assigns the duty of implementing these laws to an individual authorized by Allah, namely the qualified jurist (*Valī-ye Faqīh*)<sup>2</sup>. According to the provisions of these and other Articles of the Constitution, sovereignty in the Islamic Republic of Iran has a divine basis<sup>3</sup>.

### 1-2: National Sovereignty in the Constitution

In the title of Chapter 5 of the Constitution, the term "National Sovereignty" is employed, and Article 56 explicitly states: "*Absolute sovereignty over the world and humans belongs to God, and He has*

1 . Hāshimī, Sayyid Muḥammad. Ḥuqūq-i Asāsī-yi Jomhūrī-yi Islāmī-yi Iran: Ḥākimiyyat va Nahādihā-yi Siyāsī [Constitutional Law of the Islamic Republic of Iran: Sovereignty and Political Institutions]. Tehran: Mīzān Publications, 1387 SH/2008, pp. 3-4.

2 . For detailed information about the basis of legislation on Islamic Shari'ah, see: Ka'bī, 'Abbās. Taḥlīl-i Mabānī-yi Niẓām-i Jomhūrī-yi Islāmī-yi Iran Muḥtātā bar Uṣūl-i Qānūn-i Asāsī [Analysis of the Foundations of the Islamic Republic of Iran System Based on Constitutional Principles]. Tehran: Guardian Council Research Institute, 1395 SH/2016, vol. 1, pp. 205 onwards.

3 . Javān Ārāsteh, Ḥusayn. "Mabānī-yi Ḥākimiyyat dar Qānūn-i Asāsī" [Foundations of Sovereignty in the Constitution], Ḥukūmat-i Islāmī Journal, Year 6, No. 3, p. 84.

*made humans sovereign over their own social destiny. No one can deprive humans of this divine right, or subordinate it to the interests of a particular individual or group. The people shall exercise this divine right in the manner outlined in the following articles.”*

Based on the provision of the above Article, it can be inferred that the Constitution, through the expression “*He has made humans sovereign over their own social destiny*,” advocates for the sovereignty of the people. While declaring the method of exercising sovereignty through subsequent constitutional Articles, it emphasizes the theory of national sovereignty. The provision for public participation through elections (Article 6), the permission to form political parties and organizations (Article 26), the emphasis on enjoining good and forbidding evil as a religious duty (Article 8), and other provisions demonstrate the recognition of various dimensions of national sovereignty within the Constitution of the Islamic Republic.

In reconciling these two aspects and explaining the Constitution’s final approach to the basis of sovereignty, it must be stated that humans, by divine existential will, are endowed with free will and thus choose how to govern their social life based on this freedom. No one can impose their will on society unless accepted by the people. In other words, even though Almighty God has made the establishment of a religion-based government a general duty, its actual realization depends on the people’s will and acceptance. Therefore, if people do not desire or accept an Islamic government, the establishment of such a government seems impossible, and it is the people who give concrete reality to the Islamic government<sup>1</sup>.

The actualization of Islamic government in Iran occurred in 1979. The people of this territory, through the establishment and consolidation

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1 . Şalāḥī, Sohrāb. “Jāyigāh-e Mardom dar Tashkīl-e Ḥukūmat-e Islāmī” [The Role of the People in the Formation of the Islamic Government], Barresī-hā-ye Ḥuqūq-e ‘Ummūmī, 1392 SH/2013, p. 127.

of the Islamic Republic, expressed their will to be governed by Islamic rules and norms in various aspects of their individual and social affairs, as stipulated in the Constitutional Articles. In fact, the people, while acknowledging divine sovereignty, decided to exercise their will within the framework of rules derived from divine will (Shari'ah), as manifested in the Constitution. Therefore, based on the people's will and desire, the foundation of sovereignty in the Islamic Republic of Iran is inherently divine, and the people have willingly confined the exercise of their will to the rules and regulations contained within Shari'ah principles.



# 2

## **Chapter Two: The Rights of the People**

## The Rights of the People

The Constitution is the most significant political and legal document of a country, containing the highest principles that, on one hand, explain the rules and standards governing the political relationships between individuals, the state, and its political institutions, as well as the distribution of power among individuals and institutions. On the other hand, it guarantees citizens' rights and freedoms<sup>1</sup>. Accordingly, the Constitution of the Islamic Republic of Iran, believing that all resources and planning must be employed to comprehensively secure the people's rights, has undertaken to recognize, guarantee, and protect the rights and freedoms of the nation, dedicating its Chapter 3 under the title **"The Rights of the People"** from Articles 19 to 42. These articles explain important examples of people's rights and freedoms and the government's duties in securing and guaranteeing these rights, which will be further examined here.

1 . Qāzī Sharī'at Panāhī, Abū al-Faḍl. Bāyisteh-hā-yi Huqūq-i Asāsī [The Requirements of Fundamental Rights]. Tehran: Mīzān Publications, 1388 SH/2009, p. 39.



## 1. Civil and Political Rights

The first category of rights and freedoms enshrined in the Constitution pertains to civil and political rights, which are examined in four sections: “The Right to Establish and Operate Associations,” “The Right to Assembly and Demonstrations,” “Right to Freedom of Publications and the Press,” and “The Right to Citizenship.”

### 1-1: The Right to Establish and Operate Associations

The “Right to Establish and Operate Associations,” aimed at providing a permanent space for individuals to gather, exchange information, and assist one another in various fields, is one of the rights explicitly recognized in international documents and the constitutions of many countries. This right is also addressed in Article 26 of the Constitution. According to this article: *“Political parties, societies, political and professional associations, and recognized Islamic or religious minority associations are free to operate, provided that they do not violate the principles of independence, freedom, national unity, Islamic criteria, and the foundation of the Islamic Republic. No one may be prevented from joining them, or forced to join one of them.”* This Article addresses the freedom of organizations and their related limitations. The intended meaning of the freedom of these organizations is the recognition of individuals’ freedom to join any of these organizations, where they continuously share their knowledge, information, and efforts in pursuit of designated objectives<sup>1</sup>.

The associations mentioned in Article 26 include political parties, societies, political and professional associations, and constitutionally recognized Islamic or religious minority associations. However, it should be stated that Article 26 is not meant to enumerate all authorized associations, but rather provides examples of the most significant associations under the categories of parties, societies, and organizations,

1. ‘Abbāsī, Bijan. *Huqūq-e Bashār va Āzādīhā-ye Bonyādīn* [Human Rights and Fundamental Freedoms]. Tehran: Dādgostar Publications, 1390 SH/2011, p. 132.

expressing a general rule regarding the freedom of political and social associations.

It should be mentioned that the freedom of parties and associations, like many other public freedoms in human society, is subject to certain restrictions due to the necessities of social life and the protection of the rights of others. In this regard, it can be stated that the freedom of associations is not considered absolute, and the legislator in Article 26, after stating the general ruling of freedom for associations, conditions them on not violating the principles of independence, freedom, national unity, Islamic criteria, and the foundation of the Islamic Republic of Iran.

As explicitly stated in Article 26: “*No one may be prevented from joining them (the associations),*” the non-prohibition of anyone from participating in associations is based on the normal and initial status of individuals; however, exceptions to the general ruling of this article may be envisioned in two situations for certain individuals:

The first exception is that certain individuals, due to occupying specific social positions and assuming various roles in society, are prohibited from membership in associations in order to maintain neutrality and eliminate any form of partisanship. For instance, the prohibition of military personnel from political party membership, stipulated in Clause 4, Article 34 of the Islamic Revolutionary Guard Corps Statute, was approved on 06/09/1982.

The second exception includes certain individuals who, due to committing unlawful acts, have been prohibited by the legislator from membership in parties and associations as a supplementary punishment. For example, Article 23 of the Islamic Penal Code, enacted on 21 April 2013, stipulates that a person sentenced to fixed corporal punishment (*ḥadd*), retaliation (*qiṣāṣ*), or discretionary punishment (*taʿzīr*) of the first to sixth degree may be subjected to the supplementary punishment of

“prohibition from membership in political or social parties, groups, and organizations.”

### **1-2: The Right to Assembly and Demonstrations**

Article 27 of the Constitution addresses the freedom of assembly and demonstrations, as well as their limitations. An “assembly” is a temporary gathering of individuals who can freely participate in events such as speeches, meetings, rallies, and street demonstrations organized by specific individuals to exchange ideas or defend their interests. According to this definition, “freedom of assembly” means that every person has the right to convene a gathering at a specific location and time with like-minded individuals to express their opinions and viewpoints. This gathering may involve delivering speeches, holding meetings and conferences, or conducting debates, culminating in the release of statements containing general regulations and recommendations<sup>1</sup>. A “demonstration” refers to a group of people marching in an organized and cohesive manner through public spaces to express their collective grievances and demands<sup>2</sup>.

According to Article 27, the principle is the freedom of assembly and demonstration. However, this freedom is not absolute and is limited by the conditions of not bearing arms and not being disruptive to the foundations of Islam.

Although this Article recognizes only two limitations—“*not bearing arms*” and “*not being disruptive to the foundations of Islam*”—based on other Articles of the Constitution, additional limitations on the freedom

1 . Parvīn, Kheyraḷlāh va Fīrūz Aṣḷānī. Uṣūl va Mabānī-ye Ḥuqūq-e Asāsī [Principles and Foundations of Constitutional Law]. Tehran: University of Tehran, 1391 SH/2012, p. 213.

2 . Hāshimī, Sayyid Muḥammad. Ḥuqūq-i Bashār va Āzādīhā-yi ‘Umūmī [Human Rights and Public Liberties]. Tehran: Mīzān Publications, 1384 SH/2005, p. 451; Islāmī, Reza and Muḥammad Mahdī Kamālīvand. Āzādī-ye Ijtimā’āt dar Niẓām-e Baynal Milāl Ḥuqūq-e Bashār va Sīstem-e Ḥuqūqī-ye Iran [Freedom of Assembly in the International Human Rights System and the Iranian Legal System]. Tehran: Majd, 1394 SH/2015, p. 36.

of assemblies and demonstrations can also be identified.

According to Article 9, in the exercise of legitimate freedoms, including the freedom of demonstrations and assemblies, the slightest harm must not be inflicted upon the political, cultural, economic, or military independence, or the territorial integrity of the Islamic Republic of Iran.

Furthermore, according to Article 40 of the Constitution, the holding of demonstrations and assemblies must not result in harm to others or infringement upon public interests. Therefore, the formation of assemblies and demonstrations must not involve the bearing of arms or lead to disruption of the foundations of Islam, harm to others, infringement upon public interests, or compromise the political, cultural, economic, or military independence, as well as the territorial integrity of the Islamic Republic of Iran.

### **1-3: The Right to Freedom of Publications and the Press**

According to Article 24 of the Constitution: *“Publications and the Press are free to express views, provided that they do not violate the principles of Islam or public rights, the details of which shall be determined by law.”* The term “Publications” includes any subject matter that is “published.” Books, articles, newspapers, quarterly journals, periodicals, yearbooks, and magazines are considered publications, which may be issued in either printed or electronic form. Accordingly, the output of a publication can take the form of text, audio, or visual content. The term “Press” refers to printed writings and is mentioned in Article 24 as a specific instance following the general term. In fact, the most prominent example of publications is the press, which the legislator has explicitly mentioned for emphasis.

Absolute and unconditional freedom leads to chaos; therefore, defining the boundaries of the freedom of publications and the press