

The Legal and Political System of the Republic of Macedonia between the Rule of Ethnos and Demos

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Abstract

This paper analyzes the functioning of the legal and political system of the Republic of Macedonia since its independence in 1991, regarding inter-ethnic relations and their legal and political solutions which are analyzed from the perspective of the process of democratization of the country as the main precondition for Euro-Atlantic integration. The paper concludes that the legal and political system of this state in transition utterly manifests the ethnocratic features as a permanent line of political governance with the state, which conceptually and practically favors the position and the rule of only one ethnic group to the detriment of democratic conceptual principles because ethnicity in this country is politicized and reflects in the daily lives of the citizens. That is why, the purpose of this paper consists in the elaboration of legal and political aspects of the position of Albanians in this country within the legal and political system drawing appropriate arguments over what is "de lege lata" and what should be "de lege ferenda" in terms of ethnic equality between ethnic Macedonians and ethnic Albanians, as the two greatest communities in this country, because democracy is possible only with equal citizens in all spheres of social and public life.

Keywords: democracy, ethnocracy, diversity, polarization;

1. Introduction

Since its independence in 1991, Republic of Macedonia has been looking for a comprehensive formula for adjusting ethnic and cultural diversity, because of the multiethnic composition of its 2-million population, ethnically structured as follows: 65 percent ethnic Macedonians, 25 per cent ethnic Albanians who live mostly in the north-west of the country, and 10 percent Roma, Turkish, Serbian, Bosnians, Vlachs and others¹, which is a result of the few centuries of coexistence, while, on the other hand, with this reality, Macedonia is one of the most ethnically mixed countries of the former Yugoslavia with deeply divided society as highlighted in a study of ethnic relations in Macedonia by Vasiljevic Snjezana (2004): "The segregation in all spheres of life along ethnic lines is profound. The TV and radio stations are controlled and operated either by their Albanian or Macedonian owners and broadcast exclusively in their respective languages from their respective viewpoints. Private clubs, theatres, and restaurants rarely cater for constituencies different in any significant way. The public school system is also heavily segregated. Children of a single ethnicity grow up together, speaking one language in the classroom. Friendships are formed within their respective groups and rarely cross religious and cultural lines. A general lack of communication across ethnic and linguistic barriers inhibits interethnic understanding and hardens ethnic stereotypes"².

In this regard, it should be noted that neither Albania nor Albanians, with no action neither challenge nor threaten the Macedonian identity in the Balkans, unlike other neighboring countries, as can be seen from the International Crisis Group Balkans Report (2001), indicating that: "Three of Macedonia's neighbors—Greece, Bulgaria and Serbia—retain

¹ State Statistical Office: Census of Population, Households and Dwellings in the Republic of Macedonia, 2002, p. 34. <<http://www.stat.gov.mk/Publikacii/knigaXIII.pdf>>.

² Vasiljevic Snjezana, Ethnic Relations and Examples of Positive Practice in Eastern Europe, Friedrich-Ebert-Stiftung, Zagreb, 2004, p. 129. <<http://www.fes.hr/E-books/pdf/How%20to%20improve%20Development%20on%20Local%20Level/07.pdf>>.

long-standing challenges to the Macedonian identity. While Greece vetoes Macedonia's name, Serbia continues to deny the autonomy of Macedonia's Church, and Bulgaria denies the existence of both a Macedonian language and a Macedonian nation. In the case of Bulgaria, Sofia's stated policy of "one nation, two states" may sound relatively reassuring, but is not, for it subverts the essential Macedonian claim to statehood: that they, as Macedonians, are a different and unique nation. Most Macedonians chafe at the remark of a former Bulgarian President (Petar Stojanov) that: "Macedonia is the most romantic part of the Bulgarian history"³.

On the other hand, for an explanation of the relationship between the former Yugoslavia and the new state of Macedonia in terms of ethnic identity and inter-ethnic relations, it is important to note the International Crisis Group Country's Report (1997) for that period, stating that: "Since Macedonia's independence in 1991, the virtually complete politicization of life-in terms of ethnic identity, loyalty to the new state, real or perceived irredentist aspirations and national security—has brought the country to a number of political crises. Like former Yugoslavia, Macedonia tends to equate its pluralism with tolerance. But also as in Yugoslavia, Macedonia's pluralism has been bought at the price of segregation rather than integration. Macedonian children go to school with their Macedonian peers, Albanians with Albanians, Turks with Turks. Macedonians read the Macedonian language press, Albanians the Albanian press, Turks the Turkish press, and so forth. In former Yugoslavia this system of 'separate but equal' tracks was meant to satisfy the social and cultural needs and even political ambitions of the country's divergent nationalities. In Macedonia, however, it has left a system of parallel, non-intersecting communities"⁴.

2. Independence of the Republic of Macedonia between ethnos and demos

After the breakdown of former Yugoslavia, the state-building process of the Republic of Macedonia, from the legal aspect, began with its Constitution of 1991, which was expected to reflect positively in terms of ethnic relations, but, this did not happen, because the state was defined under historical fact that Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanians and other nationalities⁵, which was not supported by political representatives of the ethnic Albanians, which considered that this Constitution began to build a specific type of ethnocratic regime with ethno-centric character as a historical injustice to the Albanian people which was unacceptable for a multiethnic society. According to Oren Yiftachel (1999): "An ethnocracy is a non-democratic regime which attempts to extend or preserve disproportional ethnic control over a contested multi-ethnic territory and develops chiefly when control over territory is challenged, and when a dominant group is powerful enough to determine unilaterally the nature of the state"⁶.

The International Crisis Group Country's Report (1997) for that period notes that: "Macedonia's Albanians are keenly dissatisfied with conditions in the Republic and consider themselves disadvantaged in most every domain: employment, education, political representation. As the second-largest community in the country, and as a nationality instrumental with the Macedonians in forming the Socialist Republic of Macedonia after World War II, Albanians demand equal status with Macedonians: these demands include free use of Albanian national symbols; recognition and use of Albanian as an official language; recognition of Albanians as a constitutive (state-forming) nation in the Constitution; proportional representation in government; and greater participation in organs of local government, public institutions, and the armed forces (police and military). What began as a conflict between the national political parties has been turned into a conflict between the two major ethnic groups. The battle for political power could very easily be replaced by a battle for territorial redistribution. What has developed is a potentially volatile situation of intolerance between ethnic Macedonians and ethnic Albanians, characterized by a very high level of tensions. The fear of conflict escalation is

³ ICG Balkans Report, No. 122, Skopje/Brussels: Macedonia's Name: Why the Dispute Matters and how to Resolve it, 10 December 2001, p. 8; <<http://www.crisisgroup.org/~media/Files/europe/Macedonia%2014.pdf>>.

⁴ ICG Macedonia Report: The Politics of Ethnicity and Conflict, Europe Report no. 26, p. 9, 21 October 1997. <<http://www.crisisgroup.org/~media/Files/europe/Macedonia%201.pdf>>.

⁵ The Preamble of the Constitution of RM, 17 November 1991, "Official Gazette of RM", no. 52/1991. <<http://www.sobranie.mk/en/?ItemID=9F7452BF44EE814B8DB897C1858B71FF>>.

⁶ Oren Yiftachel, *Ethnocracy: The Politics of Judaizing Israel/Palestine*, Published in "Constellations", 1999, Vol. 6: 364-391. Oren Yiftachel Papers: <http://www.geog.bgu.ac.il/members/yiftachel/new_papers_eng/Constellations-print.htm#_edn1>.

becoming a part of everyday life"⁷. In this regard, it should be noted that this situation led to the armed conflict of 2001 between the state security forces and the Albanian armed groups led by the National Liberation Army.

3. The Ohrid-state model: situation, challenges and prospects

The armed conflict which lasted from January to August 2001 was interrupted with the signing of the Ohrid Framework Agreement (OFA) in Skopje on 13 August 2001, by the four political parties (two Macedonian and two Albanian) and the President of the Republic, with the presence of facilitators from the United States and the European Union. The main objective of OFA was the survival of the Republic of Macedonia through the respect of ethnic identity and equality of ethnic communities in the country. OFA regulates the following issues: basic principles, cessation of hostilities, the development of decentralized governance, non-discrimination and equitable representation, special parliamentary procedures, education and the use of language, expression of identity, implementation, Annex A-constitutional amendments, Annex B-legislation changes and Annex C-confidence building⁸. OFA in the period from 2001 to 2006 was the basis for reducing the contradictions between ethnic Macedonians and ethnic Albanians, but with stronger mediation of the International Community, but after the 2006 parliamentary elections, for the first time, the weakness of this document became apparent, when the government was formed not with the first Albanian political party (DUI-Democratic Union for Integration), but with the second Albanian political party (Democratic Party of Albanians) according to the number of votes because this issue is not regulated by law. Warnings about this type of weaknesses of this document, previously came from the former President of the Republic of Macedonia, Kiro Gligorov (2006), who emphasized, in an International conference dedicated to the Macedonian issue held in March 2006 in United States, that: "OFA does not meet the expectations of the majority population, and at the same time, ethnic Albanians have expressed dissatisfaction with the agreement and presented new requirements for cantonization and bi-national state, which will strengthen opposites and will create the basis for new crises and divisions"⁹.

In addition, we are presenting the findings of International Crisis Group (2011) regarding ten years of armed conflict in Macedonia, which underlines that: "There have been significant improvements in inter-ethnic relations since the Ohrid Framework Agreement was signed in 2001, but the government's focus on ethnic Macedonian projects such as Skopje 2014 has rekindled feelings of discrimination among ethnic Albanians. The latter accept that much of the OFA has been implemented but say the process has been too slow and has not translated into a real commitment to create a multi-ethnic state in which they have equal decision-making power. Pursuant to Ohrid, key passages of the constitution, including its preamble, were changed; use of the Albanian language was regulated and expanded, especially in communities that are at least 20 per cent Albanian; the principle of equitable representation was introduced, as well as a voting mechanism to prevent a Macedonian majority from ignoring minority concerns. But three areas still require attention: equitable representation, especially inclusion of more ethnic Albanians in senior posts, decentralization and full implementation of the law on languages"¹⁰.

In this regard, nevertheless, the conclusions of the International Crisis Group (2011) dealing with the process of Euro-Atlantic integration of the country are important, stating that: "The lack of progress since 2008 in the process of Euro-Atlantic integration, due mainly to Greek obstacles, has contributed to a slowdown in inter-ethnic reconciliation. Extreme ideas about breakup and a Greater Albania are, for now, marginal. But as their common vision for the national future fades, ethnic Macedonians and Albanians are replacing it with their own concepts of what Macedonia should be: a unitary state for the Macedonians, a decentralized bilingual federation for the Albanians. Macedonia is also gradually backsliding on democratization and basic freedoms. In this troubled environment, inter-party and inter-ethnic tensions are increasing, and traditional forums for debate and protest are closing. The previous government, Prime Minister Gruevski in particular, spent much political and financial capital on the grandiose Skopje 2014 project. If it were only a misguided urban renewal project with nationalist overtones, this would be excusable, but it is more than that. It represents for many

⁷ ICG Macedonia Report: The Politics of Ethnicity and Conflict, Europe Report no. 26, p.10, 21 October 1997. <<http://www.crisisgroup.org/-/media/Files/europe/Macedonia%201.pdf>>.

⁸ The Ohrid Framework Agreement, 13.08.2001. <<http://www.ucd.ie/ibis/filestore/Ohrid%20Framework%20Agreement.pdf>>.

⁹ Kiro Gligorov in International conference in the United States, "The Ohrid Agreement forms the basis for new crises and divisions". Daily Dnevnik, 18.03.2006. <<http://star.dnevnik.com.mk/?pBroj=2258&stID=22960>>.

¹⁰ ICG Europe Report, Skopje, Istanbul, Brussels, No. 212: Macedonia: Ten Years after the Conflict, 11 August 2011, p. 14; <<http://www.crisisgroup.org/-/media/Files/europe/balkans/macedonia/212%20Macedonia%20Ten%20Years%20after%20the%20Cnflct.pdf>>.

a nationalist vision of the state that leaves little room for minorities, especially Albanians—and alienates those many Macedonians who do not share it either. The project has nothing to do with an EU future and, by gratuitously provoking Greece, is actively postponing it. The new government has a chance to re-focus and concentrate instead on what could be called Macedonia 2014, a genuine multi-ethnic civic state. Ethnic Albanian politicians would have to make their own special contribution, strengthening their loyalty to the state by promoting not only the interests of their ethnic kin but also policies and practices that will make their country stronger, more efficient and less prone to clientelism and patronage. Decisions made now will have substantial effect on inter-ethnic and inter-party relations and be decisive in determining if by 2014 the country is moving towards the EU or gradual breakup¹¹.

It should be added that, one of the domestic architects of the OFA, Ljubomir Frckoski (2011), when talking about the fate of this document declares that: “In the meantime, changes had appeared for the Albanians as well. Their status did not change significantly as expected and were found surprised and uncomfortable with the rush of delayed Macedonian nationalism. Not all things were achieved, as it seemed at the beginning, in the early years after the conflict. Something was missing. Although the Albanians were part of the government (through the party that came out of the rebel movement-DUI), this DUI was placed in a position of weaker partner in the government, which only approves and has no real influence in politics. Systematic processes of reconciliation were missing and there was no basis for pressure on the Macedonian side for such policies that would be substantially different and would lead to such things as, for instance: sharing history, balanced historical narratives of all ethnic communities; official history of the conflict and of other historical events”¹².

According to a more thorough analysis of interethnic relations, especially the issue of Albanian language and its state and public use, we can see that things have not moved much during these 12 years after the OFA. In this regard, as we specified our findings on this issue in an International conference held at the South East European University in Tetovo (2011) dedicated to the tenth anniversary of the OFA, whereby we highlighted three paradoxes¹³, namely: first, the historical paradox that has to do with the socialist system (with the rights of Albanians in this system), where, for example, the right to conduct court procedures in the Albanian language has been defined by the legal provision (Article 17) of the Law on Courts of the former Socialist Republic of Macedonia (1976), which stipulated that: “In the territory of the municipalities inhabited by members of nationalities, if the statute of the municipality provides for the use of a language of a certain nationality, (then) the proceedings before the municipal court established for that territory will be conducted as well in the language of that nationality” (the paradox has to do with the fact that the Albanians enjoyed more rights about the use of language in socialism than today in democracy, because today such a right has not been legally recognized). The second paradox has to do with practice, for example, during the legal clinical teaching we do with our students we often take part in the proceedings of the Tetovo Principal Court, where we are witnessing a tragicomic situation, where all participants in the proceedings, as the judge, lawyer, prosecutor, forensic expert, the defendant, clerk, witness are Albanians, but all of them conduct the judicial procedure in Macedonian language!, and the third paradox has to do with the rights coming from the minority status, such as the European Convention on regional and minority languages (the Council of Europe, Strasbourg, 1992) whose Article 9—judicial powers—obliges member countries of the EC (Republic of Macedonia as well) to ensure that at the request of a party the court procedures—criminal, civil and administrative—be conducted in regional or minority language. Here the paradox lies in the fact that Albanians do not enjoy even the language rights that the Convention guarantees to minorities. Despite the adoption of the law on languages in 2008, this law did not make the Albanian language as an official language since for instance, plenary sessions of the Parliament cannot be conducted in the Albanian language even more when one of its vice Presidents is Albanian, Albanian ministers in the Government cannot speak or write in the Albanian language, Albanian language is not used at all at the state Presidency; the Albanian language cannot be used in the army and the police, because the commands are only available in Macedonian language; civil and criminal court proceedings and administrative proceedings cannot be conducted in the Albanian language and its script (not even in the courts which operate in the local government units where Albanian language is an official language at the local level, such as: Skopje,

¹¹ ICG Europe Report, Skopje, Istanbul, Brussels, No. 212: Macedonia: Ten Years after the Conflict, 11 August 2011, p. 23; <<http://www.crisisgroup.org/-/media/Files/europe/balkans/macedonia/212%20Macedonia%20Ten%20Years%20after%20the%20Conflict.pdf>>.

¹² Frckoski Ljubomir D., “Reconciliation and Transitional Justice in Macedonia, Ten Years Later”, *Mediterranean Journal of Social Sciences*, Vol. 2 (3) September, 2011, p. 48. <http://www.mcser.org/images/stories/2_journal/mjssso203september2011/4.%20frckoski.pdf>.

¹³ Zejneli Ismail, Shasivari Jeton (2011). Legal aspects of the implementation of the OFA, SEEU, Tetovo, p. 140. <http://www.seeu.edu.mk/files/research/projects/OFA_EN_Final.pdf>.

Tetovo, Gostivar, Debar, Kumanovo, Kicevo, Struga, etc.; tax procedures cannot be conducted in the Albanian language, proceedings before various state and public institutions and bodies cannot be conducted in the Albanian language, etc., and therefore, according to these findings above we can estimate that the Albanian language is not equal with Macedonian language in the state or public life of the country.

The fact that Ohrid model fails to sufficiently prevent violent inter-ethnic tensions in the Republic of Macedonia, is noted in the ICG Country's Report (2011) indicating that: "Inter-ethnic tensions sometimes still do turn violent. Most notably on 13 February 2011, at least 100 ethnic Macedonians and ethnic Albanians clashed at the medieval Skopje fortress (Kale), over the building of a museum church meant to host historical artifacts from the archaeological excavation, resulting in eight injuries, including two police. Ethnic Albanians strongly opposed the project, claiming it was actually to be a church. Work was initially halted, but when it became apparent it was being resumed at night, Albanians, including several DUI politicians, went to the site to stop it. Hatred speeches were exchanged at the site and in the blogosphere, where some Facebook pages called for ethnic cleansing. Also, when the Macedonian Academy for Arts and Sciences (MANU) published the first national encyclopedia in September 2009, protests erupted over its provocative content, including the derogative term "Shiptari" to describe the Albanians. This encyclopedia portrays Albanians in Macedonia as newcomers from mountainous northern Albania. After strong opposition by many subjects, including the national academies in Albania and Kosovo, MANU withdrew the text and formed a working group to redraft it"¹⁴.

On the other hand, a problem in itself is the process of Antiquation of the country as is noted in the ICG Country's Report (2011), stating that:¹⁵ "Moreover, the prime minister Gruevski has invested extensive political capital since 2006 in promoting Macedonia's ancient heritage, through sponsoring archaeological excavations and renaming roads, sports arenas and the main airport after Alexander the Great and his father Philip of Macedon. This "antiquation" project has done much to reduce sympathy among Macedonia's European friends. Even locally, only 30.9 per cent support renaming public institutions and places after ancient Macedonians, while 57.8 per cent are opposed. More than any part of the nationalist project, the massive Skopje 2014 urban development scheme is undermining EU accession and inter-ethnic reconciliation. It includes construction of neo-classical buildings, statues, bridges and arches worth €250 million to €300 million. Gruevski explained its rationale: "The main driving power of each success [is the] national spirit. The love for one's past [and] inherited values has raised many nations from the ashes. Skopje 2014 puts an end to the chapter of Macedonia without monuments ... accompanied by constant denials of our nation, language, identity, history". The project is almost purely devoted to ethnic Macedonian history and heroes, thus alienating the other communities and goes against the spirit of the Ohrid Framework Agreement. For the Albanians, "this is an example of VMRO's political philosophy and the kind of state they want to build" and a project to exclude them from the capital of the country. Skopje 2014 is contributing to the capital's worrying division into ethnic Macedonian and Albanian districts. Gruevski's Albanian coalition partner, DUI, went along with it in exchange for a much smaller project for ethnic Albanians in Cair, the capital's main Albanian majority municipality. Named after the Albanian national hero Gjergj Kastrioti Skënderbeu (Scanderbeg), it is to cover a large area in the city center close to the old Skopje Bazaar. A DUI official explained: "We are trying to calm down Albanian emotions and feel part of this Skopje, too" but accused Gruevski of "ruining the real square in Skopje". He also complained that DUI "couldn't have reversed Skopje 2014 because a large part of it was already underway". The party has been able to insert only statues of three Albanian figures (representative of Islam, Christian Orthodoxy and Catholicism) into the actual Skopje 2014 project. Skopje 2014 has faced civil opposition, including accusations of illegal urban planning and lack of transparency. The Constitutional Court has ruled parts of it illegal. Gruevski had it approved in the Centar-Skopje municipal assembly under a shortened procedure that excluded wider public debate. The national monuments, which under normal procedures would be voted in parliament and require a special double majority, instead, were approved at the municipal assembly as "monuments of local significance. Negotiations for a renewed coalition were meanwhile progressing in the growing shadow of the "Warrior on a Horse", a large bronze statue apparently depicting

¹⁴ ICG Europe Report (2011). Skopje, Istanbul, Brussels, No. 212: Macedonia: Ten Years after the Conflict, 11 August 2011, p. 14-15. <<http://www.crisisgroup.org/-/media/Files/europe/balkans/macedonia/212%20Macedonia%20%20Ten%20Years%20after%20the%20conflict.pdf>>.

¹⁵ ICG Europe Report (2011). Skopje, Istanbul, Brussels, No. 212: Macedonia: Ten Years after the Conflict, 11 August 2011, p. 2-3. <<http://www.crisisgroup.org/-/media/Files/europe/balkans/macedonia/212%20Macedonia%20%20Ten%20Years%20after%20the%20conflict.pdf>>.

Alexander the Great being erected in the center of Skopje¹⁶. Greece calls this a further “usurpation of Greek history” and threatens “unavoidable repercussions” for the country’s Euro-Atlantic perspective”.

4. Concluding remarks

Republic of Macedonia with its model of inter-ethnic relations has not shown any significant progress since its independence in 1991, and in particular, since the armed conflict of 2001, because its model is limited, for as much as lack of democratic traditions, distrust of government, corruption, everlasting process of transition, poverty and enormous segregation and discord between ethnic Macedonians and ethnic Albanians.

On the other hand, analysis of the role of the mechanisms and institutions of the Ohrid state model showed that it does not possess a real effect in order to contribute to the facilitation of inter-ethnic dialogue, to the creation of a system of problem-solving and to prevent the violent inter-ethnic incidents and tensions.

The issue itself is the name dispute with Greece, which especially after the NATO Summit in Bucharest in 2008, consistently creates inter-ethnic and intra-ethnic polarization and division between ethnic Macedonians and ethnic Albanians, notably, among Macedonians themselves being divided into “ancient Macedonians” and “Slav-Macedonians” or “patriots” and “traitors”, because, for the Albanians, the most important issue is the integration of the state into NATO and EU than the name of the state, while, on the other hand, for the Macedonians, the most important issue is the name of the state than the Euro-Atlantic integrations. This issue is vital for the future of the country and the region, since by 2008 if Macedonians agreed on something with Albanians it was integration into NATO and the EU, where there was a complete inter-ethnic consensus and cohesion because after all, only at this point, the country was acting like demos, which slowly began to split along ethnic lines after the fiasco in Bucharest in 2008, where Albania and Croatia became part of the NATO, and Republic of Macedonia did not. Since coming to power in 2006, Prime Minister Gruevski has been playing on the nationalist card and turned the NATO rejection into a major political victory in the June 2008 elections on a platform of ethnic pride of glorious ancient past of the ethnic Macedonians.

We believe that the issue of trust in inter-ethnic relations in Republic of Macedonia, is mainly related to the issue of ethnic identity, therefore, a new process of inter-ethnic and intra-ethnic dialogue is needed to change the existing Ohrid state model which did not give the expected effects, and in this aspect, the final solution of the 20-year dispute with Greece over the state name will have a very powerful effect, since the reestablishment of the Republic of Macedonia as a Demos or an Ethnos respectively as a state with one common national identity or a state with two or more ethnic and state identities in the future depends exactly on these issues.

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