



ORIGINAL PAPER

Democracy and Human Rights as Topics of the Macedonian Political System Research and Practice

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Abstract

Concepts such as human rights, democracy, freedom, political and civil liberties are overlapping concepts. The relationship between human rights and democracy looks more like the pieces of a puzzle because they complement each other. The essence of human rights is to verify the judicial position of the individual within state power. Given the breadth of democracy and its complexity this paper introduces the reader to the scope of the concept of human rights and democracy in general. A variety of ideas provide insight into the relationship between the fields of democracy and human rights. The theory of democratic government rests upon a simple premise: a fair system of voting determines a majority which governs while respecting the human rights of the minority. This paper will examine the interdependence of all ideas of human rights during the transitional period of the Republic of Macedonia's change to democracy since 1991. For contemporary democratic regimes human rights have become the keystone of the modern state. This is a widely used term which describes strategies for building sustainable democratic state power systems. A greater emphasis is given to the Ohrid Framework Agreement regarding a human rights perspective and conditional judicial reforms towards a democratic governance of the state. This paper proceeds directly to its basic points as follows: 1. whether the Ohrid Framework Agreement (hereinafter OFA) human rights provisions provide proper groundwork for a transition to democracy; 2. the replacement of arbitrary use of power with legal regulations through checks and balances; 3. attempts to redefine state structures and access to power for minority groups. The end of this paper gives special attention to the democratic transformation of the system for human rights which is the main challenge to the integration of Macedonia into the European Union.

Keywords: *human rights, democracy, political rights, system, Republic of Macedonia*

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Introduction

Democracy is one of the *universal core values and principles of the modern state*. Respect for human rights, fundamental freedoms and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy. Rousseau states that: “if the populace promises simply to obey it dissolves itself by this act; it loses its standing as a people. The very moment there is a master there no longer is a sovereign and henceforth the body politic is destroyed” (Rousseau: 1762).

This paper follows Beetham’s (Beetham, 1991: 55) distinction between the concept of democracy and theories of democracy. The concept of democracy, in its simplest form, can be defined by using the two Greek words *demos* (people) and *kratos* (rule) which combine to make the word democracy; meaning rule of the people. This is the classic idea of democracy. Beetham elaborates on this concept as “a mode of decision making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement is when all members of the collective enjoy effective equal rights to take part in such decision making directly which realizes to the greatest conceivable degree the principles of popular control and equality in its exercise”. Theories of democracy attempt to make this basic concept operational by prescribing how democracy might be realized, in what institutional form it will take and the content of democracy in plural societies such as Macedonia. Larry Diamond defines democracy as “a system of government that meets three essential conditions: meaningful and extensive competition among individuals and groups, especially political parties, for all effective positions of governmental power at regular intervals and excluding the use of force; a highly inclusive level of political participation in the selection of leaders and policies, at least through regular and fair elections, such that no major social group is excluded; and a level of civil and political liberties i.e. freedom of expression, freedom of the press, freedom to form and join organizations, sufficient enough to ensure the integrity of political competition and participation”. For contemporary democratic regimes human rights have become the keystone of the modern state. Civil and political rights form a fundamental basis for legitimate politics. This is a widely used term to describe strategies for building sustainable democratic state power systems. This paper is focused on the Macedonian case since its independence in 1991, and deals with shifting from a monistic communist regime to a turbulent period of democratic transition of being that culminates in the conflict of 2001. This transition continues today in a modified form.

From this perspective the paper shows basic features of the transitional period of Macedonia. It highlights the interdependence of ideas on human rights and democracy, and attempts at building a sustainable modern state after 2001. We trace the origins and processes of democratization and human rights in Macedonia. Thus, we analyze the Ohrid Framework Agreement in regards to a human rights perspective and conditional judicial reforms for democratic governance of the state. We also examine whether the OFA (OFA, 2001) has partially succeeded and why. Throughout we make clear the radically diverse and diametrically opposed thoughts of the communities, both Macedonian and Albanian, in regards to human rights issues, state regulations, power sharing systems and challenges to the democratic development of this state. The first part of the paper deals with the characteristics of the transformation period and the role of human rights concepts in the state-building process of Macedonia. The second part analyzes the post-independence phase of Macedonian state-building and its positioning in regional relations. The third part deals with the inside of interdependence between democracy and human rights. The fourth part deals with the Ohrid Framework Agreement’s (2001) human rights issues,

constitutional changes via the process and composition of democratic values and the state-building process in Macedonia.

Democratic transition and Human Rights issues in Macedonia

The background of the democratic transition in the former Yugoslavia has been complex and has occurred both within states and between states since the end of the Cold War. It was at this time that many states within the Socialist Federal Republic of Yugoslavia (SFRY) began to fragment (Sriram, Martin-Ortega, Herman, 2010: 68). The Socialist Republic of Macedonia, (SRM) one of the six constituent republics in the Socialist Federal Republic of Yugoslavia, (SFRY) was situated in the southern part of the territory of the federation. It was economically one of the least developed of these republics and today suffers from grave economic problems with over 30% unemployment (Liotta, 2000). The Republic of Macedonia declared its independence through a national referendum and confirmed by the adoption of a constitution in 1991. It thus became an independent actor on the political stage of Europe and the Balkans in the context of the dissolution of the Yugoslav Federation (Shea, 2008: 155-192). Macedonian independence declared on September 8, 1991 followed the declarations of independence by Slovenia and Croatia on June 25, 1991. This was in turn followed by independence for Bosnia and Herzegovina where a referendum was held on March 1, 1992 and the declaration of independence on April 5th. Montenegro declared on June 3, 2006 while Kosovo did so on February 17, 2008 (Norman, Holly, 2003).

Ethnic Albanians were not pleased with their own status in the new Macedonian society and boycotted both the referendum on independence and on the constitution in September, 1991 (Musliu, 2012). In addition, the Albanians refused to participate in the 1991 census and contested the results. They held their own referendum on territorial autonomy in January, 1992 which was declared illegal by the government. Many consider these as key symbolic moments in 1991/92 because they formed the basis for continued ethnic tensions in the country due to their salience and mobilizing effects on both the Albanian and Macedonian communities. The new constitution became a focus of ethnic division. Both the act of independence and the constitution of the Republic of Macedonia divided the Albanians and Macedonians in the new state. Constitutional human rights of the Albanian ethnic group in Macedonia were the main generator of discontent which eventually led to the events of 2001 (Musliu, 2012).

Ethnic Macedonians consider the republic as their nation-state. This was clearly expressed in the preamble to the new constitution of 1991: "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, Romana and other nationalities living in the Republic of Macedonia". The Constitution of Macedonia was altered from its origins in the ex-Yugoslavia which stated that, "Macedonia is the state of the Macedonian people and the Albanian and Turkish nationalities" and that "Macedonia is the national state of the Macedonian nation" (Daskalovski, 2002). The Macedonian ownership of the state was also implied in Article seven (Constitution, 1991) which declared the Macedonian language, written in the Cyrillic alphabet, as the official language of the state. Also, Article 19 (Constitution, 1991) made special reference to the Macedonian Orthodox Church. Church and state are separated by law and the political process is generally secularized. However, preferential treatment in public life is given to the main Orthodox Christian and Islamic denominations. New sects within these faiths cannot officially register under the same

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name and operate in the country. Smaller religious communities have problems in practicing their faiths due to long-running denials of permission to build, extend or establish legal ownership over places of worship. These religious organizations are a significant part of the civil society. The government introduced optional religious teaching in the public education system. This decision was reviewed by the Constitutional Court as unconstitutional, as it was seen as violating the secular character of the Macedonian state (Daskaloski, 2009).

Albanian political parties demanded major reforms to the constitution's human rights, and in public affairs regarding the use of languages, representation in the civil service and decentralization (Musliu, 2012). According to the new constitution (1991) we can identify three categories of citizens: the Macedonians as the primary bearers of the rights of the state, the nationalities mentioned and then those assigned to the category of others. The notion of permanent co-existence seemed to be designed to divide rather than integrate groups (Daskalovski, 2002).

There was an under-representation of Albanians in the civil service, the armed forces and the police. This in turn, was linked to the low level of socio-economic development in the Albanian community; accurate statistics are hard to attain but generally male unemployment in the Albanian regions of Macedonia in the 1990s was much higher than the national average of 22%. Although Albanians were granted formal political rights and even seats in cabinet and even though some attempts to remedy their underrepresentation in state positions were made throughout the 1990s it is claimed that real political influence was lacking i.e. their representatives were outvoted and the pace of reform was slow (Ackermann, 2001: 117-135). Degrees awarded by the Universities in Tirana and Pristina had a long process of accreditation in Macedonia and often were not recognized at all. Not having access to higher education resulted in restricted access to jobs in the civil service for ethnic Albanians. This was also used as a justification for the low numbers in the civil service on the one hand and served as the basis for calls for education in the Albanian language and a separate Albanian university on the other. This issue served to not improve the constitutional human rights of the Albanian community and again it was named as a crisis generator (Musliu, Georgieva, Memedi, 2010). The issue of the right to education in the Albanian language became a key demand and one that was to provoke a series of violent incidents during the 1990s. The Albanian community moreover, questioned the considerable discrepancy between constitutional rights and the implementation of those rights in everyday life (Maksuti, 2002).

The Ohrid Framework Agreement (2001) and Human Rights issues in Macedonia

Since independence polarization between the two ethnic groups continues to be a major problem and in 2001 became a challenge for further democratic development of Macedonia (Ackerman, 2001). The armed conflict in 2001 was the worst violence between the two ethnicities i.e. Macedonian on one side and Albanian the other. The Ohrid Framework Agreement, (2001) the eminent peace agreement, relates to human rights of ethnic communities in Macedonia (Musliu, 2012). The Ohrid Framework Agreement (OFA) was signed on August 13, 2001. It was negotiated in the city of Ohrid located in the southwestern part of the country and signed in Skopje in the English language by President Boris Trajkovski. The leaders of the two biggest Macedonian and two biggest Albanian political parties also signed. The procedure was witnessed by Francois Leotard, the special representative of the European Union, and by James W. Pardew, the special

representative of the United States (Reka, 2011). The OFA represents an agreed framework for securing the future of Macedonia as it sets the basic framework of human rights legislation and policy changes without dwelling too much on the details. It strengthens the multi-ethnic character of the state through expanding the rights of ethnic communities while simultaneously proclaiming the state's territorial integrity and unitary character (Brunnbauer, 2002). In the preamble of the agreement it states that "this framework will promote the peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens" (OFA, 2001). After the signing of the OFA, the international community was expecting the political elite of the country to target causes of the outbreak of this serious political crisis and, on the basis of a cold and objective reflection, to prevent the repetition of a new crisis. Thus, from the very beginning, the international community supported the OFA as a new political philosophy, which should have inaugurated a new model for the functioning of a multi-ethnic state.

The OFA (2001) consists of several basic principles. The first provision of the OFA (2001) defines a number of principles that are important for the successful implementation of the provisions. Firstly, it stipulates that signatories reject the use of violence in pursuit of political aims and emphasize that only peaceful political solutions can assure a stable and democratic future for the country. Secondly, it reaffirms the sovereignty, territorial integrity and the unitary character of the state and stresses that there are no territorial solutions to ethnic issues. Thirdly, it states that the multi-ethnic character of the society must be preserved and reflected in public life. Fourthly, with regard to the constitution as the highest legal document in the country it states that the modern democratic state in its natural course of development and maturation must continually ensure that its constitution fully meets the needs of all its citizens and conforms to the highest international standards which they themselves continue to evolve. Finally, it states that the development of local self-government is essential for encouraging the participation of citizens in democratic life and for promoting respect for the identity of communities (Ohrid Framework Agreement, 2001). Besides the basic provisions the agreement also consists of three annexes: Annex A on constitutional amendments, Annex B on legislative modifications and Annex C on implementation and confidence-building measures (Ohrid Framework Agreement, 2001).

In the implementation of the OFA the parliament legislated for constitutional amendments and adopted numerous laws or revised existing ones with nearly two-thirds focused on decentralization issues. The main thrust of the constitutional amendments had the effect of enhancing the power-sharing mechanisms of the political system to prevent any further discrimination against Albanians in civil, economic, social and political rights; the recognition of Albanian as an official language by increasing the number of official languages to include any language spoken by at least twenty percent of the population; raising the ethnic community composition of the state police force; the legalization and state financing for the previously illegal University of Tetova and amnesty for rebel fighters. The legislative framework changes are largely in place, but its effective implementation has yet to be ensured together with a full respect of the spirit of the Ohrid Framework Agreement (Musliu, 2012).

A number of discussions and debates on the importance and nature of the OFA followed after it was signed. These debates centered on the issue of whether the OFA was an international agreement or an internal agreement within Macedonia. These debates were of theoretical, but also practical importance. For instance, this determined if the

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agreement was binding or not and if yes what is its relation to the constitution and the legal system of the country. With the adoption of the constitutional amendments based on the OFA these discussions lost relevance. From the moment that these changes took place in the constitution as well as in the laws of the country the implementation of the OFA was at the same time was the implementation of the constitution and of the laws of the country. There remains however, debate as to whether and how far the legislative changes were the true reflection of the Ohrid Framework Agreement (2001).

Civil and political liberties: Democratic capability of Macedonia

To ensure the integrity of political competition participation in civil rights, as well as, political rights and liberties is becoming the essential input for democracy. These are focused on freedom of expression; non-discrimination policies; election disputes; inter-ethnic tensions and dysfunctional state institutions. The situation regarding freedom of expression continues to be highly problematic. This is in spite of the introduction of comprehensive new media legislation at the end of 2013 following extensive public consultations and advice from international organizations (OSCE/ODIHR: 2013/14). There is indirect state control of media output through government advertising and government favored media outlets, which can be interpreted as advertisements for the ruling parties. A few television stations are considered to be politically influenced since the owners of these outlets are also the presidents of political parties. Ownership of the leading print media remains highly concentrated. Corporations that own print media also have alleged links to political leaders and the editorial independence of various newspapers is doubtful (EU Report, 2014). The use of criminal laws to restrict journalistic activity drew international attention in 2013 when *Nova Makedonija* reporter Tomislav Kezarovski was arrested in May for allegedly revealing the identity of a protected witness in a murder case. He was kept in pretrial detention and then sentenced to four and a half years in prison in October (Freedom House, 2014).

In September, 2014 the government made data on government advertising, including partial figures, publicly available; however it is still unclear which media outlets are the primary beneficiaries of such campaigns and according to what criteria public funds are disbursed. Defamation actions continued to be raised by journalists against other journalists (highlighting the low level of solidarity within the profession), by politicians against journalists (creating a chilling effect on the freedom of expression) and by politicians against other politicians (in the place of open public debate). This results in a scarcity of truly independent reporting and a lack of accurate and objective information being made available to the public by the mainstream media. Poor journalistic standards and ethics contribute to the situation (EU Report, 2013/14).

The non-discrimination policy remains an essential element for strengthened human rights, democracy and rule of law in the country. Although the spirit of the OFA was building a civic state, Macedonia still even after a decade of the inauguration of this peace Agreement, functions as a mono-ethnic state. Despite the proclaimed property of all citizens, the majority in this country claims to have absolute ownership over the state. Regardless of the effort of promoting a consensual democracy, the majority furthermore continues to determine how many rights belong to non-majority communities. There has been some progress on implementing the law on languages, on decentralization and equitable representation. Continuous efforts, through dialogue, are needed to fulfill the objectives of the agreement and ensure its full implementation. Furthermore, political elites still use ethno-nationalistic rhetoric for mobilization of their respective ethnic

groups. Constitutional changes have fuelled mistrust, power struggles and, what is even more noticeable, caused a continual decline in confidence into the political process (Musliu, 2012). According to Bell, (Bell: 2003) the agreements are characterized by constitutionalism designed to define, protect, and enforce rights to replace the arbitrary use of power with its legal regulation through checks and balances which is not case in Macedonia. Related to the Ohrid Framework Agreement peace agreement, Reka stressed that it preserved the sovereignty and territorial integrity of Macedonia, but it did not preserve the national integrity of citizens who did not belong to the majority (Reka, 2011). The Ohrid Framework Agreement put an end to the conflict, but it did not put an end to the sources of this conflict. The Ohrid Agreement excluded from consideration territorial solutions to ethnic problems, but preserving the unitary character of the country was not accompanied with the relevant implementation of measures by which all citizens of this unitary country would be equally treated. The war in Macedonia was the only case from the wars in the former Yugoslavia which did not occur for territories, but for the status of state-building and equal rights to all its citizens.

According to the EU Progress Report (2014) there is room for improvement in the areas of non-discrimination, fair representation, the use of languages and education. The law on the use of languages and the law on use of flags of the communities have still not been properly implemented. Local committees for relations between the communities are suffering from a lack of resources. A review of the implementation of the Ohrid Framework Agreement is still incomplete and the resulting recommendations have not yet been published. The budget of the secretariat for the implementation of the Ohrid Framework Agreement has been increased mostly on account of the salaries of around 1,700 civil servants who are yet to be assigned to state administrative bodies. The secretariat and the secretary general continued recruiting on civil servants from non-majority communities, but without specifying defined posts or job descriptions. This occurred often at the expense of the principle of merit. In 2013 the overall proportion of civil servants coming from non-majority communities increased slightly to reach 19%. Measures to address the underrepresentation of smaller minorities such as the Roma, Turks and others remain inadequate. Increased political support and state funding are necessary for efficient implementation of the Strategy on Integrated Education (EU Progress Report, 2014).

One of the basic beneficial instruments that were inaugurated with the Ohrid Framework Agreement was the so-called key 20 per cent, for gaining representational rights for non-majority citizens. With this 20 per cent, during this period, instead of a political-philosophic document, the OFA converted to a statistical exercise of a permanent ethnical counting. The consequence of this absurd percentage formed a new sociological category (not-known so far) for the Albanians in Macedonia – a 20 per cent nation. The Albanians in Macedonia have been counted by this number percentage due to be allowed the acquisition of certain collective rights. Then is a raised a question who should do the statistical counting and afterwards who is the one that shall permit these rights to Albanians? Census is about democracy, not just statistics. This situation led to the operational failed of census in 2011. Census in 2011 appealed to be a hostage to politics instead to be a necessary statistical operation for economic and social planning of the country (Musliu, 2012). Major protests by the Albanian community started in July of that year after the court verdict on the so-called “Monster” case relating to murders carried out in 2012 which currently is basic issue in the state. The murder of a teenager in the Skopje municipality of Gjorče Petrov in May, while not ethnically motivated, triggered protests

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and increased inter-ethnic tension thereby exposing again the lack of trust between communities. The coalition partners made joint efforts to calm the protests but some political leaders from both communities continued to use ethno-centric and divisive language particularly during election campaigns. More effort is needed under the Ohrid Framework Agreement to pro-actively promote positive inter-community relations (EU Progress Report, 2014). Although elections in Macedonia are de jure free and fair, there have been manipulations of the vote in certain areas of the country in the past. Such manipulations took place during the early parliamentary elections during the period of 2008-2014 and the OSCE-ODIHR Report, 2008-2014 election observation mission reported that key international standards were not met. Tensions in Macedonia have been mounting since a disputed election in April, 2014 in which the ruling conservative VMRO-DPMNE party of prime-minister Gruevski defeated Zaev's ex-communist Social Democrats (SDSM) for the fourth consecutive time. Opposition leaders claimed that the election had been fraudulent and accused the prime-minister of operating a dictatorship. The Macedonian opposition (SDSM) has boycotted parliament ever since despite EU pressure to return to the assembly. Supporters of the government and the opposition have become ever-more polarised, to the extent that people from opposing camps who have been neighbours for years no longer talk to one another. Macedonia, which is a candidate to join the European Union, faces an escalating political crisis amid allegations of a planned coup, a mass wiretapping scandal and claims that the government and the secret service conspired to undermine the judiciary and rig media coverage.

In February, 2015 the Macedonian opposition leader Zaev released the latest of what he has called information "bombs" against the government i.e. a series of alleged wiretapped conversations of prime minister Gruevski, the head of the secret service and other senior officials. These conversations revealed that they apparently discussed government interference in the judiciary, the media and urban-planning processes (Carnegie Europe Report, 2015). One of the major protagonists is the prime minister's first cousin Saso Mijalkov who is head of the shady security and counter-intelligence agency; the so called UBK. The opposition claims that the government and the UBK have been running a massive wiretapping programme, monitoring telephone conversations of 20,000 Macedonians, including journalists, politicians and religious figures. This represents a larger number than were bugged under communism (Carnegie Europe Report, 2015). Presently, we can only speculate about the veracity of any allegations – we simply don't know the facts, and all the protagonists in this drama modify, add to or even contradict their claims on a daily basis. While the foreign media tends to emphasise an alleged ethnic divide in Macedonia, there are no real "ethnic tensions" – people have lived and will continue together in peace. We will conclude with two comments Ambassador James Pardew stressed on the ten anniversary of the OFA agreement concerning leadership in Macedonia, "Real leaders do not just follow," and "They lead at critical moments in history". Right now is another point in time which requires leadership with vision and courage in the state (Reka, 2011).

Conclusion

Since independence in 1991 the interdependence of democracy and human rights has not been consolidated, yet. The process of democratization, once begun, needs to be sustained. This is the more difficult challenge. Not every democratic transition was sustained and success at the same time. Inter-ethnic relations, which remain fragile, continue however to pose a challenge for the democratic development of the country. The

Ohrid Framework Agreement, which brought to an end the conflict of 2001, provides the framework for human rights and preserving the multi-ethnic character of this society. Constitutional human rights changes have fuelled mistrust, power struggles and, what is even more noticeable, caused a continual decline in confidence in the political process. Effective implementation of the Ohrid Framework Agreement needs to be maintained in a spirit of consensus. Also, significant external difficulties continue to delay membership in NATO and the EU. Progress in relation to the protection of human rights of non-majority groups has been hampered by insufficient financial and human resources and inadequate cooperation between concerned authorities. There continues to be a lack of trust between the communities, however, and further initiatives to proactively promote an inclusive multi-ethnic society are needed. In recent years, an increasingly divisive political culture has resulted in many political crises and a breakdown in political dialogue. Parties in government have also blurred the line between the state and party, thus eroding trust in public institutions. There are serious concerns about government control over public institutions and the free media. However, a few key factors are found to be frequently recurring themes in the paper which discusses the issue of democratic sustainability in Macedonia. One is a democratic development and modernization that will fully respect human rights. Secondly here we take up the questions of political culture, historical tradition and learning to embrace democracy. The Ohrid Framework Agreement should not be seen as a limitation or a cap for the country's desire to build on its multi-ethnic and multicultural identity. Rather the Agreement should be viewed as foundation stone, or platform for building a stronger, fairer and more inclusive democracy where everyone truly believes they have a stake in Macedonia's future prosperity as a nation.

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