

MACEDONIAN CONSTITUTIONAL STORY

Abstract

The Constitution, in a contemporary meaning, is a “living organism” which is a product of the society and for the society. As the society and conditions within it change, the Constitution also needs to adapt and keep up with the development if that constitution aims to be progressive. In times of globalization, and in times of increasing will and need of the countries to join the EU and in other international organisations, national constitutions are going through a trend of more and more dynamic constitutional reforms. The pressure for constitutional changes most often comes from the need for *Internatonalisaton and Europeanisation* when it comes to the country's obligations, the international and the supra-national economy and politics, the migrations, the enhanced protection of the human rights etc. This paper is dealing not only with the historical aspects of the constitutional development of the country but also with the constitutional challenges that are seeing as a key issue in the Macedonian state.

Key words: Constitution, amendments, independence, Europeanisation, Assembly, procedure

I. Introduction – Brief overview of the constitutional development in the Republic of Macedonia

The contemporary constitutional development in the Republic of Macedonia is viewed from two aspects; the first, which follows the constitutional development of the country as part of the former SFR Yugoslavia, and the second, which puts the emphasis on the period after the country gained independence from the Yugoslav federation, i.e. when the Republic of Macedonia became an independent and sovereign country.

Undoubtedly, the events related with the creation of the first republic in the Balkans, the Krusevo Republic of 2nd of August 1903¹, had serious impact on the overall constitutional development within the Republic of Macedonia, as did the period after the WW2, when the Macedonian state reaffirmed its existence in the documents adopted at the ASNOM (the Anti-Fascist Assembly of the People's Liberation of Macedonia)².

* Tanja Karakamisheva-Jovanovska, PhD., Full Professor, Ss. Cyril and Methodius University, Faculty of Law “Iustinianus Primus”, Skopje, Republic of Macedonia

¹ The Krusevo Republic lasted for only 10 days. It was a product of the Ilinden Uprising in which the Macedonian people rose their voice against the Ottoman Empire. Although it was ruthlessly devastated on its 10th day, the Krusevo Republic remained a key event in the Macedonian struggle for its own independent state.

² The first session of ASNOM took place at the St. Prohor Pciniski monastery on 2 August 1944, which saw the adoption of four key acts with constitutional and legal reference to the constitutional development and moreover the development of the Macedonian state within the Yugoslav federation: 1. the decision for ASNOM to be declared supreme legislative and executive people's representation body and highest body of

As part of the former SFR Yugoslavia, the constitutional development of Macedonia is viewed in close correlation with the constitutional development of the Yugoslav Federation, i.e. the federal and republican constitutions of the Federation: the Constitution of the FNRJ (Federative People's Republic of Yugoslavia) of 1946³, the 1953⁴ Constitutional Law, the 1963⁵ Constitution of the SFR Yugoslavia, i.e. of SR Macedonia, and the 1974⁶ Constitution of SFR Yugoslavia. The independence of Macedonia, slowly but surely, was emerging to surface with the major changes in the social, economic and political system that took place with the constitutional changes in September of 1990. These constitutional amendments explicitly proclaimed the right of the Macedonian people for self-determination, including the right to secession from the former Yugoslavia, based on the decision adopted by the Assembly with 2/3 majority of votes from the total number of MPs. This decision became valid after it was adopted at a referendum with majority of votes from the citizens with the right to vote.

According to the new election law, as well as the new law for political organization of the citizens, the first democratic parliamentary elections took place on 11 November 1990, parallel with the first elections for the municipal councils, with participation of numerous political parties. The new parliamentary composition is the one who, in fact, started the contemporary constitutional development of the independent and sovereign Republic of Macedonia.

authority within democratic Macedonia; 2. The ASNOM declaration for the fundamental rights of the citizens of Macedonia; 3. The ASNOM decision to introduce the Macedonian language as an official language in the Macedonian state, and 4. The ASNOM decision to declare Ilinden, 2nd of August, a national and state holiday of the Macedonian state that serves as an expression for the continuity of the struggle of the Macedonian people for their national liberation and creation of their own state. Besides these four acts, the first session of ASNOM also adopted decisions to create two commissions: Commission to examine the war crimes committed by the occupiers and their collaborators, and Commission to process the legal regulations of the Macedonian federative state. ASNOM delegates also elected 40 Macedonian representatives to represent Macedonia at AVNOJ (Anti-Fascist Assembly of the People's Liberation of Yugoslavia) and at its presidium. See: **Republic of Macedonia - From a Member State of the Yugoslav Federation to a Sovereign and Independent State, Council for Research into South-Eastern Europe of the Macedonian Academy of Sciences and Arts Skopje, Macedonia, 1993, <http://www.historyofmacedonia.org/IndependentMacedonia/RepublicofMacedonia.html>.**

³ The first constitution of the People's Republic of Macedonia of 1946 is particularly important for the Macedonian people having in mind the country's statehoodness and its unification with the other people of Yugoslavia as part of the new federal union, the FNRJ.

⁴ Constitutional law for the social and political establishment and for the governing bodies of the People's Republic of Macedonia, predicated by the adoption of the Fundamental Law for Management with the State Companies and the higher commercial associations by the work collectives, also known as the Law on Workers' Self-Management of 1950.

⁵ Most important aspect of this Constitution is that it introduces the principle of assembly system, whereas the Assembly of the SR Macedonia was composed of five boards. For the first time, the Constitutional Court of Macedonia is introduced as an institution to protect the constitutionality and the legality. At this period, SR Macedonia saw several amendments: the 1965 amendment cancelled the counties in Macedonia, the 1967 amendments introduced changes in several functional relations that also reflected on the work of the Assembly, the 1969 amendments changed the structure of the Assembly and the scope of its boards and the 1972 amendments changed the position of the Republic as a result of the altered relations within the Federation and the organization of common labor.

⁶ This constitution falls in the group of real-programme constitutions. The next period brings some new amendments to the constitution, the first amendments fall in 1981 and the remaining changes come in 1989-1990 aimed to create constitutional basis for the deep reforms that followed two years later.

It initiated the adoption of the Declaration for independent and sovereign state of Macedonia⁷ by the Assembly of the Republic of Macedonia on 25 January 1991. The Macedonian people directly expressed their will for independent state at the referendum for independence held on 8 September 1991. On this day, over 95.5% of the citizens voted for independence of the Republic Macedonia. The people's will for an independent state was confirmed with the Declaration of the referendum on September 18, 1991 at the Macedonian Parliament. Finally on 25th September, 1991 the Declaration was adopted at the first multi-party Macedonian Parliament.⁸

On 17 November 1991, the Assembly of the Republic of Macedonia adopted the first Constitution of the independent and sovereign Republic of Macedonia. Although the 1991 Constitution falls in the group of rigid constitutions, bearing in mind the complexity for its amending, the 32 adopted amendments in the past 23 years of independence point to different conclusion. The reasons for the frequent changes in the 1991 constitution can be divided on external and internal. The following analysis explains in more details all the specific circumstances and facts related with the constitutional and legal development of the independent Republic of Macedonia, as well as the need of "Europeanisation" of the Macedonian constitution so that the country can reach its main goal – integration in the European Union. The analysis ends with final observations and objective forecasts by the authors of the constitutional and legal development of the country in the future.

⁷ The Declaration states that: "the citizens of the Republic of Macedonia wrote, in a democratic fashion, a new page in the Macedonian century-long history to reach independence and sovereignty of Macedonia as a state. In the Declaration on the Sovereignty of the Republic, by which, among other things, the Republic of Macedonia was defined as a sovereign state, which, in conformity with its own interests, would decide independently about its future relations with the states of the other peoples of Yugoslavia. In the referendum held on September 8, 1991, the vast majority of the citizens voted in favor of a sovereign and independent state of Macedonia. On the basis of the results of the referendum, the Assembly of the Republic of Macedonia, at its session of September 17, 1991, adopted a Declaration, confirming the will of the citizens expressed in the referendum. The Declaration states that the Republic of Macedonia as a sovereign and independent state will strive for consistent observance of the generally accepted principles of international relations contained in the Charter and other documents of the United Nations Organization, the CSCE Final Act from Helsinki and the CSCE Paris Charter, and that it will base its activity in international relations on the observance of international standards and, in particular, on the principles of respect for territorial integrity and sovereignty, non-interference in internal affairs, strengthening of mutual respect and confidence and comprehensive cooperation with all countries and peoples (Article 2). The Declaration states that the Republic of Macedonia has opted for a comprehensive development of good-neighborly relations and cooperation with all its neighbors, and also for development and cooperation with all European and other countries, international organizations and groups (Article 3). The Declaration particularly emphasizes the determination of the Republic of Macedonia to strictly observe the principle of non-violability of borders and confirms that it has no territorial claims against any neighboring country. Expressing the determination of the Republic of Macedonia to oppose any kind of disrespect for its territorial integrity and sovereignty, the Declaration confirms the Republic's determination to adhere strictly to the principle that all problems in mutual relations should be solved in a peaceful manner by way of negotiations and mutual respect (Article 4). Finally, the Declaration states that the Republic of Macedonia will continue to conduct a policy based on international standards and whose main objective and essential characteristics are the recognition of and respect for basic human rights and freedoms, and, within this framework, the rights and freedoms of Macedonians who live as national minorities in neighboring countries, adding that these questions could be resolved solely by peaceful and democratic means and in the spirit of European and civilized standards (Article 5). See: <http://www.historyofmacedonia.org/IndependentMacedonia/RepublicofMacedonia.html>.

⁸ See: <http://www.123independenceday.com/macedonian>.

II. Constitutional development of the independent and sovereign Republic of Macedonia

1. Structure and contents of the 1991 Constitution of the Republic of Macedonia

The 1991 Constitution of the Republic of Macedonia falls in the group of liberal-democratic constitutions. The main goal of the 1991 Constitution was to mark the beginning of the contemporary development of the Macedonian state as an independent and sovereign state which completely broke from the ties with the previous socialist constitutionality and went through complete democratic reorganization and transfer of the society and the country from a system with deeply enrooted socialist character to a new, democratic system.

In particular, the 1991 Constitution abandons the numerous ideological determinations and values that the then current ruling ideology had as basis, such as, socialist self-governing democracy, rule of the working class, undisputed rule of one party, the concept of socio-political communities, the delegate and assembly systems, etc. The Constitution affirms in their place the commitment to ownership, political pluralism, and a market economy. It proclaims the principle of division of power, Macedonia as a state with a republican form of rule based on the sovereignty that “derives from the citizens and belongs to the citizens”. The Republic of Macedonia is a democratic state based on the sovereignty that belongs to all citizens of the Republic regardless of their national, religious, or other affiliations, who are equal and have the same rights and freedoms. The 1991 Constitution introduced the principle of division of power as well. According to this principle, the Assembly of the Republic of Macedonia, as a constitutional and legislative institution, should affirm and develop in its work all positive aspects of the parliamentary tradition with an independent and responsible Government and with a President of the Republic that expresses state unity in the Republic and the competence determined by the Constitution. The Constitution also establishes an independent judiciary with a Supreme Court of the Republic of Macedonia as the highest court. The Constitution foresees also a Constitutional Court as responsible for the protection of the constitutionality, but also of the legality in accordance with the Constitution.⁹

The structure of the 1991 Constitution is consisted of preamble, normative text, and 32 amendments¹⁰.

⁹ See more details: **Savo Klimovski, (2000), Politics and Institutions, Linking Publishing Company Co., Ltd, Taiwan, p.105-109.**

¹⁰ So far, the Constitution underwent seven changes which resulted in 32 constitutional amendments. At the time when this paper is written, the Assembly is facing another procedure for additional eight draft-constitutional amendments which, quite certainly, will be adopted by the end of January 2015. Amendment 33 defines the marriage as a life-long union between only one man and only one woman. The legal relations in the marriage, the family and the out-of-marriage unity are regulated with a law that will be adopted with two-third majority of votes from the total number of MPs. Amendment 34 reads that: 1. In the Republic of Macedonia, international financial zones can be established in accordance with the law. 2. The organisaiton and work of these zones is regulated with a law. Amendment 35 reads that: 1. The Bank of the

The Preamble, according to its content, has a declarative, as well as elements of a manifest character. It calls to mind the most important moments of the Macedonian historical, cultural, spiritual, and state heritage.

The normative text of the Constitution consists of nine sections marked with Roman numerals. Most of them are one unit, and only two have been separated into independent separate units marked with Arabic numerals. The first section of the Constitution contains basic provisions explained in eight articles that determine the character of the state, the barrier of sovereignty, the indivisibility and non-inalienability of the territory, and inviolability and change of the current borders of the Republic of Macedonia. This section regulates other issues of statehood character like: citizenship, state symbols (coat of arms, flag, anthem), the capital, and the official language of the Republic. The first section ends with the enumeration of the fundamental values of the Macedonian constitutional order. These principles, noted in Article 8 of the Constitution are fundamental constitutional norms and are an expression of the political philosophy of the state. These fundamental values change the character of the Constitution and make it a political act.

The second section of the Constitution is the most extensive one, dedicated to basic human and citizens rights and freedoms. It has been divided into four units: 1. Civil and political rights and freedoms; 2. Economic, social, and cultural rights; 3. Guarantees of the basic freedoms and rights; and 4. Bases of the economic relations.

The third Constitutional section covers the provisions related to the organization of the state power. The institutions of the Republic and their competences are determined in this section: 1. Assembly of the Republic of Macedonia; 2. President of the Republic of Macedonia; 3. Government of the Republic of Macedonia; 4. Judiciary; and 5. Public prosecution.

The fourth section regulates matters dedicated to the Constitutional Court of the Republic of Macedonia, the fifth section contains the basic principles for local self-government, the sixth section relates to matters regulating relations in the domain of international relations, the seventh section refers to defense of the Republic and military

republic of Macedonia is Central Bank of the Republic of Macedonia. 2. Main goal of the Bank of the Republic of Macedonia is to achieve and maintain stability of the prices. 3. The Bank of the Republic of Macedonia is independent in the achieving of its set goals. 4. The Bank of the Republic of Macedonia is a legal entity with functional, institutional, personal and financial independence whose organization and work is regulated with a separate law. Amendment 35 defines the status and the position of the Bank of the Republic of Macedonia as a Central Bank of the Republic of Macedonia. Amendment 37 defines the deficit of the Budget of the Republic of Macedonia which cannot surpass the level of 3 % of the GDP, as well as the height of the public debt of the country which cannot surpass the level of 60 % of the GDP. Amendment 38 defines the changes in the Judicial Council of the Republic of Macedonia, while amendment 39 regulates the constitutional complaint as a separate legal mechanism for protection of the rights and freedoms of the citizens of the Republic of Macedonia. Amendment 40 specifies that the work and procedure before the Constitutional Court is regulated with a law that is adopted with two-third majority of votes form the total number of MPs.

and emergency situations, the eighth section is dedicated to the procedure for changes to the Constitution, and the ninth section contains provisions of a transitory and final character. This part determines also the manner in which any transition will be made from the former to the new constitutional system.

2. Constitutional amendments (1991-2011)

The amendments to the Constitution of the Republic of Macedonia were adopted through seven procedures for constitutional amendments, as follows:

- 1992 (Amendments 1 and 2 from 10 January 1992).
- 1998 (Amendment 3 from 2 July 1998);
- 2001 (Amendments 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 from 20 November 2001);
- 2003 (Amendment 19 from 30 December 2003);
- 2005 (Amendments 20 to 30 from 9 December 2005), and
- 2009 (Amendment 31 from 9 January 2009), and
- 2011 (Amendment 32 from 12 April 2011).

The first two amendments in 1992 were passed under direct pressure from Greece, which tried to influence on the highest legal act of the country with an extremely contradictory demand for the Republic of Macedonia to guarantee it does not have territorial pretensions toward the neighboring countries and that the border of the Republic of Macedonia can be changed only with the constitution and based on the principle of free will and in accordance with the commonly accepted international norms.¹¹

Here we are talking about a unique exception both in the international law and in the international politics where one country was directly blackmailed by another country to change its highest legal act without any direct cause or a direct act. The Republic of Macedonia as an independent and democratic country, by adopting the 1991 constitution, obliged itself, with the 11th fundamental value of the constitution, that it will "respect the commonly accepted norms of the international law."

The 1998 constitutional amendment regulated the duration of the detention, i.e. detention period prior to the conviction based on a court decision, which can last maximum up to 180 days. After the launching of a conviction act, the relevant court decides or extends the detention based on a procedure determined with the law.

The next, quite controversial change to the 1991 constitution took place in 2001 as a result of the signed Ohrid Framework Agreement which put an end to the "ethnic

¹¹ Under direct pressure from the Republic of Greece, the Republic of Macedonia obliged itself that it will only be able to change its border in accordance with the commonly accepted international norms, which is actually a humiliation from the democratic character of the Constitution of the Republic of Macedonia, as well as of the Assembly which passed it. The same applies to the second amendment adopted in 1992 which reads that "The Republic cares for the rights and the position of the Macedonian people living in the neighbouring countries and in the Diaspora, helps their cultural development and advances the ties with them. By doing this, the Republic shall not interfere in the sovereign rights of other countries when it comes to their internal matters." This constitutional amendment, adopted under direct pressure from Greece, devaluates the democratic capacity of the Constitution, as well as of the institutions of the system.

conflict" in the country. These 15 amendments are even today subject of numerous disputes within the Macedonian public, as well as among the wider public.

A solution to the 2001 conflict arrived in the form of the joint EU-US sponsored Ohrid Framework Agreement (OFA). What is clear is that within the background of the EU-US negotiations for finding peace the OFA was evidently established as an unavoidable resolution to the conflict, with chief US negotiator *James Pardew* later arguing that the OFA "gave Macedonia a chance in 2001 to avoid destructive divisions and to develop as a democracy."¹²

Essentially, the OFA changed Macedonia's political, legislative, institutional and social landscape, bringing forward tectonic changes to the constitutional system. Its establishment, and further glorification by domestic and international actors, made Republic of Macedonia a testing ground, where members of ethnic communities began to realize a great portion of their rights on the basis of statistical variables, thus making Macedonia a rare example in constitutional theory where collective rights began to be realized on the grounds of a statistical rather than civil basis. The process of the creation of "Framework" Macedonia and the elevation of the status of the OFA, interestingly, goes hand in hand with Macedonia's European integration. During the 2001 crisis Macedonia suddenly received very serious attention within the context of the EU Foreign Policy Agenda. The end to the conflict came hand in hand with Macedonia officially beginning its European agenda through the further implementation of the Stabilization and Association Agreement with the EU.¹³ The EU viewed Macedonia as a multicultural and multi-ethnic society whose members had overcome their prior religious and ethnic divisions, so that they could cooperate and work together for a common good.

It is very likely that the EU used the US experience with the Dayton Peace Agreement signed in 1995 to end the war in Bosnia, and learning from their mistakes decided to take another approach with the Ohrid Framework Agreement.¹⁴ Today, the

¹² See: Pardew, W. J., (2011), "The Diplomatic History of the Ohrid Framework Agreement", in "The Ohrid Framework Agreement: Ten Years Later". *Ten years from the Ohrid Framework Agreement: Is Macedonia Functioning as a multi-ethnic state?*, South Eastern European University, Tetovo, Republic of Macedonia, p.21-23,

http://www.seeu.edu.mk/files/research/projects/OFA_EN_Final.pdf. Other authors have different views for the 2001 conflict in Macedonia. "The conflict in Macedonia in 2001 could be seen as a further manifestation of the will to greater autonomy, self-rule and even independence by the ethnic Albanian community. What was unique about that particular moment in time was the confluence of forces that encouraged militant armed struggle. The conflict of 2001 can be seen as an extension of the process of violent break up of Yugoslavia that began with the brief conflict between the Slovenian National Guard and the Yugoslav Army in 1990. The fighting that eventually broke out in Croatia, Bosnia and Kosovo in the ten years that followed finally spilled over in to Macedonia in 2001. The exact moment of the outbreak of violent armed conflict depended upon a number of factors."

See more details:

http://jsis.washington.edu/ellison//file/REECAS%20NW%202012/Seraphinoff_REECASNW.pdf.

¹³ See: EU Enlargement: The Former Yugoslav Republic of Macedonia.

http://ec.europa.eu/enlargement/candidatecountries/the_former_yugoslav_republic_of_macedonia/relation/index_en.htm (Accessed July 12, 2012).

¹⁴ See: Tanja Karakamisheva-Jovanovska and Zvonko Mucinski, (2014), "Framework" Macedonia Within Rule of Law Europe: An Ongoing Transition or a Unique "Founding" Model of Democracy", Paper presented at the ASN World Convention Columbia University, 24-26 April 2014, https://www.academia.edu/8372852/Framework_Macedonia_Within_Rule_of_Law_Europe_An_Ongoing_Transition_or_a_Unique_Founding_Model_of_Democracy.

OFA Agreement is fully implemented in the articles of the Constitution of the Republic of Macedonia. It is composed of a basic part that identifies the main problems, and changes, for the Republic of Macedonia, and three Annexes: Constitutional Amendments, Legislative Modifications and Implementation and Confidence-Building Measures. The contents of the OFA are based on five principles¹⁵:

1. The use of violence in pursuit of political aims is rejected completely and unconditionally. It is established that only peaceful political solutions can assure a stable and democratic future for Macedonia.
2. Macedonia's sovereignty and territorial integrity, and the unitary character of the State are inviolable and must be preserved. There are no territorial solutions to ethnic issues.
3. The multi-ethnic character of Macedonia's society must be preserved and reflected in public life.
4. A 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 comports with the highest international standards, which themselves continue to evolve.
5. 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.

The OFA also prescribes the need for development of decentralized government as well as the principle of non-discrimination and equitable representation of all citizens under the law. This principle is applied with respect to employment in public administration and public enterprises, and access to public financing for business development. Laws regulating employment in public administration included measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration. Parallel to this process the OFA also establishes special Parliamentary procedures and Constitutional amendments. Examples of this are as follows:¹⁶

The Constitutional Preamble was amended as such:

“The citizens of the Republic of Macedonia, the Macedonian people, as well as the citizens, leaving within its borders who are part of the, Albanian people, the Turk people, the Vlach people, the Serb people, the Roma people, the Bosnians people and others. . .”

Article 8 of the Constitution stipulated that *equal representation of persons belonging to all communities in public bodies at all levels and in other areas of public life.*

Article 19 of the Constitution stipulated that *the freedom of religious confession is guaranteed and that the Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelic-Methodist Church, Jewish Community and other Religious communities and groups are separate from the*

¹⁵ See: <http://www.ucdp.uu.se/gpdatabase/peace/Mac%2020010813.pdf>.

¹⁶ See: <http://eudo-citizenship.eu/NationalDB/docs/MACConstAmendmentsIV-XVIII28English.pdf>.

state and equal before the law. Religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.

Article 48 of the Constitution was changed as follows: *Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols. Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.*

Article 78 of the Constitution was changed as follows: *The Assembly shall establish a Committee for Inter-Community Relations. The Committee consists of seven members each from the Macedonians and Albanians parliamentarians within the Assembly, and five members from among the Turks, Vlach, Roma and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly. The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution.*

Article 86 stipulates that the President of the Republic is President of the Security Council of the Republic of Macedonia. *In appointing the three members, the President shall ensure that the Security Council equitably reflects the composition of the population of Macedonia.*

Article 104 stipulated that the Judicial Council is composed of seven members. *Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.*

Article 109 stipulates that the Constitutional Court of Macedonia is composed of nine judges. *The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.*

The official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language. *Any other language spoken by at least 20 percent of the population is also an official language, as set forth herein. In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law. Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office will reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which will reply in that language in addition to Macedonian.*

To this point the Assembly of the Republic of Macedonia has enacted all the necessary legislative provisions that were necessary to bring the OFA into full effect and amended or abrogated all provisions incompatible with the Agreement. Also, the international community has been invited to facilitate, monitor and assist in the implementation of the provisions of the Framework Agreement and its Annexes. The realization of the OFA is monitored within the context of Macedonia's EU Accession process (as noted yearly within the Progress Report issued by the Commission), as well as by NATO within the context of each Membership Action Plan (MAP) cycle.

The main controversy of the OFA is the model of power-sharing it brought along. There is no similar model in any other institutional designs for multi-ethnic states, allowing for different and contradictory interpretations of its provisions. The current Macedonian system is a form of a consociational power-sharing although it does not fit all the elements of Lijphart's famous model for consociational democracy. In order for this model to be successful it must meet four criteria.¹⁷

¹⁷ Four criteria are: Small territory, a multi-party system, cross cutting cleavages and more than three segments.

[http://wikisum.com/w/Lijphart: Democracy in plural societies#Chapter 2: Four Main Characteristics of Consociational Democracy](http://wikisum.com/w/Lijphart:Democracy_in_plural_societies#Chapter_2:Four_Main_Characteristics_of_Consociational_Democracy). Critics have noted several possible disadvantages to Lijphart's ideas, most of which complain that consociationalism is not fully democratic. For example, there is a small, weak opposition, so it is hard to vote against the government without voting against the system. Lijphart counters by pointing out that (in Horowitz's later terms) winning the election in a deeply divided society is more like just winning a census. So if there were a strong opposition, it would have no real chance of alternating in power, because its size would be limited by the size of its ethnic group. So it is better to include the opposition in a Grand Coalition since, otherwise, power would not alternate and the strong opposition would simply be alienated. Also, critics complain that Lijphart's solution can't bring stability, only deadlock and immobilism. He concedes that policies may take longer to pass, but that policies are also less likely to be repealed in four years. Modern liberal democracies are based on two competing visions of the democratic ideal. The majoritarian principle emphasizes that democracy is majority rule and is based on a concentration of power. Majoritarian democracy can create sharp divisions between those who hold power and those who do not, and it does not allow the opposition much influence over government policy. The consensus principle, on the other hand, promotes the idea that democracy should represent as many citizens as possible and that a simple majority should not govern in an unfettered fashion. Consensus democracy disperses power so that there are multiple poles of decision making and multiple checks and balances, thus limiting the power of the central government while providing for the representation of a broader array of interests. Lijphart's distinction between consensus and majoritarian democracy is the single most influential typology of modern democracies. Until his path-breaking work on the related theme of consociational democracy appeared in the 1960s and 1970s, political science was dominated by a majoritarian bias. For over three decades, Lijphart has persuasively argued that democracy need not follow the majoritarian model. In *Patterns of Democracy* he repeats this familiar yet important theme: **"In the most deeply divided societies . . . majority rule spells majority dictatorship and civil strife rather than democracy. What such societies need is a democratic regime that emphasizes consensus instead of opposition, that includes rather than excludes."** During his distinguished career, Lijphart has consistently underscored the virtues of consensus (or consociational) democracy. Lijphart very often analyzes the consequences of the differences between majoritarian and consensus democracy. He concludes that consensus democracies have an equal or slightly better record than majoritarian democracies in economic management and in the control of violence. Moreover, they perform better at promoting women's representation, reducing inequalities, encouraging electoral participation, promoting citizen satisfaction with democracy, protecting the environment, providing social welfare, avoiding high crime rates, and encouraging generosity in foreign aid. Although Lijphart makes a persuasive case for the virtues of consensus democracy, his ex-ante prediction for it skews parts of the analysis. For example, when he measures the quality of democracy, he selects some issues on which consensus democracy has a clear advantage but not one that favors majoritarian democracy. Lijphart's bivariate comparisons show that

The Macedonian model does not meet at least two of those criteria. Furthermore, the multiparty system is highly fragmented and ideologically amorphous, while the ratio between the two main segments (ethnic Macedonian and ethnic Albanian) is extremely divergent with 65 percent of the population identifying itself as Macedonian versus ethnic Albanians with only 25 percent). There is a growing criticism that the OFA did not provide an adequate response to the 2001 conflict and that it only increased the tensions. The OFA, some believe, have even worsened the inter-ethnic relations. This criticism mainly comes from the majority, as the perception of ethnification, thanks to the new aspects of power-sharing and quota distribution system.¹⁸

It is still unclear whether the OFA transformed the country into a bi-national state, and not into a multi-ethnic society. In conclusion, the OFA has been a success story in ending an escalating conflict and banning the fear of a renewed conflict. And, it did resolve some old issues like, for example, the higher education in Albanian language. Still, the OFA failed in some other aspects, i.e. it was unable to fundamentally transform

consensus democracy is correlated with better governmental performance, but these correlations do not show that consensus democracy was responsible for the enhanced performance. Often it is not clear why consensus democracy would be better at attaining some results. Quantitative social scientists will yearn for more statistical details that control for other possible sources of causation. See more details on: http://muse.jhu.edu/journals/journal_of_democracy/summary/v012/12.3mainwaring.html.

¹⁸ Today there is almost nothing left of the idea of the “civic approach” articulated in the document. Multi-ethnicity has been sacrificed and replaced by bi-nationality, while the power sharing arrangement makes democracy look like a pipedream (Vankovska 2006:2). Up to now all polls show that the Albanian community is much more in favor of OFA than any other community in Macedonia. This is partly a result of an “albanianised” process that initially was meant to be in favor of all citizens of Macedonia. Here below, are some main critics that one could find in research papers, articles in media and blogs, and are related to the implementation of Ohrid framework agreement:

- The implementation of OFA has damaged the other ethnic minorities, meaning the minorities that are below the “magic number” of 20 % ¹⁸ (Principle of double majority voting suggested and accepted at the Ohrid Framework Agreement OFA. It is in fact a right to veto, or else known as the ‘*Badinter principle*’, basically meaning: Laws with a significant impact on ethnic minority communities may not be adopted by a simple majority but require a ‘double’ majority, including a majority among political representatives of the minority)

- The implementation of OFA has is exclusively an Albanian oriented process;

- The implementation of OFA is quantity and not quality oriented process;

- The implementation of OFA is mostly focused on ensuring equitable representation of Albanians, by that the Secretariat for Implementation of the Framework Agreement (SIOFA) has turned in to Agency for Employment of Albanians,

- The implementation of OFA has forgotten its main concept of civic approach and multiculturalism, and they are replaced by the concept of bi-nationality;

- The OFA turned out to be all about numbers and percentages.

See more details on: Nora Maliqi, MA , Albert Hani, MA candidate (2011), NGO Training Centre for Management of Conflicts, “Ohrid framework agreement, challenge or opportunity”, Presented at the Conference of Center for Research and Policy Making, titled “ 20 years Macedonian independence – economic, political and policy developments”, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.tcmc.org.mk%2FResearch%2520paper%2520OFA_challenge%2520or%2520opportunity.docx&ei=eVIGU9j_LcXUtQbtrYCgAQ&usq=AFQjCNHVgPXbKYr0281xv_UaCYHhd7K7ug&sig2=jqrmomrWJGutxZLZYJwe_Q&bvm=bv.64507335.d.Yms.

the interethnic relations in Macedonia. The changes the OFA made in the country are quite asymmetric and many Macedonians consider the agreement as a “loss” for the Macedonian side. Nevertheless, the Agreement is widely perceived as a zero-sum game, where the gain for one community inevitably must signify the loss for another. In essence, the Ohrid Framework Agreement is widely perceived by many Macedonians as a ceiling for the accommodation of Albanians in the state (often times referring to an unseen level of “positive discrimination”), whereas many Albanians consider the agreement as the foundation for building future relations.

The 2005 constitutional amendments were focused on the reforms in the judicial and in the prosecution system of the Republic of Macedonia. They introduced two new key bodies in the system – the Judicial Council of the Republic of Macedonia and the Council of Prosecutors of the Republic of Macedonia, with specific authorities whose goal was to elevate the independence of the judicial and prosecutor's function.

The constitutional amendments of 2009 reduced the census for election of the President of the Republic in the second round from the previous 50 % to 40 % of the voters, so now the constitutional formulation reads: "president-elect is the candidate who won majority of votes from the voters who voted, if more than 40 % of the voters "have voted".

In 2011, the Constitution suffered another amendment which influenced the Paragraph 2 of the Article 4, according to which "the citizenship of a citizen of the Republic of Macedonia cannot be revoked, nor can he be extradited to another country, except in cases based on a ratified international treaty and with a court order." This amendment largely eased up the process for adoption of the Framework Decision of the European Council for EAW (Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, OJ No. L, 190/1 of 18-07-2002).

Finally, the importance of this framework decision was additionally enhanced with its recent verification by the EU Court of Justice. It reads that "the member-countries of the EU are obliged to extradite the citizens of another member-country of that country has issued a European arrest warrant."

3. Which body and in what kind of procedure adopts and amends the Constitution of the Republic of Macedonia?

The 1991 Constitution of the Republic of Macedonia falls in the group of rigid constitutions which are adopted and amended through a complex procedure. The Parliament of the Republic of Macedonia is the only institution authorized to adopt a new Constitution, or to make changes to the Constitution through amendments. In this context, section 8 of the Constitution of the Republic of Macedonia outlines the process for amending and supplementing the Constitution of the Republic of Macedonia through constitutional amendments and reads that proposal for changes to the Constitution of the Republic of Macedonia can be launched by the President of the Republic, the Government, at least 30 MPs or 150,000 citizens. In accordance with the changes that took place after the OFA implementation, the decision for changes in the preamble, the articles concerning the local self-government, the articles concerning the culture, the use of the language, education, personal identity documents and the use of the symbols,

besides the 2/3 majority of the total number of MPs, the amendments require majority of the total number of MPs who belong to the communities who are not majority in the Republic of Macedonia.

This double majority in the Macedonian constitutional practice is also known as a *Badinter* majority and is a necessary mechanism for these changes to take place. The procedure for a new constitution or changes to the constitution is elaborated in details in the Rulebook of the Parliament of the Republic of Macedonia.

In particular, after the Commission for Constitutional Affairs decides positively on the proposal for changes to the Constitution, the parliament adopts this decision with two-third majority of votes from the total number of MPs. After the decision for amending the constitution is passed, the Assembly passes a conclusion and determines a deadline until which the submitter of the proposal prepares a draft-text of the constitutional amendments. The submitter submits the draft-amendments to the President of the Assembly, who then submits it to the MPs and to the Prime Minister, if they are not the actual submitters of the amendments, not later than 30 days before the Assembly session is scheduled. The debate in the Commission for Constitutional Affairs and in the Legislative-Legal Commission can last maximum of three working days on the text of each draft-amendment. Then, the Assembly puts the draft-amendments on a public debate. The Assembly defines the timeframe in which the public debate should take place, the manner of announcing the draft amendments and defines a timeframe in which the submitter of the draft amendments as a head of the public debate will present a report from this debate to the assembly and a text of the draft constitutional amendments. The submitter submits the text of the draft amendments and the results from the public debate to the President of the Assembly who, in a period of 30 days prior to the assembly session, submits it to the MPs and to the Prime Minister.

Each MP, each working body and the government, in cases when they are not submitters of the draft amendments, can submit amendments to the text of the draft amendments within eight days before the assembly session at which the constitutional amendments will be voted. There is a general debate on the text of each amendment in duration of maximum of three working days. The Assembly decides separately on the text of each amendment with majority of votes from the total number of MPs. The assembly determines the proposal for each amendment separately with majority of votes from the total number of MPs. The amendments to the constitution are adopted with two-third majority of votes from the total number of MPs, and with the same majority the Assembly passes a decision to declare the amendments to the constitution.

As a final point, in brief, this is the constitutional and legal procedure for voting on the constitutional amendments. One can note that the procedure is quite complex and demands a wide political consensus, i.e. support from at least 82 from the total of 123 MPs, as well as *Badinter majority* for the constitutional amendments that require double majority. It seems that the procedure for amending the constitution leaves enough space for all concerned parties to speak their mind. The timeframe of 30 days for a public debate leaves enough time for all relevant factors to speak (university professors, Academy of Science and Arts, institutions, state bodies, etc.) Unlike some constitutions in the world that require a referendum (mandatory¹⁹ and optional²⁰) for passing a new

¹⁹ As in the case of Switzerland, Ireland, France, Spain, Japan, Russian Federation etc. we should also mention that there are different forms of compulsory referendum: 1. Compulsory referendum for passing a

constitution or for amending the existing one, the Constitution of the Republic of Macedonia does not foresee obligatory referendum, although there is a possibility for organizing a compulsory referendum if supported by 150,000 citizens. In this case, the decision passed by the citizens at a referendum is compulsory.

Although the 1991 Constitution of the Republic of Macedonia does not use the term "direct democracy", it does stipulate the forms through which the citizens exercise the authority in the country. Article 2 of the Constitution stipulates that "in the Republic of Macedonia the sovereignty comes from the citizens and belongs to the citizens. The citizens of the Republic of Macedonia exercise their power through democratically elected representatives, by a referendum and by other forms of direct expression."

Further on, Article 68, paragraph 1, item 10 says that: "the Assembly of the Republic of Macedonia schedules a referendum", and Article 73 says: "the Assembly decides on scheduling a referendum on certain issues of its competence with majority of votes from the total number of MPs. The decision at the referendum is adopted if it is supported by the majority of voters who voted, if more than one-half of the total number of voters registered in the Single Voters' List voted at the referendum. The Assembly is obliged to schedule a referendum when the proposal for referendum comes from at least 150,000 voters. The decision passed at a referendum is mandatory.

III. Conclusion

The Macedonian Constitution so far saw seven changes with total of 32 amendments, not taking into consideration the eight amendments that were in the Assembly procedure in 2015. The Constitution of the Republic of Macedonia will yet be a subject of deep analysis. With the new amendments, and with the new processes of EU integration, the country will be obliged to make even more constitutional amendments that will inevitably open the question for the consistency and quality of the existing constitution, as well as for the need of a new constitution that will fully correspond with the challenges of the country at the economic, cultural, social and every other plan. No constitution is carved in stone.

"The balances between continuity and the need for maintenance and innovation, between the roles of representative bodies, and between voters and courts, are the most crucial aspects of constitution making, particularly in relation to the design of constitutional arrangements, so as to make future change possible.

If a constitution does not establish an effective way to transform itself, change will occur anyway, because a constitution which is totally unsuited for change sooner or later is doomed to become an instrument incapable of serving its purpose. Constitutional patriotism is best served by ensuring that a given set of constitutional arrangements can

new constitution; this kind of referendum is foreseen in the constitutions of the US states, the Swiss cantons, the 1947 constitution of Japan etc. 2. Mandatory referendum for amending constitutional provisions. This type of referendum exists in Austria in its 1920 Constitution, the 1959 Cuban constitution etc. and 3. Compulsory constitutional referendum when the assembly cannot adopt the proposed constitutional amendments, like in the case of Senegal in its 1959 Constitution.

²⁰ The case with the Constitutions of Austria, Italy, Slovenia, etc.

be adapted and incrementally changed rather than making out of it a petrified object of devotion.”²¹

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Useful internet links:

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