

Linguistic rights' regime in Macedonia –Challenges and /or constraints for effectiveness of Human Rights or Quid Pro Quo for a stable multi-ethnic democracy

Abstract

“If you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart”

Nelson Mandela

The linguistic rights of non-majority communities in Macedonia are based on two pillars: implementation of the Ohrid Agreement and the improved efficiency of the institutions – two processes that are closely connected. In other words, an effective implementation on the linguistic rights of non-majority communities, in Republic of Macedonia can be acquired, if the political engineering is implemented in an atmosphere of respect for values and principles of human rights that are generally accepted in modern political community. Speaking of the countries from the so-called third wave of democracy, the attention is focused on the question of how far the formally established political structures of multi-party democracy can produce an efficient protection of linguistic rights, the rule of Law and politically responsible linguistic diversity management. This is the process through which the “formal,” “quasi- formal,” and “democracies in transition”, will start operating on the basis of principles and values that are necessary precursors of liberal democracies. The term effective linguistic rights 'regime raises a few questions: the question of procedure/institution protecting minority rights on local level; the question of the factors stimulating or de-stimulating the bridging of that gap; and the question of time, because democracy is a process.

In this paper, I would like to tackle the process of linguistic rights' regime, on constitutional and international level, with special emphasis on linguistic rights' regime in Republic of Macedonia, and whether and to what extend, the introduction of special language provisions in the Constitution and the legislation contributes to the stable democracy, taking into account two factors: political elites and operability of the institutions.

Key Words: Non- majority communities, Ohrid Framework Agreement, human rights, use of languages.

THE TREATMENT OF MINORITY LINGUISTIC RIGHTS' REGIME ON CONSTITUTIONAL AND INTERNATIONAL LEVEL AND ITS RELEVANCE IN MULTI-ETHNIC SOCIETIES

After the fall of communist regimes in Eastern and Central Europe in the early nineties and the delicate creation of political pluralism and democracy, there has been an increased multiplication of the number of states whose borders have not been constructed in the most appropriate way. With the reconstruction of borders, majorities became minorities and vice versa. These events created a series of ethnic conflicts, ending with catastrophic consequences, creating new borders, genocide and division of society along ethnic lines, typical of recipient countries of former Yugoslavia. The deeply divided societies were created; where politics was organized at a large extent along ethnic lines, and where two or more ethnic groups competed for power, especially in the elections.

Hence, a fundamental challenge facing these countries was how to accommodate ethnic¹ and linguistic diversity because the potential for serious ethnic conflict is greater in these states.² Worldwide, there are about 200 countries and they include about 5,000 ethnic groups. 161 of these states are bigger and they have a minority ethnic groups who make up more than 10 per cent of their population.³ This is especially applicable for Central and Eastern Europe and the newly independent states, including Central Asia. The past century has taught us not only that diversity is increasing, but also the efforts of its elimination, ignorance or creation of impression that it is not there, cause a burning resistance. By denying it can create devastating long-term consequences, while recognizing the diversity and adapting it, can resolve seemingly irreconcilable disputes. Therefore, the states should guarantee the social, political and economic stability and to create policies and norms that respect and favours diversity.

Given this new realm, many post-communist countries introduced new Constitutions, where rights of minorities were symbolically introduced, either through constitutional provisions, or through *lex specialis*. Little, if not, at all, these provisions were respected, provided the historical legacy of nation-state and overwhelmingly recognized politics of majority domination. On the other hand, most of the modern Constitutions have language provisions, through which they regulate the modus of implementation and application of the official language that is considered to be a majority language. In contrary, if minority language provisions are envisaged in the Constitution, say in its Preamble, that doesn't automatically mean that states recognize and enforce these provisions. These provisions only serve as a basic ground for introduction of language legislation in the respective countries.⁴ Envisaging some form of recognition of minority linguistic rights, like

¹ The paradigm "ethnic" refers to "a group whose members share a common language or culture", *See*, Akayesu ICTR T. Ch. I 2.9.1998 paras. 512–15 and *see* Kayishema ICTR T. Ch. II 21.5.1999 para. 98.

² L.J.Diamond, M.F.Platner, *Nationalism, Ethnic Conflict and Democracy*, Johns Hopkins University Press, 1994, p.86.

³ Z.Katona, P.Kovacs, *Introduction to Ethnic Diversity Management, Concept, Strategies and Tools*, Research Report- Local Government Initiative, Open Society Institute, Budapest, Hungary, 2007.p.7.

⁴ R. Dunbar (2001). *Minority Language Rights in International Law. International and Comparative Law Quarterly* 50(1) 90-120. Available on Westlaw International Database. Last visited 30 April 2017.

provisions that envisage minority language promotion, do not also mean that minority language rights would be de facto granted, but it only serves as a programmatic provisions or future constitutional base, out of which special laws would be enacted in the national Parliaments.⁵

Unlike Constitutions, the experience in Europe, as elsewhere have shown that, in order to support such effectiveness of these rights, governments need to establish specific language arrangements for the national minorities. These arrangements should have a primer and ultimate aim to facilitate the inclusion of minorities within the State, thus enabling them to maintain their own identity and characteristics, including language.

In this context, Xavier Arzos⁶, stipulates three basic processes, that make linguistic rights emerge into the constitutional making process:

1. Recognition of linguistic minority rights are depending on political decisions;⁷
2. Linguistic minority rights exist on the base on some form of international agreement or inter-state agreement⁸ and
3. Linguistic minority rights created as a result of new Constitutions in Central and Eastern Europe⁹.

The first process, as the name itself express, again proffs the thesis that linguistic minority rights are depending of the will of the politics in states, or as Arzos says” based on the number of linguistic groups or communities¹⁰. Sometimes when states have relative big number of minority linguistic groups, this could be the basis for constant strive for domination of one minority language over another, and hence linguistic rights are envisaged in the Constitutions as a result of political compromise.¹¹

The second process emphasize that recognition of language rights are based on international or intra-state agreement¹². The evolution of such linguistic minority rights in the Constitutions is result of dissolution of federal states and changes of new border and territories. After the creation of the new states, majorities became minorities and hence, states were obliged to create specific constitutional linguistic recognitions. Hence, the

⁵ For bigger debate on this issue, see W. Osiatynski.(1994). Rights in New Constitutions of East Central Europe. *Columbia Human Rights Law Review* (26), 111-166

⁶ X.Arzos. (2007) The Nature of Language Rights. *The Journal of Ethno politics and Minority Issues in Europe* 6, at pp. 22-24. Available on

<http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/2-2007-Arzos.pdf>. Last visited 11 February, 2017.

⁷ Ibid.p.23

⁸ Ibid.p.24

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Such agreement is the one between Germany and Hungary, obliging parties to protect and adopt measures in favor of specific minorities. See Kinga Gál, “Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection?”, European Centre for Minority Issues, ECMI Working Paper #4, May 1999, available on http://www.ecmi.de/download/working_paper_4.pdf. Last visited 5 March 2017. Another example is the agreement between Former Yugoslavia and Italy over Trieste.

recognition of linguistic minority rights is solely dependent on the inter-state agreements.¹³

Finally, the third process stems from the creation of the new constitutions in the countries of Central and Eastern Europe¹⁴. One can freely say without any deliberation that this model of constitutionalizing of linguistic rights are in line with what Samuel Huntington says” the third wave od democratization”. This is so because the linguistic provisions of these models of Constitutions are enshrined from the major international human rights instruments.¹⁵ Many of the states in this third model, established Constitutional Commissions, (e.g. in the Balkan countries- Badintere Commission for evaluation of newly established Constitutions).

Regardless how evident is the need of recognition and implementation of the use of linguistic rights of minorities, the reality has proven somehow different. Namely, at the current stage, International Human Rights Law does not oblige the States to provide education in minority languages, and in the communication with the administrative and judicial authorities, may be used minority language, only if the states desire so¹⁶. The single norm- the prohibition of discrimination based on language constitutes a foundation and hence, the most far reaching right in practice.

In addition, the European Convention of Human Rights does not contain substantive provision that treats specifically linguistic rights. Instead, individuals who claim that their rights have been infringed and discriminated against could invoke the violation of article 14 (prohibition of discrimination)¹⁷, only in conjunction with another substantive provision of the Convention, say for example in conjunction with article 6 - right to fair trial.¹⁸ There is no separate language provision that could be invoked individually¹⁹. What is also very important to note that, the Court gives the states-signatories to the Convention, a rather wide margin of appreciation, when it comes to linguistic rights, provided the historical and social legacy within the respective states background.²⁰ The member states through this instrument have, therefore, great liberty in the way and manner of the treatment of the minority languages.

¹³ Ibid.p.24

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Advisory Opinion of the Permanent Court of International Justice as of 31 July 1930, Series B.17 at p.21. Available at http://www.icj-cij.org/pcij/serie_B/B_17/01_Communautes_greco-bulgares_Avis_consultatif.pdf. Last visited 14 April 2017.

¹⁷ European Convention on Human Rights. p.8.Available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf. p.12. Last seen 10 March 2017.

¹⁸ Ibid.p.8.

¹⁹ The provisions mostly invoked relate to Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression), as well as Article 2 of Protocol No. 1 (right to education). For more information on these issues, see Research Report, *Cultural Rights in the case law of the European Court of Human Rights*, Council of Europe, European Court of Human Rights, January 2011, p. 4. Available on: http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf. Last seen 10 March 2017.

²⁰ Ibid.p.13.

In general terms, the right of use of minority languages, voting rights and representation in the parliament are considered important indicators in the category for effective participation in the collective sphere, as these are categories where specific requirements of minorities are contrary to the democratic principle of majority rule. This goes in line with the 1995 Council of Europe Framework Convention for the Protection of National Minorities, the first legally binding instrument, which shows that protection of national minorities is essential to stability, democratic security and peace. Article 27 of the International Covenant on Civil and Political Rights, the United Nations Minority Rights Declaration, the Charter for Regional and Minority Languages defined a framework for protection of national minorities, especially in the field of language, culture, education and public administration. All these instruments, with exception to the Charter of Regional and Minority Languages, put little or no mark on effective use of languages by national minorities.

In this context, the very first question that arises is what are the preconditions and indicators for the states to recognize the idea of minorities and even more, the idea of linguistic rights of minorities?! Is there a common denominator or certain percentage so that the states could define what constitutes minority²¹ and why it is important to respect the values of universality of human rights, including the linguistic rights of minorities?

Taken this premise and having into consideration that every Human Rights issue including linguistic rights of minorities should be observed within the country specific context, it is important to explore whether introduction of such specific language arrangements contribute to the stability of democracy within the specific country, i.e. Republic of Macedonia. Since the paper seeks to address the legal and constitutional implications as a result of introduced minority language provisions in Republic of Macedonia within pre and post conflict period, and having in mind the complex composition of the state with the consensual democracy and power sharing elements, the paper should give answer to the question, i.e. whether and to what extent the introduction of special language mechanisms in the Constitution and the legislation contributes to the stable democracy. The aim is to see whether and how the introduced language arrangements contribute for a success or failure in a plural society, such as Macedonian one and whether its implementation significantly changes the position of minority – majority relations between 1991- 2001 pre and post conflict period. Even though one might be proud of such Human Rights achievements, still, the most important dilemma is whether these changes contributed to the stability of the democratic system, by the introduced Constitutional and legal amendments, or they just created two parallel worlds in which the Pandora box of demands and contra demands was opened.

²¹ Minority Rights: *International Standards and Guidance for Implementation* (HR/PUB/10/3), p.2. Available on http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf. Last visited 14 April 2017.

LEGAL AND CONSTITUTIONAL BASIS ON LINGUISTIC RIGHTS' REGIME IN REPUBLIC OF MACEDONIA

In elaborating on linguistic rights' regime in Republic of Macedonia, one must differentiate between two periods – the linguistic regime after Macedonian independence from Yugoslavia in 1991, and post-Ohrid Framework Macedonia from 2001, where significant language provisions and laws were introduced and implemented.

The first period from 1991- 2001, was characterised by turbulent political discourse, not only from linguistic point of view, but also from the overall creation of the Macedonian national identity, as such. Before the case of the Ohrid Framework Agreement is being elaborated, it is necessary to draw attention to the foundations of an independent Macedonia in 1991, the adoption of the Constitution of that year, which was considered that ten years later was the reason for the ethnic conflict of 2001.

The draft of the Constitution of the Republic of Macedonia in 1991 sparked great interest in the Parliament. Several crucial issues were the focus of interest at the time of its preparation in 1991; the decision making process in Parliament, the Council for Inter-Ethnic Relations, the introduction of vice President of RM and responsibilities of local government²². In the light of the events of proclaiming the Macedonian independence, was the boycott of the referendum by the majority ethnic Albanian community, thus supporting the new Constitution of Albanian deputies. In this direction, the Albanian MPs wanted to introduce a political system, based on consensus, when Parliament decides on issues of vital interest to all nationalities living in it²³. The MPs from the parliamentary majority rejected the proposal to introduce the consensus, explaining that the Council for Inter-Ethnic Relations is a corrective institute to the majoritarian decision-making in Parliament. Some MP's from Albanian political parties proposed the consensus to be institutionalized as a way of decision-making in the Council for Inter-Ethnic Relations. However, the majority finally adopted the majoritarian system of civil democracy, with which it was not possible to enhance the democracy in Macedonia, because it lacked a broad consensus in the adoption of the constitution of 1991. However, opinions differ on the above. In fact, in her paper entitled “ Globalization, democracy and constitutional engineering as a mechanism for resolving ethnic conflicts”, Prof. Dr. Gordana Siljanovska - Davkova, said: “ Citizens make up demos in modern political community. Democracy does not exist in a vacuum. If there is no demos, there cannot be a functioning democracy. Citizens –the modern expression of demos, presents the basis for a modern democratic state - as in countries with majoritarian model of democracy (e.g. U.S.) and in countries with consensual democracy (e.g. Switzerland). The parliament is an institution of democracy, not only because it is a mechanism for advocacy, but also because it is the demos that draws legitimacy of its decisions²⁴. In any case, in a study

²² S. Skarikj. *Comparative and Macedonian Constitutional Law*, Matica Makedonska, Skopje, 2004. p. 209.

²³ Ibid.

²⁴ G. Siljanovska Davkova. Globalization, democracy and constitutional engineering as mechanism for resolving ethnic conflicts. p.13. Available on <http://www.enelsyn.gr/papers/w6/Paper%20by%20Prof.%20Gordana%20Siljanovska%20Davkova.pdf>. Last visited 13 December 2015.

done for UNPREDEP, the Finnish National Centre for Research and Development for social and health issues believes that “ the basis for the development of Macedonia and in the future should be the policy of equality. Macedonians when trying to find their place under the sun, should take into consideration the rights of Albanian, Roma and other minorities, so they participate in this space, equally, if Albanian, Roma and other minority Macedonians want a piece of that space they will have to define their identity as Macedonians.” Are ethnic Albanians, Turks Serbs Vlavs, Roma or Bosnians defined as Macedonians in Framework agreement? No! It moves these ethnic groups away from the Macedonian identity and pushes in “their “ community²⁵.

Another obstacle on the way of the creation of the 1991 Constitution was the responsibilities of the local government in regards to education. It was thought that education is a matter solely to the Ministry of Education and will be generally inappropriate, if it was allowed for the local government to intervene in this area. The major demand actually was to be granted a way of decentralised use of languages on local level in the educational processes, with which the minorities could have education on their own language in primary or even secondary school. In this case, all proposals and amendments that were submitted in relation to the local self-government, didn't gain a green signal in the Constitution making process.²⁶

In terms of the use of languages on local level, the 1991 Constitution prescribed in the Article 7 “in the local government units, where the majority of representatives of nationalities²⁷ live, despite the use of Macedonian language and the Cyrillic alphabet, the language and alphabet of the nationalities can be used in a manner prescribed by law.”²⁸

On the other hand, in 1997, the Albanian students required to be taught on Albanian language at the higher educational institution, i.e. Academy of pedagogy, which was rejected by the Ministry of education. In parallel to this, majority Macedonian student protested for days against accepting these demands, believing that behind the requirement of use of Albanian language at the tertiary level, claims for territorial secession and divisions would be occurring.

At the same time, since 1992, in Macedonian politics existed tradition of broad coalitions, in which Albanian parties were constantly involved. It was stressed by the Albanians that in order to achieve stability in the system, it would require significant involvement of Albanians, but not only in the government. However, these claims were contrary to what existed in reality, because all rights guaranteed under the international law were respected in the country. The provisions for minorities guaranteed protection of their ethnic,

²⁵ Supra note 22, at. p.14.

²⁶ Ibid.

²⁷ The syntagm “nationalities” in the Constitution of 1991 was used to denominate the majority Macedonians, from minorities, who were referred as “nationalities”, including, Albanians, Bosnians, Turks, Vlavs, Serbs and Egyptians.

²⁸ Constitution of Republic of Macedonia 1991, (Official Gazette, 52 of 1992), available on: www.pravo.org.mk. Last visited on 20 April 2017.

cultural and religious identity²⁹. The multi-ethnic reality was expressed in formulations that guarantee the free expression of national identity as a fundamental value. Article 7 of the Constitution allowed for the official use of minority languages and alphabets in the local government, in which ethnic minorities live in significant numbers. According to the Law on Local Self-Government of 1995, 20 % of the local population is a significant number, which allows minorities to use this constitutional right. The solutions in this law regarding official use of minority language were inspired by the European Charter for Regional or Minority Languages, although I must note that Macedonia has not yet ratified this Charter.

In conditions of political tensions and disagreements for the about issues, the Constitution of Macedonia with 92 votes from the 120 deputies was adopted on November 17, 1991. It was adopted with more votes than the predicted two-thirds majority (80). The Constitution received support from 22 MPs that came from the Albanian parties; Party for Democratic Prosperity (PDP), and the National Democratic Party (NDP). It was a sign that the Albanian minority is not satisfied with its status in the Constitution of the Republic of Macedonia since 1991³⁰.

Having in mind the political constellation described above, ten years later, the ethnic conflict escalated in Macedonia in 2001. After several months of negotiations, the Ohrid Framework Agreement³¹ was officially signed on 13.08.2001, in Skopje by the leaders of the main Macedonian and Albanian political parties (SDSM, VMRO - DPMNE, DPA and PDP).

The basis of the Ohrid Framework Agreement includes termination of violence and preservation of the unitary character of Macedonia and reflects the multi - ethnic nature of the society in public institutions (equal representation) and public life without territorial division, as well as providing additional protection in five specific areas of cultural autonomy (language, culture, education, symbols and local government) through the principle of “Badintere”³².

The use of the languages of non-majority communities in Macedonian local context was effectively implemented after 2001. Despite that the Constitution, after 2001, introduced

²⁹ The right to express the national and religious identity is guaranteed in Republic of Macedonia. In relation to the law of census as of 1994, the application forms has to be bilingual.

³⁰ For Albanian political parties, the preamble of the Constitution of Republic of Macedonia as of 1991, was unacceptable. Namely, the arguing was in the line of the following formulation: “ The citizens of Republic of Macedonia at the Referendum of 8 September 1991, as well as historical fact that Macedonia is constituted as a national state of the Macedonian people, in which, it is assured complete civic equality and permanent co-existence of the Macedonian people with the Albanian, Turks, Vlavs, Roma, Serbs and other nationalities that live within the territory of the Republic of Macedonia.” *Official Gazette of Republic of Macedonia no. 91/01*.

³¹ The full text of the Ohrid Framework Agreement in English version is available on <http://www.ucd.ie/ibis/filestore/Ohrid%20Framework%20Agreement.pdf>. Last accessed 10 April 2017

³² 46 laws enumerated in the Law on Committee of Inter-Ethnic Relations are voted with double majority. At the same time, in electing the major organs is also used the double majority for example in electing the Ombudsman, election of 4 out of 15 judges in the Judicial Council, as well as 3 out of 9 judges of the Constitutional Court.

numerous provisions for the use of languages, the scope of the use of non-majority languages could only be implemented in relation to the Constitutional Amendment V. This means that on the whole territory of the Macedonian state, official language is Macedonian and its Cyrillic alphabet, and in the areas where 20% of the population speaks the non-majority language, official language, in conjunction with the majority Macedonian, is the the language spoken by this language community.³³

Macedonia today, has attained respective international standards for the protection and promotion of the languages of non-majority communities. Macedonian Constitution of 2001 belongs to the acts that contain standards of citizens - liberal concept, which emphasize the individual linguistic rights and putting the individual at the core of existence in the Constitutional value. This protection includes not only approximation with the provisions from the legally binding instrument- the Framework Convention for Protection of National Minorities, but also provisions envisaged in the local laws and Constitutional provisions, are in the spirit of the European Charter for Regional and Minority languages, eventhough Macedonia did not ratify this instrument yet. One can freely say that Macedonia has not only respect towards tolerance, but also towards promotional rights for the use of languages. On the other hand, many soft law mechanisms, like the Oslo Recommendations and the Hague Recommendations are transponded through the varieties of laws, with which Macedonia makes the cradle of respect for the implementation of linguistic rights as part of the corpus of human rights.

SPECIFIC ASPECTS ON THE USE OF NON-MAJORITY LANGUAGE

Use of languages on local level

The effective delivery of the right to use the non-majority language to members of minority communities is an obligation that derives from the Constitutional Amendment V, which provides the basis for the Macedonian language policies. Namely, the amendment V of the Macedonian Constitution, introduced by the Ohrid Framework Agreement (OFA) provides that:

“In the units of the local –self government, the language and alphabet used by at least 20 % of the population is an official language in addition to Macedonian language and the Cyrillic alphabet. In addition to this, for the use of language and alphabet that is spoken by less than 20 % of its citizens, its use its decided by the organs of local self-government”. This means that the local self-government units have a constitutional obligation to provide official use of languages for those communities who constitute 20 % of the population within the unit. Additionally, there is an opportunity - if a community is composed of less than 20 % of the population, then the introduction of the official use of language of that community is conditioned by a decision by the authorities of local self-government units. It is important to note that, in all cases, the minority language could not be used separately, but as provided by the Constitution, it must be

³³ Amendment V of the Constitution of Republic of Macedonia, *Official Gazette of Republic of Macedonia no. 91 from 20.11.2001*. Available on www.pravo.org.mk Last visited 15 of April 2017.

used in parallel with the Macedonian language. It is worth to highlight that before 2001 a similar provision was laid down in Article 7 of the same Constitution.

In addition to this, the law on local self-government from 2002³⁴ and on the City of Skopje 2004³⁵ contain specific sections dedicated to local language policies. The provisions related to municipalities are identical to the provisions stipulated in the capital of Skopje. Namely, articles 89 and 90 of the Local Government law, foresees provisions regarding language policy at the local level. It is stipulated that the Macedonian language and its Cyrillic alphabet are official at the local level, but also the languages and alphabets of minority communities that are at least 20 % of the population are also official. Also, this law introduces a role for the municipal council - the collective representative body of the units of local self-government - who has been identified as responsible for creating the local language policy for those minority communities that make up less than 20 % of the population of local units. More specifically, article 90, paragraph 2 of the Local Government Law provides that: "The use of language and spoken by less than 20 % of the residents of the municipality to the council of the municipality." This provision is important because it defines the role of the municipal council, as a central authority for decision-making on matters of language policy for "smaller" communities, i.e. those communities who make up less than 20 % of the population in particular unit of the local-self government.³⁶ Moreover, the decisions upon issues related to the use of the languages of minorities are also subject to specific decision-making procedures. The Local Government law stipulates that: "Regulations relating the use of languages that is spoken by less than 20 per cent of the citizens in the municipality is adopted by majority of votes of the members of the council, which must have a majority votes of the council members who belong to communities who belong to the minority of the population in the municipality."³⁷

This kind of decision is generally known as "double majority voting" or "Badintere majority". The purpose of this type of decision-making is to provide protection for non-majority groups from being outvoted by the majority ethnic group. This procedure was first introduced in the Parliament with the incorporation of the OFA in the legal framework. Thus it was limited to specific issues or questions pertaining to education, culture, use of language and symbols of minority communities, initially it should serve as a protective mechanism for minority communities nationwide. However, these rules were later adopted for decision making at the local level. The Commission for Interethnic

³⁴ Law on Local Self-Government, Official Gazette no. 5 / 02 of 29 January 2002. Available on www.pravo.org.mk. Last visited 15 of April 2017.

³⁵ Law of Skopje, Official Gazette no. 55 / 04 of 16 August 2004. Available on www.pravo.org.mk

³⁶ Article 32, paragraph 1 of the Law on Local Government, defines the Municipal Council as "the representative body that decides within the powers of the municipality". Members of the municipal council (councilors) are elected in general, direct and free elections (Article 33, paragraph 1) a four-year term (Article 35, paragraph 1). The numerical composition of the Council determines the population of the municipality, or in the smallest municipalities (which have 5000 inhabitants) councils are made up of nine councilors, while the largest (over 100,000 inhabitants) councils are made up of 33 councilors (Article 34). Depending on the number of residents, the city council may be composed of 9, 11, 15, 19, 23, 27, 31 or 33 advisors.

³⁷ Article 41, paragraph 3, Law on Local Self-Government, 2002. Available on www.pravo.org.mk

Relations is a local body, responsible for the implementation of local language policies. It was established in those local governments where non-majority community assembles at least 20 % of the population, as required by Article 55 of the Law on Local Self-Government. These committees, consisting of representatives of all communities in the municipality have a consultative function on issues relevant to community relations. The official use of the languages of the communities is also an issue on which CICR has an advisory function.

Law on Languages

Besides the local government law that contains provisions on the use of minority languages, the central law that regulates the sphere of public policy for the use of official languages is the law on languages that is spoken by at least 20 % of the citizens of the Republic of Macedonia and in the units of a local government. This law was adopted in 2008.³⁸ The rules prescribed by the Constitution and the Local Government Act are confirmed by the language law, the status of the Macedonian language as the official language that is used in local self government units, the status of the languages of the communities that make up 20 % of the population in the municipalities, and the status of languages that is used by communities that are less than 20 % of the population in the municipalities. Also, the role of the municipal council as decision-maker, concerning the use of local language policy for communities below 20 % and the use of double majority voting in the municipalities in Skopje is also provided. This language law systematically combines all relevant provisions of the use of non-majority languages that were previously included in different laws.

Another enacted law is the Law on promotion and protection of members of communities that are less than 20% of the population in Republic of Macedonia.³⁹ The realization and promotion of rights of communities that are less than 20% of the population of Macedonia, according to this law, encompass the rights in the field of employment, in accordance with the principle of equitable representation of community members, the use of language, education (Primary, secondary and tertiary), culture and other areas in which the law regulates the rights of community members.⁴⁰ According to this law, the members of communities have the right of education in their own language on all there levels,⁴¹ right of receiving an information in their own language, through electronic and printed media,⁴² and may establish associations and foundations to exercise their cultural, educational, artistic and scientific purposes in accordance with the law.⁴³ Also, the law prescribes that the members of communities have the right to use their own symbols, in accordance with this law.⁴⁴

³⁸ Law on languages spoken by at least 20 % of the citizens of the Republic of Macedonia and local governments, Official Gazette no. 101 / 08, 100/11. Available on www.pravo.org.mk.

³⁹ Law on promotion and protection of members of communities that are less than 20% of the population in Republic of Macedonia Official Gazette of RM.no. 92 of 22.07.2008

⁴⁰ Ibid. Article 3.

⁴¹ Ibid. Article 5

⁴² Ibid. Article 6

⁴³ Ibid. Article 7

⁴⁴ Ibid. Article 8.

The use of non-majority languages in the judicial procedures and litigation

The application of non-majority languages in the judicial and litigation procedure is prescribed on three levels of litigation- criminal, civil litigation and offence procedure.

In the criminal procedure, the official language is Macedonian and the Cyrillic alphabet, and another official language spoken by at least 20 % of the population and its alphabet, is used in accordance with the Criminal procedure. If the defendant or another participant in the proceedings speaks an official language other than Macedonian, he/she is entitled in court to use that language and write submissions in their language and alphabet, as well as to receive invitations and other documents in its own language.⁴⁵ However, the implementation reveals something else. Namely, as a result of the poor level of implementation of these provisions in practice, the Advisory Committee on FCPNM asked the state to continue with the training and recruitment of qualified interpreters in order to effectively implement the provisions on the use of minority languages (the other official language) in criminal procedure.⁴⁶

Offence procedure – for implementation of proceedings in these courts, provisions of the Criminal Procedure relating to the use of language by the participants has been applied. If the defendant is suspected of committing an offense for which the court ordered detention, it has the right to be notified of the language or a language he understands, of the reasons for detention. The legislator with this provision left space the court to freely evaluate on which language the detainee will be informed of the reasons for detention. It does not mean that the person belonging to a community could use the language of its community, but also could be given a chance to use another language that he/she speaks and understand.

The civil procedure is conducted in Macedonian language and the Cyrillic alphabet, and the use of other official language and alphabet spoken by at least 20 % of the population. The parties and other participants in the proceedings, whose language is an official language other than Macedonian in the proceedings before the court have the right to use their language in a way that they would provide their interpretation of language and translation costs covered by the budget. The courts that are placed in different local units, besides the Macedonian language as the official language, the language of the Community that is spoken by at least 20 % of the citizens is also used.⁴⁷ Finally, in order to satisfy the principles of fairness and justice, the drafters of the laws predicted that the court cannot reject evidence for a fact just because it is written in the community language of both the parties and other participants in the proceedings and are citizens of

⁴⁵ Article 8 and 9 from the Criminal Procedure Law. Official Gazette of RM. No.15/1997, 44/2002, 74/2004, 83/2008, 67/2009, 51/2011. Available on www.pravo.org.mk

⁴⁶ Third Opinion of the Advisory Committee on the FCNM, on “the former Yugoslav Republic of Macedonia” adopted on 30 March 2011, ACFC/OP/III(2011)001, p.27. Available on http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_FYROM_en.pdf. Last visited 10 April 2017.

⁴⁷ Article 143 para.8 of Civil Litigation Law. Official Gazette of RM no. 79/2005, 110/2008, 83/2009, 116/2010. Available on www.pravo.org.mk

Republic of Macedonia. The translation costs of such evidence falls on the burden of the state budget⁴⁸.

The use of languages in education

The education is one of the key aspects of informing the members of minority groups in their culture and language, and is a mechanism for integration of the individuals in society. Republic of Macedonia has not only a responsibility through education to enable non-majority communities' groups to develop a sense of belonging to their communities, and inclusion in society through the education process, but also to educate the majority and to strengthen awareness among them for diversity and tolerance in multi-ethnic society. Like in the other two spheres mentioned above, the use of languages in the educational process is also at the high peak of implementation of linguistic rights in Macedonia. The right to education on the language different than Macedonian is provided from pre-school to tertiary education.

The care and education of preschool children is conducted in Macedonian language and Cyrillic alphabet, and for children- members of other communities in the language of the relevant to this community.⁴⁹ In accordance with the principle of equal opportunities and respect for diversity among children special attention should be dedicated to diversity and multiculturalism in the selection of activities, resources and materials that would allow children to foster their identity and gain knowledge.⁵⁰ In practice the problem with implementation of languages other than Macedonian may appear if there is a lack of appropriately trained staff to deliver the curriculum on the different language, and in this context, the application of this provision is not always respected. In the kindergartens, unlike the children, members of the Turkish community, the children from smaller communities exercise insignificantly their legal right to follow the educational activities on their native language.

In regards to primary education, which is compulsory and free, the members of non-majority speaking communities have the right of instruction in their language in primary education.⁵¹ For students' members of communities who follow the primary school in languages other than Macedonian and its Cyrillic alphabet, the educational activities are conducted in the language and alphabet of the respective community. For these students, the textbooks are in their own language and alphabet, in accordance with the Law on textbooks for primary and secondary education.⁵² In sum, the teaching in primary schools in Macedonia has been conducted in Macedonian, Albanian, Turkish and Serbian. In accordance with the commitment to respect the linguistic and cultural identity of the

⁴⁸ Ibid. article 205.

⁴⁹ Article 47 of the Child Protection Law. Official Gazette of RM no. 98/2000, 17/2003, 65/2004, 113/2005, 98/2008, 107/2008, 46/2009, 83/2009, 156/2009, 51/2011, 157/2011 Available on www.pravo.org.mk

⁵⁰ Decision for introduction of the basis of the programme for educational purposes for pre school children in the public kindergarten. Official Gazette of RM no. 125/2007. Available on www.pravo.org.mk

⁵¹ Amendment VIII of Macedonian Constitution of 2001. Available on www.pravo.org.mk

⁵² Article 3, para.2 of the Law for textbooks for primary and secondary education. Official Gazette of RM no. 98/2008, 99/2009, 83/2010, 36/2011, 135/2011, 46/2012. Available on www.pravo.org.mk

communities from third to ninth grade students have the opportunity to learn as elective subjects the language and culture of Vlavs, Roma and Bosnians.⁵³

In the primary schools, the practice shows that the problems remain on providing a better quality of instruction in a language other than Macedonian, because there are inadequate number of teachers, lack of training to the teachers in the non-majority language and lack of quality study materials. Also, children from smaller communities who completed the primary education in their own language, face difficulties in enrolling and attending classes in Macedonian language in the secondary schools, because of the lack of courses and activities for their support in studying the Macedonian language.⁵⁴ In contrary to this, a positive example of the use of languages that are less than 20 % is with the two schools in Saraj and Veles which performed experimental teaching in Bosnian language and covered a total of 328 Bosnian children. However, the biggest problems in unfulfillment the educational rights in the primary schools, remain with the Roma children, who do not always get the opportunity to exercise their language in primary school. Although through the country, the number of Roma children is significant, it takes place only in 11 elementary schools, which does not reflect the real demographic situation.⁵⁵

The secondary education is compulsory for every citizen, and according to the Constitution, community members have the right to instruction in their language in secondary schools and in schools where education is carried out in another language Macedonian language is also compulsory.⁵⁶ In order to protect the feelings of non-majority communities, the national legal framework provides to withdraw a textbook if it contains material which is insulting the history, culture and values of all non-majority communities enlisted within the Constitution, i.e. Albanians, Turkish, Vlavs, Serbian, Roma and the Bosnian.⁵⁷

Although the law allows community members to attend classes in the language and alphabet of the relevant community, this provision applies only in terms of “the largest of the smaller “ communities - Turkish community. According to official data of the State Statistical Office, in the academic year 2010/11, the teaching in Turkish language was implemented in 10 high schools through the establishment of 61 classes and delivered by 144 teachers. Although there is a trend of continuous increase in the number of Turkish students who follow the secondary school in their native language, however, in the academic year 2010/2011, only 58.32 % of the total number of Turkish students attended classes in secondary education in their native language. Additionally, in Macedonia there are private schools where instruction in Turkish language and alphabet.

Compared to the primary and secondary education, the higher education is mostly taught in Macedonian and Albanian language. However, some members of the non- majority

⁵³ Information from the Ministry of education and science, Bureau for development of education, 2007.

⁵⁴ D.Boshkovski. *Implementation of the rights of communities- practices, mechanisms and protection.p.17.*

⁵⁵ Ibid.

⁵⁶ See supra note 45

⁵⁷ Article 3 of the Amended Law of Law on textbook for primary and secondary education. Official Gazette of RM no. 46/2012. Available on www.pravo.org.mk.

communities have the right to be taught in their own language, in accordance with the Higher Education Act and the statute of the higher education institution. There is a state funding for the communities to be taught in language that is spoken by 20 % of the population in Macedonia, but it is limited to education in Albanian language, and not in any of the five languages of smaller non-majority communities. In the public pedagogical higher education institutions, the teaching could take place on the languages of other non-majority communities in the country. In all cases, when the language of instruction is the language of non-majority communities, then the Macedonian language is taught as a separate subject and at least two separate teaching subjects has to be taught in Macedonian.⁵⁸

LINGUISTIC RIGHTS' REGIME VERSUS POLITICAL (IN)STABILITY

Republic of Macedonia, managed to incorporate high standards of Human Rights, more specifically the right of use of non- majority languages on local and national level. The linguistic rights of non-majority communities within the Macedonian multi-ethnic state were raised on Constitutional level, provided the Constitution as the highest legal act of the country and derived into separate laws.

In this regard, according to the data from the Macedonian State statistical office, 31 of 81 units of the local-self government implement multilingual policies, and nearly one -third of these units officially use more than two languages of minority communities. According to the 2002 census, 832.184 citizens of Macedonia out of the total number of 2,022,547, live in the municipalities with more than one official language (or, expressed as a percentage: 41.14 % of all residents).⁵⁹.

However, the effectiveness of implementation of use of minority languages needs to be seen from two perspectives: first, from linguistic rights perspective and second whether meeting the high standards of linguistic rights in existence of consensual type of democracy and political system, contribute to the stable democracy.

If we analyze the implementation of the use of non-majority languages, then we can freely conclude that Macedonian multi-ethnic society has passed the democratic test of respect for the linguistic minorities. This is because, non-majority language provisions introduced within the Constitution and laws include the two categories of linguistic rights - namely linguistic tolerance, which protects the representatives of minority languages from discrimination and assimilation, provided that they are free to use their own language in all spheres on local level and in education, and eliminates every assimilation based on language. This contributes to preservation of minority linguistic identity in Macedonia and preservation of their own culture. In addition, the second category of language rights are fully implemented- linguistic promotion, and related to, education,

⁵⁸ Article 103 para. 1, 2, 3, 8 and 9 of the Law on higher education. Official Gazette of RM no..35/2008, 103/2008, 26/2009, 83/2009, 99/2009, 115/2010, 17/2011, 51/2011, 123/2012. Available on www.pravo.org.mk

⁵⁹ Information available on the www page of the State Statistical office. Available on <http://www.stat.gov.mk/>. Last visited 10 April 2017.

use of minority languages before courts, local level, media, or mostly provisions that are related to key public service delivery functions. For the first set of rights, Macedonian state managed to protect the representatives of linguistic minorities against so called procedural unfairness, which is also part of European Convention on Human Rights, and the International Covenant on Civil and Political Rights, which were both signed and ratified. For the second set of rights, the country also attained the significant standards, because linguistic promotion rights are not only envisaged in the constitution and laws, but are fully operational within their context.

The model of use of linguistic rights in Macedonia doesn't consider language only as a part of the human dignity, because this model is not sufficient to provide that members of non-majority communities have the same range of possibilities as those who are members of a majority. Macedonian multi-ethnic state achieved to raise the non-majority linguistic rights to the level of implementation of the standards and norms of the so called soft law mechanisms for the use of languages, envisaged in the Oslo Recommendations regarding the Linguistic Rights of National Minorities and The Hague Recommendations Regarding the Education Rights of National Minorities in its positive laws. For such implementation numerous educational laws have been changed, which provided study in a non-majority language from primary till higher education level. Provided such framework, one can notice that the protection and advancement of the minority languages presents an essential contribution towards the development of the Macedonian human and minority rights standards, and based on the principles of democracy and cultural diversity in the frames of preserving the state sovereignty and the territorial integrity.

Despite the well established language norms raised on Constitutional level, the challenges remain in the essence of whether introduced provisions for the use of languages in a state with consensual type of democracy contributes to the stability of the multi-ethnic state. The answer to this question unfortunately proofs the opposite.

Namely, the introduction of the language norms of non-majority communities, and the development of the citizen-liberal concept of the Constitution, recognized the idea of capitulation of building a political nation (demos), with emphasized individual rights, where all citizens got equal status constitutionally. This Constitutional reality created in liberal way, eliminated every effort of ethnic assimilation and majorisation of the ethnic communities, but allowed them to preserve their ethnic, linguistic and cultural identity. However, such introduced linguistic rights in consensual type of environment did not remove the open commitments and solutions for minority cantonization and federalization. (Language, symbols of non - majority communities, extending the double majority etc.). Non-majority communities quite often use the right to interpret the use of official minority language on local level, thus excluding every effort to use its language in conjunction with the Macedonian language and its Cyrillic alphabet. The whole communication and the use of alphabet in local areas, where majorities represent minority, is mostly implemented in non- majority language, thus violating the principle what the Constitutional Amendment V prescribes - despite the minority language, the official language is Macedonian and its Cyrillic alphabet. On this way, ethnic Macedonians feel that they have been majorized by the minority. In many cities in the country, representatives of the non-majority communities deny to speak the majority

language too. As such, Macedonia remains a deeply divided society between the Macedonian majority and the Albanian minority. Divided by language, religion and a strong sense of national identity, the communication between the two communities in recent decades has been limited. Thus, the tension between the Albanian minority and the Macedonian majority is a defining characteristic of the Macedonian state since its creation.

Raising linguistic rights on much higher level, did not contribute to substantial changes in inter-ethnic relations in Macedonia. The ethnic question is still the force that governs the political debates in the country. Ethnicity is very important for the citizens. They prefer to establish communication within their ethnic group, even when employed in the local-self government units, because such liberal use of languages makes division even greater. Even Lijphart suggests non-applicability of the consensual democracy in a bi-national concept (Macedonian - Albanian), which de facto is occurring in Macedonian reality.

Furthermore, the leaders of the two largest segments in the post - framework Macedonia accumulate power and functions within its own segment which is particularly evident at the local level, by employing their own party members, each from its own segment. The members of the segments, Macedonian or Albanian each use its own language and create parallel words of division among ethnic lines. The concentration of power opens the space for irresponsibility of elites in relation to citizens and realistically grounded the partitocracy. Typical behaviour that follows Macedonia's consensual decision-making means the absence of strategy or making endless concessions, which lead to ineffective and dysfunctional system for blockages and obstructions, and greater fragmentation of the system. Political elites always use the exit strategy to "play" with the feelings of non-majority communities, by explaining that their linguistic rights are infringed and that they are discriminated, because they are not implemented in accordance to law, which is only an empty debate in order to get ethnic votes among its ethnic communities. On this way, political elites within their segments shape their interests, as their requirements exclusively from internal base, without consultation with citizens, not only in its segment, but also with all other citizens in general. Political elites create election programmes in its own language, which is presented on their own TV stations, which from the beginning exclude a great number of population to understand the platform. This consequence of the behaviour of the segments against its own citizens creates serious implications in terms of violation of individual rights at the expense of the collective, and it contributes to maintenance and strengthening of patriarchal and parochial, at the expense of participatory political culture, thus stimulating the ethno-party elitism and promoting ethnocracy rather than democracy. In other words, whenever an interest within the segment will be done in a way that it planned, political leaders are resorting to acceleration of tensions along ethnic and linguistic lines, because this practice has already been considered as a successful recipe for getting power.

An eclatant example is this regard, is the introduced Platform of Tirana⁶⁰ (Tiranska Platforma), which was agreed by the leaders of the three Albanian political parties, under

⁶⁰ The text of the Tirana Platform, in Macedonian language, could be accessed here: <http://infomax.mk/wp/%D1%81%D0%B5%D0%BF%D0%B0%D1%80%D0%B0%D1%82%D0%B8>

the auspices of the Albanian Prime Minister, Edi Rama, in Tirana, Albania, just one month after the last Parliamentary elections in Macedonia, that took place on 11 of December, 2016. Not only that this platform again leaves a space for opening the Pandora box of demands and contra demands of Albanian politicians, in regards to Constitutionally recognized linguistic rights of non-majority communities, but this time they required the following "Achieving full linguistic equality, the use of the Albanian language at all levels of government and a guarantee for its implementation as a fundamental constitutional right. Constitution should determine that the "Macedonian language and the Cyrillic alphabet and the Albanian language and its alphabet are official languages in the country." Once again, in a lack of real political programme, based on the needs of all citizens in Macedonia, Albanian politicians resorted to such demands, which have no legal basis, provided the already established language mechanisms in the Constitutional Amendment V. This is known practice in Macedonia, because similar demand was asked during the Ohrid Framework negotiations.⁶¹

In parallel with this process, other communities mentioned in the Constitution (Turks, Bosnians, Vlavs, Roma and Serbs) are not linguistically treated as equal non-majority communities, though it is explicitly stated in the Preamble of the Constitution, but Macedonia is considered as a bi-national state. This is supported by the fact that higher education is only provided for the Albanian speaking community, but not for the others. This is contrary to the Constitution, and is a result of the political bargaining of the elites of the two biggest blocs- Albanian and Macedonian. This creates inequality in terms of use of languages on long run, because in practice, it does not provide space for the use of languages of smaller communities on this level. As part of this, all public discourse post 2001 is based on rhetoric - Macedonians and Albanians, while citing other communities as "minor". In a multi-ethnic society, such as Macedonian, where all six non-majority communities are given same status in the constitution in terms of use of languages, it is nebulous to create special rules for members of ethnic communities who are less than 20 %, especially in terms of having a strong liberal concept, with strong individual versus collective rights. This daily growing tendency of "minorisation" other non-majority communities which are considered for "smaller", and synthesis of interests on line - Albanian – Macedonians, enhance the commitment, the Republic of Macedonia to become de facto bi-national state, with only two official languages Macedonian and Albanian, which is contrary to what is prescribed in the Ohrid Framework agreement and the Constitution of 2001.

Furthermore, although Macedonia clearly avoided language federalization, still the introduction of the use of languages outside the Macedonian-Albanian communities did not contribute to real civic integration in the country. A primary school in Skopje's multi-ethnic community of Chair, where predominantly lives non-majority Albanian community, decided to change the name of the primary school of "Kongresi e Manastirit" (in Macedonian- "Bitolski Kongres"), written with Albanian alphabet. What caused

[%D1%81%D1%82%D0%B8%D1%87%D0%BA%D0%B8-D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82-D1%82%D0%B5%D1%80%D0%BE%D1%80%D0%B8%D1%81%D1%82%D0%B8%D1%87/.](#)

⁶¹ V.Ljatifi. *Negotiations on Ohrid Framework Agreement*. Foundation Open Society Institute, Macedonia, 2008, p.54.

ethnic tensions was the fact that the transcript was also Albanian, written with Macedonian Cyrillic alphabet. This is excellent example of non-constitutional practice. In multi-ethnic society, such as Macedonian, the politicians should not interpret the laws and Constitutions, but rather implement them. The shown example before, only proves that the Constitution has been violated and disrespected, because this provision for the school plate on solely Albanian language is contrary to the Constitutional Amendment V, failing to provide to translate the name into Macedonian language. Not only that it makes a denomination of the official Macedonian language, but also it denominates, the state symbol, the hymn, which makes Macedonian institutions weak, in respond to such events.

Macedonian model of consensual democracy, with clearly introduced language arrangements did not contribute to the stable system, because the existence of only two dominant segments leads to a policy of mutual blockades and blackmails, appeal to their own electoral base through means that are often based on their own language and ethno - political mobilization, and the overall policy, takes the form of winners and losers. Such a system, where everyone is addressing in its own language does not promise stability and compromise, and carries a risk of paralysing of the institutions.

CONCLUSION

If Macedonia wants to be truly multi-ethnic democracy in practice and in spirit, with developed mechanisms of rule of law, it needs to contribute to the depolitization of the question of the constitutionally and legally correct use of languages, through the juridization of politics, but not politization of laws. The way the Macedonian society is constructed now, by its national political abuse of the language, leaves a space that one would believe it is rather a confederation of municipalities of small states, rather than one unitary state, with strong multi-ethnic and multi-lingual character. The multilingualism should be always evaluated through the prism of enhancing the inter-cultural integrative processes, and not as a possible damage of reducing the use of the use of non-majority languages.

Therefore, the constitutional design in multi-ethnic societies needs to be properly tailored, to meet the needs of non-majority communities, and the focus needs to be put on collaboration and cooperation among different communities and their political elites. In systems with consensual democracy, the level of cooperation should be established on the way, so that the rights of linguistic minorities are to be heard. The political leaders should allocate resources proportionally for linguistic minorities to have equal say, and to avoid majorisation of only numerically bigger linguistic minorities, meaning to avoid bipartisan consensus. Only on this way, constitutionally recognized rights for the use of languages could be effectively implemented and respected. In contrary, if consensual democracy is based on dependence on permanent contracts of elites to the level that it materializes the ethnic identity, then the stability of the system and with that, linguistic rights would be placed into danger. This would lead to undemocratic and inefficient decision-making and will sign moratorium for effective implementation on the linguistic minority rights. In this regard, it is of utmost importance, to have in mind that, besides specific types of

decision-making and arrangements on constitutional level in terms of use of minority languages, to be created credible institutions, with institutionalized culture of rule of law and civic equity, apart from elite cooperation as a sole element.

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