

The Ohrid Framework Agreement and International Law: Twenty Years of Development

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The Balkans can be described as a laboratory of modernity, especially when it comes to the form of multicultural life in the communities. The modern nation states that formed from the dissolution of Yugoslavia in the 1990s were faced on the one hand with a “need” to establish a state for the majority dominant ethnic group, and on the other hand to reconcile the multicultural reality of their societies and accommodate for the rights of minorities. This paper will focus on the constitutional and legal implications that followed the signing of the Ohrid Framework Agreement (OFA). It will also give an overview of the contents of the OFA and subsequent legislation juxtaposing it to international standards prescribed by documents such as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Framework Convention for the Protection of National Minorities of the Council of Europe. In the context of this legal analysis, the paper will examine the developing political environment through analysing certain dynamics in the political system focusing on parliament and political parties. It will also follow the discourse and popular support of the agreement and its effects on the internal and external stability of North Macedonia.

Keywords: Ohrid Framework Agreement, minority rights, international law, power sharing, reconciliation

Introduction

The process of state and nation building in the Balkans is forged in conflict and compromise. Coming out of the Yugoslav socialist federation in the 1990s that in its constitution recognised only the working class regardless of ethnic backgrounds,² these new states embarked on creating nation states at the tail end of the 20th century. North Macedonia, being the only state to secede from

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2 Constitution of the Socialist Republic of Macedonia of 1974.

Yugoslavia peacefully through a referendum began building a vision for the new state that was a compromise between nationalist and liberal forces. While the multi-ethnic reality of the state was recognised in the new constitution, its symbolic place was always second to the dominant nation – Macedonians. This tension within the political system culminated in an armed intra-state conflict in 2001 in which the ethnic Albanian National Liberation Army (NLA) clashed with Macedonian security forces. The conflict was brought to an end through negotiations that resulted in the signing of the Ohrid Framework Agreement (OFA) between the dominant Macedonian political parties and Albanian parties with guarantees from the international community. This paper will focus on the constitutional and legal implications that followed the signing of the Ohrid Framework Agreement (OFA). It will also give an overview of the contents of the OFA and subsequent legislation juxtaposing it to international standards prescribed by documents such as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Framework Convention for the Protection of National Minorities of the Council of Europe. In the context of this legal analysis the paper will examine the developing political environment through analysing certain dynamics in the political system focusing on parliament and political parties. It will also follow the discourse and popular support of the agreement and its effects on the internal and external stability of North Macedonia.

Political context of 2001 and the aftermath

The breakup of former Yugoslavia in the 1990s was marked by violent conflict. Only the Republic of Macedonia seceded from the federation by peaceful means under the leading motto of its first president Kiro Gligorov “I will not let people die for piles of steel”. The referendum that was held on 8 September 1991 saw 95% of the Macedonian population vote in favour of independence from the federation.³ On 17 November 1991, the Assembly of the newly independent republic voted on the Constitution of the Republic of Macedonia. While the narrative of these events is meant to project an image of the country as one of peace and strong national consensus of independence, the reality of the events that preceded the referendum are far more complicated. While 95% of those who voted were in support of independence, the Albanian population did not participate in the referendum. This was the result of previous events in the Macedonian Assembly where Albanian demands were sidelined by the Macedonian majority. Having this in mind, it is clear that Macedonia lacked substantial political and democratic consolidation from the start of its independence.

As a new country on the international scene, Macedonia embarked on a nation-building project, the vision for which was forged in the Constitution. Namely, in the preamble of the text it is clear that Macedonia is “constituted as a national state of

³ Akademik 2018.

the Macedonian people in which full civil equality and permanent coexistence of the Macedonian people with the Albanians, Turks, Vlachs, Roma and other nationalities living in the Republic of Macedonia is ensured”⁴ While it is clear that the text at the forefront pushes a vision for the country as a national state, the second half of the text attempts to accommodate national minorities through full equality as citizens. This creates a symbolic classification of people with Macedonians as the primary bearers of the right to a state.⁵ Another point of symbolic contestation in the Constitution can be found in Article 19 paragraph 3: “The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.”⁶ Although this article does not discriminate against other religious communities in the country, it again ranks the religion and religious community (the Orthodox church) practiced by the majority nation symbolically higher than the others. From these examples we can see that the political elite chose a majoritarian model of democracy, while disregarding minority demands for inclusion and participation in the constitution building process.

Even though this constitutional setup was more liberal compared to the constitutions of the new republics in the region, it still meant a degradation of established minority rights within Yugoslavia. From the text of the 1974 constitution of the Socialist Republic of Macedonia, Article 221 declared full equality in rights to all people belonging to different ethnic groups. It also stipulated that minorities shall be proportionally represented in the state and municipal assemblies and its bodies.⁷ Article 222 of the text allows for the freedom of all ethnic groups to use their language, promote and develop their culture, and form organisations for these purposes. In addition, the local and national government is tasked with giving platforms to these efforts by minorities through support of the media (radio, TV and print).⁸

The divergence from established minority rights, and the marginalisation of minority ethnic groups in the constitution building process were catalysers for tension within the political system and society as a whole. One trigger event that led to the conflict in 2001 were the 9 July incidents that happened in Gostivar where police forces and protesters clashed over the attempt to lower the Albanian flag that was hoisted in front of the municipal building. This was in accordance with the decision of the Constitutional Court of Macedonia regarding the issue which set the scene for the future conflict. The different tensions culminated with the armed conflict in 2001 with battles between the National Liberation Army and the Macedonian armed forces, namely the police and army. The definition of the conflict remains vague since it cannot be characterised as a war, nor a civil war since no official state of

4 Preamble of the Constitution of the Republic of Macedonia of 1991.

5 DASKALOVSKI 2002: 1–31.

6 Article 19. Constitution of the Republic of Macedonia of 1991.

7 Article 221. Constitution of the Socialist Republic of Macedonia of 1974.

8 Article 222. Constitution of the Socialist Republic of Macedonia of 1974.

war was declared by the Assembly. The conflict lasted from January until November until an agreement was reached following negotiations in Ohrid under international monitoring and support. On 13 August the Ohrid Framework Agreement was officially signed between the leading political figures from the Macedonian side (Boris Trajkovski, Ljubco Georgievski and Branko Crvenkovski), and leaders of Albanian political parties (Imer Imeri and Arben Xhaferi). Guarantors of the agreement from the international community were François Léotard from the EU and James Purdue from the USA. The legal nature of this agreement is difficult to understand since it cannot be considered an international agreement since the signatories are not foreigners, despite the international guarantors it remains an internal political agreement with wide-ranging legal implications. The agreement also has elements of a peace agreement in articles related to ceasing fire and disarmament despite there being no formal declaration of a state of war.⁹ While the legal nature of the agreement remains vague it sets the foundation for a new constitutional order.

The Ohrid Framework Agreement and constitutional changes

The Ohrid Framework Agreement (OFA) encompasses 10 points with three included annexes (A, B and C). For the purposes of this paper points one, four, five and six will be analysed along with appropriate annexes. In point 1 (Basic Principles) the OFA categorically states that violence is rejected as a means in pursuit of political aims and that “only peaceful political solutions can assure a stable and democratic future for Macedonia.”¹⁰ It also stipulates that Macedonia’s unitary character is inviolable and that there are no territorial solutions to ethnic issues.¹¹ At the same time, the OFA proclaims that the multi-ethnic character of Macedonia must be preserved and reflected in public life.¹² From the basic principles the OFA sets out to preserve the unitary character of the state, while also promoting minority rights of the different ethnic groups that live in the country; this is a difficult balance to achieve in a post-conflict situation, complemented by regional insecurity and conflicts.

The basic principles of the OFA are an effort to reclaim the legitimacy of the state in a situation in which nationality groups that claim the right of national self-determination and where dominant or majority groups deny the multicultural character of the state and exclude groups in the state building process, thus denying them full citizenship.¹³ This is evident by the lack of inclusion of minority groups in the process of gaining independence and the framing of the 1991 Constitution. In accordance with the OFA, the Constitution was amended firstly in the Preamble, thus reconceptualising the vision of the state from a national citizen state into

9 BLAZEVSKA 2021.

10 Ohrid Framework Agreement, paragraph 1.1.

11 Ohrid Framework Agreement, paragraph 1.2.

12 Ohrid Framework Agreement, paragraph 1.3.

13 LINZ–STEPAN 1996.

a multicultural democracy. Since the OFA negates territorial solution for ethnic issues, thus disqualifying federalism as a possible model for the country, it needs to construct a political system based on power-sharing mechanisms and decentralisation (of the local self-government).

Point 4 tackles the concepts of non-discrimination and equitable representation with special regards to employment in the public administration on a national and local level. In addition, equitable representation is to be instituted in the police forces, as well as when electing judges to the constitutional court and, ombudsperson and members of the Judicial Councils candidates that are members of underrepresented communities. Annex C further outlines concrete actions regarding the equitable representation.

Point 5 envisions a special change in parliamentary procedure akin to the theory of consensual democracy. New “laws that directly affect culture, the use of language, education, personal documentation and use of symbols, as well as laws on local finances, local elections, the city of Skopje, and boundaries of municipalities...” must receive a qualified majority of votes of members of parliament (MPs), and a majority of MPs claiming to belong to communities not in the majority in the population – this is the so-called Badinter majority.

Power-sharing mechanisms allow for the state be administered jointly, and not by only one narrow constituency. North Macedonia can be described by two different theories. On the one hand, there is the consociational arrangement put forth by Lijphart which has 5 features: 1. grand coalition, i.e. the inclusion of all major groups in the Government; 2. proportional representation of all relevant groups in the Parliament and public administration; 3. inclusion of the major groups in the Government; 4. veto rights; and 5. a high degree of autonomy.¹⁴ North Macedonia with its constitutional changes has adopted some consociational elements, although in a different and less strict form. While grand coalitions are not mandatory, every government since 2001 has had an Albanian coalition partner. This has been proven necessary due to the fact that political parties’ voting bases are not along ideological lines, but ethnical – which is why in North Macedonia there is a distinction between the Macedonian and Albanian “political bloc”. Due to this need to form coalitions, Albanian coalition partners receive rolls in the government, therefore, they are included in the government. Proportional representation has been implemented in employment in the public administration through legal mechanisms. While the electoral system was not part of the OFA, changes were made to the law on elections and the electoral system from a majoritarian system to a proportional system with six electoral districts. There is no absolute right to veto of the minority. In this regard, the only mechanism that of power-sharing is the “Badinter majority”, which is a kind of qualified majority that stipulates that for any law that has an impact on minority rights, a majority of MPs that identify as a member of an ethnic minority (different

14 LIJPHART 1977: 25.

from Macedonian) must vote in favour in order for that law to pass. This means that for many laws there must exist a political consensus within parliament on laws impacting rights of ethnic minorities. While there is no full autonomy (such as the case with the cantons in Switzerland), the OFA and Constitution envision the strengthening of the competences of the local self-government. In essence it can be argued that North Macedonia is a minimalist consociational system.¹⁵ This power-sharing dynamic has influence over the implementation of minority rights on a national and local level.

Point 6 regulates the questions on education and use of language. It states that primary and secondary education will be provided in the students' native language and unified academic standards will be applied. In terms of higher education, the state accredited the previously disputed and unaccredited university formed in Tetovo in 1994, and later formed a university that taught in Albanian and English (South East European University). This was complemented by the implementation of affirmative action measures in state universities.¹⁶ Furthermore, this point envisions certain language rights. Languages spoken by at least 20% of the population in the state is an official language in the administration of the country. This same rule applies on the level of local self-government. In terms of languages spoken by persons that belong to communities that are below 20%, the discretion for its use in public bodies is to be decided by local authorities.¹⁷

The process of decentralisation in North Macedonia was meant to curb conflicts by balancing integrationist and accommodationist elements in the system.¹⁸ By granting non-majority groups greater competences on the local level, decentralisation would instil a greater sense of security and protection from majorisation and discrimination, while at the same time ensuring the unitary character of the country.¹⁹ Changes in the law on local self-government that implemented provisions on the OFA regarding decentralisation and language rights has been led to poor and inconsistent implementation of the consociational power sharing arrangements envisaged locally, which is another area where discrepancies in implementation of the law have affected the accommodation of non-majority community needs, particularly those of the smaller ethnic communities. Whilst greater municipal use of community languages has meant that Albanian has now acquired official status in 29 of the 85 municipalities (including the City of Skopje), the Turkish language has only become a working language in four, Serbian in one, and Romani also in one. Albanian is also in use in a further 17 municipalities where the community constitutes less than 20% locally, Turkish in another four, and Vlach language in one. It is worth emphasising that whilst the Albanian language has been recognised (formally if not in practice) in over half of Macedonia's municipalities, community languages other than Albanian are in official

15 BIEBER 2008: 7–41.

16 MAROLOV 2013: 134–154.

17 Ohrid Framework Agreement, Point 6.

18 LYON 2011: 87–115.

19 MANOR 1999.

use in only 10%.²⁰ The situation has remained unchanged even after the 2021 census, which confirmed the existing ethnic composition of the country. In 2018, a new law for use of the languages was passed through parliament which greatly expanded the use of minority languages, specifically the Albanian language in all state institutions. The law has been subject to public critique and has also been commented by the Venice Commission (which will be explored further in the text).²¹

Consequences on the rights to education and use of language

A survey in 2020 carried out by the National Democratic Institute (NDI) shows that the majority population is concerned about normal everyday problems, rather than about inter-ethnic issues. Regarding their consideration of what poses the most serious problems to the country, 27% mentioned the economy, 24% crime and corruption, 22% the Covid-19 situation, 17% judiciary and justice, 6% standard of living, 5% general political situation, 4% health, 3% EU integration, 2% human rights, democracy and freedom, and only 1% considered this problem to be inter-ethnic relations. The numbers clearly show that the majority believes that inter-ethnic tensions are easing. A most concerning issue, one that affects both the Macedonians and Albanians, but also all others living in the state, is at the very bottom of the list.²² While ethnic tensions still arise in the form of hate speech or fights during football matches violent armed conflict is non-existent. While there is less attention towards ethnic issues in the country, the implementation of policies regarding education and use of language continue to influence the everyday lives of people.

Juxtaposing the changes in the Macedonian legal system to international norms, we can observe that the provisions regarding minority rights adhere to the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM). While the rights of the Albanian ethnic community have significantly improved since the signing of the OFA, the rights of other smaller communities are still lacking, despite the fact that the OFA in terms of its language is applicable to all minorities in the country. The Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), in its the fifth opinion on North Macedonia has noted several concerns. In terms of linguistic rights, the new Law on the Use of Languages of 2019 that extends the use of the Albanian language on a national and local level is considered ambitious since the state lacks the capacity to effectively implement the law. These concerns are also noted in the opinion of the Venice Commission that praised the willingness of the authorities to improve the linguistic situation of national minorities. However, it found that it imposed in certain areas "what proved

20 LYON 2011: 87–115.

21 What is provided in the bill for the use of languages according to the legal explanation (see <https://akademik.mk/shto-se-predviduva-vo-predlog-zakonot-za-upotreba-na-jazitsite-sporod-zakonskoto-objasnuvane/>).

22 NDI 2020.

to be unrealistic legal obligations on the public institutions” and particularly on the judiciary. The full implementation of the law in this field would risk slowing down the functioning of the entire judicial system.²³ The Venice Commission further noted the law’s ambiguity about which provisions apply to other minority languages spoken by at least 20% of citizens at a municipality level and the discretion given to the municipal councils in deciding on the use of languages spoken by less than 20% of the citizens at the local level. The Framework Convention under Article 10.2 gives guiding conditions for the use of a minority language in communication with public authorities. In this regard the state has a wide margin of discretion where it needs to balance the effort and resources involved in the endeavour, but also the benefit from the application of such measure.²⁴ The ACFC also notes that the 20% threshold is too high since it will effectively only apply to the Albanian language, while the use of other languages spoken by minorities under the 20% threshold is up to the discretion of the local self-government.²⁵

Article 12 of the Framework Convention promotes intercultural education. The ACFC notes that while some schools have become more integrated and promote intercultural learning and contact, many schools are still ethnically segregated and students receive instructions in different languages.²⁶ The school curriculum also lacks content regarding intercultural education. This is especially documented in the elementary school history textbooks since the historical narratives that are promoted are exclusionary and bi-national without inclusion of other minorities besides the Macedonian and Albanian narrative.²⁷ These changes to the historical textbooks were done as part of the implementation of the OFA, but scholars involved in the process had difficulties in constructing the new narrative for the country and feared that educational materials outside North Macedonia would be promoted as an alternative.²⁸

Considering equal access to education, the ACFC notes that Roma students continue to be discriminated in the access to education, despite changes to the laws on elementary and secondary education. The ACFC also notes the de facto segregation of Roma students in several schools.²⁹

Conclusion

It is clear that the Ohrid Framework Agreement had an important influence in shaping the constitutional order of the country by balancing many interests and tendencies. It is clear that the OFA stabilised the country and evaded a protected armed conflict.

23 Venice Commission 2019.

24 DIMITROV 1999.

25 Council of Europe 2022: paragraph 90.

26 Council of Europe 2022: paragraphs 102, 103.

27 TODOROV 2020: 69–91.

28 PICHLER 2009: 217–251.

29 Council of Europe 2022: paragraph 110.

In its essence the OFA retained the unitary character of the Macedonian state while also allowing for the creation of a framework for minorities to be protected and equal in rights. It balances different diverging interests and tendencies of both sides of the conflict, which can cause issues in its implementation in the long-term. The constitutional changes allowed for greater inclusion of minorities in the national narrative and changes to laws created a political system akin to a consociational system in which proportionality and representation play a key role. While on a national level political parties and elites are divided along ethnic lines, the process of decentralisation and strengthening of the local self-government allow for different integrationist and accommodationist tendencies.

While the text of the OFA can serve for the promotion of minority rights in general, since it does not target the improvement of rights of a singular minority, even though its implementation has been heavily focused on the position of the Albanian minority. In light of international norms regarding minority rights such as the framework convention the right and legal changes derived from the OFA go beyond these minimal standards. As pointed out in the report of the ACFC, the rights of smaller minorities in the country are still lacking in key areas – education and use of language.

Twenty years after the signing of the OFA, political elites still follow its basic principles and are constrained by them in their actions. Now a majority of the Macedonian ethnic population are in favour of the agreement, which was not the case in 2001. In cases of severe political crisis, the OFA is often seen as a factor of instability, but it is also a framework that allows for the political system to develop in a way that is inclusive. Political elites need to strive for greater inclusion of other minorities in the political decision-making process to ensure the continuation of peace in North Macedonia.

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