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## INTRODUCTION

The effective political participation of small(er) ethnic groups in the decision-making process in Macedonia both at the central level in matters directly affecting them, and on a local one, generally in public affairs, has been an issue of concern and a frequent topic of discussion among international organizations, local experts, CSOs (Civil Society Organizations), as well as among academics and analysts.

Generally, in the context of the right to political participation, international human rights standards suggest that collective political participation (the access to, and the full participation of minorities in decision-making) is a key element in the protection of minority rights, as well as in the preservation of their distinct cultural and/or any other identity. However, the consociational arrangements developed after the 2001 conflict

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in Macedonia through the Ohrid Framework Agreement (hereinafter OFA) and its constitutional and legal provisions, do very little in that respect - the power is *de facto* shared between the two biggest ethnic groups, ethnic Macedonians and ethnic Albanians, thereby excluding small(er) ethnic communities from the political process. The most commonly cited source of exclusion, and therefore discrimination, is the OFA's 20% threshold as a minimum precondition for ethnic communities' entitlement to some of its key provisions designed to secure effective participation; the use of language, the right to higher education in mother-tongue, or simply the inclusion in various forms of consultation processes which include mechanisms for participation in the public administration and judicial or other bodies at the local level. This constitutional/legal obstacle goes hand in hand with more ambiguous forms of exclusion such as democratic deficit, low democratic political culture, absence of political will and a slow pace of democratic reforms, to name some. In addition, there is still a general lack of understanding on the part of both political elites and society in general that a fully inclusive political process and the participation of minority groups in political life and public affairs benefits not only minority groups but society as whole.

Therefore, this study examines the direct effect that the OFA and the constitutional and legal provisions arising from it have on the effective political participation of small(er) ethnic groups on a municipal level in Macedonia, presents the state of affairs and subsequently suggests policy recommendations for consideration on the part of practitioners and for further discussion within the academic community. In other words, the research question that this study and the empirical research behind it pose is *to what extent the OFA and its implementation facilitate the process of effective political participation of small(er) ethnic groups at the local level of governance in Macedonia.*

The theoretical framework this study builds on are the power-sharing models of democracy, and precisely the consociational approach as a political system sensitive to societal diversity in terms of ethnic or any other type of collective identities, as opposed to the liberal collectives-blind approach. The legal frame within which the study constructs its arguments approaches effective political participation as a tool for the empowerment of minority groups rather than the mere protection of their rights. While the last one is mostly associated with the liberal, *classique* majoritarian rule and as such fails to mirror societal diversity in political processes, the former shows greater sensibility towards the obvious needs for the political process to address cultural and/or ethnic specificities within itself and *de*

*facto* leads to the mainstreaming of minority rights. Accordingly, the study will look at the consociational mechanisms introduced in Macedonia with the OFA and its corresponding legal mechanisms regulating effective political participation of small(er) ethnic groups in the polity. The requirements the legal and political systems place in front of the country's state administration will then be juxtaposed to the actual state of affairs in the process of securing effective political participation of small(er) ethnic groups at the local level of governance in the country. The case specific analysis is possible as a result of the empirical research conducted in the period of February – March 2011 in 14 municipalities, covering a substantial part of the territory of the country. Semi-structured interviews facilitated the data-gathering from the 79 respondents coming from, on one side, both central and local level, and on the other side, from different professional backgrounds – academics focusing on issues close to minority rights protection, political system/s and/or ethnicity or nationalism studies, CSOs employees active in the field, and state administration officials and practitioners.

The final part of the study, drawing upon the analysis, will propose measures to be taken and issues to be addressed both by the state administration as well as CSOs, in order to secure a higher degree of, and effective, political participation of small(er) ethnic groups at the local level as a step forward in reaching substantive equality. The study acknowledges that in the process of development of substantive equality and a truly inclusive society, the effective political participation of small(er) groups at the central state level, in the CSOs and especially in the value system, i.e. the behavior and mind-set of the individuals, is of equal importance, however due to resources and time constraints, it focuses on the level of local governance only.

## I. BACKGROUND

In the aftermath of the dissolution of Yugoslavia, its successor states went through highly intensive conflicts leading to changes of their political systems, moving them away from the Westminster type of democracy and almost all institutionalizing (to varying degrees) ethnicity. Macedonia was one of the cases which pulled out of the former federation without violence in spite of the general expectations that its internal ethnic divisions would produce another violent conflict on the territory of former Yugoslavia. The relative success of its political elites in managing the internal political, economic and social challenges was less due to political maturity and more because of the presence of external threats and challenges leaving no space

for other agendas. It was also to some degree a result of political will and traditional inter-ethnic accommodation at the executive level. However, in 2001, ten years after the independence,, a relatively violent ethnic conflict shook the *oasis of peace*, changing its political and, subsequently, legal system. The peace agreement reached through international mediation, the Ohrid Framework Agreement (hereinafter OFA), signed on 13 August 2001, addresses institutional (re)arrangements based on the main elements of power-sharing democracy as the only (and most) promising solution for conflict regulation in deeply divided societies. The negotiating parties and signatories of the agreement, the four biggest parties from the Macedonian and Albanian political blocks, made the process exclusive, leaving out the other (small) ethnic groups and the political parties representing them. As a result, the so-called small(er) ethnic groups in Macedonia have no ownership over the OFA and the process of its implementation, which creates the notion of an agreement establishing a bi-national state, both among themselves and among some of the external political actors.

Amendments to the Constitution of the country and its laws secure the implementation of the provisions of OFA which, in addition to the basic principles, stipulate reforms in the areas of decentralization, non-discrimination and proportional representation, special parliamentary procedures, education and the use of languages, expression of identity, and implementation. Thus, it introduces special rights for the ethnic and linguistic minorities exceeding 20% of the population of the country at the central level, or of the respective municipality at local level. Moreover, specific provisions regulate the rights of minorities constituting less than 20% of the population of the country or of the respective municipality.

Despite these pitfalls, the game is not lost if the process of implementation of OFA respects the existing principles of minority group empowerment, one of which is the right to (effective) political participation, especially in the case of the small(er) ethnic minorities. An important argument for the latter is that OFA, unlike similar peace agreements regulating the *mode de vivre* in the other post-conflict ex-Yugoslav countries, is not a traditional cease-fire agreement, but a document setting up the basis for a new political system significantly different from its preceding one in positive terms.

## II. THEORETICAL AND LEGAL FRAMEWORK

The core idea of both political and legal mechanisms and instruments of minority protection is multicultural and multiethnic societies to amount to the most suitable accommodation of the diversity of their population.

Thus, political and legal measures become ethnic conflict prevention tools and, in the case of post-conflict societies as Macedonia is, can also serve as conflict resolution ones.

## **II.1. Theoretical Framework: Management of Diversity**

Ordinary or liberal democracy, oblivious to the special needs of divided societies, in its conventional majoritarian model “either does nothing about ethnic exclusion or actually fosters it.” (Horowitz, p. 35-55) Often the intolerance towards the minorities of any type, combined with the winner-takes-all principle of state rule undoubtedly lead to permanent political, and further generating social and economic, exclusion of the minority groups. In that sense, power-sharing democracy proves to provide at least the basis for an inclusive system of ethnic and/or group conflict regulation, by allowing multi-ethnic societal and political landscapes to shape the political system as it aims at political, economic, societal and cultural participation of all ethnic groups in the polity.

### **II. 1.1. Models of Diversity Management: Consociational Democracy**

The two main models of power sharing democracy are the Horowitzian, integrative approach, and Lijphart’s consociational approach. Sisk describes them as conceptual poles in a spectrum of specific conflict-regulating institutional arrangements and practices promoting power sharing. (Sisk, p. ix) Indeed, there are important differences - theoretical and practical ones – as both types contain power sharing provisions, but are based on different arrangements, objectives, and most importantly, rest on different assumptions. (Reynolds, p. 155 – 196). The attention in this study will be drawn more towards Lijphart’s work, as it is more relevant and applicable when discussing the case of Macedonia.

Lijphart defines the consociational approach as a system of rule in societies divided along ethnic, religious, or cultural lines, which upholds the basic idea of managing the differences by providing power guarantees to each significant identity group. Basically, consociationalism advocates a set of principles and informal practices that, if applied both within legal and political bodies and mechanisms, allow representation and decision-making power on common issues for each significant identity group or segment in a society, as well as a degree of autonomy over issues of importance to the group. (Sisk, p. 5)

In conclusion, consociational approach aims to model the polity so to provide the significant groups in the society equal status and representa-

tion, securing maximal protection and recognition. In the context of politics of nationalism and ethnicity, consociationalist model of governance allows peaceful coexistence of more than one nation or ethnic group in the state on the basis of separation, yet an equal partnership rather than the domination by one nation of the other(s). (Kellas, p. 178)

### **II. 1.2. Basic Principles of Consociational Democracy**

The phenomenon of consociational democracy assumes four basic premises. The first and undoubtedly one of the most important mechanisms is the power-sharing cross-community executive or (1) grand coalition formed of the leaders of all significant groups of the society. Further, (2) veto rights for minorities are an important instrument practically ruling out the possibility small groups to be outvoted; (3) proportional representation in civil service and public funds ensure fair distribution, and, the last but not least, is the mechanism allowing for community self-government or (4) group autonomy. (Lijphart, p. 25-52)

The grand coalition is a “vital instrument for the attainment of political stability in plural societies,” as by being involved in the government of the country together, parties that do not mutually trust each other have some kind of guarantees of political security. (Lijphart, p. 30) However, the argument here is that significant groups should be included and the government needs to be broad, but not necessarily only along ethnic lines and/or ethnic parties. The second principle, the minority veto, is “the ultimate weapon that minorities need to protect their vital interests,” as even if represented in a grand coalition cabinet, they can easily be outvoted and thus marginalized by the majority/ies. However practice shows that non-dominant groups do not automatically need to have an absolute veto right as this can pose challenges to the system and make it nonfunctional or less effective. while The proportionality principle in the spheres of political representation, public service, and public funds, is providing all groups inclusion and fair distribution, with an end goal to secure fair (and proportional) representation of ethnic minorities. (Lijphart, p. 491 – 509) The principle should be applied in two directions, namely through electoral systems - the composition of the governing elite should commensurate the demographic structure, and, through the distribution of resources - fair distribution of both public administration posts and public spending, or allocation of resources. Consociationalism scholars advocate for the system of proportional representation (PR), because of one simple reason - it guarantees higher probability for just representation of the minorities, as a contrast to the majoritarian electoral system. As Norris underlines, ma-

majoritarian electoral systems, like the first-past-the-post system, exaggerate the parliamentary lead for the party in first place with the aim of securing a decisive outcome and government accountability, thereby excluding smaller parties from the division of spoils. (Norris, p. 207) Theoretically, in comparison with majoritarian, PR electoral system ensures representation of the minorities that have shown will to be represented as minority parties, however if a threshold is introduced very often small but politically and historically significant groups cannot ensure parliamentary representation.

The principle of group autonomy is the one securing groups control over “their” problems, as the issues of common concern are to be made jointly, and all others should be left to and for each group. Segmental autonomy is an ultimate difference from the majority rule: the rule by the minority group over itself in the area of the minority’s exclusive concern. (Lijphart, p. 47)

In addition to the main principles of the consociational approach, there is a list of favorable conditions for successful consociational arrangements: (1) absence of a majority ethnic group, as there is a possibility for it to turn into majoritarianism; (2) absence of large socio-economic differences among the groups; (3) roughly equal size of the groups, as it gives a notion of balance; (4) society consisted of a limited number of groups, so to make negotiations possible and not too complicated; (5) a relatively small total population of the state, as a factor favoring a simple decision-making process; (6) existence of external threats, which will promote unity; (7) overarching loyalties that can weaken ethnic affiliations; (8) geographically concentrated ethnic groups, so that federalization can be an alternative for group autonomy; (9) previous tradition of accommodation and compromise. (Lijphart, p. 500)

In conclusion, the type and degree of implementation of the package of consociational arrangements is crucial in post-conflict divided societies. However, the consociational arrangements as such are not the only precondition for successful conflict management and institution-building. Consociational arrangements may be a solution with higher probability than the liberal democratic system to lead to accommodation of ethnically diverse polity, but there is a complex interdependence between its effectiveness and efficiency on one side, and external factors such as political culture, economic development, and international community involvement, to name few, on the other. The consociational model itself is not a one-size-fits-all solution, but assumes a variety of institutional forms, and different forms do not lead to ethnic accommodation equally well, so the result will also vary.

### II.1.3. Consociationalism in Macedonia

In the case of Macedonia, consociational model instruments were seen as a reliable approach that will first of all give security guarantees to the ethnic Albanians for the protection of their vital interests, and second, prevent domination of the ethnic Macedonians over the Albanians. Thus, the ethnic principle was introduced and the country acknowledged its divisions along ethnic lines. However, the power sharing agreement introduced mechanisms that, if further developed and properly implemented, can create a stronger feeling of justice and equality among the citizens of the country and the communities.

With the OFA, Macedonia opened an ambitious process of constitutional and legal reforms, introducing several power-sharing mechanisms. It opened the possibility for other languages to get the status of official language; however with the 20% threshold at the national level, *de facto* only Albanian got the status of an official language alongside Macedonian, while at the local level Turkish, Romani, and Serbian also received official recognition. For the first time the country introduced the principle of proportional representation in the public administration, both at the local level as well as the central one. Furthermore, double majority/ies became a requirement in the process of decision-making in the legislative, concerning issue of vital importance. Last, but not least, it paved the way for the process of devolution of power - the decentralization of governance.

An important conclusion when carefully evaluating OFA against the model as elaborated above, is that it introduces some of the consociational principles and mechanisms, and Macedonia can thus be regarded as a (soft) power-sharing democracy. However, OFA also leaves enough space so the institutional set-up of the country to be regarded as contradictory, as crucial features of the previous political system are left unchanged, leaving strong elements of a nation state, but also leaving and/or introducing concepts close to the civic approach. The new preamble of the Constitution is the most obvious example of the latter, as, in accordance to the Amendment IV deriving from OFA, its changed text reads: "The citizens of the Republic of Macedonia, the Macedonian people, as well as the citizens that live within its borders, who are part of the Albanian people, Turkish people, Vlach people, Serb people, Roma people, the Bosniak people, and others...." This shows how both state concepts close to liberal democracies and power-sharing systems are defining the nature of the state – the constituting people are both the citizens and the ethnic groups of Macedonia – introducing a collective approach, but also preserving the individual one, thereby preserving equality of citizens while introducing group equal-



ity. This Macedonian mish-mash state concept or character is criticized by many scholars, however there are also those who claim that the new Constitution applies the formula of a truly multiethnic state and creates the necessary preconditions for the society to develop multiple identities. (For ex. Marko, p. 695-721) This study however, will neither enter into this discussion nor evaluate the OFA itself. Instead, it builds upon the argument that the power-sharing mechanisms introduced in Macedonia with the OFA changed the character of the political system and thus established a weak system of consociational democracy that still needs to prove its capacities and possibilities to accommodate the competing narratives in the society.

Last but not least, that needs to be underlined, is that the power-sharing mechanisms introduced are mostly reserved for only two of the many ethnic groups in the country, and thus creating a bi-national state.

## ***II.2. Basic Principles of Minority Protection***

The core pillars on which the international protection of minority groups rests upon are the principle of non-discrimination and the principle of protection and promotion of the separate identity of the minority groups.

The first pillar secures formal equality for the minority groups in order to create conditions for the achievement of substantive equality. The second pillar builds on the first one, as (substantive) equality can be achieved only in a society where there are no threats of assimilation and/or discriminatory practices, and diverse identity groups can preserve and promote their cultural distinctiveness and identity. (Thornberry, p.?)

Although the arguments that minority rights in themselves are discriminatory are not unknown in academia, nowadays this double approach to minority protection is widely and commonly accepted, both within theory and within the legal system of human rights protection. Thus, it is common knowledge that protection of cultural identity and distinctiveness can take place only if culturally different groups can participate in their own culture both within the public and the private sector.

### **II.2.1. The Right to Effective Political Participation in the International Legal System**

The protection of minorities is one of the oldest issues that international law deals with, while the right to participation securing effective political participation at collective level is a relatively new legal and political category, often being regarded as a “third generation” right.<sup>2</sup> The core premise of political participation mechanisms is the creation of a society providing substantive equality, or equality in reality, as opposed to the

equality in law close to the majority perspective on society. The paradigm shift from minority protection to empowerment of minority groups' members to represent their own viewpoints and interests undoubtedly reflects the crisis of the liberal society to address collectives; in addition to the (rare) readiness of international law to address what liberal democracy is failing at – effective protection, inclusion and empowerment of vulnerable groups. At the center of the right to effective participation as stipulated by the CSCE Copenhagen Document (para 35), the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities [Article 2(2) and 3], and guaranteed by the Framework Convention for the Protection of National Minorities (Article 15), is to provide access for the minority groups to political decision-making of all forms, at all levels of governance, without discrimination. Thus, the right to political participation of minorities has as an end goal to protect, affirm and promote minority identity. (Verstichel, p. 78)

When legally defining the right to participation at international level, the universal system of human rights protection and implementation defines political participation at the individual level within the International Covenant on Civil and Political Rights (ICCPR) through Article 25.<sup>3</sup> When specifically discussing minority participation at universal level, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities (UNDM) in its Article 2(2) entitles the *persons belonging to minorities to the right to participate effectively in cultural, religious, social, economic and public life*, while its Article 2(3) regulates effective participation in decision-making, as it entitles members of minorities *to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation*.

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2 Generally, the right to participation, with emphasize on effective political participation, i.e. participation that makes an influence on the outcomes of the decision-making process, in public international affairs is stipulated in the 1990ies. The concept includes not only representation in the legislative bodies, but also participation in public affairs. For more see: Weller and Nobbs, and Donnelly

3 Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

In the context of the European human rights system, the CoE's FCNM is the key document to look at, as it is the only legally binding instrument regulating minority rights. As the FCNM explanatory report prescribes, the Convention as a "soft" instrument of the hard law is composed mostly of program-type provisions setting out aims which the Parties undertake to pursue, allowing for both implementation margins and diversity in the approach on part of the states, as the Advisory Committee to the FCNM (the monitoring body of the Convention - hereinafter AC) shows sensitivity to the different needs the State Parties have due to high probability that a certain measure which leads to effective participation in one country might not give the same results in another. Precisely, the Article 15 of this instrument is the one regulating effective political participation, reading:., *The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.* "

It should be clear, however, that both analysts and the AC itself argue that Article 15 can and should be read as a legal basis for minorities entitlement to political participation in the decision-making process not only on issues directly affecting them, but also on ones more generally affecting them, consequently leading to inclusion of the minorities in the decision-making process over all issues. (AC Commentary on Effective Participation) The AC includes participation in elected bodies, public services and judiciary, specialized governmental bodies, decentralized and local governance, consultation mechanisms and cultural autonomy arrangements as part of the right to political participation of minority groups. The same commentary includes the social and cultural components to minority participation, so to give access to development projects, employment, distribution of resources, health and social welfare, access to education, media, as well as ensure a general protection of identity.

Thus, regardless of the fact that the forms of effective political participation could be more precisely defined both in international as well as in regional human rights instruments, the principle of non-discrimination as a key concept behind the human rights system safeguards its universal application to a high degree.

### **II.2.2. Linking Power-Sharing Democracy and Effective Participation**

From the above, it becomes obvious that some elements of the right to effective political participation can be seen as mirrored or addressed within the provisions of consociational democracy, or power-sharing arrange-

ments. Namely, the proportional representation principle of the consociational model presupposes adequate representation of the ethnic groups of the society in the elected bodies on central level – parliament, as well as at the local level – municipality governance structures, but also participation in the administration (both central and local), law enforcement institutions, advisory bodies and councils, committees, and, last but not least, in the public enterprises and public life. The provisions are set out in the right to political participation.

Furthermore, the grand-coalition principle is nothing more than effective political representation in the executive.

Finally, the autonomy principle is *de facto* implementation of the political representation, as all forms of autonomy are mechanisms on part of the communities to decide on issues directly affecting them.

### **III. THE RIGHT TO EFFECTIVE POLITICAL PARTICIPATION OF SMALL ETHNIC COMMUNITIES IN LOCAL GOVERNANCE IN MACEDONIA**

The AC of FCNM indicates major differences between, on the one hand, the Albanian community, who take a central position in the public life of the country and have a significant role in the process of decision-making, and, on the other hand, the smaller ethnic groups, who have limited mechanisms for access in the decision-making process creating among them a feeling of exclusion both from public life, but also from the OFA and the process of its implementation. (AC Opinion on Macedonia) In addition, the body underlines that the implementation of OFA should not lead to limitations of the rights of the smaller ethnic groups, thus making recommendations not only on the need for their involvement in intercultural dialogue and the application of the principle of proportional representation, but also the fair distribution of resources, access to media, right to education in the languages of the minorities, representation in the legal bodies and courts, etc. Overall, the recommendations suggest that the government needs to increase its efforts in order to ensure equitable representation of the smaller ethnic communities in the public sphere and precisely in public administration. The Advisory Committee recommends special measures to be taken in order to fight social exclusion and marginalization of the Roma community, so to ensure their participation in public sphere. The same line follows also the EU, as the 2010 European Commission Progress Report states that the representation of the smaller communities, and especially the Turkish and the Roma community, in the civil service, remains low.

Since independence in Macedonia itself there is a tendency of creating an idyllic representation of the legal frame for minority protection and therefore the position of minorities. Although the terms 'minority' and 'minority rights' are not widely accepted in the political and legal discourse, the standards in the field were evaluated and represented by the national political elites as highly progressive even during the 2001. This discourse marks the first state report on the Framework Convention (2003), according to which Macedonia is a country with the highest level of application of international and European standards for the protection and promotion of minority rights, and based on deeply rooted tolerance.

As our empirical findings show, the academic community in Macedonia considers that in fact, at a normative level, Macedonia has achieved high standards of protection of minority rights and has a well-developed institutional system for the later, particularly after the amendments to the Constitution in 2001. However, it has also been noted that the standards are result of ethnic conflict on one side, and on the other side, not all ethnic groups are treated equally. Thus, according to some, OFA in fact offers a very liberal and civil framework, providing possibilities for inclusive decision-making process through its individual approach, as right holders are citizens, and therefore citizens belonging to ethnic communities cannot be excluded from the decision-making process. However, the 20% threshold is considered by some as affecting the full realization of the rights of the ethnic communities to participate effectively in the governance. Finally, one of the crucial issues still having a negative impact is the exclusion of the small(er) ethnic groups from being signatories to OFA.

In contrast to the legal and normative frame is the implementation of the OFA, which according to both the local scholars and practitioners is evaluated as problematic.

At a local level of governance, most of the respondents are of the opinion that the state failed in the implementation of the OFA provisions related to minority rights. Some of the local governance administration respondents show even resistance to the explicit mention of minority right. Such resistance exists among some of the respondents from civil society as well, expressed through the common argument that while minority issues are important, more important is the employment of citizens – clearly confirming the necessity for mainstreaming minority rights and developing projects that would facilitate changes in the political culture. Unhidden resistance to the use of the term 'minority' exists also on the part of Albanians who hold key positions in some municipalities.

On the general improvements in the field of minority rights and the

position of small(er) communities after OFA, the majority of CSOs representatives see no significant improvement of the position of the small(er) ethnic communities, while some qualify them as losers in the whole story. Furthermore, CSOs employees have serious objections to the very nature of OFA (the most common feature attached to it is either bi-national agreement promoting bi-national state, or agreement between Macedonians and Albanians), to the 20% threshold, to its uneven implementation, to its negligence of the small(er) ethnic communities at the expense of its focus on one ethnic group, etc.

However, some of the respondents outlined the benefits of OFA for the small(er) communities, as the increased number of representatives at a central and local level, increased number of employees in the public sector, and specifically the benefits for the Roma community as a subject to continuous and pertaining discrimination and marginalization (instead of the traditional employment of Roma members as cleaners, now there is a growing number of employed in civil service positions).

### **III. 1. Non-discrimination**

Political elites in Macedonia have long overlooked the measures and actions to be taken so to ensure full application of the principle of equality, despite of its crucial importance.

The legal framework for protection from discrimination in Macedonia is established through the Constitution and the laws, while the ratification of OFA made no significant changes in this area. The Constitution contains a provision on equality for all citizens regardless of gender, race, color, national or social origin, political or religious beliefs, property or social status (Article 9). The Ombudsperson safeguards the protection of the constitutional and legal rights of citizens when violated by state administration bodies and other organizations that have public authority (Article 77). The Law on the Ombudsperson was adopted in 1997, but there is no adequate focus on the prevention of discrimination, as well as protection of minority rights.

The constitutional amendments adopted after the OFA are not related to the legal mechanisms regulating non-discrimination. The only amendment that fails in this area is the amendment XI to the Article 77. According to it, the Ombudsperson *“protects the constitutional and legal rights of citizens when bodies of the state administration and by other bodies and organizations with public mandates violate their rights. The Ombudsman shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies,*

*bodies of the units of local self-government and public institutions and services.*” This amendment in 2003 resulted in the adoption of the new Law on the Ombudsperson, which also reflects the contents of it. According to the new law, the institution of Ombudsperson is obliged to regulate protection against discrimination, but also to monitor the situation with respect to the application of the principle of proportional representation of communities in the state administration, the units of local governance and public administration and services. However, the Annual reports of the Ombudsperson in the last few years show very small (and declining) number of complaints which are related to discrimination and proportional representation.

The changes in the legal framework for the protection from discrimination in 2010 led to the adoption of the first specific law on prevention and protection from discrimination. Despite of the many criticisms and shortcomings of this law, the majority of representatives from the state institutions and civil society have accepted the text as a first step towards building a sound basis for the protection against discrimination. In accordance to this law, a Commission for Protection against Discrimination was formed, becoming the first body for equality in Macedonia.

However, in general, Macedonia has no policy strategy for non-discrimination and equality, on the top of the lack of holistic and strategic approach to promotion and protection of human rights in general. Despite of the apparent importance and need for adoption of a National Action Plan for Human Rights (including non-discrimination), such a document is not even on the table for discussion.

The analysis of the data show that the majority of respondents from the state institutions, municipalities and CSOs, as well as from both majority and minority communities – are of the position that in Macedonia and/or in their respective municipalities there is no discrimination. Some of the respondents are of the opinion that exclusion is often a result of inadequate qualifications, and not discrimination, while others are of the opinion that discrimination as a subject is imposed by donors, and it is not a real problem in Macedonia. Few of the respondents who confirmed that there are cases of discrimination are associating the later with members of the Roma community. The most common grounds for the cases of direct discrimination is considered to be on ethnic and party affiliation grounds, while the indirect discrimination is associated with the 20% threshold.

### III. 2. Proportional Representation

The proportional mechanism instrument is a key measure not only for the adequate representation of small(er) ethnic communities, but also generally as a measure for preventing discrimination. The proportional representation mechanism was of central importance during the OFA negotiations, as statistics show that during the 1990's the number of Albanians [but also the number of small(er) ethnic communities] employed in the public administration was very low, and therefore much of the grievances on the part of the Albanians were caused by their exclusion from public services.<sup>4</sup> As a result, the OFA introduced this mechanism for the first time, and its implementation was made possible through a complex change of the legal system as a consequence of the Amendment VI in of the Constitution, and precisely through the changes of several laws - Law on Courts, the Law on the Public Prosecutor, the Law on Labor Relations, the Law on Public Enterprises, the Law on Primary Education, the Law on Secondary Education the Law on Pupils' and Students' Standards, the Law on the Public Attorney, and the Law on Civil Servants. (Teodosievska Jordanoska)

The first period of implementation, as expected was mostly focused on ensuring higher numbers of Albanians in the security forces - police and the army, followed by the public administration and public enterprises.<sup>5</sup> However, the implementation of the principle of proportional representation poses many challenges not only in ensuring quantity, but also quality: as Bieber underlines, the mechanism was introduced by the OFA so to fix two problems of the public administration prior to it, it's 1. unrepresentativeness of, and 2. unresponsiveness to minorities. (Bieber, p.32) The problems posed in front of the state were therefore requiring both central and local level, country-wise measures in securing numbers, and second, possibility for the small(er) ethnic communities effective participation and interaction with their community representatives within their local communities. Partization of public administration placed a dark shadow on this as as a survey indicates, most citizens consider party membership (38.2%)

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4 Of special concern was the number of Albanians in the police (3%), but also in the judiciary and generally public administration. On this please see Ragaru.

5 In 2002, from a total number of 58,927 employees in the public administration - 14,7% were Albanians, 1,4% were Turks, 0,5% Vlach, 2,1% Serbians, 0,6% Roma, 0,3% Bosnian. According to the statistics, in December 2004, the number of employees in public administration was 56.871, of which 18,1% are Albanians, 1,6% Turks, 0,6% Vlach, 2,1% Serbians, 0,7% Roma, 0,3% Bosnian and others are represented with 1,2%. Source: Ibid, 5.



rather than merit (17.85%) or ethnic affiliation (0.6%) to be crucial in a professional career. (Petkovska-Hristova, p. 32)

Similar are the findings of this study as few of the respondents consider that OFA is respected in terms of equitable representation, and many of them think not enough progress has been made in the process of implementation of this principle, especially in the bodies of municipalities and the state and public enterprises. Many of the respondents noted inconsistent application of the principle mostly in the case of the smaller ethnic communities, and usually supported with the argument of inadequate professional background of the representatives employed. In addition, many of the respondents underlined political bargaining and/or employment based on partisan criteria, not only at central, but also at the local level as highly threatening to the successful implementation of it. Some, however, as a key reason behind the slow progress in reaching proportional representation both at local, as well as at central level see the bad economic situation in the country, and less political will or nonexistence of consensus on the need for it.

### **III. 3. Decentralization**

The OFA, as opposed to other peace agreements in other countries of the former Yugoslavia, setting up joint rule of different ethnic groups (Bosnia and Herzegovina, and Kosovo), did not grant neither territorial nor cultural autonomy to its ethnic groups. Instead, OFA stipulates that the provision for proportional representation and sovereignty over issues directly affecting the groups are to be achieved through decentralization, or through higher competencies of the local level governance mechanisms.

As a result, the laws adopted as a consequence of the OFA require transfer of competencies pertaining to the fundamental character of the municipality and those affecting the communities, such as culture, use of languages, coat of arms and flag require a double majority of the majority councilors and those representing the smaller communities together. (Bieber, p. 34) This type of regulation secures the possibility to veto certain decisions to both small(er) ethnic groups, and Macedonian population if in a minority position in a certain local unit..

The process of decentralization in relation to the territorial organization of the country proved to be one of the most painful reforms deriving from the OFA, with many scholars evaluating it even as the biggest threat to the stabilization of the country after the conflict of 2001. Namely, in 2004 the Government (negotiations included only the coalition partners at that time – SDSM and DUI) proposed as a path towards decentralization

new territorial organization of the country introducing 84 municipalities instead of the previous 123, with 27 municipalities having minority population of above 20%, or passing the threshold granting small(er) ethnic communities effective participation in the decision-making process. The city of Skopje got special status, with ten municipalities constituting the city, with Albanians having official status in the unit. However, the majority population shifts from Macedonian to Albanian in certain municipalities (Kicevo and Struga) and the manner in which the process took place, led to public disagreements, which resulted in an (unsuccessful) referendum.<sup>6</sup> (MOST Report on Referendum). Several issues here need to be addressed: first and foremost, the negotiations were fully closed as neither citizens and small(er) communities were involved in the process despite of the fact that their municipality borders are redrawn and therefore the decision are directly affecting their lives, nor experts; international community legitimized political bargaining as a tool for decision-making failing to pressure for transparency and accountability of the process thus legitimizing party and ethnic deals.

The later was another step backwards in the position and feeling of inclusion for the small(er) ethnic communities, as despite of the party negotiations character of the talks, the parties were in fact representing the two big ethnic groups: the ethnic Macedonians and the ethnic Albanians.

It has been noted by many scholars that the redrawing of municipal boundaries and the outnumbering of both small(er) ethnic communities and the Macedonian majority in some municipalities created a feeling of “losing” the country and therefore resulted in obscure nation-building projects on a local level, over-representation of community symbols and campaigns on the part of leaders to bolster ethnic identity. (Bieber, p. 35)

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6 The World Macedonia Congress (WMC), aided by the then in opposition right-wing VMRO-DPMNE, had collected 180,454 signatures fulfilling the requirements for organizing a referendum. The referendum question read the following: “Are you for the territorial organization of the local self-government (the municipalities and City of Skopje) as determined by the Law on Territorial Division of the Republic of Macedonia and Determination of the Law on Local Self-Government Units (Official Gazette of the Republic of Macedonia No. 49/1996) and the Law on the City of Skopje (Official Gazette of the Republic of Macedonia No. 49/1996)?” — “For” — “Against”. Source: Report, Referendum 2004. Citizen’s Association Most. <[http://www.most.org.mk/images/transparency/Monitoring%20of%20Referendum%202004/report/Referendum\\_2004\\_ENG.pdf](http://www.most.org.mk/images/transparency/Monitoring%20of%20Referendum%202004/report/Referendum_2004_ENG.pdf)> Last Accessed: October 24th, 2011

#### IV. RECCOMENDATIONS

1. In more general terms, there is an urgent need for adopting a more strategic approach to both human rights in general and in particular, minority rights. Thus, it is highly desirable on the part of the state to open a broad consultative process on the possible adoption of a Human Rights Action Plan, providing extensive opportunities to the small(er) ethnic communities to participate and articulate the problems their communities are facing, and the violations of the rights of their members.

2. An establishment of a research and data-gathering oriented body in the field of human rights would thus generate data based policy analysis, reports and even more important, recommendations. A Human Rights Center establishment associated with the academic community, but also involving international human rights experts and practitioners can thus act as a generator of informed-based analysis.

3. In more specific terms, awareness campaigns oriented towards both of the dominate ethnic groups, as well as the small(er) ethnic communities on the benefits of effective political participation of the later both in issues directly affecting them, but also generally in public affairs should be undertaken so to contribute to the mainstreaming of minority rights.

4. More inclusive and innovative ways of involving citizens, especially citizens who belong to small(er) ethnic groups. At the local level of communication it should be discussed in order to raise awareness about the possibilities they have to get involved in the decision-making process within their communities.

5. State administration and especially local level state administration should be professional and not politically active, in order for the public administration to be perceived in as being in the service of the citizens and of the communities, and not political parties. The latter will enhance political participation to a high degree.

6. The issues on which small(er) ethnic groups are consulted and involved need to be extensive and to go further than local use of language rights and local administration, and encompass decision-making more generally both on a local level, and especially on a central level.

7. Small(er) ethnic communities leaders should involve more with their own ethnic communities and organize campaign for raising awareness among their members on the right to political participation they have.

8. Small(er) ethnic communities' leaders should involve more with their own ethnic communities and partner with the state institutions in order to organize awareness raising campaigns on the need for further development of group members' professional capacities.

### Abstract

The effective political participation of small(er) ethnic groups in the decision-making process in Macedonia both at the central level in matters directly affecting them, and on a local one, generally in public affairs, has been an issue of concern and a frequent topic of discussion among international organizations, local experts, CSOs (Civil Society Organizations), as well as among academics and analysts. This paper, based on comprehensive empirical research, offers overview of the implementation of the right to effective political participation of the smaller ethnic communities in Macedonia, alongside the recommendations for improvement of the effective political participation of the in both the decision-making processes at the local level, as well as in the political and cultural public life.

### Резиме

Ефективното политичко учество на (по)малите етнички групи во процесот на донесување одлуки во Македонија, како на централно (за прашања што директно ги засегаат), така и на локално ниво (општо во јавниот живот), е прашање од голем интерес и честа тема за дебата на меѓународните организации, локалните експерти/ки, граѓанските организации и научниците/чките и аналитичарите/ките. Овој труд, заснован на сеопфатно емпириско истражување, покрај прегледот на примената на правото на ефективно политичко учество на (по)малите етнички заедници во Македонија, нуди и препораки за зголемување на нивната вклученост како во процесите на донесување одлуки на локално ниво, така и во политичкиот и културен јавен живот.

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