



ORIGINAL PAPER

Mapping the Constitutional Agreement: In Search of a Basis to Functioning of Multiethnic States

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Abstract

With the end of bloody conflicts and wars in the Balkans, which caused hundreds of thousands of victims, genocide and large-scale destruction, the international community used various methods and tactics for achieving peace in Balkan. The solutions that were proposed, were imposed, temporary political solutions, achieved through compromise, which did not meet the requirements of any community (leaving pending and unresolved key issues). These solutions that were proposed by the international community in most cases were balanced, and in some cases were contrary to the interests of the peoples that were victims of war in former Yugoslavia. The agreements reached between the parties in conflict, internationally mediated to end the war - especially in Bosnia, Kosovo and Macedonia – created the so called multiethnic states that every day more and more are seen as flawed and unworkable projects in practice. One of the criticisms addressed to traditional approaches to drafting the constitution is that they have a static, unchanging and contractually access to the process of drafting of the constitution. The new approach is characterized by greater transparency and broader participation of the public. The process is also characterized by increasing the involvement of the international community in the process, to otherwise known as "joint effort with the international community".

Keywords: *multi-ethnic states, constitutional convention, the constitution, the international fact*

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Introduction

By the end of bloody conflicts and wars in the Balkans in the late twentieth, which caused hundreds of thousands of victims, genocide and large-scale destruction, the international community used various methods and tactics for achieving peace in the Balkans. The solutions that were proposed were imposed temporary as political solutions, achieved through compromise, which did not meet the requirements of any community (leaving the key issues pending and unresolved). These resolutions that were proposed by the international community in most cases were balanced, and in some cases were contrary to the interests of the peoples, victims of war in former Yugoslavia (Bauer, 2000: 184). The agreements reached between the parties in conflict, internationally mediated to end the war - especially in Bosnia, Kosovo and the 2001 interethnic conflict in Macedonia - created the so-called multiethnic states that every day more and more are seeing as projects failed and unworkable in practice because they were based on agreements of political compromises. The functionality of these states must be based on constitutional agreements because legal rules are the healthiest basis for regulating social relations transformed into state institutional relations. One of the criticisms addressed to traditional approaches to drafting the constitution is that they have static, unchanging and contractually approach to the process of drafting of the constitution. The new approach is characterized by greater transparency and broader participation of the public. The process is also characterized by increasing the involvement of the international community in the process, to otherwise known as "joint effort with the international community".

Multiethnic states do not function according to political agreements

Currently we are in a historical paradox stage: the degeneration of multiethnic societies and building on those relics of multiethnic states. We all know that Bosnia-Herzegovina before the war was the image of a multiethnic society (Constitution of ex JFRJ, 1974). After the war, this multiethnicity in the society was gone, the people living together are divided into three state enclaves, in three ethnic cages without natural interaction. This form of forced cohabitation is a consequence of the imposition of a new doctrine called multiethnicity. A similar situation to that of Bosnia is also in Kosovo. Kosovo's disappeared multiethnic society was replaced by the creation of a multi-ethnic state, where Serbs are locked in a cage and live according to the laws, their worldviews. In Macedonia, the situation is even more paradoxical, there is no multi-ethnic society, nor a multiethnic state but an intermediate stage, where all are waiting to see what will happen. With these findings, of course I do not give my positive or negative assessments for the value of coexistence. However, the idea of multiethnic societies and states is more humane and civilized, but of course where function as such, where social relations turn into legal relations. These organizations may be equally inhumane if placed colonial relations between ethnic groups that coexist. Albanians in Macedonia make great efforts to be treated as equal. Instead of analyzing the causes of inequality, all are stood up to criticize the consequences. The issue of ethnic state or self-determination is the result of malfunctioning of society and multiethnic state. It seems clear that multiethnic states in the Balkans function with big problems. In some cases, these countries are dysfunctional and work with states within the state. Here especially excel Bosnia, Kosovo and Macedonia. The dominant political idea in the Balkans is the creation of national states and the strengthening and consolidation of national identities. Consequently, state and national policies in the Balkans are directed towards the creation of such states that means negative and contrary to the multi-ethnic state.

Defects in the functioning of multiethnic states

The Dayton agreement to end the war in Bosnia and Herzegovina, produced a multiethnic state composed of three communities: Croatian, Serbian and Muslim, organized into two separate entities: the Bosnian - Croatian Federation and Republika Srpska of Bosnia (Elezi, 2005: 4). Although it has been nearly two decades since the end of the war, the state of Bosnia and Herzegovina remains fragile, with many ethnic problems and major problems of operation - as a result of the inability of the full implementation of the Dayton agreement. Vienna Agreement on Kosovo that came as a result of talks between Kosovo and Serbia party, brought the Ahtisaari Package which resulted supervised independence for Kosovo (Ahtisary, 2008a), as a multiethnic state (inhabited by 95 percent Albanian population) by ensuring great rights for minority communities in Kosovo (especially the Serb community). The Ahtisaari Package, which wrongfully was imposed to Kosovo (Ahtisary, 2008b), had many flaws in itself because the choices proposes made it almost impossible the normal functioning of the state of Kosovo. The implementation of this package even today has not been fully implemented and has major implementation problems especially in the north Kosovo. Also, the (Ohrid Framework Agreement, 2001) for Macedonia produced a multi-ethnic state consisting of Macedonian and Albanian community, but its implementation has not yet been fully implemented and as a result the Macedonian state faces huge problems between ethnic majority communities. The solutions offered by the international community for these three countries created after wars as a result of the achievement of agreements that were aimed at the realization of projects of creating multiethnic states in the Balkans, have failed because even after nearly two decades of the first agreement, these agreements have remained on paper and not being fully implemented in practice as tensions between communities are constantly growing. This also occurs due to negligence and lack of pressure from the international community to compel the parties to fully implement the agreements as are achieved and even update on real constitutional convention. If this situation will continue so, these multiethnic states created under the concept of the international community will continue to face further ethnic problems, with no functionality and lack of exercise of full sovereignty on the whole territory of them and for a long time and as such will remain a source of rising nationalism and instability for the entire region and an obstacle to the process of European integration.

Review of Peace Agreements, not new conflicts

In order not to come to this, it is time that all political actors to engage seriously in order to eventually silent the monoethnicity trends of multiethnic state. It's time that to peaceful political agreements be done a serious revision, to see which parts do not work out and replaced with the other and turn into a constitutional convention. In this process should necessarily be included the international factor that ensured the agreements - the US, EU, NATO and OSCE. When we talk about the international factor, it should not be forgotten nor left aside and ignored the role and contribution given in resolving ethnic conflicts in the above mentioned countries, of the achieved political agreements as a result of which stopped the bloody conflicts between ethnic groups in these countries (Dayton Agreement), has obviously crucial role the EU, US, NATO and the OSCE, but this is not enough if ethnicities in these countries even further continue to play on the principle of national superiority and inferiority. Multiethnic states and in particular the aforementioned states, their essential aspiration should be building a modern democratic state in its natural

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course of development and maturation, must continually ensure that its Constitution fully meets the needs of all citizens and ethnic societies, in accordance to the highest international standards and as well their continuous development (Ohrid Framework Agreement, 2001), trying that in their multiethnic, multicultural and multiconfessional states achieve a cultural relativism without hatred and divisions among themselves by sharing the best place together. The best example of this cultural relativism can be found in different community of states, as is in the United States, European Union, and some countries that will be mentioned as an illustration, such as Belgium, Switzerland, Finland, Canada, Ireland, which have similar or nearly similar demographic composition, the conclusion is that there is big difference on the issue of the respect for the rights of other not majority peoples, and about proper functioning of an equal division of state and government. These countries not only have a multicultural society, but the same is reflected in the manifestation of the state as multiethnic state. This means that fair representation (Kymlicka, 1995: 132), use of languages and symbols, budget allocation is made to right and equal. These states this functionality to their multiethnic states have reached by converting their interethnic agreements into constitutional convention, ie installed in their constitutions. People sometimes as they forget the messages of religious teachings of the greatest religions and their holy books which consistently is preached tolerance to others independently from their convictions. Every man is born free, he creates and acts and as such should live. With the agreements and cooperation are set up societies, states and communities of states. The idea of multiculturalism or society with many cultures and ethnicities has not turned out today, but it exists since ancient times, Alexander the Great tried to spread the idea for “brotherhood among all nations”, where everyone would live calm and happy without problems and conflicts. According to him all men were brothers among themselves, regardless of race, religion or culture, so they must live together. This idea is followed years and centuries trying so in multiethnic, multi-racial and multi-cultural states to achieve a cultural relativism free of hatred and divisions among themselves sharing the same place together. The best example of cultural relativism can be found in various Community countries, such as USA, European Union etc.

How to achieve the functionality of a multi-ethnic disfunctional state? In this community of states it must be developing a diversity of cultures, religions and nationalities. In these societies each individual and social group should act, create anything within the boundaries of culture, religion and his nationality without prejudice to any other individual or social group but to have a balanced love and sincerity towards its country.

Even us as a part of a multi-ethnic state where live several different nationalities with different religions and cultures, as common challenge we have to build a stable society (Aziri, 2004: 25). If we are aiming for the developed countries and EU integration that can best be achieved through the creation of a multicultural and multiethnic climate installed in the constitution. In our society everyone as an individual should abstain from any kind of prejudice, subjectivity and ethnocentrism. To draw on the surface a new mindset, according to which there will be no valid and invalid culture, savage or civilized culture. But we should understand that all cultures are equally important and valuable for its members and we must respect without prejudice. Modern living requires one to understand that, no culture can live without society, but also no society can exist without culture. Human's life begins and ends with the culture, so it must be understood and perceived the multiethnic state.

The change of the constitutional system – the need of multiethnic policy in Macedonia

Therefore, when now is raised the issue of constitutional changes, it is necessary the unification of the multi-ethnic factor for change of the political system through which would be achieved the balance and control (check and ballance), as well as the equal sharing of powers among the Macedonian and Albanian political elite. The political life in Macedonia in the last twenty years shows the (none) operation and it is impossible to achieve the functionality of a modern multi-ethnic state, being hampered by the Macedonian elite itself. As an illustration, in the beginning of the transition, this country was built backward, where despite the repeated requests by the Albanian political parties, there were not able to build a multi-ethnic state. Although various literature in political science recommend that if in addition to the majority in a State, lives a considerable number of non-majority population, the state should be built on the principles of multi-ethnicity, otherwise will always be conflicts, and it may even be come to the dissolution of the state. However, this political system was rejected by the Macedonian political elite. The greatest calamity is that most of those who drafted the constitution were professors exactly of political science faculties, today some of them are even more outspoken, saying that since then they have made a mistake and that it should be heard the Albanians voice (Statement of the Assembly of the Republic of Macedonia, 1991: 5) (as was the case of the former speaker Stojan Andov, then former Prime Minister Georgievski) or the need for greater advancement of Albanians. Professors and former officials of this kind there are many, and we continue to have a system where the Macedonian political elites puts in a more advantageous position in power compared with the Albanian, it may happen that even after ten years in any of the current Macedonian elite say that since then (I mean the present time) to meet requirements of the Albanians. When we speak about literature, just what the political literature refers and occurred in Macedonia, the 2001 conflict, especially the Macedonian political elite were given a chance to be used the Ohrid Agreement for the development of a multiethnic society and state. However, today, 13 years after its signing, the Agreement was intended to end discrimination especially to the Albanians; the implementation of some of its points from the Macedonian elite is slowing, even ignored. Although the year 2005, as the date fixed for the finalization of the agreement was not observed (Ohrid Framework Agreement, 2001: 21), even today 13 years later, the use of the Albanian language in state institutions continues not to find use in practice, the fair and equal representation is transformed into an impossible mission. And, because of the power within the government that the Macedonian political elite has (because according to the election model winner and mandator are always Macedonians, the key positions are always led by Macedonian) still exists institutional discrimination, especially against Albanian municipalities by finding as reasons instruments and various legal gaps. One of the basic principles of the Ohrid Agreement opens the way to overcoming the overall inter-ethnic conflict in Macedonia as follows: “a modern democratic state in its natural streams of development and maturation must continually ensure that its Constitution fully meets the needs of all its citizens, in accordance with the highest international standards and is continuously developing its”. The Macedonian Constitution does not meet the needs of expression and affirmation of total ethnic, economic, cultural, religious, linguistic diversity. Rather, favoring exclusivity of Macedonians this constitution is transformed into constant conflict generator. Redefining the state as a bi-

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national state, official use of the Albanian language at all levels of state institutions (Elezi, 2005:7) (with equal status rather than as a second language) and finding the most appropriate forms of expression of sovereignty from the top down (provinces, autonomous regions, cantons, etc.) are the only way for Macedonia to meet the needs of Albanians in accordance with the highest international standards. On the contrary, the logic of domination and ethnic exclusivity will inevitably bring versatile boycott and will pose new generator crisis in the region.

Commitments on the constituent status of Albanians in constitutional plane in Macedonia

In Macedonia lacks scientific efforts to elucidate the right of Albanians for a constituent status in the constitutional level, supporting him in the historical background and taking into account the real demographic interethnic structure in this republic. Indeed, the Krusevo Republic (1903) presents the direct source for Albanians statebuilding since they were introduced in the state subject and constituent element. The effort made for the progress of the position of Albanians in the republic with the constitutional solutions of 1974 did not appear in practice and was not even close in accordance with the principles proclaimed neither constitutional nor standards of international law. Even Macedonia's declaration of independence happened without a clarified position of the Albanian ethnicity and his participation in the constitutional system of this country, without being defined within the premises and reports within the new social formation. Consequently, the Macedonian regime did not built a right attitude towards ethnic Albanians and not recognize their fundamental rights by consensus not to establish a mechanism that would prohibit the possibility of majority of Albanians and their rights, formally, was previously known, despite their inability to accomplish in practice. In the first multi-party elections in 1990, Albanians in Macedonia, as it is known, were represented by the Party for Democratic Prosperity (PDP ongoing) and the Peoples Democratic Party (PDP). These two parties (PDP include the majority of the Albanian electorate), the total had 23 MPs (17 PDP, 5 the PDP-PDP coalition and 1 PDP). We should note that the creation of a legal political party in these ethnic Albanian spaces, as was the case of the PDP, was met with an unprecedented enthusiasm from the general public around the Albanians. This was seen in the campaign and on election day when in the Albanian settlements the percentage of voters was over 90%. Not much later, the enthusiasm began to fade due to the fact that in Macedonia continued political, national, and cultural education discrimination of Albanians. Then the leadership of the PDP, despite several attempts, failed to create suitable climate to the then Macedonian political factor. This was evident in the case of adoption of a new Constitution (December 1991), which did not accept any amendment of the Albanian deputies, which declared Albanians as a national minority. Among the activities with historic weight of Albanian deputies in that time, however, it is "The Statement for equal status of Albanians in Macedonia", submitted for approval to the Parliament of the Republic of Macedonia, on 29 July 1991.

In this way, the Macedonian Constitution of 1991 became the basic generator of the crisis on the Macedonian-Albanian relations, due to denigrating constitutional and legal position of Albanians in it, in particular because of their treatment as a national minority. Given the need to advance the constitutional and legal position of the Albanians in Macedonia and the recognition of their right to be equal with Macedonians subject in this republic, the international community committed itself to a "historic agreement"

between Macedonians and Albanians, however, whether the principles and solutions, and in particular, their application in practice, not justified the given qualification.

The Ohrid Agreement did not promote Albanians as autochthonous, with significant demographic features of their number and high concentration and broad-ethnic and common life in the republic and, on this basis, brought to them denigrating status of "national minority", even "without mentioning anything", except within "communities" that are "multi-ethnic state", even though Albanians, in fact, constitute the most prominent ethnic group to which increased awareness that he is a political subject as entirely equal to the Macedonian people, has the right to be the bearer of sovereignty and state-building, so that the Ohrid Agreement did not eliminate the underlying cause of the crisis in Macedonia - the treatment of Albanians as a minority. The agreement in principle, "justified the" limited acceptance of the Albanian language as "second official language", although "without mentioning anything" except under "any other language spoken by at least 20 percent population", despite the fact that the Albanian language and its alphabet, language and writing constitute about thirty percent of the total population living in the republic and that, on this basis, the language and script "meet the standards "that be completely equal to the Macedonian language and script. The agreement foresaw "undertaking concrete measures to expand the representation of members of communities which do not represent the majority in Macedonia, as in the civil service, army and public enterprises, and the improvement of their access to financing development and working activities" without mentioned, even in this case the Albanians, in particular, who, what is the truth, are not represented at all or are represented in very insignificant percentage, although, in fact, the total number of them constitute a significant force of nation in the republic, from which can be recruited, equally with Macedonians, officials and leading cadres in the civil service, army and public enterprises, although they are an important factor and are fully equal politically, economic, social, demographic, and even military recruiters, with the Macedonians, who appeared as "a majority" in this republic. Although the Ohrid Agreement resulted "with a breathing moment" of Albanians, it, in fact, just opened a process of seeking their legitimate and legal national rights. Over ten years after its signing, it was found that it did not secure the Albanians the status of a constituent. Why? Because the Ohrid Agreement: there was not implemented within the prescribed period; was not fully implemented until the end; was interpreted one-sided; was corrupted its contents; was misinterpreted; in practice, it was not strictly enforced; there was not implemented within the prescribed period; experienced and suffered compromises; the agreement itself, at the time of signature, was a compromise. In further stages, she suffered other compromises, so they become in a compromise of compromises; the Macedonian side, although a signatory, has never recognized him. In such circumstances, the Albanians in Macedonia no way left, but reorganized to realize their legitimate rights.

Redefinition of the new constitutional order of the Republic of Macedonia

Macedonia's future can be built only by redefining it as a state of peoples which implies recognition of constituent legal and constitutional subjectivity equal to the Albanians in Macedonia, as a starting point for the issuance of a new constitution (Elezi, 2014: 9). In Macedonia there should be established a new concept of state "that prevents systemic domination of one ethnic group over another" and that qualifies Albanians as indigenous people, as an integral part of the Albanian people in the Balkans (Ghai, 2001), in the geographic area where he lives continually in ethnic majority, well that does not qualifies as "national minority", but as people with perpetual and continuous right to

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national self-determination. The right solution of the Albanian issue in Macedonia, dominant factors in completing the democratic transition, democratic stability and accelerate Macedonia's integration into Euro-Atlantic structures, NATO and EU. The final resolution of the Albanian issue in Macedonia is the test of its democracy and proof of its democratization. Pluralistic, multi-party and parliamentary democracy Macedonia, should be distinguished from monism, undemocratic and self-socialist period Macedonia. The right choice of the Albanian issue would be the value that would distinguish her from the monism and undemocratic. So because the right choice of the Albanian question: is of interest, for Albanians as well as the Macedonian; is a function of the stability of Macedonia and the region, and the development of democratic processes and integration in the country and in the region; is in line with historical trends; will consolidate, will strengthen and stabilize Macedonia within. As such, it would be worthy to be a respected member of the EU and NATO. The fair resolution of the Albanian issue in Macedonia facilitate the development of democratic trends and climate and democratic integration in the region. With the right solution of the Albanian issue in Macedonia will also be respected the principles of democracy and the values of Western civilization.

The right solution of the Albanian issue in Macedonia, the dominant factors in the completion of democratic transition, democratic stability and acceleration of Macedonia's integration into Euro-Atlantic structures, NATO and EU

Today all the conditions are ripe for a just resolution of the Albanian issue in Macedonia, because: the Albanian factor in Macedonia, despite the restrictive and discriminatory policy, thanks to the unprecedented vitality in the last two decades marked a dynamic development in many areas: in the political, socio-economic and cultural; the Albanians in Macedonia, in the past two decades, experienced a high degree of national awareness; the Albanians in Macedonia, in the past two decades, reached a high degree of political culture; Albanians in Macedonia, just like the whole Albanian nation in the Balkans, during the crisis in the region, following a political philosophy and constructive peacekeeping, demonstrated a high degree of political maturity. All this, in order to maintain peace and stability in the region and its democratization; Albanian issue in Macedonia experienced emancipation stage, the affirmation, the actualization and internationalization; the time factor, i.e. passage of a period of twenty years in the political and ideological pluralism necessitate political and non-police treatment of the Albanian issue in Macedonia. In other words, the Albanians have already exceeded the waiting phase. How much long should Albanians expect their cause to end with a stable political and legal epilogue rather than a judicial treatment and fictional political epilogue? Albanians and Macedonians, within two decades of parliamentary democracy and political pluralism, have already exceeded adaptation stage, namely adaptation to each other; Requirements of Albanians, as they are raised in state institutions and in higher instances of it, ie legislative body, they themselves possess their legitimacy and justification; requirements of Albanians, as are paved democratically organized political and institutional way, enjoy the support of the international community; requirements of Albanians, except historically justifiable, for them, they have also vital and existential importance; requirements Albanians are not extreme and radical, but realistic and rational. Reconognition of the status of constituent people for Albanians in Macedonia and the creation of a Macedonian two entities does not impugn its international borders.

Macedonia claims itself as a democratic state. But its democratic character it must be proved in the practice. The final solution for the Albanian issue in Macedonia is the

test of its democracy and democratization of her testimony. Pluralistic, multiparty and parliamentary democracy Macedonia should be distinguished from undemocratic, monist Macedonia and self-socialist period. Macedonia today claims to be called democratic. The right choice of the Albanian question would be the value that would distinguish it from the monistic and undemocratic. And this because the right solution of the Albanian question: is of interest, for Albanians as well as Macedonian; is a function of the stability of Macedonia and the region, and the development of democratic processes and integration in the country and the region; is consistent with historical trends; will consolidate, will strengthen and stabilize Macedonia within. As such, it would be worthy of being a respected member of the EU and NATO. The right solution to the Albanian issue in Macedonia facilitate also the democratic developments and trends as well as the climate and democratic integration in the region. With the right solution of the Albanian issue, in Macedonia will be respected the principles of democracy and the values of Western civilization. In this direction, right solution of the Albanian issue in Macedonia is imperative. Unresolved right solution of the Albanian question, postpone the development of democratic processes in Macedonia, inter-ethnic tension, de-consolidates and destabilizes it, prevents economic development, delaying democratic transformation and its integration into the family of civilized world. Given that the Albanian issue in Macedonia is a dimension of the Albanian national question, its solution has nationwide importance. The right solution of the Albanian issue in Macedonia, in addition to the independent and democratic Kosovo and consolidated Albania and NATO members are *conditio sine qua non* for factoring of Albanians in the Balkans and the creation of a new political balance in the region.

Conclusion

Over the past twenty years, after the wave of the constitution drafting process in countries emerging from conflicts and based on the achieved compromises as a result of peaceful political agreements, has been introduced the need of an approach of "new constitutionalism" that focuses as in the democratic process and in the results of the democratic process and the compromises and interethnic agreements multi-ethnic states. One of the criticisms addressed to traditional approaches to drafting the constitution is that they have static, unchanging and contractual access against the constitution drafting process. While traditional approaches considered the constitution as a "done act", the new approach focuses constitution drafting "in the participatory process of drafting the constitution" or "conversational constitutionalism". The new approach is characterized by greater transparency and with a wider participation of the public ethnic groups. The process is also characterized by increasing the involvement of the international community in the process, to otherwise known as "joint effort with the international community". As a result, the legitimacy of the constitutional process and the constitution itself and its functionality, is measured by the degree of participation in the process, as is an open and democratic process, as it involved the company or how transparent the process, as well as whether are people who are involved in the drafting process, people democratically elected and accountable. The Constitution is not only a law, it is more important than the law, combines the principles that would govern the state and creates mechanisms for political compromise and effective Self-determinaton. The constitution should be used to define the relations between the different communities, and to establish mechanisms applicable to customize developmental interethnic relations in multiethnic states. Only due to a

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constitutional convention from which will come to a Constitution based on the premise outlined above, will be a guarantee of operation of multi-ethnic states.

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