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THE LEGAL STATUS OF THE ALBANIAN
“MINORITY IN MACEDONIA”

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The Legal Status of the Albanian “Minority” in Macedonia

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The Legal Status of the Albanian “Minority” in Macedonia

Introduction

My work will focus on the legal discipline regarding the Albanian “minority” in Macedonia. The mere fact of talking about minority between quotations has a specific reason that is right the key of the “Albanian question” in Macedonia. Tito’s decision of granting Macedonians the status of nation, while classifying Albanians as nationality (national minority), was seen as a big injustice from the Albanian point of view.

According to the theory of the ethnic state, each nation should have its own State, so that only nations were granted a republic, while nationalities had their own motherland outside the Yugoslav Federation.¹ Moreover unlike Kosovo Albanians, Macedonian Albanians did not even get an autonomous province.

I will argue that the crossing of the “Albanian question” with the “Macedonian question” represents the thread of the complex relationships between Albanians and Macedonians in Macedonia.

On the one hand, Albanians had been building their national identity since the end of the nineteenth century, and obtained their own State in 1912. More than half of the Albanian population remained in Kosovo, South Serbia and western Macedonia, and the big dream to have a “Big Albania” was only temporary achieved during the Second World War under the Italian invasion.²

On the other hand, Macedonians never had neither either their own State or a national identity, because their land has always been ruled by different peoples during the centuries, and since 1912 it has been shared out among Serbia, Bulgaria and Greece.³

Thus, when Tito recognized them as a constituent nation of the Yugoslav Federation, on 2 August 1944, Macedonia had not only to begin the nation-building

¹ See Mathias Konig, *The situation of minorities in the federal republic of Yugoslavia towards an implementation of the framework agreement for the protection of national minorities*, ECMI working paper 11, European Centre for Minority Issues, Flensburg, 2001, p. 7.

² See Rexhep Qosja, *La question albanaise*, Fayard ed., Paris, 1995, p. 16.

³ See Elisabeth Barker, *The Origin of the Macedonian dispute*, in *The new Macedonian question*, James Pettifer ed., Basingstoke, New York, 2001 pp. 7, 12.

process but also to assert its identity towards the neighbours.⁴ Therefore, Macedonians were not willing to cope with the Albanian demands to have more rights, and they were very concerned when Albanians, in public protests, asked to be joined to Kosovo in order to create the seventh republic. The fear was due to the fact that Albanians are predominantly concentrated in the western side of the country, which borders with Kosovo and Albania, and that Albanian birth rate is much higher than that of Macedonians.⁵

During Tito's regime, two different policies were used to face the issue of nationalities. During the fifties and the first half of the sixties, he tried to implement the Yugoslav Program aimed to suppress any kind of nationalism. Then, he realized it was better to please the claims of nations and nationalities in order to keep the situation under control. Indeed, the 1974 reform was very important because it established the complete equality between republics and provinces, and granted more rights to nationalities.⁶

Consistently with the 1974 federal Constitution, the Macedonian Constitution, passed in the same year, established in the preamble that Macedonian was the state of Macedonian people and of the Albanian and Turkish minorities. Peoples and nationalities were considered equal and had the same rights and duties. It also granted many rights in favour of minorities especially in the fields of language, education, and proportional representation in public bodies, keeping and strengthening minority protection provisions already present in the 1963 Constitution and in the 1946 Declaration on the Basic Rights of Citizens of the Democratic Republic of Macedonia. The 1974 Constitution also introduced the Commission on inter-ethnic relationships.⁷

However, the discipline had to be implemented by law, and the Constitutional Court, set up in 1963 both at the federal and at the republican level, could not be considered as a check and balance element because of its composition and of the effects of its decisions.⁸ Thus, while during the eighties Kosovo Albanians enjoyed a period of

⁴ See Victor Roudemetov, *Collective memory, national identity and ethnic conflict*, PRAEGER, Westport Connecticut, London, 2002, p. 192.

⁵ See Ulf Brunnbauer, *The implementation of the Ohrid Agreement: ethnic Macedonian resentments*, ECMI issue 1/2002, European Centre for Minority Issues, Flensburg, 2002 p. 9.

⁶ See Mathias König, *op. cit.*, pp. 4-6.

⁷ See Giorgi Caca, *Status and rights of nationalities in the Republic of Macedonia*, in *The new Macedonian Question*, J. Pettifer ed., Palgrave, Basingstoke, New York, 2001, p. 151.

⁸ See Giuseppe De Vergottini, *Diritto Costituzionale Comparato*, CEDAM, Padova, 1999, p. 764.

large autonomy within Serbia, Macedonian Albanians were victims of a discriminatory campaign carried out by Macedonian authorities.

At the end of the eighties there was a rise of nationalism, due above all to the fall of communism, that after the 1974 reform was the only federal element remained, besides the army. Furthermore, the economic differences between the republics were enhanced by the eighties economical crisis.

Macedonia was very concerned about the destiny of the Yugoslav Federation, because the prospective of the outbreak of the latter would mean the coming out again of Serbia, Greece and Bulgaria's territorial ambitions. It was right the re-emerging of the "Macedonian question" that in 1989 led Macedonians to change the constitutional preamble, which in the new version said that Macedonian State was the State of Macedonian nation.⁹ The will was clearly to create an ethnic state in which little space would be let to minorities and especially to Albanians.

The 1991 Constitution represented a big compromise between Albanian and Macedonian positions, but none of the two ethnic groups seemed to be satisfied. Actually the attempt was to fuse together the ethnic state theory with the one of the civic state. The result was a preamble that, while affirming that Macedonian state was the State of Macedonian nation, granted minorities equal rights as citizens.¹⁰ As regards language rights, for instance, the Constitution established that the official language would be the Macedonian language and that the nationalities' languages would be in use in the local self-government units where the nationalities made up the majority of the population or were in a consistent number.¹¹ These rights could be enjoyed only in the manner determined by law, but the 1991 Constitution increased the guarantees of independence of the Constitutional Court judges in order to make more effective the external review of the constitutionality of laws.

The electoral law was changed in order to introduce a mixed electoral system (majority and proportional). And as happened in 1974, the 1991 Constitution provided the Commission on inter-ethnic relations.¹²

⁹ See Hugh Poulton, *Who are the Macedonians*, Hurst & Company, London, 2000, p. 172.

¹⁰ See Stefano Bianchini, *Sarajevo le radici dell'odio*, Roma, 1993 p. 173.

¹¹ See The Constitution of the Republic of Macedonia, art. 7, www.Izbori98.gov.mk/English/html/constitution.html

¹² See Mauro Mazza, *Profili gius-pubblicistici degli ordinamenti delle repubbliche balcaniche degli slavi meridionali: il diritto costituzionale serbo-montenegrino (jugoslavo) e macedone*, in *DPCE*, vol. 1999 I, G. Giappichelli ed., 1999, pp. 852, 853.

The increased attention towards minority rights was also due to the approval of two important documents within the CSCE: the 1989 Vienna Concluding Document and the 1990 Copenhagen Document. Moreover the draft of the 1992 UN Declaration on the rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities was available since the Macedonian Constitution had been written.

In 1991 the outbreak of the Yugoslav Federation began and the war quickly moved from Slovenia to Croatia and would then explode in Bosnia with terrible consequences. Macedonia was the only republic that was able to get its independence in a peaceful way thanks to the president Gligorov's diplomatic skills. He was actually able to reach an agreement with the Yugoslav army.¹³

However, the relationships between the Macedonian majority and the Albanian minority remained critical. The spectre of the "Macedonian question" threatened the existence of the newborn republic, because the neighbours for different reasons did not want to recognize it with the name of Macedonian Republic. Actually, Macedonia became member of the UN only in 1993 with the official name of FYROM and before that date it could not even have access to the funds of international credit institutes.¹⁴ Moreover Greece had put an embargo over goods coming from Macedonia, that ended only in 1995.¹⁵ Thus, notwithstanding constitutional provisions, Albanians still suffered persecutions because the Macedonians' fear of losing a part of the territory became stronger, given that the menaces of Serbia, Greece and Bulgaria were more concrete once Macedonia had lost the shell of the Yugoslav Federation.

Some progress was made in the field of minority protection, such as the 1995 Law on Local Government which gave to the local self-government units plenary powers in the field of education, and the 1997 ratification of the Framework Convention for the Protection of National Minorities. Moreover in 1998, when the Macedonian nationalist party (VMRO-DPMNE) won the elections, it invited the most voted Albanian party (DPA) to build a grand coalition in order to govern the country in that disquieting situation.¹⁶

¹³ See Stefano Bianchini, *op. cit.*, p. 174.

¹⁴ See Richard Miller and Miodrag Ivanovic, *Macedonia: the creation of a nation and a state out of ethnic conflict*, in *Ethnicity and nationalism in East-central Europe and the Balkans*, Thanasis D. Sfikas and Christopher Williams ed., Aldershot G.B, Brookfield USA, Singapore, Sydney, 1999, pp. 317, 318.

¹⁵ See Jenny Engstrom, *The power of perception: the impact of the Macedonian question on inter-ethnic relations in the Republic of Macedonia*, in *The global Review of Etnopolitics*, vol. 1, no. 3, March 2002, p. 9.

¹⁶ See Hugh Poulton, *op. cit.* p. 218.

The 1998 Kosovo conflict did not spill over Macedonia. However, the latent conflict broke out in March 2001, when the first combats between UCK guerrillas and the Macedonian army took place.

On the one hand Albanian guerrillas maintained that they were fighting to improve the Macedonian Albanians' situation, asking to get more civil and cultural rights, such as Albanian university and proportional representation within the army, the police, and state administration. Their requests went so far as asking to be recognized as a constituent nation of the Macedonian state. On the other hand, the Macedonian Government said the conflict was fomented by Kosovo Albanians fighters with the aim of realizing the Big Albania.¹⁷

Fortunately the conflict was not as bloody as the previous Balkan conflicts because of the coordination of efforts among NATO, UE and USA to block the hostilities.

On 13 august 2001 the Framework Agreement was signed. The attempt was to build a civic multi-ethnic State based on the criteria according to which all citizens are members of the same nation because they share the same values. The model to get this result was the Lyphart' s consociational democracy which was based on four elements: the grand coalition, the multi-party system and the proportional representation of minorities, the minority veto and possibly a federal structure.

The first three elements were present in the Framework Agreement.

The grand coalition element was present *de facto* since Macedonia had become an autonomous republic and the multi-party system had been introduced for the 1990 elections. As regards the electoral system, the Framework Agreement established to modify it from a mixed system to a mere proportional system. Moreover, minorities were granted a veto power in matters of vital importance, such as language, education, culture, and the change of the administrative units' borders. The veto power was also provided for the appointment of three constitutional judges. Minority proportional representation had to be ensured within the army, the police and the judicial machinery. Faculties in Albanian language were created, while the quota system, introduced in 1994, was kept to facilitate the access of minorities in Macedonian state universities.

¹⁷ See Kristina Balalovska, *Alle origini della questione macedone*, in *Limes* fascicolo 2, 2002, pp. 55, 56.

However, the state structure kept being unitary and the decentralization process had to allocate more powers to the self-government units already existent, without creating new entities by following ethnic lines, at least apparently.¹⁸

The constitutional changes did not perfectly respect the directions of the Agreement. The preamble had to mention only the citizenship criteria while some ethnic references were reintroduced. Furthermore, a deeper analysis of the provisions of the Ohrid Agreement shows that the elements of consociational democracy clearly privilege Albanians compared to the other minorities, making some scholars think that the result would be more a bi-national State than a civic multi-ethnic State.¹⁹

I will analyse the different parts of the Ohrid Framework Agreement showing how the provisions themselves and their practical implementation were clearly aimed at privileging Albanians by granting them to some extent an institutional equality through for instance the grand coalition, the minority veto and the paritarian representation within the Committee for Inter-Community Relations. To some other extent the Macedonian state keeps the characteristics of a promotional state. On the one hand, it pursues the realization of a substantial equality vis-à-vis Macedonians through the positive measures set forth to improve the Albanian representation in public bodies. On the other hand, notwithstanding the prohibition entailed in the basic principles, the provisions of the Ohrid Agreement, embodied in the revised Law on Local Self-Government, grant Albanians a *de facto* territorial autonomy. Actually, the Ohrid Agreement allocates to municipalities independent administrative competences and the State can intervene only when the municipalities cannot efficiently exercise the powers assigned to them by passing a law which shall however encourage the carrying out of the competence at the local level. Moreover, many language and cultural rights can be enjoyed only within the territory of the municipalities in which a community makes up at least 20% of the population or in certain cases the majority of the population.

I will then demonstrate that the consociational democracy works well in Macedonian system and did not lead either to a block of the decision-making process or

¹⁸ See Mirjana Maleska, in *What kind of a political system did Macedonia get after the Ohrid Agreement?*, in *New Balkan Politics*, issue 9, p. 3, www.newbalkanpolitics.org.mk/napis.asp?id=31&lang=English

¹⁹ See Jenny Engstrom, *Multi-ethnicity or bi-nationalism? The framework Agreement and the future of the Macedonian State*, ECMI working paper issue 1/2002, European Centre for Minority Issues, Flensburg, 2002, pp. 13, 14.

to a re-emerging of ethnic conflicts, because the compromising approach was generally accepted by Macedonian society.

However, the consociational model does not create more integration between the two ethnic groups because it set forth, for instance, a segregated primary and secondary educational system in which Macedonian children and Albanian children do not have any kind of interaction.

The other element which might turn to create segregation is the reform of the local self-government which *de facto* grants Albanians a territorial autonomy and for this reason was clearly challenged by Macedonians. The territorial autonomy was actually formally prohibited by the Framework Agreement because, unlike the local self-government, is a notion which is more directly linked with ethnic issues since it allows to a community, concentrated in a certain territory of the state, to run its own affairs independently from the central government. Thus, the Macedonian opposition party and the World Macedonian Congress organized a referendum to abolish the laws which redefined the borders of municipalities allowing in that way to Albanians to constitute the majority in a greater number of municipalities. The organizers claimed that such laws violated the prohibition stated in the Ohrid Agreement.

Nonetheless, the referendum did not reach the necessary *quorum* of voters and the process of implementation of the Framework Agreement could continue.

The implementation of the Agreement is extremely important even because minority protection is one of the main requirements of the political criteria, necessary to become a member of the EU, decided during the European Council of Copenhagen. The process of approaching the EU began with the signature of the SAA (Stabilization and Association Agreement) on 9, April 2001. In early 2004 Macedonia officially presented the demand to become a member of the EU and, in December 2005, the country was finally declared official candidate to EU membership.

Finally, it cannot be undervalued that the nowadays after-effects of both the “Macedonian question” and the “Albanian question” have their precise influence on the events regarding the Macedonian Republic. The fact that Greece had not yet recognized Macedonia as the official name of the republic and the historical hostility showed towards the latter could constitute an obstacle to the EU accession. Actually even though Macedonia won a big battle within the Greek dispute when the USA recognized

the constitutional name of the republic, the EU supported Greece by criticizing the unilateral choice.²⁰

As regards the Albanian question, the Kosovo status has not yet been defined. Granting to Kosovo full independence could perhaps have some repercussions on Macedonian Albanians. However, it seems unlikely that they would ask for secession in their turn given that their legal status, set forth by the Ohrid Framework Agreement, has pleased most of Albanians' claims.

²⁰ See Risto Karajkov, *Macedonia e UE: un passo in avanti*, 23 February 2005, pp. 3, 4, www.osservatoriobalcani.org/article/articlereview/3934/1/46

Chapter one

Macedonian-Albanian relationships during the communist period and the origins of the competing claims

1.1) Macedonians and Albanians' ethnical background

Macedonia has always been, in the course of history, a crossroad of different cultures. Albanians claim to be the descendants of the ancient Illyrians that inhabited the area of actual Albania, Greece and some territories of the ex Yugoslavia since 2,000 BC. They are predominantly Muslims and their mother tongue is the Albanian language, one of the nine original Indo-European languages. Macedonians, on the other hand, were Slavs who arrived in the Balkans during the seventh century AC. They settled in the region that was the homeland of the Macedonian Kings, so they began to be called Slav-Macedonians and, later on, Macedonians. They speak the Macedonian language, that belongs to the south-Slav subgroup of the indo-European languages and they use the Cyrillic alphabet. Their religion is the Christian-Orthodox.

Before the Slavs invasion, the inhabitants of Macedonia had been ruled by different peoples: the Greeks from the ninth century BC until the second century BC, then the Romans and from the fourth century AC onwards they were under the influence of the Byzantine Empire. In the seventh century the proto-Bulgarians arrived in the Balkans, built their own Empire and fought against Byzantium to get the control of Macedonia which was alternately under Bulgarian or Byzantine rule until the fourteenth century. Then the Serbs Empires dominated Macedonia until 1371, year in which the Ottoman Empire took Skopje from the Serbs, and ruled undisturbed until the nineteenth century.²¹

1.2) Tito's distinction between nations and nationalities

Geographically speaking, Macedonia is the area bounded to the north by the Skopka Crna Gora and the Shar Planina mountains; to the east by the Rila and Rhodope

²¹ See Elisabeth Barker, *The origin of the Macedonian dispute* in *The New Macedonian question*, J. Pettifer ed., Palgrave, Basingstoke, New York, 2001, p. 8.

mountains; to the south by the Aegean coast around Thessalonika, Mount Olympus and the Pindus mountains; and to the west by the lakes of Ohrid and Prespa.²²

Since 1913 it has been divided among Greece, Serbia and Bulgaria, and Tito was the first to recognize Macedonia as a nation, on 2, August 1944, and gave it the republican status within the borders of what once was “south Serbia”. He established that only constituent nations would have the status of republic and would enjoy the right of self determination, given that nationalities (another way to define national minorities) have their own State outside Yugoslavia.²³ Constitutionally recognized nations were: Serbs, Croats, Slovenes, Macedonians and Montenegrins. In 1968 also Bosnian Muslims were conceded the status of nation as a compensation for the fact that did not have their own republic. Recognized minorities, or nationalities according to the official terminology since 1959, were: Albanians, Hungarians, Bulgarians, Czechs, Roma, Italians, Romanians, Ruthenians and Turks.²⁴

Tito’s definition of nations and nationalities was based on the theory of the ethnic state (or eastern theory) according to which each nation should have its own “titular nation State”²⁵. In this context, nation is no more synonym of demos (people that share common values), but it becomes synonym of ethnos (people who share the same culture, language, religion).²⁶ The result is that people who do not belong to the dominant nation of the State will be classified as minority and will be considered a second class citizens.²⁷ The extreme but logical consequence of this theory will be the attempt of obtaining pure states made up only by members of the majority ethnic group by practising ethnic cleansing policies and even genocides.²⁸ That trend was present in the nineteenth century and will appear again at the beginning of the twentieth century during the civil war.

²² See Hugh Poulton, *Who are the Macedonians*, Hurst & Company, London, 2000, p. 1.

²³ See Mathias Konig, *The situation of minorities in the federal Republic of Yugoslavia, towards an implementation of the framework convention for the protection of national minorities*, ECMI working paper 11, European Centre for Minority Issues, Flensburg, 2001, p. 7.

²⁴ See Mathias Konig, *op. cit.*, p. 7.

²⁵ See Paul Shoup, *Nation building in Bosnia: from Tito to Dayton*, in *State Building in the Balkans*, Stefano Bianchini and George Schopflin ed., Longo, Ravenna, 1998, p. 277.

²⁶ See Giuseppe De Vergottini, *Diritto Costituzionale Comparato*, CEDAM, Padova, 1999, p. 895.

²⁷ See Ivan Ivekovic, *Identity: the Yugoslav drama*, in *State building in the Balkans*, Stefano Bianchini and George Schopflin ed., Longo, Ravenna, 1998, p. 253.

²⁸ See Victor Roudemetov, *Collective memory, national identity and ethnic conflict*, PRAEGER, Westport, Connecticut, London, 2002, p. 19.

The opposite theory is the one of the civic state (or western theory) which maintains that States exist before nations.²⁹ In this case the nation-building process is based on citizenship, which in this theory does not imply only the participation at the political life of the State but also the membership to the same nation, thanks to the sharing of universal principles, and not thanks to the belonging to a particular ethnic group.³⁰

It is very hard to transform an ethnic state into a civic state. Even nowadays the Macedonian Republic does not *de facto* possess, as I will demonstrate below, all the conditions to be defined as such. The reasons for that, are to be found in the history of Macedonians and Albanians.

1.3) Albanian and Macedonian question: two unsolved issues

Albanians did obtain neither their own republic nor the status of nation. Moreover, while Kosovo Albanians got at least their autonomous province, Macedonian Albanians, who were mostly concentrated in western Macedonia, were not reserved that kind of “privilege”. The Albanian question’s pivot in Macedonia will always be tightly linked to the fact that, for historical reasons, Albanians saw Tito’s decision as a terrible injustice.

In the nineteenth century Albanians inhabited an 80,000 squares kilometres territory that went from Novi Pazar in the northern side to Preveza and Konica in the southern side and from Podgorica in the north western side to Kumanovo, Skopje and Tetovo in the eastern side.³¹ In that period Albanians began to construct their national identity thanks to the precious role of the Albanian Renaissance, movement that began to stress the unifying elements of that people. It affirmed the religious neutrality considering that Albanians belonged to three different faiths, and it wanted to create a national Albanian school in order to educate people in the national language, and to build a national literature. Their slogan was: “The Albanian faith is the Albanity”.³²

Albanians’ position within the Ottoman Empire was definitely privileged compared to the Christian Slavs because most of them were Muslims, so they could have good jobs in the public administration or in the army and pay lower taxes.³³

²⁹ See Paul Shoup, in *op. cit.*, p. 277.

³⁰ See Victor Roudemetov, *op. cit.*, p. 17.

³¹ See Kristina Balalovska, *A historical background to the Macedonian-Albanian interethnic conflict*, in *Minority politics in southeast Europe: crisis in Macedonia*, ETHNOBAROMETER, Rome, 2002, p.111.

³² See Rexhep Qosja, *La question albanaise*, Fayard ed., Paris, 1995, pp. 17-20.

³³ See Kristina Balalovska, *op. cit.*, pp. 111, 112.

On the other hand, Macedonians, in the nineteenth century, became the object of the neighbours' expansionistic desires and the so called "Macedonian question" had its origin. In 1870 the Bulgarian Exarchate was created and it would rule also in part of Macedonia (Skopje and Ohrid) thanks to what said Art. 10 of the Turkish decree, passed under the Russian pressures. That act was seen as a scission by the Greeks considering that, before that date, all Slav populations were unified under the Greek Patriarchate of Constantinople. Serbians, in their turn, complained of Turkey's decision and challenged the Bulgarian influence in Macedonia. Others scholars affirm that the origins of that question are to be found in the 1878 Saint Stefan Treaty, that ratified the end of the Russian-Turkish war and testified the Ottoman Empire's defeat in Europe. It was maintained that Bulgaria would have the control of almost all Macedonian territory.

The big powers, especially England and France were concerned about the excessive influence Russia would have on the Balkans' events, given that it had chosen Bulgaria as its outpost in the area. That is why at the Berlin Conference, which was held few months later, the big powers decided to give back to Turkey almost all the Macedonian territory and letting its empire to leave for few years more.³⁴

At the Berlin Conference also the "Albanian question" came out because the Balkan States such as Serbia, Montenegro, Greece and Bulgaria began to share out a part of Albanian territories without letting Albanians to participate at the Conference. The Prizren League (an Albanian nationalist movement born in Kosovo in 1878) was nonetheless convinced that the best solution was to obtain an autonomous administrative unit within the Ottoman Empire. Albanians foresaw that the big powers were not willing to let them build a big Albanian state.³⁵

The first Balkan war, fought by Serbia, Montenegro, Bulgaria, Greece against Turkey, led to the Ottomans' defeat, but the issue of how to divide the Macedonian territory was still open. Bulgaria, in the second Balkan war, struggled alongside Turkey in the unsuccessful attempt to obtain a bigger slice. Actually, the Bucharest Peace stated the partition of Macedonian land into three: Vardar Macedonia (26,776 square kilometres) went to Serbia, Egean Macedonia (34,600 square kilometres) went to

³⁴ See Elisabeth Barker, *op. cit.*, pp. 8-13.

³⁵ See Rexhep Qosja, *op. cit.*, pp. 44-50.

Greece and the little Pirin Macedonia (6,798 square kilometres) was assigned to Bulgaria.³⁶

Almost in the same period, at the London Conference (December 1912-August 1913), the big powers, especially the two blocks headed by Russia on the one hand and Austria-Hungary on the other, had different plans for the future of Albanian nation in order to please their own interests. They both saw Albanian territories as the ruins of the Turkish Empire, which they feel therefore entitled to occupy. At the end the big powers decided to let Albanians have their own State, even though leaving almost half of the entire population outside the borders of the newborn entity. Albanian territory was reduced to 28,565 squares kilometres with only 748,000 inhabitants, which meant Albanians lost 290,000 squares kilometres and that 1,200,000 Albanians remained in Serbia, Montenegro and Greece.³⁷

From 1878 until the Second World War Albanians suffered persecutions and ethnic cleansing even in Montenegro, Serbia and Vardar Macedonia, which after the Bucharest peace was annexed to Serbia. Until the half of the thirties 120-150,000 people escaped from Kosovo and western Macedonia towards Turkey and 12,000 towards Albania. The official reason of those barbaric acts was that Albanians were assimilated to Turks and so they have to pay for having defeated the Serbs in the famous battle of Kosovo Polje on 24, June 1389.³⁸ Thus, Albanians clearly developed a strong repugnance against the Slavs. However, also Macedonians were victims of the Serbs' assimilation policies that brought many Macedonian writers and poets to exile to Sofia. So the terrorist activity of the VMRO³⁹ against the Serbs increased also thanks to the privileged relations of its members with Sofia's government.⁴⁰

Notwithstanding the VMRO violent protests, Macedonian political settlement remained almost unchanged, except for temporary expansions of the Bulgarian territory in 1915 and in 1941. As for Albanians, in 1941 they realized their dream of a Big

³⁶ See Elisabeth Barker, *op. cit.*, p.13.

³⁷ See Rexhep Qosja, *op. cit.*, p. 83, 101.

³⁸ See Rexhep Qosja, *op. cit.*, pp. 110, 111, 133, 134.

³⁹ In 1893 the VMRO was founded in Macedonia. That political movement was aimed to join Macedonia to Bulgaria and cooperate with the Sofia Committee, created by the Macedonian refugees in Bulgaria. In 1903 VMRO organized the Illinden uprising against the Turkish empire that brought to the construction of the Turkish Krusevo Republic". The counteroffensive was extremely violent. That event led to the break up within the VMRO into two wings: one pro-Bulgarian and the other in favour of an independent Macedonian state. See Stefano Bianchini, *op. cit.*, pp.161, 162.

⁴⁰ See Stefano Bianchini, *Sarayevole radici dell'odio*, Edizioni Associate, Roma, 1993, p. 163.

Albania, because the Italian invader annexed Kosovo and western Macedonia to the Albanian territory, even though they soon had to renounce to that territorial expansion.⁴¹

Tito strongly wanted to realize a big Yugoslav Federation made up with Yugoslavia, Bulgaria, Greece and Albania in order to solve once and for all both Macedonian and Albanian question, but that ambitious plan remained only a dream. On the one hand Greek communists, by ratifying the cease fire with the monarchs, were obliged to respect the intangibility of the borders⁴². On the other hand, the heads of the Yugoslav Party had declared in February 1945 that the best solution for Albanians were the unification of Kosovo and Metohija with Albania within the Yugoslav Federation. The international circumstances were yet not favourable to a political union between Albania and Yugoslavia.⁴³ Only Bulgaria seemed ready to become part of the federation and it also signed an agreement with Tito in 1947, but the two countries had different point of views about the structure of the federation itself: while Yugoslavia wanted Bulgaria have the same status of the other republics, Bulgaria wanted to participate only if it had had the same status of Yugoslavia. The 1948 break up between Tito and Stalin and Dimitrov's death brought to an end even the Bulgarian-Yugoslav project.⁴⁴

When Tito had to decide which had to be the constituent nations of the federation, he made a clear cut choice in favour of the Macedonians. There are many different reasons to explain why the leader of the communist party acted like that. First of all he could have given Macedonians the nation status because of their precious help in the struggle against the Nazi-fascists. Another possibility is that Tito built an artificial nation only to pose obstacle to the Serbian predominance in Yugoslavia. Maybe he simply wanted to put an end to the Bulgarian claims on Macedonia. Finally, that act could be interpreted by the Albanians as a way to establish Slav supremacy within the federation.⁴⁵

No matter how things really were, Macedonia had to begin its own process of nation-building.

1.4) Macedonian nation building

⁴¹ See Rexhep Qosja, *op. cit.*, pp. 164-170.

⁴² See Stefano Bianchini, *op. cit.*, p. 168.

⁴³ See Rexhep Qosja, *op. cit.*, p.169.

⁴⁴ See Hugh Poulton, *op. cit.* p. 107.

⁴⁵ See Kristina Balalovska, *Alle origini della questione Albanese*, in *Limes* fascicolo 2, 2002 pp. 68-70.

Before 1945, the Macedonian question was basically a battle among Bulgaria, Serbia and Greece to gain the possess of Macedonian territory given that they relatively claim Macedonians were Bulgarians, Serbs or Greeks.⁴⁶ In fact Macedonia had constituted, before 1914, the object of the Great nations' dreams: the Greek "Great Idea", the "Great Bulgaria" and the "Great Serbia".⁴⁷

After 1945, the issue assumed new nuances because Macedonia had not only to construct its own national identity, but also to affirm it towards its neighbours.⁴⁸ Actually "national identity is socially constructed, fluid, situational and modified through encounters and interaction with other groups, thereby fostering the necessity for boundary preservation and exaggeration of cultural difference".⁴⁹ Macedonian men of letters had to construct a national language. Indeed they wrote and published grammars and primers so that people could be educated in Macedonian language. It was not an easy task: they could not take the dialect spoken in the northern Macedonia because it was too similar to the Serb language so they had to choose the dialect spoken in Bitola-Veles. The latter was similar to the dialects spoken in east Bulgaria, but enough different from Bulgarian language.⁵⁰ However, Bulgaria never accepted either Macedonian as a separate language or Macedonians as a nation, and this approach will constitute a big deal when Macedonia becomes independent. Moreover the talks to establish a Macedonian autocephalous Orthodox Church, that will be set up in 1967, started.⁵¹ The church issue will become in 1992 matter of discussion with Serbs, which did not accept Macedonian church as separated from the Serbian one.

The most important role in the building of a national identity is nonetheless played by history. "Reading history backwards" means nothing more that "reading pre-national history from within nationalist lenses".⁵² Actually they praised glorious episodes of the past such as the Illinden uprising and the Turkish Krusevo Republic. They emphasised the pro-independent component of the VMRO, which was surely the less relevant. They even claimed to be descendants of the old Macedonians that were clearly not Slavs, and this will be evidently challenged by Greeks which claimed to

⁴⁶ See Victor Roudemetov, *op.cit.*, p. 192.

⁴⁷ See Stefano Bianchini, *op. cit.*, p. 158.

⁴⁸ See Victor Roudemetov, *op.cit.*, p. 192.

⁴⁹ See Victor Roudometov, *op.cit.*, p. 196.

⁵⁰ See Hugh Poulton, *op. cit.*, p.116.

⁵¹ See Stefano Bianchini, *op. cit.*, pp. 167, 168.

⁵² See Victor Roudemetov, *op.cit.*, p.194.

have the same ancestors. Nonetheless, the recognition of the Macedonian nation by the communist regime is not necessary a mere fabrication or an invention, even though Slavs Macedonians in the nineteenth century did not have a strong ethnic consciousness. Indeed the inconsistent interpretation of past events from different countries⁵³ is quite normal in a geographical area in which borders were always changeable.⁵⁴

However, the fact of being such a young nation would make Macedonia feel threatened by the neighbours. Thus they were not willing to recognize Albanians more rights and they reacted very hardly when Albanians in 1968 and 1981 even went so far as asking to create an autonomous republic together with Kosovo Albanians. Actually, Macedonian Albanians are mostly concentrated in the western side of the country which borders with Kosovo and Albania and they have a birth rate much higher than the Macedonian ones⁵⁵. Macedonians could not allow them to secede because, in that hypothesis, Macedonian already little territory would inevitably become prey of Serbia, Greece and Bulgaria. The crossing of the “Albanian question” with the “Macedonian question” will always determine the trend of the relationships between the two ethnic groups.

1.5) Tito’s plan to address the issue of nations and nationalities

1.5.1) Yugoslavhood

Given that the project to construct a big Yugoslav Federation had failed, Tito had necessarily to deal with the nationality issue. Thus, he planned to create the Yugoslavhood as a supranational identity and to establish a complex system of power sharing that could guarantee the equal representation of all national groups.⁵⁶

The federal structure of the 1946 Constitution of the Popular Republic of Yugoslavia, modelled on the 1936 URSS Constitution, was very weak and granted very few powers to the Republics and to the autonomous provinces.⁵⁷ Actually during the fifties and the first half of the sixties, Tito adopted the first solution and tried with his staff to implement the Yugoslav Program, the slogan of which was: “brotherhood and

⁵³ For instance Gotse Delchev, one of the most important leader of VMRO, was claimed both by Macedonians and Bulgarians as a national hero, see Victor Roudemetov, *op. cit.*, p. 67.

⁵⁴ See Hugh Poulton, *op. cit.*, p. 8.

⁵⁵ See Kristina Balalovska, *op. cit.*, p. 63.

⁵⁶ See Mathias Konig, *op. cit.*, p. 5.

⁵⁷ See Stefano Bianchini, *La questione jugoslava*, Giunti-Casterman, Firenze, 1999, p. 77.

unity for all the nations and nationalities”.⁵⁸ The assumption was that all south Slavs spoke the same language (erroneously including also Macedonians and Slovenians in the same linguistic group) and should therefore be members of the same nation.⁵⁹ It is true that Yugoslavism was not a Tito’s invention, because he just put in practice theories that first came out in the eighteenth century⁶⁰.

However that idea was based on a mistake: the fact of having emphasized the language as a unifying element and having, on the other hand, ignored all the other elements of which nationhood is made up.⁶¹ Actually, even in the picks of popularity of this idea, after Tito’s death, the number of people that returned their identity as “Yugoslav, nationally undetermined” in the censuses was only 10% and most of them were children of mixed marriages or had multi-ethnic families.⁶² Thus, the Yugoslav program was superimposed through the suppression of any demonstration of nationalism. The more repressive attitude was kept towards Albanians who could not for instance fly the Albanian flag or exhibit national symbols and, if they did it, they were imprisoned. The number of Albanian schools was very small in Kosovo. In Macedonia, where by 1951 there were 200 Albanian schools,⁶³ the number was yet deemed inferior compared to the population’s needs. Serb and Macedonian police supervised the school programmes especially the ones of the national subjects, such as history, literature and Albanian language. There was also a list of books that could not be used to teach neither to be read by the students. In the public administration the only official language was the Serb-Croat.⁶⁴ The real aim of these policies was to push Albanians to leave the territory of the Yugoslav Federation. Actually 195,000 Albanians were even forced to emigrate to Turkey.⁶⁵

⁵⁸ See Mathias Konig, *op. cit.*, p. 5

⁵⁹ See George Schopflin, *Yugoslavia: State construction and State failure*, in *State Building in the Balkans*, in S. Bianchini and George Schopflin ed., Longo, Ravenna, 1998, p. 240.

⁶⁰ This theory first came out in the eighteenth century when first Croats, Serbs and Slovenes were unified under the Napoleon Illyrian province. This idea then influenced men of letters in nineteenth century, period in which Vuk Stefanovich Karadzic and Ljudevit Gaj began to create a common language for Serbs and Croats, starting from the dialect that was more similar to the two different languages.

Moreover after the first world war Serbs, Slovenes and Croats decided to constitute a common kingdom, which in 1929 will be called Yugoslavia. See Stefano Bianchini, *op. cit.*, 1993, pp. 27-30.

⁶¹ See George Schopflin, *op. cit.*, p. 240.

⁶² See George Schopflin, *op. cit.*, p. 247.

⁶³ See Hugh Poulton, *op. cit.*, p. 126.

⁶⁴ See Rexhep Qosja, *op. cit.*, pp. 177, 178.

⁶⁵ See Victor Roudometov, *op. cit.*, p. 165.

1.5.2) More powers to nations and nationalities

In 1968 public protests took place both in Kosovo, where Albanians demanded to have their own republic, and in western Macedonia where Albanians demanded to be joined to Kosovo in order to create the seventh republic. At the end of the sixties Kosovo was given the right to be represented in the federal parliament, and the possibility of exercising many powers at the local government level. Moreover Yugoslav authorities allowed Kosovo Albanians to fly their national flag and to exhibit national symbols. Macedonian Albanians on the contrary were not reserved that privileged treatment. However in 1970 the Pristina University was set up, and this was very important also for Macedonian Albanians that could go over there to attend the Albanian university, given that in their Country they did not have that possibility.⁶⁶

The most momentous reform was the one passed in 1974 and formulated by the vice-president Kardelj. From this moment the Yugoslav Program was almost totally put aside and the question of nations and nationalities will be solved through a system of representation and power sharing based on a combination of the principle of territoriality with the principle of personality within a federal framework.⁶⁷

The main issue was how to combine the principle of “unity” of power and of the “democratic centralism” with the federal structure of the state. That principle stated the power was unique and descended from the people, so that federalism with its system of power sharing seemed to undermine the basis of the Communist State. The theoretical justification was that federalism was the only way to brake the desire of national minorities to be independent from the state. In such a way that state structure could be seen as transition stage towards the coming back of the centralistic model⁶⁸ even though the process could not be concretely reversed.

The principle of territoriality was expressed through the representation of “nations” in their republics. Republics had a high degree of internal autonomy in legislation and jurisdiction. The equal representation of “nations” was guaranteed through a quota system, the rotation of the cadres and the veto power towards federal legislation. The two autonomous provinces, Kosovo and Vojvodina, obtained the status of constituent element of the federation and will work as *de facto* republics until 1989.⁶⁹

⁶⁶ See Stefano Bianchini, *La questione yugoslava*, Giunti-Casterman, Firenze, 1999, p. 114.

⁶⁷ See Mathias Konig, *op. cit.*, pp. 5, 6.

⁶⁸ See Giuseppe De Vergottini, *op. cit.*, p. 775.

⁶⁹ See Mathias Konig, *op. cit.*, pp. 5-7.

The result was a quasi co-federal structure in which the only common elements were: the Communist League, the Yugoslav army and Tito.⁷⁰ The relationships between republics and the federation still remained disciplined by the Constitution and not by an international agreement among sovereign states as it should be in a co-federation, but republics *de facto* acted as sovereign states having the central level devolved almost all the competences to them.⁷¹ On the other hand, the principle of territoriality consisted of an individual's self-declaration as member of either a "nation" (*narod*) or "nationality" (*narodnost*). Art. 245 established that all nations and nationalities would enjoy the same rights, and Articles 246-248 said that both of them could have considerable autonomy throughout the territory of the SFRJ, including the rights to use their own languages in administration, education and the media.⁷²

1.6) Minority protection in Macedonian system

1.6.1) Macedonian Constitution

In the first session of ASNOM (Macedonian National Socialist Assembly), on 2 August 1944, Macedonia adopted the Declaration on the Basic Rights of the citizens, that secure all the rights of a free national life to the national minorities.

Then Art. 12 of the 1946 Constitution of the People's Republic of Macedonia stated that national minorities enjoyed the right to and protection of their cultural development and the free use of the languages.

The 1963 Constitution of the Socialist Republic of Macedonia was much more detailed. It introduced the dual term "nationalities-national minority". This definition was very important because it was aimed to avoid that people belonging to a minority would be treated as second class citizens. The 1963 discipline was almost totally kept in the 1974 Constitution.⁷³ According to the 1974 Federal Constitution, the 1974 Macedonian one entailed an entire chapter (chapter eleven on equality of nationalities) that dealt with minority rights.

⁷⁰ See Stefano Bianchini, *Sarajevo le radici dell'odio*, Edizioni Associate, Roma, 1993, pp. 34, 35.

⁷¹ See Mirjam Skrk and Danilo Turk, *The prospects of a confederation in the practice of states: can Yugoslavia survive?*, in *Federalismo e crisi dei regimi comunisti*, La Rosa Editrice, Torino, 1993, pp. 28-30.

⁷² See Mathias Konig, *op. cit.*, p. 7.

⁷³ See Gjorgji Caca, Status and rights of nationalities, in *The New Macedonian question*, J. Pettifer ed., Palgrave, Basingstoke, New York, 1999, pp. 150, 151.

- The preamble said that “Macedonian people and nationalities in the Socialist Republic of Macedonia are equal and have the same rights and duties. Municipalities and the Republic had the role to ensure that nationalities are proportionally represented in the municipal assemblies and the Assembly of the Socialist Republic of Macedonia, and are adequately represented in their bodies.”
- The official language was the Macedonian language while members of nationalities had a right to freely use their language and script and express and develop their own culture and establish organisations for this purpose.
- As regards education rights, members of the nationalities had the right to education in their language, in accordance with the Constitution and as determined by law.
- Municipalities and the Republic had to take care of the development of education, as well as the development of the press, radio, television, and cultural activities in the languages of the nationalities.
- In the regions inhabited by members of the nationalities, the languages and scripts of the nationalities were equal in public and social life with the Macedonian language. In the municipalities inhabited by members of the nationalities, the decisions and the more significant acts of the assemblies of the municipalities were also announced in the languages of the nationalities. Public signs in these regions were in the languages of the nationalities as well.
- Members of the nationalities had the right to use their own language and script in the realisation of their rights and duties, as well as in procedures with state authorities.
- The assemblies of the municipalities where the members of the nationalities live, and the assembly of the socialist republic of Macedonia formed a Commission for Inter-Ethnic Relations. The Commission followed and surveyed the realisation of the equality of nationalities and their other rights determined by the Constitution and law, and proposed measures for their implementation. It was composed of an equal number of members of the Macedonian people, and of the Albanian and Turkish nationalities and it was made up of a chairman and 6 members. Two members were elected from among the ranks of each of the

Macedonian nation and Albanian and Turkish nationalities, while one member should be of Romany ethnic origin.⁷⁴

1.6.2) Macedonian constitutional Court

Having the constitutional provisions devolved to the legislator the role of implementing minority rights, it would have been important to have an external control to check the conformity between the laws and the Constitution.

Nonetheless Macedonian Constitutional Court, turned to be an empty power in nationalities' hands. Formally, the 1963 reform, that introduced the Constitutional Court both at the federal and at the republican level, was seen as a big innovation because, before that date, communist States had only known the political review of the constitutionality of laws.⁷⁵ Consistently with the principle of "unity" of power, the 1946 Yugoslav Constitution established that only federal and republican assemblies could exercise the review of legislation.⁷⁶ Nevertheless, by analysing the composition of the republican Courts and the effects of its decisions, it is clear that this institution had not all the guarantees of independence that it should have had to work as an element of check and balance and protection of minorities.

Members of the republican Constitutional Courts were elected by the respective assemblies.⁷⁷ In such a way the republican constitutional judges turned to be elected from the same organ that had passed the alleged unconstitutional laws.⁷⁸ However, while the 1963 SRM Constitution established that both the president and the six judges were elected for eight years and could be re-elected, the 1974 fundamental law prohibited the re-election. Further, the office of a judge of the Constitutional Court was incompatible with the functions of: member of the Parliament, minister, official in the state administration. The judges and the president enjoyed of the same immunities of the parliament members.⁷⁹

⁷⁴ See Gjorgji Caca, *op. cit.*, pp. 151-153.

⁷⁵ See Giuseppe De Vergottini, *op. cit.* p. 784.

⁷⁶ See Mauro Mazza, *La giustizia costituzionale in Europa Orientale*, CEDAM, Padova, 1999, pp. 371, 383.

⁷⁷ See Mauro Mazza, *op. cit.*, p. 384.

⁷⁸ See Giuseppe De Vergottini, *op. cit.*, p. 764.

⁷⁹ See Svetomir Shkarich, *Constitutional Court of the Republic of Macedonia*, in *Giustizia Costituzionale e sviluppo democratico nei Paesi dell'Europa centro-orientale*, Giuseppe De Vergottini, G.Giappichelli, Torino, 2000, p. 132.

As regards the effects of the decision, it is important to notice that, once the Constitutional Court had declared the total or partial unconstitutionality of the law, the Court had to communicate its decision to the Parliament. The latter had then to adequate the law to the Constitutional judges' opinion, within six months, on pay of loss of effects of the law itself.⁸⁰ The 1974 Macedonian Constitution even established that the term to harmonize the law with the Constitution could be prolonged for other six months, under request of the Assembly.⁸¹

1.7) Albanians' concrete situation during the eighties

Until 1981, Albanians' situation was not so bad. Indeed as regards educational rights, the number of Albanian elementary schools passed from 200 in 1951 to 287 in 1981. Those schools employed 3,000 teachers with over 74,000 pupils. There were no Albanian secondary schools but 8,200 secondary schools pupils attended classes in Albanian language. Moreover, there were also in 1980 2,365 students which studied in Macedonian universities.

The right to freely develop Albanian culture, was ensured by an Albanian newspaper "Flaka e Vellazerimit", and some Albanian television and radio programs that were broadcasted. The freedom of association was realized through many cultural associations, theatre groups and sport clubs.⁸² Nonetheless, these positive aspects were largely obscured by the repression of nationalist movements and the indifference showed towards Albanians' demands after 1981.

In 1981, after Tito's death, Kosovo Albanians organized nationalist manifestations aimed to ask for an autonomous republic. Macedonian Albanians, in their turn, asked to be joined to Kosovo in order to give birth to the seventh Yugoslav Republic. These public protests, similar to those of 1968, were a strong reason of concern for Macedonian authorities which reacted worse than the Serbian ones. The prison sentences imposed by Macedonian authorities were indeed much harder, because Macedonians were scared by the possibility of Albanians' secession.⁸³ Macedonians

⁸⁰ See Mauro Mazza *op. cit.*, p. 385.

⁸¹ See Svetomir Shkarich, *op. cit.*, p. 132.

⁸² See Hugh Poulton, *op. cit.*, pp. 125, 126.

⁸³ See Hugh Poulton, *op. cit.*, p. 126.

even passed a law in order to avoid that ethnic Macedonians sold lands to Albanians in the western side of the country.⁸⁴

The Inter-Ethnic Commission, that should have worked to balance different ethnic interests, revealed its fragility. Macedonians were successful in exploiting that institution to get their objectives. Indeed the Commission endorsed a proposal for a revision of syllabuses and textbooks in the attempt to prevent nationalistic and irredentist tendencies of Albanian teachers.

With respect to the right to freely develop their culture there were many restrictions. Many Albanian popular tunes and folksongs were censored and even the weddings were controlled to avoid “expression of nationalist euphoria”⁸⁵. Macedonian authorities even prepared a list of offending names that could inspire nationalist sentiments.

They further introduced measures to contrast the phenomenon of Albanian high birth rate. For instance families were obliged to pay for medical service from any child above the ideal number of two. Albanians were also imposed a fine in case they decided to have “extra-children”. The 1981 census had in fact revealed that Albanians were 377,726 (19,8 % of the population), that means there was an increase of 36% compared with the 1971 census, and that they had a birth-rate that was three times over the Macedonians’ one.

As regards the principle of proportional representation in public bodies, in the League of Communists Macedonians were higher represented than they were in the population, while Albanians were clearly underrepresented. Actually, in 1981 Macedonians made up 67% of the population and they were represented with 82,95% in LC; Albanians who made up 14,36 % of the population were represented only with 5%.⁸⁶

Many Albanians officials, that worked for the State administration, were dismissed with the accuse of having fostered nationalism. For instance Flaka e Vellazerim, on 25, October 1987, reported the decision of the Tetovo LC municipal Committee to dismiss 100 Albanian officials.

⁸⁴ See Victor Roudemetov, *op. cit.* p. 167.

⁸⁵ According to *Borba*, the LCY organ published in Belgrad, 10, December 1986.

⁸⁶ See Hugh Poulton, *op. cit.*, pp. 121, 122.

The freedom of establishing organization to develop their culture was limited by a law that prohibited guys under the age of fifteen to attend organized religious instruction. In such a way Macedonians wanted to avoid the propagation of the Muslim religion that was seen as a mean through which nationalist ideas were divulged.

With respect to the public use of the language, there was no law which obliged people that worked in public offices to know at least a nationality language, so that the constitutional protection turned to be only formal.⁸⁷

The events that created more concern were the ones related language rights in the field of education. Some teachers in Tetovo were dismissed because they refused to use the Macedonian language in the official subjects and many Albanian pupils refused to attend class in that language.⁸⁸ In 1985 a law even established that in secondary schools Albanian classes could create only if the pupils enrolled for that class were more than thirty. That law was then enforced so strictly that, while in 1981 pupils who attended classes in Albanian language in secondary schools were 8,200, they were only 4,221 according to *Oslobodjenje* (Sarajevo newspaper) 6, January 1989.

In 1987 in Kumanovo and Gostivar some pupils and teachers were expelled because they protested against the measure of forcing Albanian children to attend mixed classes even though they did not speak Macedonian. In 1988 manifestations of young Albanians were held in Kumanovo in August and in Gostivar in October to ask the respect of the rights established by the 1974 Constitution. In Kumanovo, 128 Albanians were detained for more than sixty days, the police in both occasions reacted by arresting the organizers and twenty of them were even imprisoned.⁸⁹

This was the situation in the eve of the fall of the Berlin wall and of the consequent dissolution of the Yugoslav federation.

⁸⁷ See Silvo Devetak, *The equality of nations and nationalities*, W. Braumuller ed., Wien, 1988 p. 57.

⁸⁸ See Hugh Poulton, *op. cit.*, pp. 128-130.

⁸⁹ See Hugh Poulton, *op. cit.* pp. 130.

Chapter two

The fall of the Yugoslav Federation and the building of the Macedonian state

2.1) The rise of nationalisms and the collapse of the Yugoslav federation

The causes of the re-emerging of nationalism at the end of the eighties have to be looked for in the gaps of the federal system built by Tito in order to face the issue of nations and nationalities.

While the 1946 Constitution formally granted a large degree of autonomy to the Republics, in reality power was highly centralized at the federal level, which meant in the hands of the Communist Party. The first article even conceded the Republics to enjoy the right to self-determination, which according to the Leninist idea, could lead to secession.⁹⁰ Nonetheless, it was also made clear that the nations of Yugoslavia, during the Second World War, had united “on the basis of the right of their will freely expressed” so that the right of secession was concretely inapplicable.⁹¹ Moreover the republican Constitutions had to be consistent with the federal Constitution.

The 1974 Constitution reversed the situation, realizing on the one hand a macro-decentralization thus throwing the bases for a confederative structure.⁹² There was not even a provision that established the supremacy of the federal Constitution over the republican ones. The central power was weaker and weaker and the idea of the Yugoslav nation-state was more and more underestimated. On the other hand the idea of State began to be overestimated within the republican territories.⁹³ Actually there was a micro-centralization process at the republican level because the titular nation state tried to concentrate the power in its hands in order to create an homogeneous management and avoid the menace coming from “the others” (the nationalities).⁹⁴

⁹⁰ See Sinisa Malesevic, *Ethnicity and Federalism in Communist Yugoslavia and its successor states*, in *Autonomy and ethnicity: negotiating competing claims in multi-ethnic states*, Cambridge University Press, Cambridge, 2000, p. 152.

⁹¹ See Hugh Poulton, *op. cit.*, p. 107

⁹² See Pavle Nolic, *I sistemi costituzionali dei nuovi Stati dell'ex Yugoslavia*, G. Giappichelli ed., Torino, 2003, p. 29.

⁹³ See Stefano Bianchini, *The idea of State in Post-Communist Balkan Societies*, in *State Building in the Balkans*, Stefano Bianchini and George Schopflin ed., Longo, Ravenna, 1998, p. 77.

⁹⁴ See Stefano Bianchini, *op. cit.*, pp. 74, 78.

Another element that favoured the growing of nationalisms was the eighties economical crisis. Each Republic isolated itself in the attempt of better safeguard its own interests and to compete for the distribution of the scarce resources, realizing the so called “economic nationalism”. The distance between north and south of the country was deeper and deeper. Slovenian standard of living, for instance, was seven times higher than in Kosovo. The detachment in the production field was evident notwithstanding the big investments in the underdeveloped areas which definitely were not able to manage the money they received.⁹⁵

In Macedonia, the nationalism phenomenon was also strengthened by the fear for the possible break-up of the Yugoslav federation that was seen as a threat for the very existence of the Macedonian State.⁹⁶ Actually, the neighbours’ claims would be stronger once Macedonia had lost the shell of the federation itself. Therefore, in 1989, the constitutional preamble was changed. While in 1974 the Macedonian state was defined as “a state of the Macedonian people and the Albanian and Turkish minorities”, the new version stated that Macedonian state was “a nation-state of Macedonian people”.⁹⁷ That amendment was a clear sign of the will of ethnic Macedonians to create an ethnic state, where there would be no place for minorities.

In Serbia the nationalist views were first expressed by the Serbian Academy of Science in 1985. The main reasons of complaining were: the discriminatory policy against Serbian economy, the partition of Serbia into three parts under the 1974 Constitution (Serbia, Kosovo and Vojvodina) and finally the alleged discrimination campaign against Kosovo Serbs from the Albanian separatists.

Milosevic exploited these anti-Albanian feelings to suppress Kosovo’s autonomy. On 3 February 1989 Serbia’s National Assembly passed some amendments that transferred the security, finance and social planning powers to Belgrad. Albanians organized a general strike which ended with twenty-four deaths. The following month the Kosovo Assembly was obliged to authorize the constitutional changes that would totally put Kosovo under Serb control.⁹⁸ From that moment the discrimination and homogenization campaign against Albanians became harder and harder. It was only the beginning of the Serbian plan to build a Big Serbia made up only of Serbs.

⁹⁵ See Stefano Bianchini, *La questione jugoslava*, Giunti, Casterman ed., Firenze, 1999, pp. 138,139.

⁹⁶ See Hugh Poulton, *op.cit.*, p. 172.

⁹⁷ See Hugh Poulton, *op. cit.* p. 172.

⁹⁸ See Victor Roudemetov, *op. cit.*, pp. 168, 169.

The transition from an authoritarian regime to democracy seemed to be very complex in the Balkans. On the one hand the major reason of the collapse of the communist State was the incapacity to reform the Country in a democratic sense. On the other hand, the fall of the Berlin wall, and the dissolution of the League of Communists in 1990 due to incompatible views about the future structure of the Yugoslav federation and of the communist party, left space to the consolidation of the former communist elites within the republics. They tried to fill the void of reference values through the propagation of nationalist ideas.⁹⁹ Thus, the first multiparty elections saw the predominance of the ethnic parties both in Slovenia and in Croatia, while in Macedonia the ex communists still had many votes and the VMRO-DPNE¹⁰⁰ did not reach the absolute majority. In December 1990 Milosevic won the presidential elections in Serbia thanks to the reestablishment of direct Serb control over Kosovo.¹⁰¹

The point was that, the transition to democracy could not be based on the dream to have “imagined political communities”¹⁰² because, as Mostov underlines, the fact that a particular ethnic group defines the principles and the institutions of a state, which it considered as its home, is not compatible with democracy.¹⁰³ The development of that theory led directly to violent conflicts among the different ethnic groups in the vain attempt to create pure states. However, nationalism was a project “initiated ‘from above’, by elite manipulation, and accepted ‘from below’ by a large segment of frustrated masses.” As many other scholars, Ivan Ivekovic refused to think that the use of violence was just an eternally ethnic revenge for past defeats or genocides perpetrated by the “enemy nation”. On the contrary, it was a re-shaped political design,

⁹⁹ See Philip Spencer and Howard Wollman, *Nationalism, politics and democracy in the development of post-communist societies*, in *Ethnicity and Nationalism in East Central Europe and the Balkans*, Thanasis D. Sfikas, Christopher Williams ed., Ashgate, Aldershot, Brookfield USA, Singapore, Sydney, 1999, p. 86.

¹⁰⁰ VMRO-DPMNE was the Macedonian nationalist party the name of which clearly underlined the continuity with the historic VMRO, but was also a declaration of the new political program. Indeed the second part of the name meant “democratic party for the Macedonian national unity” . The aim was the unification of all Macedonian people within the same independent State, even though the members of that party was conscious that the result would not be reached in a short period of time. See Stefano Bianchini, *Sarajevo le radici dell’odio*, 1993, Edizioni associate, Roma, p. 172.

¹⁰¹ See Victor Roudemetov, *op. cit.*, p. 169.

¹⁰² B. Anderson, *Imagined Communities, Reflections on the Origin and Spread of Nationalism*, Verso, London, 1983, p. 6.

¹⁰³ See J. Mostov., *The national idea and democracy: Congruence or confrontation?*, in *The National in Eastern Europe: The politics of Ethnic and Civic Community*, Mass Heath, Lexington, 1996, p. 190.

which used the 19th century's ideological symbols, but essentially was a contemporary phenomenon.¹⁰⁴

Almost all the political elites of the Yugoslav republics, except for the Bosnian and the Macedonian ones, wanted to get the same result: secession. That process was initiated by a big constitutional crisis. Most of the new Constitutions passed within the republics were not consistent with the federal Constitution, federal laws were no more implemented, while republican laws and bylaws were clearly at odds with constitutional provisions. The decisions of the federal Constitutional Court were dead letters. Moreover some republics began to do obstructionism within the federal parliament and to withdraw some members from the parliament and from the presidency of the RSFJ, from the executive federal Council, from the Constitutional Court and also to take back part of the Army. Thus, although, during 1990 and 1991, some proposals aimed to a constitutional reform were made, the final decisions were definitely unconstitutional for the absence of the legal number of members. In spring 1991 other unsuccessful attempts to find a compromise were made within the presidency of the RSFJ, organ which had the initiative power about the constitutional changes.

The will of the single republics to be independent finally prevailed and secession was the result. However, that process was clearly unconstitutional because the 1974 Constitution provided that RSFJ borders could not be modified without the consensus of all the republics, even though it is common opinion that the right to self determination represents the essence of a nation and is characteristic of a free and democratic society no matter what the letter of the Constitution says.

Having not found an agreement with Belgrade, secession assumed a violent dimension with different intensity depending on the zones. Slovenian armed conflict lasted only few months because Slovenian territory was almost totally homogeneous and was not within the map of the Big Serbia. Croatian and above all Bosnian conflict were much longer and bloody.¹⁰⁵

2.2) Independent Macedonia and the Macedonian question

¹⁰⁴ See Ivan Ivekovic, *op. cit.*, p. 268.

¹⁰⁵ See Pavle Nolic, *op. cit.*, pp. 30-36.

Unlike all the other Yugoslav republics, Macedonia was able to obtain its independence in a peaceful way thanks to the diplomatic skills of its president, Kiro Gligorov who was chosen to guide a Government of technicians, given that the results of the 1990 elections did not allow a single party to have the majority. Gligorov tried anyhow to diminish the extremist pushes of the VMRO-DPMNE. He was aware that independence was not an easy way for Macedonia on account of the complicate relationships with the neighbouring States.

First Gligorov looked for a solution that would grant Macedonia all the characteristics of a nation state while keeping a link with the others Yugoslav Republics. Thus, the process towards secession turned to be very slow.¹⁰⁶ It was only on January 1991 that the Macedonian Parliament passed a declaration to affirm the sovereignty of the Socialist Republic of Macedonia and the right of the Macedonian people to self-determination and secession. It also established the predominance of the Macedonian juridical system over the federal one. Even the 8, September 1991 referendum did not assume a peremptory character towards the old federation. The majority of the electors participated and the 75% of them were in favour of Macedonian independence. Then, the 17 September 1991 Parliament Declaration formally decided that Macedonian republic had to be a sovereign and independent State.

It was only in February-march 1992 that Macedonia finally seceded from the Yugoslav Federation; through the peaceful withdrawal of the Yugoslav Army. Once again the agreement was reached thanks to Gligorov's balanced politics.¹⁰⁷

The new Macedonian Constitution had been passed, by the majority of the Parliament, on 17 November 1991. Gligorov's aim was to find a compromise between the Macedonian majority and the Albanian minority. Thus, the preamble was a sort of mediation between the ethnic theory of State and the civic one, indeed it still said that Macedonian state was the state of Macedonian people but at the same time it established the full equality and the permanent co-existence with Albanians, Turks, Vlachs, Roms and other nationalities.

The preamble explicitly asserted the role of national minorities in the country, but divided peoples into three categories. The nationalities not mentioned complained that their status was neither equal to Macedonian citizens nor to the status of the

¹⁰⁶ See Stefano Bianchini, *Sarajevo le radici dell'odio*, Edizioni associate, Roma, 1993, p. 173.

¹⁰⁷ See Pavle Nolic, *op. cit.*, pp. 157,158.

nationalities listed within the constitutional provision.¹⁰⁸ Albanians were not satisfied because they wanted to be considered as a constituent nation, while Macedonians maintained that their national feeling was mortified.¹⁰⁹ Once again Macedonian the question and the Albanian question were overlapping. During the nineties the Albanians' claim to be granted more rights will not be addressed by the Macedonian authorities because Macedonian identity was still challenged from the neighbouring countries for different reasons.

2.2.a) Bulgarian position

Bulgaria was the first neighbouring country that formally recognized the Macedonian Republic in 1992, but at the same time it was also clear that Bulgaria did not have any intentions of recognizing Macedonia as a nation. Even though this issue was not explicitly mentioned in the declaration of recognition, Bulgarian refuse to use interpreters or translators in official communication with Macedonia had a specific meaning. Bulgaria wanted to stress that it still considered that territory as an essential part of its national history and it was not willing to recognize the existence of a separate Macedonian nation, which was either totally denied or ascribed to Titoist propaganda.¹¹⁰ That remark also led Bulgaria to deny the existence of a Macedonian minority within its borders. The Bulgarian President had also to explicitly ensure that “from a Bulgarian point of view, Macedonia was only a geographical term and not the name of a nation” in order to calm down the Greek Prime Minister who was very annoyed by the Bulgarian decision.

The relationships between the two countries were also determined, during the nineties, by the presence of a new VMRO party both in Macedonia and in Bulgaria. The former had a program that was much more similar to the independence-wing of the ancient VMRO and was aimed to the reunification of all Macedonian people in a unique independent State, even though the members of that party were conscious that it was a long-term objective and almost impossible to be concretised. The latter had an ambiguous position that only partly reflected the pro-Bulgarian wing of the ancient

¹⁰⁸ See Zhidas Daskalovski, *Language and Identity: The Ohrid Framework Agreement and Liberal Notions of Citizenship and Nationality in Macedonia*, ECMI working paper issue 1/2002, European Centre for Minority Issues, Flensburg, 2002, p.15.

¹⁰⁹ See Stefano Bianchini, *Sarajevo le radici dell'odio*, Edizioni associate, Roma, 1993, p. 173.

¹¹⁰ See Kyril Drezov, *Macedonian Identity: An Overview of the Major Claims*, in *The New Macedonian Question*, James Pettifer ed., Palgrave, Basingstoke, New York, 2001, p. 51.

VMRO, which wanted Macedonia to be annexed to Bulgaria. Nonetheless this party did not have a widespread following among the Bulgarian public, except for the region of the Pirin Macedonia¹¹¹, and Bulgaria did not make any official claim on the Macedonian territory. However, Macedonia and Bulgaria share the same national heroes which are associated with a particular place so that, for instance, the city of Ohrid, around which king Samuil had built his reign, is considered by both countries as the cradle of their national cultures.¹¹²

It was only in 1999 that the two countries were able to reach an agreement to solve the long-standing language issue. The joint declaration had to lead to the recognition of Macedonian language as a separate language by the Bulgarian state. Nevertheless, the formula used: “Bulgarian language according to the Bulgarian constitution and Macedonian language according to the Macedonian constitution”¹¹³ only meant that official documents between the two states could be written both in Bulgarian and in Macedonian. In practical terms, the Republic of Macedonia had to withdraw any claims regarding a Macedonian minority in Bulgaria, because from that moment citizens of both countries were allowed to choose their own identity without impositions from outside. Thus, Macedonia was obliged to accept that Macedonians in Bulgaria defined themselves as Bulgarians.¹¹⁴

2.2.b) Greek position

Greece has denied the existence of the Macedonian nation since the end of the civil war, but its position was different from the Bulgarian one because it did not exclude the existence of a distinct people of Slavic origins within the borders of the Macedonian Republic. The only controversial point was the application of the name “Macedonian” to that people. “From a Greek perspective, the name Macedonia is and has always been considered “a constituent element of Greek cultural heritage”¹¹⁵. The stickers which said: “Macedonia is Greek” did not mean to state the obvious- that Greek Macedonia is

¹¹¹ See Victor Roudemetov, *op.cit.*, pp. 42-45.

¹¹² See Jenny Engstrom, *The power of perception: the Impact of the Macedonian Question on Inter-ethnic Relations in the Republic of Macedonia*, in *The Global Review of Ethnopolitics*, Vol.1 no. 3, March 2002 pp. 8, 9.

¹¹³ Abiodun Williams, *Preventing War: the United Nations and Macedonia*, MD, Rowman & Littlefield, Lanham, 2000, p. 29.

¹¹⁴ See Victor Roudemetov, *op. cit.*, p. 46.

¹¹⁵ Evangelos Kofos, *Greek Policy Considerations Over FYROM*, in *The New Macedonian Question*, James Pettifer ed., Palgrave, Basingstoke, New York, 2001, p. 232.

Greek- but that no one could claim to be a Macedonian without being Greek.¹¹⁶ Greeks considered themselves descendants from the old Macedonians although it is still controversial whether ancient Macedonians made part of the ancient Greek world or whether they were “barbarians” acculturated into the ancient Greek civilization.¹¹⁷ Thus, Greeks did not accept that the flag of the Republic of Macedonia entailed the star of Vergina, an archaeological artefact made up with a sun of sixteen rays which was discovered in an ancient Macedonian tomb in 1978.¹¹⁸ Moreover, the preamble of the 1991 Macedonian Constitution made references to Aegean Macedonia, and Art. 49 stated: “the Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries as well as Macedonian expatriates, assists in their cultural development and promotes links with them”. That provision was interpreted as a will to interfere with the issue of the Macedonian minority in northern Greece.

On 4 December 1991, Greece declared that it would recognize the Republic of Macedonia under three conditions: constitutional guarantees against claims to Greek territory, cessation of hostile propaganda against Greece, and exclusion of the term “Macedonia” or its derivatives from the new state’s name. Greece was even able to impose its will within the EU which in December 1991 stated that the recognition of the Macedonian Republic would take place only if it had guaranteed that it had no territorial claims against the neighbouring states and would not adopt any provocative act against them, including the use of a name which could imply territorial ambitions.¹¹⁹

In January 1992, the Macedonian Parliament adopted two constitutional amendments. The first one established that Macedonia did not have any territorial claims against its neighbouring states and that its borders could not be changed consistently with the constitutional and international norms. With the second one, Macedonia committed itself not to violate the sovereignty of other countries or to interfere with their internal affairs even when Macedonia took care of the rights of Macedonian people living within the territories of its neighbours and of the cultural development of Macedonian emigrates.¹²⁰

¹¹⁶ See Victor Roudemetov, *op. cit.*, p. 75.

¹¹⁷ See Victor Roudemetov, *op. cit.*, p. 13.

¹¹⁸ See Jenny Engstrom, *op. cit.*, p. 9.

¹¹⁹ See Loring M. Danforth, *National Conflict in a Transnational World*, Princeton University Press, Princeton, NJ, 1994, pp. 327, 328.

¹²⁰ See Pavle Nolic, *op. cit.* p. 158.

Hence, thanks to those amendments, the Badinter Report, issued by the Arbitration Commission of the European Union, explained that the republic had fulfilled all the conditions for the recognition.¹²¹ However on the one hand, Art. 49 was not removed from the 1991 Macedonian Constitution and the constitutional name of the Republic still remained Macedonia. Therefore, Greece did not only keep its position by negating the recognition, but, in 1992, it also imposed an embargo against goods coming from the Republic of Macedonia.

Finally, in January 1993 Macedonia got the UN membership with the official name of FYROM (Former Yugoslav Republic of Macedonia) and in December 1993 six European Union States decided to recognize the new republic with that name too.

This was felt as a defeat for the Greek hard line, and led the Greek Government to impose, on 16 February 1994, a new strict trade embargo which banned the movements of goods from the Thessaloniki harbour to the FYROM.¹²² That act was strongly criticized by the EU countries and by the United Nations. However, an agreement was reached only in 1995 thanks to the diplomatic intervention of the Clinton administration and Cyrus Vance. The accord established that the two parties agreed to respect each other's borders and that Greece had to recognize Macedonia as an independent state. The name issue remained still unsolved and one of the conditions that Macedonia had to follow in order to get Greek recognition was the use of the name FYROM in international relations and within international organizations. Macedonia also ensured the counterpart that the Macedonian Constitution entailed no territorial claims over Greek Macedonia, and was even obliged to remove the star of Vergina from the flag.¹²³

It is clear that both Greek and Bulgarian position, which deemed the Macedonian nation as an artifice, threatened the principle of ethnic nationalism, that is: a Macedonian state for the ethnic Macedonian community. Anyway, the neighbours' feelings did not have only formal implications, but did have also serious concrete consequences which menaced the very existence of the Macedonian State.

On the one hand, the loss of recognition for two years since Macedonian independence meant the impossibility to get funds from the international credit

¹²¹ See Loring M. Danforth, *op. cit.* pp. 327, 328.

¹²² See Victor Roudemetov, *op. cit.* p. 34.

¹²³ See John Shea, *Macedonia and Greece: The struggle to Define a New Balkan Nation*, Mc Farland & Co, London, 1997, p. 305.

institutes, such as the World Bank, to relaunch the economy. In that period it was really difficult for Macedonia to procure oil products and the other raw material.

On the other hand, Greece put an embargo against Macedonian products until 1995 and the UN imposed economic sanctions against Serbia. Macedonia agreed with the sanctions imposed against Serbia, even though it was aware of the damages it would suffer due to the tight relations it had built with the Serbian economy, with its market and its system of transport.

All these events led Macedonia to feel abandoned from the international community and threw Macedonian economy into a deep crisis even accentuated by the flux of refugees fleeing from Bosnia and Serbia.¹²⁴

2.2.c) Serbian position

Although Macedonia was the only republic that gained its independence in a peaceful way and that tried until the end to find a solution aimed to avoid the disintegration of the Yugoslav Federation, Serbia did not recognize Macedonia (under the name of Republic of Macedonia) until 1996. The decision was influenced by the pressure of the Greek ally that wanted to recreate economic relations with Macedonia. The reason for this delay was that Serbian elite still considered Vardar Macedonia as nothing more than South Serbia, (because from 1913 and for the entire interwar period Vardar Macedonia was ruled by Serbia) excluding the existence of a separate Macedonian nation.¹²⁵ However, Serbian claims were not bound to the language spoken but to religion.

The point was that the 1991 Constitution did not even expressly mentioned the Serbs as a nationality even though they have been lived in Macedonian territory for centuries and their number was double compared to the Vlachs. This was the outcome of the assimilation policy carried on during the Communist period against the Serbs, which also led in 1967 to the creation of the Macedonian Orthodox Church, never recognized by the Serbian Orthodox Church, and to the confiscation of Serbian monasteries and churches, to the devastation of Serbian graves and monuments.¹²⁶

After Macedonian independence, the Serbian Orthodox Church still continued to bring the Macedonian church back to its jurisdiction. Even though it accepted that churches

¹²⁴ See Stefano Bianchini, *Sarajevo le radici dell'odio*, Edizioni Associate, Roma, 1993, p. 175.

¹²⁵ See Jenny Engstrom, *op. cit.*, p. 10.

¹²⁶ See Pavle Nolic, *op. cit.*, p. 159.

and monuments built after 1967 belonged to the Macedonian Church, it strongly required the restitution of buildings made before that date. There were some attempts to find a compromise that came to nothing because the Serbian Orthodox Church set up in Nis a quasi-patriarchate. That event was seen as an interference and provocation by the Macedonian Government.

The association of Serbs and Montenegrins cared also about other problems, such as education in Serbian language and the broadcast of Serbian programs. In 1993 there were no schools that provided education in their language or TV programmes for Serbs, while Turks, Roma and even Vlachs had both educational facilities and media outlets.

The CSCE Mission in Macedonia organized trilateral talks in order to improve the situation of the Serbs. In late June 1993 the government agreed to begin the procedures to change the preamble of the Constitution and finally elevate the Serbs to the status of a recognized nationality.¹²⁷

2.3) Minority protection in the 1991 Macedonian system

2.3.1) 1991 Macedonian Constitution

The 1991 Constitution was for many aspects consistent with the modern constitutional science. It entailed provisions regarding fundamental rights and freedoms recognized by international law, the distinction among legislative, executive and judiciary power that was *de facto* totally absent during the communist period, political pluralism, direct and democratic elections, social justice, solidarity, local autonomy, the juridical protection for goods, the free market and enterprise, the safeguard for nature and environment and the respect for consuetudinary international norms.¹²⁸

The drafting of the Constitution was positively influenced by a growing sensibility towards minority issues by the international community, reflected in the OSCE Vienna and Copenhagen Document and the draft of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In the 1989 Vienna document the States parties agreed in ensuring to persons belonging to national minorities' full equality with the others, they recognized that the collective identity of national minorities should be protected and that they should adopt

¹²⁷ See Hugh Poulton, *op. cit.*, p. 180.

¹²⁸ See Pavle Nolic, *op. cit.*, pp. 160, 161.

measures to promote and protect them. The document also enshrined a list of rights enjoyable by minorities.

A year later, the Copenhagen Document confirmed the principles established in the Vienna Document and went further. It solved the issue of how to determine the membership of a national minority: "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice." Moreover, it stated that: "respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor of peace, justice stability and democracy in the participating States." It also stressed that the principle of territorial integrity was inviolable. Actually the conflicts between majority and minority groups showed to be the greater cause of instability in the post-Cold War period.¹²⁹ The UN declaration also contained a list of rights and confirmed the principle of equality, the necessity to adopt positive actions towards persons belonging to national minorities and the principle of territorial integrity.¹³⁰ All these documents were not binding for the States parties, but they still were very important because they represented the first attempt to address the issue of minority protection at the international level.

According to the principles of the Copenhagen Document, Art. 8 of the Macedonian Constitution established the right of free expression of national identity. This could have two meanings: first that nobody should put pressure on anybody to get a declaration of belonging to a particular ethnic group and second that individuals are not obliged to declare themselves as members of any nationality or nation. The second meaning refers to a sort of liberation from the past given that a person should not be considered guilty to be born as a member of a particular nation or nationality and should have the possibility to disclaim that bound. The principle of territorial integrity was entailed in Art. 3 and was to be intended as a warning for the ethnic Albanians who still dreamt of Greater Albania.

The 1991 Constitution also enshrined some specific articles dedicated to minority protection. The rights conceded were partly individual and partly collective,

¹²⁹ See Petra Roter, *Managing the 'Minority Problem' in Post-Cold War Europe Within the Framework of a Multilayered Regime for the Protection of National Minorities*, in *European Yearbook of Minority Issues*, Volume 1, 2001/2, Kluwer Law International, The Hague, 2003, pp. 88-93.

¹³⁰ See Florence Benoit Rohmer, *The minority question in Europe: towards a coherent system of protection for national minorities*, Council of Europe Publishing, Bonn, 1996, pp. 22, 23.

that means that some rights could be enjoyed by the members of the nationality as an individual in his/her life and work, and some could be realized collectively by a nationality.

- Art. 48 of the Macedonian Constitution established that: “Members of nationalities have the right to freely express, foster and develop their identity and national attributes. Members of the nationalities have the right to establish institutions for culture and art, as well as scholarly and other associations for the expression, fostering and development of their identity.” It also granted members of nationalities the right to be educated in their language in primary and secondary schools, as determined by law. If education was carried out in the language of a nationality, Macedonian language had to be taught as well. It is important to notice that in connection with rights belonging to the members of a nationality there was also the obligation of the Republic to ensure the protection of those rights.¹³¹
- Another important provision was entailed in Art. 45: “Citizens have a right to freely establish private schools at all levels of education, with the exception of primary education, under conditions determined by law.”¹³²
- One of the most important and visible manifestation of nationalities’ identity is the free use of their language. Members of nationalities had not only the right to mutual communication in their own languages in private life, they also had the right to petition the state bodies, the public services and other forms of social and public activities. Public officers were obliged to accept petitions in the language of any nationality, and they also had to provide translation of every form of communication they had with members of nationalities.
- However, it has to be stressed that the Constitution did not establish a multilingualism in the Republic. Actually art. 7 explicitly maintained that: “The Macedonian language, written using the Cyrillic alphabet, is the official language in the Republic of Macedonia”, therefore acts of the state bodies were written in Macedonian and could be translated if there was a request from a member belonging to a particular nationality. The same was for oral

¹³¹ See Gjorgji Caca, *op. cit.*, pp. 153-155.

¹³² See Art. 45 of the Constitution of the Republic of Macedonia, www.izbori98.gov.mk/English/html/constitution.html

communication: it was performed in Macedonian language and there could be the translation if so required. Nevertheless the discipline of language rights had other interesting implications. Art. 7 said that: “In the units of local self-government where the majority of the inhabitants belongs to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions determined by law. In the units of local self-government where there were a considerable number of inhabitants belonging to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions and in a manner determined by law.” These provisions introduced a bi or multilingualism within the self-government units, even though the official character of a nationality language could only be established by law. The law had also to define when a nationality made up the majority of the population or just a consistent number. The majority is clearly more than the 50% of the population, while the other criterion is vaguer and can be interpreted either as more than 25% or equal to 30% of the population. There was a little difference in the legal standardization of the two situations: if the nationality constituted the majority of the population, only the conditions were established by law, in the other case the laws also defined the manner in which the right had to be enjoyed. The reason was the different conditions of living arising from the different number of nationality members compared to the members of Macedonians.¹³³

- As regards religion, on the one hand art. 19 established that: “the freedom of religious confession is guaranteed. The right to express one’s faith freely and publicly, individually or with others is guaranteed”¹³⁴, but on the other hand, the second paragraph expressly mentioned only the Macedonian Orthodox Church while the other churches were simply included in the definition of religious communities and groups. The third paragraph did not expressly discriminate other religions, but it was clearly a sign of the will to consider Macedonian Orthodox Church as special in comparison with the others. This provision was a

¹³³ See Gjorgji Caca, *op. cit.*, pp. 156-158.

¹³⁴ See Art. 19 of the Constitution of the Republic of Macedonia, www.izbori98.gov.mk/English/html/constitution.html

reason of friction between the Macedonian Church and the heads of the Catholic and Islamic Communities. During the years ethnic Albanian political representatives asked for the amendment of that provision.¹³⁵

- The Constitution also set up the Council for inter-ethnic relations, the functioning of which was described in art. 78 of the Constitution. The Council should be made up of the president of the Assembly and two members each from the ranks of the Macedonians, Albanians, Turks, Vlachs and Romanies, and two members from the ranks of other nationalities in Macedonia. The president of the Assembly was also the president of the council. The council members were elected by the Assembly. The role of the Council was to take into consideration issues of inter-ethnic relations in the Republic and to make proposals for their solution. Thus the assembly was obliged to make decisions according to what the Council had established. However the Council had not to be seen as a mean to solve crisis situations, it should on the contrary work to prevent them. If a conflict had still occurred, the Council would have to come up with a possible solution. This discipline was similar to the one provided in 1974 Constitution for the Commission on Inter-Ethnic Relations, besides the fact that in 1991 Constitution the Vlachs were entitled to participate with two members too. However there was still the problem of violation of the equality principle as regards all the other ethnic groups not mentioned in the constitutional provision and which could only be represented in the Council by two members from their ranks.¹³⁶

Even though the preamble of the 1991 Constitution granted nationalities full equality as citizens and ensured that the choice to belong to a particular nationality would not imply discriminatory effects, other constitutional provisions, seemed to contradict those statements. Although the protection of nationality culture was one of the aim of the republic, nationalities were in reality not placed on the same footing of ethnic Macedonians.

There cannot be a right without the relative freedom to exercise that right and the scarce economic resources allowed to nationalities to develop their identity were clearly an obstacle in the free exercise of their constitutionally granted rights. The

¹³⁵ See Zhidas Daskalovski, *op. cit.*, p. 16

¹³⁶ See Zhidas Daskalovski, *op. cit.*, p. 19.

Macedonian state was far from meeting the notion of liberal nation building in which the State has to guarantee to nationalities equal means to develop their own culture.

It is true that the adoption of one official language and one official culture is justified by the will to allow all citizens to communicate with each other and to keep the loyalty towards state institutions.

However, not recognizing the presence of parallel processes of nation building can only lead to increase political agitation.¹³⁷ Ethnic Albanians' demands for a full bilingualism and a state funded Albanian university, for instance, were always rejected until a compromise had been finally reached after the 2001 armed conflict.

Nonetheless, when speaking about the relations between ethnic Macedonians and ethnic Albanians, it is necessary to bear in mind that an excessive weight given to Albanians could lead to destabilizing effects, equal to the ones caused by the negation of the rights themselves.

2.3.2) Macedonian Constitutional Court

The system of minority protection set up by the constitutional provisions needed to be guaranteed by an independent organ which could check the compliance between laws and the constitutional provisions themselves. On the one hand, as I explained above those constitutional provisions tended to be only a formal guaranty. On the other hand, the role of the new Constitutional Court turned to be not so incisive notwithstanding the unquestionable improvements brought into the discipline of its working.

The principle of the “unity” of power of the communist regime was totally abandoned to leave place to the principle of the separation of powers. Thus it was no more so difficult to conceive an external organ that could check the work of the legislative power. The Constitutional Court was drawn as an independent organ from the other organs of state power. It had to be independent from the legislative, from the judiciary branch, and from the executive branch too. This independent position was reflected by an ensemble of ad hoc provisions. First of all, it was the Constitution that peremptorily indicated the cases in which the judge could be dismissed before the expiry of his/her term: if the judge resigns; if the judge is sentenced for a criminal offence to unconditional imprisonment of at least six months; if the judge permanently

¹³⁷ See Zhidas Daskalovski, *op. cit.*, pp. 7-10.

loses his/her ability to perform his/her functions. Moreover, the Constitution established the absolute incompatibility with the office of a constitutional judge with the political activity or any other public profession.

As regards immunity, the discipline was imposed by the Rules of Procedure of the Constitutional Court of the Republic of Macedonia. The constitutional judges were entitled to the two kinds of immunities granted to the members of Parliament, which are: the immunity for unaccountability and the immunity for inviolability. The first one protected the judge from criminal accountability or for an opinion expressed or vote given within the Court, the second one protected the judge from detention without court approval, with the only exception of the case when the judge was found to have committed a criminal offence that led to five years of imprisonment. It was the Constitutional Court itself that decided about the applicability of the immunity over a judge and not the Parliament.

The members of the Constitutional Court were still elected by the Parliament, but there was an innovation. The composition was concretely determined by the three different powers: five candidates for judges were nominated by the Elections and Nominations Committees of the Assembly, two judges were nominated by the President of the Republic and two were nominated by the Republic Judiciary Council¹³⁸ On the one hand the Parliament and the President of the Republic take into consideration more the political trend than the professional skills, on the other hand the Juridical Council decides according to opposite considerations. Furthermore, the influence of political organs in the choice of the judges was mitigated by a constitutional provision which explicitly required the constitutional judges to be elected from among the most distinguished lawyers, while in the previous Constitution it was not even necessary for them to be graduated in law. It has also to be pointed out that the final vote was anyway given by the Assembly.

¹³⁸ The Judiciary Council is an organ made up of seven members, elected by parliament and by the higher courts. The mandate of its members lasts six years and can be re-elected for two times and they have immunities. Its members cannot have other public functions or professions and cannot be part of a political party. The role of the Judiciary Council is to propose to the Parliament the appointment and the revocation of the judges and to examine the cases in which the judges can be exonerate according to the Constitution. It also decides about the disciplinary responsibility and evaluates the specialization and adequacy of the judges compared to their functions. See Pavle Nolic, *op. cit.*, p. 182.

Another very important innovation compared with the previous norms is that the re-election of the constitutional judges was now forbidden. The term of their office was of nine years.

Besides, the Constitution totally modified the discipline concerning the effects of the Court decisions. While in the previous system a law was only declared unconstitutional and could eventually be eliminated only if the Parliament did not adapt that law to the constitutional provisions within a fixed period of time, the new provisions established that the effects would be two: abolishing or annulling effect. The abolishment was effective only for the future (*ex nunc*) while the annulment was effective also for the past so that the Court with this kind of decision did not annul only the act but also the consequences produced since the act had been passed.

Nonetheless, there was also a step backward. Indeed, the Court with its own Rules of procedure could establish both the content of immunity rights and the application of the incompatibility principle, while in the previous regime these matters were regulated by the Constitution itself or by law.

The competences of the Constitutional Court, that could have consequences on minority rights, even though not directly, were: the direct protection of human and civil freedoms and rights, the decisions regarding conflict of competencies between the organs of the Republic and the local self-government, and the decisions on the constitutionality of programmes and statutes of the political parties.

The first one was a competence that was introduced in 1963 but that was not present in the 1974 Constitution. The 1991 Constitution granted the direct protection of the Constitutional Court only for three human rights. One of the rights protected was the prohibition of discrimination of citizens on the ground of race. Formally, every citizen was entitled to invoke the protection of those rights before the Constitutional Court through a procedure based on the principles of priority and urgency. In reality, there were two conditions to respect: the legal protection had to be exhausted before ordinary Courts, and the established term when submitting the request for protection had to be respected.

The second competence should have become important after the approval of the 1995 Law on Local Government. However, as I will explain below, on the one hand the structure remained highly centralized, on the other hand the Court's trend was not in

favour of the municipalities. Moreover, the Court in these cases proceeded as a conflict Court and only decided which organ had to solve the issue.

The third competence deserves to be taken into consideration too. Actually, the Court had the big responsibility to ensure that the multi-party system worked. It could not ban a nationality political party on the basis of superficial considerations but only in the case in which the statute or the programme turned to be unconstitutional.¹³⁹

2.4) Albanian question during the nineties

2.4.1) Between radicalism and moderation

The distance between the constitutional order and the real dynamics of the relationships between ethnic Macedonians and ethnic Albanians was deeper and deeper. Once it became clear that Macedonia would be an independent State, Macedonians felt a growing need to defend the Macedonian national identity from the neighbours' claims, and obviously feared to lose part of their territory.

The situation of Macedonian Albanians cannot be compared to the one of Kosovo Albanians after the Milosevic's ascent to power but the level of conflicts in Macedonia still remained very worrying. As I mentioned before, the first free elections did not see the affirmation of the Macedonian nationalist party (VMRO-DPMNE) and the coalition government turned to be made up by the former Communists (The Social-Democrat Union for Macedonia, SDSM) and the two Albanian parties, the Albanian Party for democratic prosperity (PDP)¹⁴⁰ and the People's Democratic party (NDP)¹⁴¹. However, the inclusion within the government coalition could not placate Albanians' unrest.

In 1990 Albanian activists organized public demonstrations, in Tetovo, similar to those of 1968 and 1981, in which they called for a Greater Albania. Albanians went even so far as boycotting the 8, September 1991 referendum as a sign of protest against the Government's discrimination campaign which had also led to the closing of most of the Albanian secondary schools.

¹³⁹ See Svetomir Shkaric, *op. cit.*, pp. 134-148.

¹⁴⁰ PDP was founded in April 1990, it was a moderate party that found its supporters within the Macedonian Albanians.

¹⁴¹ NDP was an Albanian party founded in Tetovo in 1990. It proposed more radical reforms than PDP and even wanted the federalization of Macedonia.

In the winter period of 1991-1992 a group of Albanian politicians from the Tetovo region declared the birth of the Republic of Illirida¹⁴², never recognized by the Macedonian government and even undervalued by some Albanian politicians. Totally different was the creation of an illegal Kosovo Parliament which on 22, September 1990 had declared Kosovo's independence and sovereignty. Actually that decision was then confirmed by an illegal referendum that was nonetheless tolerated by the Serbian authorities. In the 1992 elections, Rugova was elected President of the clandestine Kosovo republic, which was also recognized by the Albanian government headed by Berisha.¹⁴³ The Illirid declaration on the other hand was not followed by the creation of a shadow government and the Albanian parties continued to be part of the official Macedonian government. However that event had some consequences within the Albanian population, so that the January 1992 referendum, held in the western side of the country, 74% out of the 92% of eligible voters voted for territorial autonomy.¹⁴⁴ In 1992 there were also the first clashes, in Bit-Pazar, and Skopje, where some Macedonian policemen assaulted an Albanian vendor of cigarettes. Thousands of Albanians protested in the squares and the clashes with the police caused four dead persons: one Macedonian and three Albanians.¹⁴⁵

In 1992 Albanians proposed some changes to the constitutional text in order to be recognized as a constituent nation instead of as a nationality, and were able to collect 150,000 signatures in support of their proposal. Throughout 1992-1993 the Council on Security and Cooperation in Europe tried to convince the government to grant more rights to ethnic Albanians and finally in 1994 an agreement was reached: the text of the revised constitution would not anymore mention the Macedonian Orthodox Church and had to recognize the Albanian language as an official language of the State, alongside the Macedonian language. Unfortunately, it was impossible to overcome the opposition of the VMRO-DPMNE, and the constitutional amendments could not be passed by the Parliament.

The 1994 elections saw the victory of the former communists (SDSM led by Gligorov) Actually, the VMRO-DPMNE had decided to boycott the vote, due to the accusation of irregularities, at the first turn of elections, made by CSCE observers.

¹⁴² See Victor Roudemetov, *op. cit.*, p. 172.

¹⁴³ See Victor Roudemetov, *op. cit.*, pp. 169, 170.

¹⁴⁴ See Victor Roudemetov, *op. cit.*, p. 172

¹⁴⁵ See Arian Konomi, *La questione Albanese in Macedonia*, in *Limes*, fascicolo 4, 1997, pp. 304, 305.

Thus, Albanians had the possibility to overcome the *impasse* and collaborate with Gligorov in order to approve the constitutional changes they wanted. Nonetheless, Albanian parties (PDP and NDP) won only fourteen seats, and four Albanian radical deputies were not willing at all to support the Government initiatives.¹⁴⁶ Within the PDP there were continuous tensions between the radicals, which were in favour of autonomy following the lines of the Illirid declaration and were initially supported by Berisha government, and the moderates which did not lay territorial claims but wanted to transform Macedonia in a civic state. The gap became deeper and deeper. Many politicians within the PDP were not satisfied with the party leader, Abdurrahman Aliti, which was accused of being too indulgent towards Macedonian parties and not doing enough to promote the protection of Albanian rights. Finally, in February 1994, the formal split took place and in April the radical wing, headed by Xhaferi, created a new party: the Party for the Democratic Prosperity for Albanians (PDP-A). The PDP-A got a good success in the 1996 municipal elections. That party won some important mayoral positions, including Tetovo and Gostivar, the two pivotal centres of ethnic Albanians in Macedonia.¹⁴⁷

2.4.2) The census issue

Besides the fear for extreme positions, which from time to time came up, another element of concern for Macedonian authorities was the number of ethnic Albanians.

In 1991 they even maintained to be close to 40% of the population, while according to the census, Albanians turned to be only 21.0% of a total population of 2,033,964. The result could not be precise because most of Albanians decided to boycott census given that the law on citizenship excluded from the citizenship, and also from the census, all Albanian people who had lived in other parts of the Yugoslav federation and came back to Macedonia. However a figure around 30% was quite realistic, especially because of the high birth rate of Albanians, the number of Albanians from Kosovo that had moved to Macedonia to escape from persecutions, and the high emigration level among young Macedonian Slavs.¹⁴⁸

¹⁴⁶ See Victor Roudemetov, *op. cit.*, p. 173.

¹⁴⁷ See *Macedonia's Ethnic Albanians: Bridging the Gulf*, ICG Balkans Report 98, International Crisis Group, Skopje, Washington, Brussels, August 2000, p. 11.

¹⁴⁸ See *Macedonia's Ethnic Albanians: Bridging the Gulf*, in ICG Balkan Report, n. 98, Skopje, Washington, Brussels, pp. 4, 5.

In 1992 a new Law on Citizenship was enacted, and its content was even more discriminatory against Albanians. Actually, the new law provided that only those born in the republic and those who were ethnic Macedonians were considered Macedonian citizens. Naturalization was possible only if the request was submitted by a person who was 18 years old, had had continuous residence in the republic for the previous fifteen years, was of good physical and mental health, maintained a residence in the republic, had a permanent source of income, no criminal record, had terminated any prior citizenship, spoke the Macedonian language, and finally only if granting the citizenship to the petitioner would not endanger the security and defence of the republic.

The most criticized element was the fifteen-year residence. Regarding that point, there was also an intervention of the High Commissioner on National minorities, Max Van der Stoep which strongly recommended to the Macedonian authorities to lower the necessary period of residence to five years, as many other OSCE states required. The Macedonian government, nevertheless, remained deaf towards those considerations.¹⁴⁹ As regards the 1994 census, Albanians said that the results (23% of the total population) were directly linked with the 1992 law on citizenship and that it undercounted Albanian population by 10% or even more.¹⁵⁰ Indeed, in June 1994 the Interior Minister confirmed that 150,000 people had failed to meet the requirements to become a citizen and that most of them were Albanians from Kosovo.¹⁵¹ Moreover many long-term residents in ethnic Albanian communities were left out the voter lists because their status of citizenship was disputed.¹⁵²

Thus, the 1992 law was considered as a deliberate act to prevent ethnic Albanians to have enough parliamentary seats in order to veto the constitutional changes.¹⁵³ Indeed the constitutional revision process implied the vote of the two thirds of the parliament members¹⁵⁴ and Albanian members in parliament were not definitely more than one third.

Macedonian Albanians are not only numerous, they are also concentrated in precise areas of the country: near the capital Skopje, in the north-west area and in the

¹⁴⁹ See Victor Roudemetov, *op. cit.*, pp. 173, 174.

¹⁵⁰ See Hugh Poulton, *op. cit.* p. 186.

¹⁵¹ See Hugh Poulton, *op. cit.* p. 183.

¹⁵² See *Macedonia's Ethnic Albanians: Bridging the Gulf*, in ICG Balkan Report, n. 98, Skopje, Washington, Brussels, p. 10.

¹⁵³ See Hugh Poulton, *op. cit.* p. 183.

¹⁵⁴ See Pavle Nolic, *op. cit.*, p. 174.

west area, along the border with Kosovo and Albania. Albanians are clearly the majority in the area around Tetovo and Gostivar, in some municipalities of Kicevo and Debar they have become the majority. They also made up the majority of the population in the border region down to Struga on Lake Ohrid. The population is 99.8 % ethnic Albanians in the municipalities of Polosko and Velesta, close to Struga. Albanians are then very numerous in Skopje and the surrounding area and also in the town of Kumanovo. Here ethnic Albanians constitute over one third of the population and there is also a sizeable Serb community. Moreover, in six municipalities within that area they made up 97 % of the population. On the other hand, in the other parts of Macedonia the number of ethnic Albanians is much lower and in some municipalities there are no Albanians at all. In the central and eastern part of Macedonia many municipalities count less than one per cent of Albanians.

The geographic division clearly reinforced the interaction among Albanian people and diminished the exchanges with ethnic Macedonians. Macedonians felt as strangers in their own home in the regions predominantly inhabited by Albanians especially because some of them could not even speak the Macedonian language.¹⁵⁵ The results of a research published in 1974 by the sociologist Dr Ilija Josifovski on the Macedonian, Albanian and Turkish populations in the villages of Polog, which includes the areas around Tetovo and Gostivar, even demonstrated that 95% of Albanian and Macedonian and 84% of Turkish heads of individual households would not let their sons marry a girl of different nationality, and in the case they had daughters the percentage increased. The study also showed that mixed marriages between Macedonians on one hand and Albanians or Turks on the other were not existent. The interaction between the two major communities did not grow up during the nineties and the feeling of mistrust and suspicions were reciprocal.¹⁵⁶

2.4.3) The issue of the Tetovo University

One of the pivotal aspects related to the Albanian question was right the education issue because it is through the educational system that a culture and a tradition can survive and be transferred to the new generations.

¹⁵⁵ See *Macedonia's Ethnic Albanians: Bridging the Gulf*, ICG Balkan Report n. 98, International Crisis Group, Skopje, Washington, Brussels, August 2000 pp. 5, 6.

¹⁵⁶ See Hugh Poulton, *op. cit.*, p. 132.

In 1989-1990, 71,505 pupils continued into higher education and only 2,794 of them were ethnic Albanians. At the university level, the situation was even worse: of 22,994 registered students in 1991-1992 only 386 were Albanians. Moreover while during the communist period Albanian secondary schools were ten, by mid-1993 there was only one secondary school remained. The situation improved during the nineties given that almost all Albanians could get primary education in their language and the percentage of those who could attend the secondary school in Albanian schools increased up to 14% in 1998.

However, the main problem was that, if Albanians wanted to go to University, they had to attend Macedonian faculties. Before 1989 many Macedonian Albanians could move to Kosovo and attend the Albanian University in Pristina, but after Milosevic had revoked the Kosovo autonomy, that University was closed. Thus Macedonian Albanians began to ask for an Albanian language faculty, which Macedonian authorities denied to grant, because they saw it as an unjust privilege compared with Vlachs and Turks.¹⁵⁷ Moreover, Art. 48 of the 1991 Constitution provided the right of members of nationalities to have instruction in their own language only in primary and secondary education. The Government did not envisage the need of setting up a new University because Albanians had free access to the Macedonian Universities of Skopje and Bitola. However, in Bitola there were only 4,800 Albanians out of 125,000 inhabitants compared with Tetovo in which 130,000 inhabitants out of 181,000 were ethnic Albanians.¹⁵⁸

Albanians' reaction was to set up, between the end of 1994 and early 1995, the "Albanian University" in Mala Recica, close to the city of Tetovo.¹⁵⁹ Albanians' claims were based on Art. 45 which granted every citizens the right to establish private schools. But the point was that the discipline had to be established by law, and the law on higher education was not passed. Macedonian authorities declared that the University was illegal under the constitutional provisions and tried forcibly to close it, thus provoking the death of an Albanian protester. Some Albanian academics were

¹⁵⁷ See Hugh Poulton, *op. cit.*, p. 185.

¹⁵⁸ See Silvo Devetak, *Le statut juridique des minorités ethniques dans les états successeurs de la Yougoslavie*, in *Minorités et Organization de l'état*, Bruylant, Bruxelles, 1998, p. 177.

¹⁵⁹ See Victor Roudemetov, *op. cit.*, p. 177.

arrested and brought to trial. On 21, July 1996 Albanian students tried to avoid the arrest of the rector and of Prof. Sulejmani and there were some incidents.¹⁶⁰

Most of the teachers came from the Pristina University so that ethnic Macedonians saw the Tetovo University as a mean to propagate nationalist ideas within the Macedonian Albanian population and were not willing to make to Albanians any concessions.¹⁶¹

However, Albanians continued to attend their own university in private houses, following the example of “Kosovo’s underground parallel system” and they claimed to have 4,000 students and 260 teachers.¹⁶² The government was absolutely unable to prevent Albanian students from attending that University, reopened nevertheless in October 1995, thanks to the presence of representatives of the UN peacekeeping forces. Then the government decided to ignore the problem and did not make other attempts to close it.¹⁶³ It is clear that the conditions in which the students had to attend the courses cast some doubts over the quality of the education and with no recognition outside; the graduation diplomas were clearly undervalued.¹⁶⁴ Albanians were still really proud of having their own system of university education. They could also rely on the approval of practically all the FYROM Albanian parties and of the Berisha Government.¹⁶⁵

Nonetheless, the official recognition from the Macedonian government has never arrived and the various solutions which will be proposed by the international community members will not be able to please the real needs of the Albanian community.

2.4.4) The language issue

Besides the Albanians’ demand of having their own university in which the language of teaching would be the Albanian language, another significant clash was the requirement of making the Albanian language an official language alongside the Macedonian one. While regarding the University education, Macedonians and Albanians were not able to find an agreement, some positive steps were made with respect to the official use of the language, even though only in some sectors.

¹⁶⁰ See Silvo Devetak, *op. cit.*, pp. 177, 178.

¹⁶¹ See Victor Roudemetov, *op. cit.*, p. 177.

¹⁶² See Hugh Poulton, *op. cit.*, p. 185.

¹⁶³ See Maria-Eleni Koppa, *Ethnic Albanians in the Former Yugoslav Republic of Macedonia: Between Nationality and Citizenship*, in *Nationalism and Ethnic Politics*, vol. 7, n. 4, Winter 2001, p. 51.

¹⁶⁴ See *Macedonia’s Ethnic Albanians: Bridging the Gulf*, in ICG Balkan Report, n. 98, Skopje, Washington, Brussels, p. 19.

¹⁶⁵ See Victor Roudemetov, *op. cit.*, p. 177.

- First of all it was decided that Albanian names could be written in Albanian, but had also to be translated in Macedonian.¹⁶⁶
- As regards school documents the new discipline provided that only the most important documents had to be written in Macedonian language also in Albanian schools.¹⁶⁷ Actually, both the 1995 Law on primary Education and the 1995 Law on Secondary Education established respectively in Art. 81 and on Art. 73 that: “The pedagogical documents and records are being written and issued in Macedonian language and Cyrillic alphabet. For pupils who attend school in one of the languages of the nationalities, the pedagogical documents and records are registered and issued both in the Macedonian language and its Cyrillic alphabet and in the language and alphabet of the nationality, while the pedagogical evidence is written in the language and alphabet in which the instruction is being carried out.”¹⁶⁸
- The Law on Identity Card was passed. Art. 5, par.2 stated that: “...the names of the persons belonging to nationalities are written also in the language and alphabet of the nationality.”¹⁶⁹
- Nonetheless, the working language within the Parliament remained Macedonian, and Macedonian MPs even left the Parliament when an Albanian deputy made his speech in Albanian language.¹⁷⁰
- Another important law, related to the official use of the language, was passed in 1997: the law on criminal procedure. Art. 4 (2) provided that: “Every accused has the following minimum rights: to be informed immediately and in detail, in a language which he understands, of the crime he is charged of, and the evidence against him. Art. 6 stated that the official language of the criminal procedure was the Macedonian language and its Cyrillic alphabet, but Art. 7 listed the cases in which the language used should be a nationality language. “(1) Parties

¹⁶⁶ See Art. 9, par. 2, Law on Personal Names 1995 in www.minelres.lv/NationalLegislation/Macedonia/Macedonia_Names_excerpt

¹⁶⁷ See Hugh Poulton, *op. cit.*, p. 188.

¹⁶⁸ See Art. 73 (2), Law on Secondary Education, 1995, in www.minelres.lv/NationalLegislation/Macedonia/Macedonia_SecEdu_excerpt; and Art. 81(2), Law on Primary Education, 1995, www.minelres.lv/NationalLegislation/Macedonia/Macedonia_PrimEduc_excerpt

¹⁶⁹ See Art. 5(2), Law on Identity Cards, 1995, in www.minelres.lv/NationalLegislation/Macedonia/Macedonia_ID_excerpts

¹⁷⁰ See Maria-Eleni Koppa, *op. cit.*, p. 52.

and other participants in the procedure during hearings and other procedure activities before the Court have the right to use their own language. If the procedure is not conducted in the language of the parties and participants, respectively, oral translation for what is being said during the hearings will be provided in their own language as well as oral translation of the corrections which are used during hearing as a proof. (2) Parties and other participants in the procedure will be instructed about the right to follow the oral procedure in their own language by the help of interpreters. They may cancel the right to interpretation if they give statement that they understand the language in which the procedure is being conducted. The record will include that they were given such instruction as well as their statement. (3) Interpretation is done by an interpreter.”¹⁷¹

2.4.5) The law on local government

Radical Albanians often claimed for a federalization of the Macedonian state, being Albanians mostly concentrated in some areas of the country. However, decentralization seemed to be the most viable solution. They constitute the majority in many municipalities, and it would be obviously extremely important for them that the single administrative units were provided with many powers. The self-government would allow Albanian communities to make important choices aimed to better protect their own interests. Unfortunately, as I will demonstrate through the analysis of the 1995 Law on Local Government, there was a scarce will to apply its principles. This attitude definitely contributed to the widespread Albanian unrest towards Macedonians. The debate over the state structure continued during the years, and would be one of the main questions the Ohrid Agreement tried to find a solution to.

The framework for local self-government had already been fixed by Chapter V of the 1991 Constitution even though only through general principles which had to be developed by law.

- Art. 114 defined “municipalities” as units of local self-government within which it was possible to establish forms of neighbourhood self-government. It said that “Municipalities are financed from their own sources of income determined by

¹⁷¹ See Law on Criminal Procedure, 1997, in www.minelres.lv/NationalLegislation/Macedonia_CrimProc_excerpts_English.htm.

law as well as by funds of the Republic.” It also called for a law, adopted by a two thirds majority, which would provide the details of the discipline.

- Art. 115 stated that: “ In units of local self-government citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of urban planning, communal activities, culture, sport, social security and child care, preschool education, basic health care and other fields determined by law.” The Article also underlined that Municipalities could operate autonomously in the execution of its constitutionally and legally determined spheres of competence, even though the Republic kept a role of legality supervisor. It finally stated that additional functions could be entrusted to the municipalities by the national government.
- Art. 116 called for a law that would define the territorial division of the Republic.
- Art. 117 referred to the particular status of the city of Skopje, which had to be considered as a particular unit of self-government regulated by a specific law.

The implementing law (Law on Local Government) was adopted in October 1995. The jurisdiction of municipalities was entailed in Articles 17, 18 and 19, while chapters VII and VIII defined the supervising role of the State.

Article 4 of the 1995 Law stated the principle of autonomy of the municipalities in the execution of the competences determined by the Constitution or by law and Art. 16 even said that: “the units of local self-government within the framework of the Constitution and the law have a right by their bylaws to perform matters and to undertake activities of local relevance which are not under the jurisdiction of the state authority. However, Art. 17, which enshrined a comprehensive list of local government powers, in the last paragraph affirmed that: “municipalities may also perform other activities determined by law” so that they did not turn to have a residual competence and any additional power had to be provided them by law.

Moreover, even though the competences were divided into: independent functions and competences entrusted to the municipality (divided by the 1995 law into “shared jurisdiction”, and “functions delegated by the State”), all of them had very narrow restrictions. Art. 17 mentioned thirty-two different competences as independent functions, but seventeen of them were dependent on other legislation instead of

depending on the Law on self-government itself. Other laws could also be adopted in any of the thirty-two competences. This obviously reduced the discretion of the local government in adopting the acts to pursue its objectives. Moreover, Art. 114, par. 4 of the 1991 Constitution required that the discipline of local self-government was “regulated by a law adopted by a two thirds majority”. Thus, through subjecting the local government functions to laws passed by a simple majority, Art. 17 could be considered unconstitutional, even though the Constitutional Court was not asked to examine that issue. The two thirds majority was required to ensure the stability of the division of competences between the two levels of government.

Further, the law did not allow the self government units to have a direct operating authority even in those independent competences defined by the Constitution as issues of local relevance (culture, sports, social and child welfare, preschool education, basic health care). Actually, par. 23 and par. 24 of Art. 17 only permitted municipalities to represent citizens’ opinion about the above mentioned functions and to participate indirectly in the institutions providing those services.

The only full independent competence, among the issues of local relevance, was the one regarding primary and secondary education.¹⁷² Art. 17, par. 20, as well as other parts of the law, stated that local government had the right to establish secondary schools, issue opinions on the establishment of primary schools, finance facilities for primary schools beyond the level provided by the state, raise initiatives and offer opinions and proposals for the development of the institutional network of culture, social and child welfare, preschool education, basic health care and so on. Art 17 also provided that representatives of the local government could participate in the work and decision-making of school boards in primary education.¹⁷³

Art. 18 established the functions of the “shared jurisdiction”. Par. 1 and par. 2 assign to the municipalities the responsibility for urban planning. They are responsible for the adoption of general and detailed urban plans with the approval of the specific organ of the State administration responsible for urban issues. Par. 3 addresses most of the competences defined by the Constitution as issues of local relevance: “In accordance

¹⁷² See Draft Report Macedonia: Local Government in Transition, Urban Institute, UI Project 06610-903, January 1999, pp. 15-19.

¹⁷³ See Zidas Daskalovski, *Minority Political Participation and Education in the Municipality of Chair*, in *Managing multi-ethnic local communities in the countries of the former Yugoslavia*, Nenad Dimitrijevic ed., Open Society Institute, Budapest, 2000, pp. 127, 128.

with the law, establish and provide funds for construction and equipment and maintenance of institutions in the areas of preschool education, culture, sports, social, and child welfare (and) basic health care.” In the fields listed local government and the Republics shared financial responsibility for facilities and equipment that supported those functions, but local governments were not given operational responsibility.

Finally, Art. 19 allowed the Parliament to “entrust” to municipalities the duty to perform some particular activities “under jurisdiction of the organs of State administration.” The activity would be delegated on a case-by-case basis, according to factors such as the dimension of the municipality, the number of inhabitants, etc. It is the State that should provide the funds to carry out the competence delegated.

In addition to the restrictive discipline regarding the use of powers of the municipalities, the 1995 law also established that municipalities’ acts were subject to be reviewed by the State.

Actually, Art. 4 stated that the government could “exercise supervision of the legality, the opportuneness and the professionalism (of the acts of the municipality). Chapter nine indicated the areas of state intervention: unconstitutionality or illegality of acts, acts exceeding the scope of shared authority and acts exceeding the scope of entrusted authority. In the first case, the State could enjoin the act, passed on the basis of an independent or shared power, if there was a danger of causing irreparable damage. Then the State had to appeal the act to the Constitutional Court within fifteen days. The decision of the Constitutional Court was necessary to keep effective the injunction, even though the Court could also decide to adequate the act to the constitutional provisions. In the second case, the State could enjoin an act included in the shared competence of the municipality only if it had not been already approved by the relevant ministry and if the act itself could cause irreparable harm. In the third case, State administrative agencies could “perform inspection, supervision and control over the enforcement and administrative activities (within entrusted jurisdiction) and to provide instructions and guidelines for the implementation of these acts” (art. 71 par. 1). If the municipality failed to implement an act of entrusted jurisdiction, the State could order to perform it within sixty days. In case the order was not respected, the State had the possibility to perform it directly using the municipality’s funds. Moreover, Art. 72 permitted the

Ministry of Finance to “perform supervision of the material and financial operations” in matters included in the entrusted jurisdiction of municipalities.

In 1997 the Constitutional Court decided at least nineteen cases regarding the powers of local self-government units and the decisions were all against the municipalities. Many of those cases were referred to acts passed when the new law had already entered into force.¹⁷⁴

The result of the discipline regarding the division of powers was that Macedonia remained a highly centralized country and Skopje seemed not willing to concretely devolve powers to municipalities. The local administration in the 124 municipalities lacked all kinds of resources; above all they did not have sufficient funds to support their activities. The position of the central government and state administration continued to be very strong and party affiliation continued to be the major criterion in filling positions in public administration and state-controlled enterprises. Skopje was seen as an apparatus which wanted to keep the power and to satisfy the needs of its supporters, which were mostly ethnic Macedonians.

One of the most negative elements was the presence of too many municipalities which implied a waste of financial resources. It would be better to find an intermediate solution between the 34 administrative divisions of the previous regime and the 124 units created by the 1995 law. This would allow to better use the money and to find useful way of co-ordination among the different municipalities.¹⁷⁵ Moreover, the high number of municipalities implied a territorial discontinuity among the Albanian unities, which in such a way turned to be spaced out by unities controlled by Macedonians. In support of Albanian thesis it is interesting to notice that, while in order to constitute a Macedonian municipality it was sufficient to have few hundreds inhabitants (Staravina:456; Konopiste: 510), Albanian municipalities such as Gostivar and Tetovo, for instance, had respectively 45,740 and 65,318 inhabitants.¹⁷⁶

Besides, the discipline of the financial resources was not clear cut defined and presented many gaps. Art. 9 stated that the municipalities had to be financed from their own resources of revenues determined by the law on local government, revenues

¹⁷⁴ See Draft Report Macedonia: Local Government in Transition, Urban Institute, UI Project 06610-903, January 1999, pp. 20-25.

¹⁷⁵ See *Macedonia's Ethnic Albanians: Bridging the Gulf*, in ICG Balkan Report, n. 98, Skopje, Washington, Brussels, pp. 21, 22.

¹⁷⁶ See Arian Konomi, *La questione Albanese in Macedonia*, in *Limes*, fascicolo 4, 1997, p. 303.

determined by the law on local government, by other laws, and by additional funds allocated by the central government only in the case the municipality was performing a function which originally was within its powers. In par. 2, that Art. also said that the municipalities could autonomously dispose of the financial resources mentioned in par.1. However, given that they had a very restrictive operating discretion, their discretion in spending the money could not be so large.¹⁷⁷

The other provisions which deserve to be mentioned are the ones aimed to implement or specify the content of some constitutional articles regarding minority rights. Art. 25, par. 3 of the law stated: “ In the Council of the unit of local self-government, where the majority or a considerable number are members of different nationalities, a commission on inter-ethnic relations shall be created, which shall include representatives of every nationality represented in the unit of local self-government.” Art. 78 of the 1991 Constitution only established a Council on inter-ethnic relations at national level.

Moreover, Art. 88 of the law went to define two pivotal concepts (“majority” and “considerable number”) in order to make effective the provisions regarding the official use of the nationalities’ languages within the administrative units. Par. 1 specified: “In the units of local self-government in which the number of the members of a nationality exceeds 50% of the total number of inhabitants determined by the last census of population shall be considered as units of local self-government in which a majority of members of the nationality live.” Par. 2 on the other hand stated: “The units of local self-government in which the number of the members of a nationality exceeds 20% of the total number of inhabitants determined by the last census of population shall be considered as units of local self-government in which a considerable number of members of the nationality live.”

Art. 89 made clear that: “(1) At the session of the Council and other organs of the units of local self-government in which a majority or a considerable number of members of the nationality live, besides the Macedonian language and its Cyrillic alphabet, the language and the alphabet of the nationality that is majority or a considerable number shall be in use. (2) The by-laws, the decisions and other general acts passed by the organs referred to in paragraph 1 of this Article shall be written and

¹⁷⁷ See Draft Report Macedonia: Local Government in Transition, Urban Institute, UI Project 06610-903, January 1999, p. 28

published in the Macedonian language and its Cyrillic alphabet, as well as in the language and alphabet of the nationality that is either a majority or a considerable number. (3) In public services, public institutions and public enterprises established by the unit of local self-government in which a majority of members of a nationality live, besides the Macedonian language and its Cyrillic alphabet, the language of the nationality that is a majority shall be in official use.

Art. 90 talked about the discipline of the signs and name of the places. “(1) In the units of local self-government in which a majority of members of a nationality live, the names of populated places, the signs of public services and institutions, the signs of enterprises and other public enterprises established by the unit of local self-government shall be written in the Macedonian language and its Cyrillic alphabet, as well as in the language and the alphabet of the nationality that is the majority. (2) In the units of local self-government in which a considerable number of members of a nationality live, the names of populated place, the signs of public services and institutions, the signs of enterprises and other public signs shall be written in Macedonian language and its Cyrillic alphabet, and in the language and the alphabet of the nationality that is in a considerable number, if so decided by the Council of the unit of local self-government. (3) The signs of cultural and educational institutions solely serving to the development and promotion of cultural and educational goals of the nationalities, shall be written in the Macedonian language and its Cyrillic alphabet, and in the language and the alphabet of the nationality regardless of the number of members of the nationality who live in that unit of local self-government.”¹⁷⁸

2.4.6) The flag issue

As well as in 1994-1995 the main reason of concern for Macedonian authorities was the incidents in Tetovo because of the founding of the Albanian university, in 1997 Tetovo will also be theatre of conflicts, alongside Gostivar, this time because of the “ostentation” of national signs.

Alongside the education issue, the other major point of clashing was the display of national symbols. The 1974 Macedonian Constitution allowed nationalities to use their own flags only during popular and national holidays, but in 1988 an edict

¹⁷⁸ See art. 89 and 90, Law on Local Government, 1995, www.minelres.lv/NationalLegislation/macedonia/Macedonia_Municip_excerpt_

suppressed that provision. Considering the lack of a specific legislative discipline, in April 1997, the municipal councils of Tetovo and Gostivar passed a local statute which enabled flying the Albanian flag together with the Macedonian one. The Macedonian opposition political parties, in Gostivar, reacted by bringing the Council before the Constitutional Court because the Constitution prohibited flying flags of foreign countries. Actually, during the communist period minorities' flags were different from the ones of the titular countries due to the presence of the red five-pointed star, which was taken off after the Macedonian independence.¹⁷⁹ The question was examined by the Constitutional Court, on 21, May 1997 which decided that until the approval of an *ad hoc* law, nationalities' flags should be lowered.¹⁸⁰

The Government decided to form an ad hoc committee to design new flags for Macedonian minorities, but this solution was soon put aside since not accepted by the minorities. Then the Government worked on a draft law that could constitute a compromise: it allowed Macedonian Albanians to keep their flag as their traditional symbol, but established some restrictions about the occasions and the locations in which the flag could be flied. However the law was not passed.¹⁸¹

In the meanwhile, the Constitutional Court, on 26 June, had passed another measure to prevent the mayors of the Albanian municipalities to fly the Albanian flag. Then the Court had declared the unconstitutionality of the municipality councils' decisions which challenged its position. The mayors of Tetovo and Gostivar defied the Court's measure and flied the Albanian flag over the city hall.¹⁸² On 8, July 1997, Macedonian authorities passed a regulation which stated that the ostentatious and provocative flying of the Albanian flag over the municipal offices of Gostivar and Tetovo was illegal. Ethnic Albanians protesters tried to prevent the police to enter the town hall but the reaction was very hard. Three people were killed and more than 200 injured.

The PDP made pressure on Government to set up a parliament investigative commission. The result was that the police used too much force but the Commission

¹⁷⁹ See *The Politics of Ethnicity and Conflict*, ICG report, International Crisis Group, Skopje, October 1997, p. 13.

¹⁸⁰ See Arian Konomi, *op. cit.*, p. 306.

¹⁸¹ See *The Politics of Ethnicity and Conflict*, ICG Balkans report, International Crisis Group, Skopje, October 1997, p. 13.

¹⁸² See Arian Konomi, *op. cit.*, p. 306.

refused to punish the single officers because this task was out of its mandate.¹⁸³ The mistrust of ethnic Albanians towards the members of PDP continued to grow up because they were not able to defend Albanians' interests.

The mayor of Gostivar, Osmani, and the mayor of Tetovo, Demiri, and other 400 Albanians were detained. The sentence regarding Osmani was very severe: on 18, September 1997 he was condemned to thirteen years and eight months imprisonment. The trial was deemed unfair by many human rights organizations. Osmani's defence team pointed out that the entire trial was marked by irregularities: witnesses called by the defence were not allowed to testify and motions before the court by defence lawyers were struck down. The lawyers tried to appeal the decision on the basis of procedural irregularities. They had twenty days to file the motion, but it has been delayed because Osmani wanted the conviction to be presented him in Albanian. The Court agreed to translate the motion on the basis of the 1997 Law on Criminal procedure, but the appeal was clearly postponed. Osmani's lawyers even decided to resign in protest of the alleged bias of the Court against the defendant. The Court assigned him a public lawyer who was given only an hour to prepare the case.¹⁸⁴

2.5) The ratification of the Framework Convention for the protection of national minorities

Being aware of the seriously concerning situation of the relationships between ethnic Macedonians and ethnic Albanians, which reached the pick in the incidents of Tetovo and Gostivar, described above, and fearing for a likely escalation of conflicts, on 10, April 1997 the Republic of Macedonia ratified the Framework Convention.

Art. 8 of the 1991 Constitution defined the concept of minority rights with generally accepted standards of international law. That provision was extremely important for the ratification of international documents, especially the Framework Convention for the Protection of National Minorities.

The Framework Convention is an international document that was born within the Council of Europe after the failed attempt of the Committee of Ministers to convince the assembly to pass the proposal of additional protocol to the ECHR

¹⁸³ See *The Albanian Question in Macedonia*, ICG Balkans report n. 38, International Crisis Group, Skopje, Sarajevo, August 1998, p. 8.

¹⁸⁴ See *The Politics of Ethnicity and Conflict*, ICG Balkans report, International Crisis Group, Skopje, October 1997, p. 15.

(European Convention of Human Rights) The formula of the framework convention, with its flexibility and less binding nature was the most adequate to be extendable to many states, even to countries which were not members of the Council of Europe (which was not the case of Macedonia, which became member of the Council of Europe in 1995). Through that instrument, the states were able to reach a consensus to translate the political undertakings of the OCSE declarations (1989 Vienna Declaration and 1990 Copenhagen Declaration) into legal obligations.¹⁸⁵

By analysing the text of the Framework Convention, it is clear that there are many difficulties that the Committee of experts, responsible for drawing it, was not able to overcome.

- First of all there is no general definition of the concept of national minority, term which for its intrinsic ambiguity is rarely used in international texts. Usually minorities are identified by their ethnic, religious or linguistic belonging (as, for instance in Art. 27 of the International Covenant on Civil and Political Rights) because the meaning of “national minority” is different depending on which of the two main concepts it refers to, the French one or the German and Slav one. The explanatory report even says that it is not sufficient the mere existence of ethnic, cultural, linguistic and religious differences to automatically create a national minority. Thus, it is finally up to the state the recognition of a group as national minority in order to apply the provisions of the Framework Convention and there is no agreement at all. The most influential definition is the one enshrined in Art. 1 of the 1993 Proposal for an Additional Protocol to the ECHR: “ national minority refers to a group of persons in a state who: (a) reside on the territory of that state and are citizens thereof; (b) maintain longstanding, firm and lasting ties with that state; (c) display distinctive ethnic, cultural, religious or linguistic characteristics; (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion and their language.”¹⁸⁶ Macedonian Albanians obviously could not accept

¹⁸⁵ See Florence Benoit Rohmer, *The minority question in Europe: towards a coherent system of protection for national minorities*, Council of Europe Publishing, Bonn, 1996, pp. 36-40.

¹⁸⁶ See Petra Roter, *Managing the ‘Minority Problem’ In Post-Cold War Europe within the Framework of a Multilayered regime for the Protection of National Minorities*, in *European Yearbook of Minority*

the citizenship requirement in order to meet the definition of “national minority”. Actually, as I mentioned above, the 1992 New Law on Citizenship was, without any doubt, discriminatory with respect to ethnic Albanians.

- Another gap was that collective rights were not recognized because of the fear of fostering secessionist claims within the members of a national minority. A compromise formula was instead adopted: “persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present Framework Convention individually as well as in community with others.” (Art. 3 par. 1) The 1991 Macedonian Constitution on the other hand granted both individual and collective rights, such as the right to get education in the nationality language under the conditions established by law and the official use of the language in the municipalities where they constituted the majority or a consistent number.
- Further the rights of individuals are not directly applicable but they are expressed in term of obligations incumbent on states. Members of a national minority do not have any rights. It is the state which is obliged to grant them the rights listed in the text of the Framework Convention so that the rights cannot be invoked against the states before a national court. However as regards the nationality rights provided by the 1991 Macedonian Constitution, which were mostly the same as the ones provided by the Framework Convention, the proceeding to get a pronouncement from the Constitutional Court was not so easy but it was always possible to get a decision from a lower Court.
- The state obligations were often not clear-cut defined and many of them were just entailed in “programme-type provisions”, so that the way to get the objective remained up to the states. The typical expressions used to temper the binding character are: “as far as possible” and “where necessary”. Art. 12, for instance, requires that states, “where appropriate”, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion and provide adequate opportunities to teacher training and access to text books.”

Issues, Volume 1, 2001/2, Kluwer Law International, the Hague, 2003, p. 103.

- The monitoring system was also very weak, because the judicial system provided by the ECHR seemed too hard compared to the not binding norms enshrined in the Framework Convention. Hence the implementation stage would be assured by the states themselves and the Committee of Ministers would only play a political supervision role (Art. 24). The monitoring system implied that states had to transmit to the Secretary General of the Council of Europe, within a certain period of time and whenever there was a formal request by the Committee of Ministers, all the information about the measures already taken. The Committee of Ministers would be assisted by an advisory committee in order to evaluate the measures taken and the progresses made by the contracting parties. Even though the entire procedure should respect the principle of openness, the states are not obliged to accept the publication of the reports which would subject them to the scrutiny of international public opinion.¹⁸⁷

As regards the compliance between Macedonian Constitution and Macedonian laws to the provisions of the Framework Convention, it is interesting to illustrate the analysis of the Helsinki Committee for Human Rights in the Republic of Macedonia published in September 1999. First of all the Framework Convention confirmed that the belonging to a particular national minority was a matter of personal choice and that the choice should not turn to be a disadvantage. Art. 8 of the 1991 Constitution entailed the same principle, even though in reality that principle was often violated. The other main important provisions were the ones dedicated to the official use of the language and to the right to be educated in the nationality language.

- The use of the language, the freedom of the use of a minority language in private relations and in public was granted without any problems. The crucial point was nonetheless the official use of the language. Actually the states had only to “endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations with the administrative authorities.”(Art. 10, par. 2) Moreover also in this case the obligation comes into play only in areas inhabited by national minorities traditionally or in a substantial number and there should be a request which has to correspond to a real need to enjoy that right. The provision does not explain the terms of

¹⁸⁷ See Petra Roter, *op. cit.*, pp. 36-50.

“traditionally” or “substantial number”. The 1991 Macedonian Constitution had established a discipline which was also vague because, as I said above, the official use of a nationality language was ensured only in the local units where the members of that nationality constituted the majority or a considerable number. However the two concepts were explained in the Law on Local Government.

- States had to guarantee to the members of national minorities the right to use their first name and their surname in the minority language and the official recognition of them. (Art. 11 (1)) As regards Macedonian legislation, the Law on Identity Card and the Law on Personal Names were consistent with that provision. However, since the discipline had to be provided by national laws, so that it was possible that the name written in the minority language was spelled using the official language of the state.
- The parties should enable the members of minority groups the right to display traditional local names, street names and other topographical indications intended for the public also in the minority language, but only under certain conditions. Actually the right was enjoyable only in areas traditionally inhabited by substantial numbers of persons belonging to a national minority if there was a specific law or, where appropriate an agreement with other states. Moreover it was necessary to have a sufficient demand from the members of a national minority. In the Republic of Macedonia the persons belonging to a particular minority could have the toponyms written both in the Macedonian language and in the minority language, in the areas inhabited by a substantial number without requiring the sufficient demand. Both the Framework Convention and the Macedonian system provided that persons belonging to national minorities could display in the minority language signs, inscriptions and other information of a private nature visible to public. The only difference was that according to the Macedonian legislation (Law on Local Government) in order to enjoy that right, it was necessary to be part of an area where the minority represented the greater part of the population.
- According to Art. 12 (1) the parties should, “where appropriate, take measures in the fields of education to foster knowledge of the culture, history, language and

religion of their national minorities and of the majority. Macedonian primary and secondary education comprised programmes which referred to the cultural and historical heritage of the minorities, but they were deemed insufficient by the minorities themselves. As regards the opportunities of teacher training (Art. 12, par. 2) it has to be pointed out that in the Republic of Macedonia there was no possibility for the secondary school teacher training in the languages of the minorities. Finally par. 3 stated that “the parties undertake to promote equal opportunities for access to education to all levels of persons belonging to national minorities.” The disparity in the access to all levels of education was evident within the Macedonian school system, due to the delay in adopting positive measures by the state. There was a lack of resources for primary and secondary education and a high dropout rate among members of national minorities. However there was a significant increase of persons belonging to minorities who graduated in Macedonian university. They were only 6.4% in the 1991/92 school year, while they were 15% in the 1997/98 school year.

- Art. 13 referred to the possibility for members of national minorities to establish their own private school, but underlining that the exercise of that right did not imply any financial obligation for the parties. As I explained above, Macedonian state did not want to grant Albanians a state-funded university, but it was also unwilling to recognize the legality of the Tetovo private Albanian university. Actually even though Art. 45 of the Constitution recognized the right to establish private schools at all levels of education, the discipline had to be implemented by law, and the law on higher education was not passed.
- As regards the use of a minority language in state schools, there was no obligation for the states. The enjoyment of that right would be justified, according to Art. 14, only if there was a sufficient minority presence in a certain region and if a request was formulated. Art. 14 par.3 confirmed that the teaching of a minority language would not undermine the obligation to learn the official language of the state in order to keep a degree of cohesion within the country. According to the 1991 Macedonian Constitution it was not necessary to meet the quantity criterion or to present an official demand to enjoy that right even

though it was granted only for primary and secondary education. The teaching of Macedonian language was compulsory.

Other meaningful provisions were Art. 19 and Art. 21. Art. 19 talked about the limits to the application of the principles of the Framework Convention. The limits should be only those provided by other international legal instruments, especially the ECHR. The only limits that the Republic of Macedonia had declared were:

1. “The term “national minorities” used in the Framework Convention for the protection of National Minorities is considered to be identical to the term “nationalities” which is used in the Constitution and in the laws of the Republic of Macedonia.
2. “The provisions of the Framework Convention for the protection of National Minorities will be applied to the Albanian, Turkish, Vlach, Roma and Serbian national minorities living on the territory of the Republic of Macedonia.”

Art. 21 stated that: “Nothing in the present Framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of states.” This provision is very important because it clearly prohibited the possibility of secession, an event that many times Macedonian Albanians had menaced to realize, and that did inspire fear to ethnic Macedonians. The report points out that the political programs of some Albanian parties directly or indirectly included secession as a political solution to their problems. For instance, Xhaferi, the DPA leader had initially declared to be in favour of the reunification of Albanian people, and the legal registration of the party was examined by the lower courts and even by the Constitutional Court.¹⁸⁸

In conclusion, the ratification of the Framework Convention was an important step, representing a commitment at the international level in the field of minority protection. However, being a compromising document among so many states with different internal situations, it clearly entailed only a minimum level of protection. According to the comparison between the Macedonian constitution and legislation with

¹⁸⁸ See Helsinki Committee for Human Rights in the Republic of Macedonia, Report on Minority Rights in the Republic of Macedonia, September 1999, pp. 5-28. www.minelres.lv/reports/macedonia/macedonia_NGO

the provisions of the Framework Convention, it appeared that the Macedonian system of minority protection was consistent to the standards required in that international document. Nonetheless, on the one hand the concrete situation of ethnic Albanians was still very concerning and discriminations against them were still present in many sectors. On the other hand, Albanian claims went definitely beyond the rights already granted them. The Framework Convention was a good starting point, nevertheless many steps forward had to be made in order to meet Albanians' demands and keep the level of conflicts under control.

2.6) The 1998 elections

2.6.1) The raise of the radical political parties

1998 was a crucial year for Albanian politics. Actually Xhaferi, the leader of DPA¹⁸⁹ which initially had declared to be in favour of secession, decided to create an electoral alliance with PDP in order to maximize the impact of ethnic Albanians' vote. The differences between the two political programs were not so irreconcilable, they were rather part of DPA's political strategy to gain more consensus. Actually the two parties were able to find a common platform to present to the electors. The coalition program was the following: equal status for ethnic Albanians in society, education for ethnic Albanians in their native language at all levels, more use for the ethnic Albanian language in the central and local government, proportional representation of ethnic Albanians according to their numbers in the wider population in state institutions, public enterprises, public administration, and economic and financial centres, decentralization of central government and the release of ethnic Albanian political prisoners.¹⁹⁰

The need of a political alliance was also due to the new electoral law which established a mixed electoral system (majority and proportional) and provided a 5% threshold.¹⁹¹

¹⁸⁹ In 1997 the PDP-A and the small NDP merged to constitute a new party: the Democratic Party for Albanians (DPA) which drew a big enthusiasm among young people. Macedonians perceived the new party as a threat, and the legal registration of the DPA was discussed by the court system. Actually the application of the PDP-A and the NDP to create the DPA was first refused by the Appellate Court of Skopje because it maintained that the new party's statute was not compatible with the Constitution and the merger was blocked. The point was that the party name was not written in the Cyrillic alphabet. Thus on the ballot papers of the 1998 elections, both the acronyms were written down, even though the parties only referred to DPA during the electoral campaign. See *The Albanian Question in Macedonia*, ICG report n. 38, International Crisis Group, Skopje, Sarajevo, August 1998, p. 7 and *Parliamentary Elections in the Former Yugoslav Republic of Macedonia*, OSCE, p. 14, in www.osce.org/documents/odihr/1998/12/1395_en.pdf.

¹⁹⁰ See *1998 Elections in Macedonia*, ICG Balkans Report n. 45, International Crisis Group, Skopje, Sarajevo, October 1998, pp. 14-15.

¹⁹¹ In June 1998, parliament adopted a very important law which changed the electoral system. Art. 2 of the law established that 85 parliamentary seats would be elected on a majority basis with uninominal bodies, while the other 35 would be elected through the proportional system, that refers to a single electoral district including all the Macedonian territory. To elect the seats with the majority system two rounds were necessary. If no candidate wins the majority at the first round or if the majority is less than one-third of the registered votes in the district, an other round of election has to be held within fourteen days. While in the first round an absolute majority is required, in the second one the simple majority is sufficient to win. As regards the seats elected with the proportional system, they are distributed according to the Hondt model. With this method, the votes obtained by each list are divided for one, two, three and so on up to the number of seats to be filled. The quotients got are then classified from the largest to the smallest, and seats are allocated to the lists with the highest average. The Hondt system tends to discourage the party fragmentation. Moreover, under the new legislation only political parties that got 5% of the votes could participate at the partition of the seats on the basis of the list scrutiny. Thus, the smallest ethnic parties were clearly obliged to form electoral alliances to keep some room in the political scenario. See *1998 Elections in Macedonia*, ICG Balkans Report n. 45, International Crisis Group, October 1998, p. 5.

The electoral operations were controlled by an electoral commission, made up by eight members nominated by the Assembly. It is important to notice that the President and two members of the commission were proposed by the Supreme Court, while the other members were proposed half by the government parties and half by the opposition parties which obtained at least 5% of the votes in the previous elections. Then there were the district electoral commissions made up by four members nominated by the national electoral commission under proposal of the political parties. Two were nominated by the parties in power and two by the opposition parties.¹⁹²

According to the OSCE final report there were significant improvements in comparison with the past elections. The electoral law had been passed with a large political consensus and in general, the campaign was well conducted, even though there were some violent incidents and also some violations of the period of electoral silence.

The Media¹⁹³ did full cover the electoral campaign, but the OSCE report underlined the bias in the news of some television channels, included the national TV (MRTV). Concerns about the voter registers and the voter cards¹⁹⁴ were raised, but during the second round of elections, the debate about those issues sensibly decreased.

¹⁹² See Mauro Mazza, *Profili gius-pubblicistici degli ordinamenti delle repubbliche balcaniche degli slavi meridionali: il diritto costituzionale serbo-montenegrino (jugoslavo) e macedone*, in DPCE, vol. 1999 III, G. Giappichelli Editore, 1999, pp. 852, 853.

¹⁹³ Art. 43 of the Law for Elections of Members of Parliament of the Republic of Macedonia states: “The media in the Republic of Macedonia are to provide equal conditions for equality in presentations of MP candidates, political parties, groups of voters and their programmes. The length of the election presentation, and the advertising conditions and methods for using the programme time, that is, newspaper space for presentation of candidates, political parties, and group of voters are to be announced by the media no later than 50 days before the election day.” The point was that the responsibility was placed on the media themselves in a country in which traditionally media have never been impartial. A better solution would have been to place the responsibility to the SEC or to a special independent body. Further the law did not specify which conducts constituted a violation and did not provide specific fines. There were no mechanisms through which the single parties could complain about the situation and receive remedies such as corrections or apologies by the media themselves.

As regards the voter education, many parties deemed it insufficient, because only the national TV (MTV) was obliged to grant public service announcements. See Parliamentary Elections in the Former Yugoslav Republic of Macedonia, OCSE, in www.osce.org/documents/odhr/1998/12/1395_en.pdf

¹⁹⁴ The voter registration list had become public, so that Albanians should no more worry of being deliberately expelled from it. Actually political parties could now have the chance to control the voter register. However the SEC did not meet the deadline to close the voter lists and to distribute them to political parties which thus had lesser time to check the lists.

Another procedural improvement was the issue of voter identification cards to all registered voters by the SEC. Those id cards did not have a photograph attached, but still they should diminish of electoral frauds. However the opposition parties, especially VMRO-DPMNE declared that more than 100,000 cards had not been distributed. Besides, the cards were often collected in big sacks and the long time to get the document might have pushed some elector to renounce to claim it. See *1998 Elections in Macedonia*, ICG Balkans Report n. 45, International Crisis Group, Skopje, Sarajevo, October 1998, pp. 6-7.

The voting and counting processes were mostly consistent with law, even though some irregularities were observed. Re-runs were held in eight election districts.

The elections turned to be won by the Macedonian radical party (VMRO-DPMNE) and saw the growing popularity of the Albanian radical party (DPA).¹⁹⁵ Albanian parties got a very good result: 25 seats out of 120, but they claimed the vote of ethnic Albanians to be diluted by the redrawing of the electoral districts. Actually, the new electoral system should have also implied the redrawing of the 120 electoral districts. The new 85 districts (designed by the Law for Electoral Districts) would have a 10% variance of the average number of voters. Albanians were afraid that the redrawing would imply a major number of votes in a district to elect a parliamentary deputy in the districts predominantly inhabited by Albanians and the draft map seemed to confirm their predictions.¹⁹⁶ Indeed, constituencies made up of Macedonians had some 16,000 voters, while constituencies of Albanians were made up of 20,000 voters.¹⁹⁷

2.6.2) The 1998 government and the unsolved issues

2.6.2.a) The DPA-VMRO-DPMNE coalition

The majority party (VMRO-DPMNE) surprisingly invited DPA to be part of a coalition government because Georgevski (leader of VMRO-DPMNE) thought it would be very hard in that period to govern without involving Albanians. The decision was also influenced by the ally of the VMRO-DPMNE (the DA¹⁹⁸) which was in favour of a civic concept of state.

While the DPA joined the government, the PDP decided to go into opposition, thus the positions of the two parties changed because a party that was within a governing coalition had necessarily to find compromises with the other parties in order

¹⁹⁵ See Parliamentary Elections in the Former Yugoslav Republic of Macedonia, OCSE, in www.osce.org/documents/odihr/1998/12/1395_en.pdf

¹⁹⁶ See *Albanian Question in Macedonia*, ICG Balkans report n. 38, International Crisis Group, Skopje, Sarajevo, August 1998, p. 11.

¹⁹⁷ See *1998 Elections in Macedonia*, ICG Balkans Report n. 45, Skopje, Sarajevo, October 1998, executive summary.

¹⁹⁸ The DA was founded on 23 March 1998 by Vasil Tuporkovski, the last representative of the ex-Yugoslav Presidency, who had not participate at the political life during the last years. The party run nine "Muslim" majoritarian candidates and six "Muslim" candidates on the proportional list. Most of those candidates were actually Albanians, but a party spokeswoman preferred to define them as Muslims not to accentuate their ethnic belonging. DA wanted to bring into the party ethnic Albanians who were not members of ethnic Albanian parties. See *1998 Elections in Macedonia*, ICG Balkans Report n. 45, Skopje, Sarajevo, October 1998, p.11.

to get its objectives. Despite the negative provisions about the coexistence of the two radical parties in the same coalition, the DPA and the VMRO-DPMNE did not have big conflicts. The DPA became a moderate Albanian party and it was much more successful than the PDP, in the previous government, in allowing Albanians to have important roles. Instead of merely being assistant ministers without staff, equipment or an office Albanians got many important ministries such as: Justice, Labour and Social Policy and Local Self-Government.

The PDP continued to lose votes and at the first round of the 1999 presidential election, while the candidate of the DPA received 14.9% of the votes, the PDP candidate got only 4.4%. Actually, during the 1999 presidential electoral campaign, the DPA even proposed to create a figure of vice-president which should have been ethnic Albanian but the proposal did not pass since in order to change the Constitution it was necessary to have a two-thirds majority in parliament. Furthermore, such provision would have clearly been discriminatory towards the other minorities.¹⁹⁹

2.6.2.b) Proportional representation

In June 1993, the PDP leader Halili in a letter published in Nova Makedonia, claimed that there were no Courts presided by Albanians, no Albanians in the Macedonian army general staff or in the interior and foreign Ministries, and no region, where Albanians were the majority, had squares or street names in Albanian. In 1998, the deputy Minister of Defence and one of eight generals in the army were ethnic Albanians, but they were only 3% within the Ministry of Defence employees.²⁰⁰

In May 2000, the Parliamentary Commission on International Relations released a report that showed the breakdown of the ethnic workforces. In Macedonia the workforce is 84.5% ethnic Macedonian and 9.4% ethnic Albanians, while the potential ethnic Albanian work force is 18.5% of the total population. Most of ethnic Albanians work in agriculture and civil engineering.²⁰¹ Furthermore, Albanians were only 10% in the public sector. 40% of the conscripts were Albanians but only 5% at the military Academy. They made up 8% of the police forces.

¹⁹⁹ See *Macedonia's Ethnic Albanians Bridging the Gulf*, ICG Report, International Crisis group, August 2000, pp. 12, 13.

²⁰⁰ See *Hugh Poulton*, op. cit., p. 189.

²⁰¹ See *Macedonia's Ethnic Albanians Bridging the Gulf*, ICG Report, International Crisis group, August 2000, p. 18.

As regards political representation, ethnic Albanian parties had 25 seats out of 120, 26 municipalities out of 123, 5 ministries, 3 ambassadors, and other key roles within the governing apparatus.²⁰² In the municipality of Gostivar, where Albanians made up 64% of the population and Macedonians were only 17%, 78 out of 88 employees at the tribunal were Macedonians and only ten Albanians.

In the Gostivar town councillorships the proportion was the following:

- Defence: 8 Macedonians, 8 Albanians;
- Internal Affairs: 60 Macedonians, 8 Albanians;
- Finances: 52 Macedonians, 8 Albanians;
- Economy: 5 Macedonians, 6 Albanians;
- Agriculture: 9 Macedonians, 2 Albanians;
- Instruction: 4 Macedonians, 2 Albanians.

Within the Gostivar municipal bodies the proportion was the following:

- Body for the circulation of salaries: 25 Macedonians, 0 Albanians;
- Public Advocacy: 6 Macedonians, 0 Albanians;
- Fund for invalidity pensions: 42 Macedonians, 1 Albanian;
- Social services: 12 Macedonians, 2 Albanians;
- Employment office: 10 Macedonians, 2 Albanians;
- Body for the instruction: 5 Macedonians, 1 Albanian.

In Tetovo, where Albanians were some 86% of the population under their evaluations, only one public enterprise out of 120 was headed by an Albanian. In the hospital only 14.7% of the workers were Albanians and only 11% of the people who work at the Posts were of Albanian origin. In 1996, the internal town councillorship hired 38 people and only 3 of them were ethnic Albanians.²⁰³

However, it has to be noticed that on the one hand Macedonia's public administration needed to be reformed, because everything was overstaffed and inefficient. On the other hand, the education level of ethnic Albanians was still lower than the one of ethnic Macedonians. Increasing the number of workers would have

²⁰² See Francesco Strazzari, *Il triangolo macedone*, *Limes*, fascicolo 2, 2001, p. 32.

²⁰³ See Arian Konomi, *op. cit.*, pp. 303, 304.

certainly pleased Albanians' demands, but would not have been the right approach to solve the problem and could have provoked strong reactions by ethnic Macedonians.²⁰⁴

2.6.2.c) Access to media

Another sector in which Albanians were under-represented was the one of media.

The MTV strongly supported the governing coalition, but it reached a large audience because it was the only station that had a national diffusion. The others were private stations whose broadcasting was limited to Skopje and to the western Macedonian cities. "Skopje TV has only fifty-five minutes in Albanian per day, while of the sixty-four hours broadcast by all stations per day, only six are in Albanian."²⁰⁵ To compensate the situation, the Albanian radio in Tirana broadcasted five hours a day for Kosovo and Macedonian Albanians.²⁰⁶ Then an agreement was reached in order to extend the Albanian-language programmes to three hours a day from Monday to Saturday (one hour on Sunday) on national TV and eight hours a day on the radio.²⁰⁷ Nonetheless, in 1995, the two main independent TV stations, ERA TV and TV TOSCA had both been menaced to be closed. TV TOSCA had to cease to transmit Albanian news, while in ERA TV all programs had to be preceded by film clips of President Gligorov.

In 1998 the government issued new public concessions on frequency bands for television and radio stations, and all the Albanian-language stations, which were affiliated towards DPA, lost their licenses. Moreover, VMRO-DPMNE challenged the legality of public concessions granted to ethnic language networks, because this would have been a violation of the Constitution. The official language was actually only the Macedonian language. However, the Constitutional Court ruled that licenses issued to the networks did not violate the Constitution.

Flaka and Vellazerim was published only three times a week and was heavily subsidised by the State, while Albanians wanted it to be published every day. In 1998 they got their daily paper, Fakti, even though it was private. The Flaka and Vellazerimit' s editorial slant reflected the political ideas of the PDP, and gave more room to the more radical wing of DPA. Fakti tended to be critical of both the PDP and

²⁰⁴ See *Macedonia's Ethnic Albanians Bridging the Gulf*, ICG Report, International Crisis group, August 2000, p. 18.

²⁰⁵ Albanian radio, Tirana, 12 June 1993 in BBC SWB EE/1714 C1/22, 14, June 1993.

²⁰⁶ ATA, 12, June 1993 in BBC SWB EE/1716 B/1, 16, June 1993.

²⁰⁷ See Hugh Poulton, *op. cit.*, p. 188.

the DPA and was less pro-government and more independent.²⁰⁸ However, thanks to its previous close ties with the DPA, Fakti received some financial support, but not enough to pay the workers and to have a profit.²⁰⁹

2.6.2.d) The education issue

To increment the Albanian presence at the Skopje University, in 1997, the Macedonian parliament passed a law which introduced a system of affirmative actions. Many Albanians preferred not to take advantage of the quotas established to favour their access to the Macedonian university, because they were hoping for the legalization of the Tetovo University. There was however an increasing interest to send sons and daughters to the Skopje University from the most wellbeing Albanian families.²¹⁰

During the same year, Macedonians also decided to make some steps in order to find a compromise with Albanians. The parliament passed a law which allowed Albanians the use of the Albanian language to train their teachers within the Skopje Pedagogical Faculty. The decision was not at all appreciated by Macedonian students, which organized public protest demonstrations. Nothing was yet decided about the Tetovo University, and the declarations of the High Commissioner Max van der Stoel did not help at all to solve the issue. He just said that according to the international standards the state was not obliged to fund minority language education at the university level²¹¹, thus showing a big superficiality in dealing with such a complex phenomenon regarding the Albanian-Macedonian relationships.

²⁰⁸ See *The Albanian Question in Macedonia, Implications of the Kosovo Conflict for Inter-Ethnic Relations in Macedonia*, ICG Balkan Report n. 38, Skopje, Sarajevo, 11 August 1998, pp. 8-10.

²⁰⁹ See *Macedonia's Ethnic Albanians Bridging the Gulf*, ICG Report, International Crisis group, August 2000, p. 17.

²¹⁰ See Francesco Strazzari, *op. cit.*, p. 32.

²¹¹ See Hugh Poulton, *op. cit.*, p. 186

2.6.2e) The flag issue

Despite the many irregularities denounced by the defendant's lawyer and by many international organizations, the constitutional Court did not overturn the sentence regarding Osmani, and the appeal judges just decided to lower it to seven years that still was a very long period. Osmani began to serve its sentence on 10, April 1998 and from that moment he became a national hero for Macedonian Albanians which even organized a protest demonstration in Skopje, where around 5,000 people took part in. They felt themselves much more just Albanians than Macedonian citizens and the flag was the most evident symbol of their national identity.²¹²

In April 1998, the DPA direction had issued a directive appealing to its representatives to cease working in state institutions in order to protest against the arrests made in Gostivar and Tetovo on account of the flag incidents, especially for the hard sentence inflicted to Osmani. Thus, the mayors of Tetovo and other places had resigned. In May 1998 the DPA went as far as urging sanctions against Macedonia in case Osmani and the others had not been released and the result was clearly an increasing of the ethnic polarization.

The parliament, on 29, December 1998 passed an amnesty for 800 prisoners, among which Osmani and Demiri, but the President Gligorov refused to sign it by using its veto power, on 22, January 1999, thus provoking frustration within the ranks of ethnic Albanians.²¹³ However, on 4, February 1999, the parliament voted again and overcame Gligorov's veto, so that the law could come into force.²¹⁴

2.7)The Kosovo crisis

2.7.1) The relations between Kosovo Albanians and Macedonian Albanians

It was in 1995, after not to being invited to participate to the Dayton conference, where Kosovo Albanians decided to opt for more radical solutions. The KLA, Albanian radical party founded in the early 1990s, began to have the support of the Rugova's DLK.

The 1997 Albanian crisis and the weakness of its borders contributed to ease the possession of arms for Kosovo Albanians. Thus, in 1998, they were ready to begin

²¹² See Hugh Poulton, *op. cit.*, p. 190.

²¹³ See Hugh Poulton, *op. cit.*, pp. 197-199.

²¹⁴ See *Macedonia's Ethnic Albanians Bridging the Gulf*, ICG Report, International Crisis Group, August 2000, p. 16.

clashing with the Serbs in order to provoke their reaction and to attract the attention of the international community to the Kosovo issue.

Ten thousands of people took part in the protest demonstrations organized, in March 1998, by ethnic Albanians in Tetovo and Skopje, while only some thousands of people participated in Tirana. Even though in Albanian state Albanians are 80% out of 3.4 million of inhabitants, while in Macedonia they are just about 23% of the entire population, the links between Macedonian Albanians and Kosovo Albanians are definitely deeper. They all share the same language and the same traditions, and they all were within the socialist block during the cold war. However, Yugoslav socialism was much more open to the western countries than Albania, which totally isolated itself. Moreover, there were no internal borders between Macedonia and Kosovo during the communist regime and Macedonian Albanians still have many relatives in Kosovo. While Albanians have always been the majority in Albania, Kosovo Albanians and Macedonian Albanians have always shared the destiny of oppressed minority, except for a brief parenthesis between 1974 and the end of the communist regime. From 1990 Kosovo Albanians preferred to emigrate to Macedonia, where they found better economic conditions than in Albania. Finally Macedonian Albanian elite had studied in Pristina, fact that contributed to create among Albanian parties an homogeneous position towards Kosovo situation. Albanian parties in Albania, on the contrary, did not have a unitary line. While Berisha supported Rugova's shadow government even though without officially recognizing it, Fatos Nano adopted a more moderate policy towards Belgrad taking into account that an explicit support for Albanian rebels would have implied the accuse of irredentism.²¹⁵

2.7.2) The issue of refugees and the NATO campaign against Serbs

Kosovo crisis had very bad influence on Macedonian instable interethnic tensions.

In February 1998 Gligorov had announced that it was necessary to organize a humanitarian passage to allow 200,000-400,000 to have first aids and then be displaced to Albania, but until September 1998 continued to deny the presence of refugees within the Macedonian territory. The minister of Internal Affairs only declared that the number of Kosovo Albanian "guests" was around 12,000. Most of them did not request to get

²¹⁵ See Maria Koinova, *Gli Albanesi del Kosovo e la solidarietà dei loro connazionali*, 13-06-1998, pp. 1-4, in www.notizie-est.com/article.php?art_id=557

the refugee status fearing to be expelled from the country; many others simply did not feel the necessity to be recognized as refugees because they were effectively hosted by relatives. The situation was concerning, but the western countries, the representatives of international organizations and even the UNHCR representative were not willing to move a step without an explicit request from the Macedonian government which clearly did not want to deal with this issue just before elections.²¹⁶

Moreover, Macedonia concluded SOFA (the bilateral agreement which allowed US troops to deploy forces within Macedonian territory) and the command of the mission of aerial supervision will be lodged in the Kumanovo barracks. Before the October elections, president Gligorov said that a military involvement of the Macedonian Army should necessarily to be avoided, and the SDSM leader Crvenkovski, was seriously concerned that the NATO presence would constitute a big damage for his party.²¹⁷ His predictions turned to be correct, because the radical Macedonians clearly did not accept to help their enemies: the ethnic Albanians.

The NATO presence was one of the causes that led to the electoral defeat of SDSM. The decision was also strongly challenged by the Serb minority which organized many protest demonstrations.

However, the NATO mission continued and its troops even went to substitute the ones of UNPREDEP (UN Preventive Deployment) missions which had been present on the Macedonian territory since the beginning of the Yugoslav conflict. Actually the decision not to prolong the UNPREDEP had probably already been taken by the UN. The fact that the Macedonian government gave official recognition to Taiwan, challenged by Gligorov, clearly implied the China's veto within the Security Council and only eased the end of the UNPREDEP mission.²¹⁸

The long presence of NATO troops before the air strikes against Yugoslavia, which began in March 1999, definitely provoked a rise of mistrust from the part of the Macedonian and Serb population. Besides, the number of refugees drastically increased after the failure of the Rambouillet and Paris talks. On 22 March alone, around 2,500 Kosovo Albanians crossed the border with Macedonia, and within few days other

²¹⁶ See Ibrahim Mehmeti, *Gli ospiti del Kosovo in Macedonia*, 22, September 1998, pp. 1, 2, in www.notizie-est.com/article.php?art_id=148

²¹⁷ See Teofil Blazeski, *Forse sì, forse no*, 18, October, 1998, pp. 1, 2, in www.notizie-est.com/article.php?art_id=567

²¹⁸ See different authors, *Skopje, l'ONU, la NATO e la Russia*, 8, January, 1999, p. 1, in www.notizie-est.com/article.php?art_id=466

10,000 refugees entered Macedonia. The government had announced to be ready to host no more than 20,000 refugees, and to manage the situation even went so far as closing the border for Yugoslav citizens, on 23 March. However, in the evening, the decision was revoked.²¹⁹

The number of refugees continued to increase and on 17 May, the United Nations High Commissioner for Human Rights said that there were currently around 229,300 Kosovo refugees in Macedonia. There was a Humanitarian Evacuation Programme which however proceeded very slow, and the arrival of financial aid promised by many governments, the European Commission and other international institutions was slow too. The unemployment was 40-50% and the relations between Albanians and Macedonians risked becoming worse.²²⁰ Moreover, the finding of arms cache owned by the Kosovo Liberation Army in Macedonia, let Macedonians thinking that the Kosovo rebels were preparing to use Macedonia as an operational base to attack the Yugoslav forces and paramilitaries. Some reports also said that the KLA was recruiting fighters from among the ranks of the Kosovo Albanian refugees in Macedonia and even from among Macedonian Albanians.

Many were afraid that once Kosovo conflict had finished, the guerrillas would turn their attention to Macedonia with the support of the Macedonian Albanian population.²²¹ The Kosovo war fortunately did not spill over Macedonia, but the lesson for Albanian Macedonians was clear: the use of violence was the only mean to attract the attention of the international community.²²²

2.8) The 1999 crisis

2.8.1) Political instability

The November 1999 presidential elections also showed the instability of the government coalition. The frictions between the VMRO-DPMNE and the DA led the two parties to nominate two different candidates for the presidential elections. The

²¹⁹ See *Macedonia Update: Challenges and Choices for the New Government*, ICG Balkans Report n. 60, International Crisis Group, Skopje, Brussels, March 1999, p. 13.

²²⁰ See *Macedonia towards destabilization: the Kosovo crisis takes its toll on Macedonia*, ICG Europe Report n. 67, International Crisis Group, 27, May 1999, p. 78.

²²¹ See *Macedonia towards destabilization? The Kosovo Crisis takes its toll on Macedonia*, ICG Balkans Report n. 67, May 1999, p. 10.

²²² Victor Roudemetov, *op. cit.*, pp. 170, 171.

VMRO-DPMNE had sacked three judges of the State Electoral Commission (DIK), which were too close to the SDSM, and substituted them with retired judges.

The compromise was reached when the VMRO-DPMNE accepted the conditions imposed by the DA and replaced the undesired judges with other active judges. Moreover the DA had opposed the sale of a big Macedonian refinery (OKTA) to Greece, even though it finally accepted the decision. The VMRO-DPMNE had even put pressure on DA even through its member in the DIK which had not deemed eligible the DA candidate because of the lack of a constitutional requirement.²²³

Thus, the VMRO-DPMNE was obliged to ask Xhaferi to bring Albanian votes to its candidate at the second round of the elections. The DPA leader accomplished his role even too well, so that the number of ethnic Albanians who voted for the VMRO-DPMNE candidate was even higher of the one of Macedonian people who voted for him at the first round. The Supreme Court invalidated the results in about 230 precincts and ordered the re-run.

The final OSCE report stated that the campaign was generally well conducted in both rounds even though there were some incidents. During the first round the electoral process was conducted according to law and only some irregularities were observed in several polling stations. Nonetheless, during the second round many irregularities were reported in several polling stations in the west of the country and in the area around Skopje (where the re-run was ordered).

As regards the media coverage, the report said the situation was improved, and that most of the media treated candidates in an equal way. It also found media dedicated almost the same amount of time to all candidates, even though some of them were not impartial in the coverage, especially the public service, which was totally in the hands of the governing parties.²²⁴ The victory of the VMRO-DPMNE was de facto equal to a defeat because of the massive help given by the Albanian radical party. The relations between VMRO-DPMNE became more and more difficult, but the crisis was overcome thanks to the attribution to DA of some ministries. Moreover, that situation clearly advantaged the opposition party SDSM which maintained anti-Albanian positions. Crvenkovski was able to exploit the racist feelings always present within the ethnic

²²³ See *Macedonia: Gearing up for presidential elections*, ICG Balkans Report n. 77, International Crisis Group, Skopje, October 1999, pp. 11-13.

²²⁴ See Former Yugoslav Republic of Macedonia, Presidential Elections, www.osce.org/documents/odihr/2000/01/1400_en.pdf

Macedonians electors in order to be reconfirmed as head of the party. However, many young people protested against the anti-Albanian line followed during the presidential campaign, because it was clearly inconsistent with the UE expectations.

After the presidential elections DPA became more and more moderate so that Xhaferri even went so far as declaring in a Macedonian radio programme, that its party was definitely against federalization and secession from Macedonia. Actually Macedonians are very much concerned about the fact that federation would only be an anticipation of secession and to the creation of a Greater Albanian or a Greater Kosovo, so that they are not willing at all to accept it. Even though that territorial solution did not imply those extreme consequences, it would certainly broaden the already existent separation between the two ethnic communities by creating *de facto* two different entities.

2.8.2) The long-standing issue of the Tetovo university

Political crisis had relevant implications also in the developments of the education issue. The distance between the positions of the two major Albanian political parties had never been so evident. On the one hand, DPA even agreed with the Van der Stoel's last proposal for the solution of the Albanian higher education, which did not entail the recognition of the Tetovo University by the Macedonian state. On the other hand, the PDP and the Tetovo's rector, Sulejmani said that the only acceptable solution was to put the Tetovo University under the state protection with equal conditions compared to Skopje and Bitola Universities.²²⁵

On 25 July 2000 the Macedonian Parliament passed the law on higher education on the basis of the Van der Stoel's proposal. This proposal had many positive aspects: first of all it pleased Albanian claims to have an Albanian language university without obliging the Government to recognize the challenged Tetovo University. Nonetheless, the new "university" will not be a state funded university, thus could be registered as an official body of higher education (post diploma institution) but will not receive public financial support. One of the expert of the drafting Committee specified that there was a difference between support of private institutions and financing of them, thus it was possible that the state would finance programs or projects through private institutions.

²²⁵ See different authors, *Macedonia: le divergenze tra i politici albanesi*, 27, February 2000, pp. 1-3, in www.notizie-est.com/article.php?art_id=156

Another advantage, according to the Macedonian point of view, was that there would be the opportunity to put aside some radical professors which considered the Tetovo University more as a mean to spread their ideas than as a mean to safeguard the Albanian culture. Nonetheless, the law entailed also many gaps and lack of understanding for the Albanian situation. It was not possible that the ethnic Albanian community ignored the existence of the Tetovo University and accepted a new purified university far away from the centre in which Albanians were more numerous and dominated intellectual life and politics. Moreover, the proposal implicitly assumed that the only category of people who needed to be educated in the Albanian language were teachers for primary, secondary and post-diploma education and future employees of the public administration.

The other challenging point was the financing of the new “university”. Van der Stoel’ s idea was that foreign donors would manage to totally finance it for the first four years, and, after that first period, the state could have begun to give the university some funds.²²⁶

The construction of that kind of “university” within a short period of time would most likely have contributed to keep peaceful relationships between Macedonians and Albanians even though it was not the optimal solution.

2.8.3) Access to media

After the November 1999 political crisis, the governing coalition parties signed an agreement to reconfirm the alliance and in that occasion to assign to DPA the third channel (the one in Albanian language) of the Macedonian national television (MRTV). The DPA *de facto* enjoyed a political monopoly among ethnic Albanians because the weight of the radical party (PDP) has definitely diminished. The Albanian media were strictly controlled by the DPA and the news turned to be censored, so that even episodes of excessive violence against ethnic Albanians criminals were given less relevance than in ethnic Macedonians’ media. The other two channels of MRTV were assigned to Georgevski’ s VMRO-DPMNE, while Turpovski’ s DA got the publishing house Nova Makedonia, which published the homonym newspaper (the most sold in Macedonia) and many others newspapers.

²²⁶ See *Macedonia’s Ethnic Albanians: Bridging the Gulf*, ICG Balkans Report n. 98, International Crisis Group, Skopje, Washington, Brussels, August 2000, pp. 19, 20.

Around February 2000, the DPA succeeded in aligning both the Albanian newspaper to its political line. The DPA put under its control Flaka, and even Fakti which few months before was very critical against the DPA's positions. Actually, Fakti was obliged to change the editorial slant if it wanted to get some funds from the State.²²⁷

A new draft law on information was proposed by government on May 12 and was strongly criticized by the local journalists and international press groups. Actually, the proposal was to transform ethical standards for journalists into legal provisions regulated by the members of the government. Moreover it established that local journalists should obtain the government-issued press accreditation. The proposal was not voted, but the situation of the matter of freedom of expression was seriously disturbing. In June there even were confiscations of the Tirana-based daily newspaper Bota Sot in Tetovo and Gostivar. That newspaper tended to be very critical of the government and in late June had strongly criticized the DPA for not having fought to obtain the recognition of the Tetovo University²²⁸ Its production was also blocked for five days officially due to technical problems.²²⁹

2.9) The September 2000 local elections

The final report of the ODIHR/OSCE mission found that the 2000 local elections showed improvements in some areas, but did not respect many international standards set forth in the 1990 Copenhagen Declaration. The principal violations regarded the duty to ensure elections free from violence and intimidation, and the secrecy of the vote. A man even died due to the injuries provoked him during the Election Day. Moreover many ballot boxes were destroyed just before the count of the votes. There was a partial re-run in 35 municipalities.

As regards media, they gave accurate information about the election activities, developments and major political issues. However Macedonian national television dedicated 75% of the news coverage to the ruling parties and only 8% to the opposition parties.

²²⁷ See different authors, *Svendita dell'economia, crisi sociale e media imbavagliati: dove va la Macedonia?*, 14, February 2000, p. 2, in www.notizie-est.com/article.pho?art_id=609/

²²⁸ See *Macedonia 2000: Country Report*, p. 1, in www.cpj.org/attacks00/Macedonia.html

²²⁹ See Human Rights Watch World Report 2001: Macedonia : Human Rights Developments, p. 2, in www.hrw.org/wrkl/europe/macedonia.html

The opposition parties won about 38% of the mayoral vote, compared to 27% for the VMRO-DPMNE. DPA got around 13% and PDP around 6%. In the second round the ruling parties (VMRO-DPMNE and DA) won half of the mayoral vote. However, the towns in which they won were very little or in rural areas, while the opposition parties won the biggest cities, included the capital, Skopje. In the municipalities where ethnic Albanians constitute the majority of the population, DPA turned to be the winner party.

The violence exploded during the elections and the elections' results themselves were a sign of the great instability which the country was going through. Notwithstanding the participation of an Albanian party in the governing coalition, the level of tension between the two ethnic groups was growing due to all the unsolved issues I mentioned before. The armed conflict was latent and unfortunately would not be late in coming.²³⁰

²³⁰ See Former Yugoslav Republic of Macedonia, municipal elections 10, September 2000, in http://unpan.1.org/intradoc/groups/public/documents/UNTC/UNPAN_018345.pdf

Chapter three

The 2001 armed conflict and the Ohrid Agreements

3.1) Causes and development of the armed conflict

Besides all the problems I have already mentioned, there were three reasons that directly led to the break out of the Macedonian conflict.

First of all, the improved relationships between Macedonian and Serbian Government brought to the conclusion of the Agreement on the demarcation of the borders between the two countries. However, the Agreement did not at all take into consideration Albanians' position either in Yugoslavia or in Macedonia.

In the same period of time, the negotiations among NATO, Serbian authorities, and the Albanian rebels of southern Serbia (PMBLA) allowed the Serbian troops to enter the buffer zone (between southern Serbia and Kosovo), the access to which was them denied since 1999. The best and closer shell for the PMBLA rebels was definitely the area of northern Macedonia.

Furthermore, Kosovo rebels of KLA were temporary unemployed and the only thing they were able to do was fighting.

However, despite what Macedonian politicians maintained, the armed conflict was not totally due to external factors. Macedonian Albanians' demands remained unheard for more than ten years, and the only way to get their objectives and to mobilize the international community seemed to be violence.

The first episodes occurred in Tearce, close to Tetovo, in January 2001. NLA, a radical Albanian party created in early 2000, claimed three attacks against a police patrol and two police stations where four policemen lost their lives.

Those episodes were followed by an official *communiqué* whereof NLA explained it was fighting to liberate Albanian people. The Macedonian authorities interpreted that message as a desire for secession, but did not take seriously the NLA's menaces. The reason was quite simple: the VMRO-DPMNE needed the consent of the radical Albanian party to govern, thus it had to turn a blind eye to the arms trafficking led by several members of the DPA. Both the governing parties and the President of the Republic declared to be optimistic, but the situation would soon degenerate.

The NLA, after that disturbing first declaration, uphold it was fighting to get more rights for Albanians and not to pursue a territorial solution, otherwise they would lose the support of the international community. The fall of Milosevic and the victory of Rugova in the 2000 local elections implied that the international community did not any longer support the hypothesis of secession for Kosovo. It was thus very unlikely that the international community itself would accept such a solution for the Macedonian situation.

Nonetheless, the only way for Macedonian Albanians to reach their aim was still the armed conflict. From 12 February to 18 March, the conflict spread outside Tanusevci and reached the north area around Skopje.

The worsening of the situation led the two major Albanian parties to become reconciled: on 20 March they signed an agreement to pledge themselves to peace and to call NLA to lay down the arms.

The first reaction of the international community was unfortunately ambiguous and not coordinated. On the one hand, NATO deployed more tanks along the border between Kosovo and Macedonia to contain the violence and try to prevent the arms trafficking, and USA made declarations in support of the Macedonian government.

On the other hand, the EU and OSCE representatives, while appreciating the fact that Albanian parties had taken distance from the extremists, they were also against a strong military reaction from the side of the Macedonian Army.

On 18 March the Macedonian offensive, helped by NATO, took place after having issued an ultimatum to the rebels and having given civilians the time to evacuate. NLA was driven out of the Tetovo area and obliged to move to the northernmost part of the Country and to Kosovo.²³¹

During the European Council in Stockholm (24 March) the balanced views of the European Union were illustrated to President Trajkovski. According to those guidelines, Solana, the SC/HR led the EU crisis management in Macedonia. He visited the region many times and he also assigned to a diplomat from his Policy Unit the role

²³¹ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *Minority politics in Southeast Europe: Crisis in Macedonia*, The Ethnobarometer Working Paper Series, ETHNOBAROMETER, Rome, 2002, pp. 13-22.

of *liaison* person in Skopje, and sent EUMM observers to facilitate the political dialogue, even though not to be an active part of the negotiation process itself.²³²

Notwithstanding the efforts of the EU to prevent other strong offensives from the government forces, a violent operation was conducted against the rebels on 29 March along the northern border of Macedonia and in the Skopska Crna Gora mountains to the north of Skopje.

The position of the DPA became more and more difficult, so that it even threatened to quit the government if the Macedonian Army had continued to use excessive force. The DPA leader, Xhaferi pressed the international community to facilitate the reaching of a political solution by promoting the constitutional reforms claimed by the NLA and endorsed by the Albanian political parties.²³³

Since time was not ripe for the parties to reach an agreement, the EU decided to promote the signature of the Stabilization and Association Agreement²³⁴ as a framework for dialogue. This agreement, signed on 9 April, was used as a face saving strategy for the Slavs-Macedonians who were not willing to make any concessions to Albanians. Indeed, in order to meet the EU standards of democracy and rule of law, Macedonians and Albanians had to solve their interethnic problems.²³⁵

In early April the situation had definitely eased. Albanian extremists came back to the mountains close to the Kosovo border, the Macedonian army stopped the counter-offensive, KFOR improved the border control, and the talks began thanks to the efforts of the EU diplomacy.²³⁶

Nevertheless, immediately it became clear that the positions of the parties were irreconcilable above all in the matters of state structure. While Macedonians found the

²³² See Ulrich Schneckener, *Developing and applying EU crisis management: test case Macedonia*, ECMI working paper n. 14, European Centre for Minority Issues, Flensburg, January 2002, p. 31.

²³³ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, pp. 23, 24.

²³⁴ The Stabilization and Association Agreement is part of the broader Stabilization and Association Process, which conditionalities were defined by the European Council on 29, April 1997. The conditionalities included co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and regional co-operation. In the "Thessaloniki Agenda for the Western Balkans", adopted by the June 2003 European Council, the EU underlined that : "the pace of further movement of the western Balkan Countries towards the EU lies in their own hands and will depend on each country's performance in implementing reforms, thus respecting the criteria set by the Copenhagen European Council of 1993 and the Stabilization and Association Process conditionalities." Macedonian SAA was the first Balkan SAA which entered into force (on 1, April 2004). See *Communication from the Commission, Commission Opinion on the Application from the Former Yugoslav Republic of Macedonia for membership of the European Union*, Commission of the European Communities, Brussels, 9, November 2005, pp. 2, 3.

²³⁵ See Ulrich Schneckener, *op. cit.*, p. 31.

²³⁶ See Ulrich Schneckener, *op. cit.*, p. 32.

only viable solution to be the construction of a multi-ethnic state, Albanians seemed to prefer the bi-national solution. The talks did not get any results even because the NLA was excluded from the discussion.

The fights continued and in May they extended from the Tetovo area to the Kumanovo area and the 3 May Macedonian offensive brought the first civilian victims.²³⁷

It was right in that moment that the EU began to team with NATO, which in this phase became more involved in the crisis management. Solana and the NATO secretary general Robertson met several times with both the Slav-Macedonians and the Albanian leaders and soon became *de facto* negotiators. Their efforts were decisive to avoid the risk of the outbreak of a widespread civil war.²³⁸ Actually, they succeeded in convincing the parties to create the “national unity” government made up by all the political parties (8 May). It was the first time when the political accommodation of the conflict was taken seriously into consideration. The coalition, notwithstanding internal conflicts, managed to uphold mainly because there was the feeling, shared by the international community, that things cannot get worse. Moreover, Solana came to Skopje whenever the coalition seemed to be in crisis. Finally, the president of the Republic played also a meaningful role by minimizing differences and by reminding that a civil war would constitute the end of the young Macedonian state.

In late May, in Prizren, the two Albanian political parties and the NLA signed an agreement, which was secretly negotiated by Robert Frowick, an American OSCE official in Skopje. It was a very bad move. When Macedonians heard about that event, they felt betrayed by the two Albanian parties which were at the time part of the governing coalition. The armed fights did not stop and mistrust between the parties was growing and growing.

Then the conflict reached Aracinovo which is located into a strategic position, being very close to the international airport at Petrovec, to the only oil refinery in the country and to the capital, Skopje. The international community feared for the consequences of a decisive attack of the Macedonian forces over the peace process and wanted to avoid the internationalization of the conflict, which was on the other hand the aim of the NLA. The only way to ensure the continuation of the smooth Kosovo

²³⁷ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, pp. 25-27.

²³⁸ See Ulrich Schneckener, *op. cit.*, p. 32.

operation was to keep Macedonian conflict as a domestic matter. Thus, as soon as the NLA agreed to move out of Aracinovo, Trajkovski, NATO, and the EU, negotiated the withdrawal of the rebels.

About 200 fighters, together with about 200 non combatants, were transported in US/KFOR and commercial buses to the village of Nikustak, held by NLA, to the north and the extremists were even allowed to keep all their weapons. It was the first time, during the conflict that the international community legitimized the NLA. The cease fire was reached and the dialogue could continue. Nonetheless Macedonians were totally unsatisfied of the result of the operation and felt betrayed mainly by the US who had accepted an agreement which undermined the sovereignty of the State. They even organized protest demonstrations in the capital against both their president and the United States.²³⁹ Actually, it was right the role of the US in the operation of withdrawal, which remained unclear and strengthened the idea of the “conspiracy theory” supported by Macedonian nationalists. The ambiguous position of the US was also confirmed by the will of the OSCE special envoy, the American diplomat Frowick who advocated direct contacts with NLA, in order to obtain the amnesty for the rebels in return for an immediate cease-fire.²⁴⁰

Fortunately, by the end of June the international actors were able to develop a unitary strategy in order to avoid a direct NATO intervention and to get a political settlement. James Pardew (former US ambassador, now special envoy to Skopje) and François Leotard (former French Defence Minister, now the EU special representative for Macedonia). Their final aim was to reach a comprehensive agreement. On 5 July a cease-fire was signed and talks began. The EU and US mediation team were supported by many legal experts, the most important of them was Robert Badinter, who had chaired the EU commission of experts in the former Yugoslavia’s issues. On 7 July the international mediators were thus able to propose the Framework Document to the conflicting parties, which during the negotiations was amended several times and specified by annexes.²⁴¹

²³⁹ See Maria-Eleni Koppa, *Ethnic Albanians in the Former Yugoslav Republic of Macedonia: Between Nationality and Citizenship*, in *Nationalism & Ethnic Politics*, Vol. 7, no. 4, Winter 2001, Frank Cass ed., London, 2001, p. 57.

²⁴⁰ See Ulrich Schneckener, *op.cit.*, p. 33.

²⁴¹ See Ulrich Schneckener, *op. cit.*, p. 35.

Notwithstanding the efforts of the international community to reach a definite agreement, the peace process turned to be very difficult. The 5 July cease-fire was many times violated by the NLA so that Macedonians thought it was a measure that advantaged only the Albanian side. The day before the Ohrid Agreements were concluded, the Macedonian government was even obliged to declare a unilateral cease-fire, “in order to give peace a chance”.²⁴²

3.2) The Ohrid Framework Agreement

The agreements between the leaders of the legal Albanian parties (Xhaferi and Imeri) and the major Slav Macedonian parties (Georgevski and Crvenkovski) were finally signed on 13 August. James Pardew and Francois Leotard participated at the conference, officially as mere witnesses, but they were clearly more than that, given that they largely contributed to the reaching of the agreement and to determine its content²⁴³

The Framework Agreement is made up of a preamble and three main sections namely: cessation of hostilities, decentralization of the State, non-discrimination and equitable representation. The Agreement entails also three annexes, which are integrant part of the agreement itself: A)Constitutional Amendments; B)Legislative Modifications; C)Implementation and Confidence-Building.

3.2.1) Preamble and basic principles

The preamble underlines that the Agreement is aimed to ensure the future of Macedonia’s democracy and to allow the development of closer and more integrated relations with the Euro-Atlantic community. It also emphasizes that the Agreement will promote the peaceful and harmonious development of civil society, but at the same time it stresses the need to respect the ethnic identity and the interests of all Macedonian citizens.²⁴⁴ These principles will be reflected in the preamble of the Constitution of the Republic of Macedonia, which according to annex A will make reference to the citizens of the Republic of Macedonia, and will also stress the value of the coexistence.

The basic principles reflect the ambivalence which will characterize the whole text of the Agreement. Actually, they point out that the use of violence in pursuit

²⁴² See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 39.

²⁴³ See Ulrich Schneckener, *op. cit.*, p. 35.

²⁴⁴ For the English text of the Framework Agreement, see for instance, http://www.uni-wuerzburg.de/law/mk00000_.html

political aims is prohibited and that Macedonia's sovereignty and territorial integrity must be guaranteed. They insist on the idea that the unitary character of the State is inviolable and must be preserved and that there are no territorial solutions to the ethnic issues. At the same time, however, they declare that the multi-ethnic character of the Macedonian society must be preserved and reflected in public life, and that the development of local self-government is essential for encouraging the participation of citizens in democratic life, and for promoting respect for the identity of communities.

3.2.2) Cessation of hostilities

The section dealing with the cessation of hostilities establishes that there shall be a complete and voluntary disarmament and disbandment of the ethnic Albanian armed groups. Even though the text of the Agreement does not make reference to the time frame in which the operations had to be accomplished, the conditions established by the NATO forces, which had to assist the operations themselves, provided that this process should have been parallel to the one of the adoption of the constitutional amendments necessary to ratify the Agreement itself.²⁴⁵

3.2.3) Development of Decentralized Government

Section 3.1 provides the adoption of a revised Law on Local Self-Government, given that the territorial autonomy could not be realized according to the basic principles.

The law will have the objective of reinforcing the powers of elected officials and of enlarging substantially their competencies in conformity with the revised text of the Constitution. Actually, according to annex A, art. 115 (1) will provide that in units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.

The revised Law on Local- Self Government shall also be consistent with the European Charter on Local Self Government and reflect the principle of subsidiarity in effect in the European Union.

²⁴⁵ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 55.

The fields in which the competences will be enhanced by the law are: the areas of public services, urban and rural planning, environmental protection, local economic development, local economic development, culture, local finances, education, social welfare and health care.

Annex B, which lists the implementing laws, confirms the duty to pass the revised Law on Local-Self Government and specifies that Assembly shall adopt the law within 45 days from the signing of the Framework Agreement. It also underlines that this law shall in no respect be less favourable to the units of local self-government and their autonomy than the draft Law proposed by the Government of the republic of Macedonia in March 2001.²⁴⁶ Moreover, annex B provides that the competences above mentioned shall be added as independent competencies of the units of local self-government. The law shall also conform to the discipline of the official language of the municipalities, described below.

In addition, the Agreement establishes that a law on financing of local self-government will be adopted to ensure an adequate system of financing to enable government to fulfil all of their responsibilities under the revised Law on Local Self-Government. Item 2 of annex B specifies that the law shall be adopted by the end of the Assembly term. The law shall enable and make responsible units of local self-government for raising a substantial amount of tax revenue; provide for the transfer to the units of local self-government of a part of centrally raised taxes that corresponds to the functions of the units of local self-government and that takes into account of the collection of taxes on their territories; and ensure the budgetary autonomy and responsibility of the units of local self-government within their areas of competence.

Moreover, section 3.2 states that the borders of municipalities should be revised within one year of the completion of a new census, which will be conducted under international supervision by the end of 2001. The operation of revising the borders will be effectuated by the local and national authorities with international participation.

²⁴⁶ That draft proposed the extension of local competences in the field of social protection of the population (social assistance to the poor and socially endangered, lodging and care for the elderly, shelter, care and education for orphans). Municipalities were entitled to establish and finance the construction and maintenance of facilities in the fields of preschool education, culture, sport, social security and child care, protection of animals and plants, protection and promotion of made environment, etc. Municipalities could also make decisions on urban planning, conditions for construction and general planning without requiring the consent of state urban planning. See Ilija Todorovski, *Local Government in Macedonia, in Local Government in Central and Eastern Europe*, chapter 6, p.217, in www.lgi.osi.hu/publications/2002/81/Stab-Macedonia.pdf

Annex B establishes that also in this field the Assembly shall pass a law. The revised Law on Municipal Boundaries shall be adopted by the end of 2002, taking into account the results of the census and the relevant provisions set forth in the Law on Local-Self Government.

Item 4 of annex B specifies that the parties shall invite the international community to assist in the process of strengthening of the local self-government. The international community should in particular assist in preparing the necessary legal amendments related to financing mechanisms for strengthening the financial basis of municipalities and building their financial management capabilities, and in amending the law on the boundaries of municipalities.

Section 3.3 of the main text of the Agreement addresses another important issue: the need to establish a local police. In order to ensure that police are aware of and responsive to the needs and interests of the local population, the local heads of police will be selected by the municipal councils from among the lists of candidates proposed by the Ministry of Interior, and will communicate regularly with the councils. The Ministry of Interior will retain the authority to remove the local heads of police in accordance with the law.

According to these principles, annex B maintains that the Assembly shall pass the Law on the Police Located in the Municipalities, before the end of its term. The law shall define the procedure of selection of the local head of police. The selection will be made by the council of the municipality choosing from a list of not less than three candidates proposed by the Ministry of the Interior, among whom at least one candidate shall belong to the community in the majority in the municipality. In the event the municipal council fails to select any of the candidates proposed within 15 days, the Ministry of the Interior shall propose a second list of not less than three new candidates, among whom at least one candidate shall belong to the community in the majority in the municipality. If the municipal council again fails within 15 days, the Minister of the Interior, after consultation with the Government, shall select the local head of police from among the two lists of candidates proposed by the Ministry of the Interior as well as three additional candidates proposed by the municipal council.

Moreover, the law shall provide that each local head of the police informs regularly and upon request the council of the municipality concerned, that the municipal

council may give recommendations to the local head of police in such areas as public security and traffic safety. Finally, the municipal council may adopt a report regarding the matters of public safety, which shall be addressed to the Minister of the Interior and to the Public Attorney (Ombudsman).

3.2.4) Non-discrimination and equitable representation

Section 4.1 begins with the declaration that the principle of non-discrimination and equal treatment of everybody under the law will be respected completely and that it will be applied especially in public administration, public enterprises and access to public financing for business development.

It follows an explanation of how the principle should concretely work. Section 4.2 states that laws regulating employment in public administration will include measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies. Nonetheless, the rules concerning competence and integrity that govern public administration should be respected. The authorities will take action to correct present imbalances in the composition of the public administration, in particular through the recruitment of members of under-represented communities. Particular attention will be given to ensuring as rapidly as possible that the police services will generally reflect the composition and the distribution of Macedonia.

Annex B, item 5 establishes that the Assembly shall adopt by the end of the term of the present Assembly amendments to the laws on the civil service and public administration to ensure equitable representation of communities according to the principles above mentioned.

Annex C, item 5.2, specifies the concrete measures to be taken to implement the principle of equitable representation in the police. As initial step towards this end, the parties commit to ensure that 500 new police officers from communities not in the majority in the population of Macedonia will be hired and trained by July 2002, and that these officers will be deployed to the areas where such communities live. The parties further commit that another 500 such officers will be hired and trained by July 2003, and that these officers will be deployed on a priority basis to the areas throughout Macedonia where such communities live.

Annex C, item 5.3, emphasizes the role that the international community shall assume in the screening and selection of candidates and their training. The OSCE, the European Union, and the United States are invited to send an expert team as quickly as possible in order to assess the best ways to achieve these objectives.

The OSCE, the European Union, and the United States are especially invited to help training and assistance programs for police, including cooperation with respect to transition planning for hiring and deployment of police officers from communities not in the majority of the population of Macedonia.

Another field in which the international community is invited in the cooperation is the training of lawyers, judges and prosecutors from among members of the communities not in the majority in Macedonia in order to be able to increase their representation in the judicial system.

Section 4.3 of the Ohrid Agreement refers to the revised procedures provided for the election of one third of the members of the Constitutional Court, three members of the Judicial Council, and for the Public Attorney (Ombudsman). In these cases there should be the majority of the total number of Representatives, but this majority should also entail the majority of the total number of Representatives claiming to belong to the communities not in the majority of the population of Macedonia. According to annex A, articles 77, 104 and 109, shall be amended and will entail the above mentioned procedure.

There is an other organ in which the equitable representation will be ensured: the Security Council. According to annex A, art 86 will establish that the Security Council²⁴⁷ of the Republic is composed of the President of the Republic, the President of the Assembly, the Prime Minister, the Ministers heading the bodies of state administration in the fields of security, defence and foreign affairs and three members appointed by the President of the Republic. In appointing the three members, the President shall ensure that the Security Council as a whole equitably reflects the composition of the population of Macedonia.

Furthermore, according to annex A, Art. 78 will maintain that the Assembly shall establish a Committee for Inter-Communities Relations. The Committee will consist of seven members each from the ranks of the Macedonians and Albanians within

²⁴⁷ The Security Council considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.

the Assembly, and five members from among the Turks, Vlachs, Romanies and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly. The Assembly will elect the members of the Committee. The role of the Committee will consist in considering issues of inter-community relations in the Republic and in making appraisals and proposals for their solution, which the Assembly is obliged to take into consideration.

Moreover, in the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2)²⁴⁸, the Committee shall decide by majority vote whether to apply that procedure.

Furthermore, to ensure the respect of the principle of non-discrimination and equitable representation, annex B, item 9, also provides that the Assembly shall pass a revised Law on the Public Attorney, as well as amend the other relevant laws concerning this subject, by the end of 2002. These measures shall ensure that the Public Attorney shall undertake actions to safeguard the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life, and that there are adequate resources and personnel within his office to enable him to carry out his functions, the establishment of decentralized offices of the Public Attorney. The Public Attorney shall present an annual report to the Assembly and, where appropriate, may upon request present reports to the councils of the municipalities in which the decentralized offices are established. Furthermore the budget of the Public Attorney shall be voted separately by the Assembly. Annex B stresses that the new legislation shall enlarge the powers of the Public Attorney in order to grant him access to and the opportunity to examine all official documents, even though the Public Attorney and his staff will not disclose any confidential information; to enable the Public Attorney to suspend, pending a decision of the competent court, the execution of an administrative act, if he determines that the act may result in an

²⁴⁸ Art. 69 (2) of the Constitution of the Republic of Macedonia shall read as follows: "For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the Application of this provision, the Committee on Inter-community Relations shall resolve the dispute."

irreparable prejudice to the rights of the interested person; and to give to the Public Attorney the right to contest the conformity of laws with the Constitution before the Constitutional Court.

Another field in which the principle of non-discrimination and equitable representation will be applied is the field of elections. Actually Annex B, item 6 states that the Assembly shall adopt, by the end of 2002, a revised Law on Electoral Districts, taking into account the results of the census and the principles established in the Law on the Election of Members for the Parliament. Annex C, item 2, establishes that both the census and the elections will be monitored by the international community (Council of Europe, European Commission and OSCE).

3.2.5) Special Parliamentary Procedures

Section 5.1 provides for a particular procedure to amend the Constitution, in the matters referred to in Annex A (the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109²⁴⁹, as well as a decision to add any provision relating to the subject matter of such provisions and articles) and to pass the Law on Local Self-Government. In these cases there must be a qualified majority of two-thirds of the votes, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority of the population of Macedonia. According to annex A, this procedure shall be mentioned in the revised texts of Art. 131, regarding the amendment of the Constitution, and in Art. 114 (5) first part, concerning the discipline of the approval of the Law on Self-Government.

Furthermore, the double majority procedure (“a majority vote of the representatives attending, within there must be a majority of the votes of the

²⁴⁹ Art. 7 concerns the use of languages; Art. 8 lists the fundamental values of the Republic of Macedonia, included the basic freedoms and rights of the individual and citizen recognized by international law and set down in the Constitution, the free expression of national identity and the rule of law; Art. 9 entails the principle of formal equality; Art. 19 refers to the freedom of religious confession; Art. 69 concerns the special legislative procedure in matters of local interest; Art. 77 concerns the special procedure to elect the Ombudsman and his/her functions; Art. 78 concerns the composition and the role of the Committee on Inter-Community Relations; Art. 86 concerns the composition and the role of the Security Council; Art. 104 refers to the special procedure of election of 3 members of the Judicial Council and his/her role; finally Art. 109 concerns the special procedure of election of 1/3 of the members of the Constitutional Court.

representatives attending who claim to belong to the communities not in the majority in the population of Macedonia”) shall be applied, according to section 5.2, to the approval of laws that directly affect culture, use of language, education, personal documentation, and use of symbols. This provision, according to annex A, shall be embodied in the revised text of Art. 69. This Article shall also specify that in the event of a dispute within the Assembly regarding the Application of this provision, the Committee on Inter-community Relations shall resolve the dispute. The same procedure will be applied to the adoption of laws on local finances, local elections, the city of Skopje, and boundaries of municipalities, and will be embodied in Art. 114 (5), second part, of the revised text of the Constitution.

3.2.6) Education and the Use of Language

As regards primary and secondary education, section 6.1 provides that education will be provided in the students’ native language. However uniform standards for academic programs will be applied throughout Macedonia. This principle shall be embodied, according to annex A, in Art. 48 (4) of the Constitution, which will read as follows: “Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.”

With respect to university instruction, section 6.2 provides for the possibility of establishing State funded universities where education will be carried out in languages other than Macedonian, which should be spoken, however, by at least 20 percent of the population of Macedonia.

Furthermore, in order to ensure that the enrolment at state universities reflects equitably the composition of the population of Macedonia, section 6.3 states that the principle of positive discrimination will be applied. Annex C, item 6 specifies that the parties invite the international community to provide assistance for the implementation of the Framework Agreement in the area of higher education.

Section 6.4 maintains that the official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language.

Section 6.5 states that any other language spoken by at least 20 percent of the population is also an official language as set forth in the following provisions. In the

organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law, as further elaborated in Annex B. Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality: such an office will reply in that language in addition to Macedonian. Any person may use any official language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government which will reply in that language in addition to Macedonian.

Section 6.6 provides that with respect to local self-government, in municipalities where a community comprises at least 20 percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian. As regards the languages spoken by less than 20 percent of the population of the municipality, the local authorities will decide democratically on their use in public bodies.

Section 6.7 establishes that in criminal and civil judicial proceedings at any level, an accused person or any party will have the right to translation at State expense of all proceedings as well as documents in accordance with relevant Council of Europe documents.

Finally section 6.8 states that the use of language in personal documents any official personal documents of citizens speaking an official language other than Macedonian will also be issued in that language, in addition to the Macedonian language, in accordance with the law.

According to annex A, all the above stated provisions shall be entailed in the revised text of Art. 7 of the Constitution. Furthermore, according to annex B Item 7, the Assembly shall amend, by the end of the term of the present Assembly, its Rules of Procedure to enable the use of the Albanian language.

According to annex B, item 8, the new laws pertinent to the use of languages shall provide that: representatives may address plenary sessions and working bodies of the Assembly in languages refereed to in Article 7, paragraphs 1 and 2 of the Constitution, that laws shall be published in the languages referred to in Article 7, paragraphs 1 and 2 of the Constitution and that all public officials may write their names in the alphabet of

any language referred to in Article 7, paragraphs 1 and 2 of the Constitution on any official documents. The Assembly shall also adopt by the end of its term the new legislation on the issuance of personal documents.

According to annex B, item 8, the Assembly shall approve by the end of its term, all relevant laws to make provisions on the use of languages fully compatible with the entire Section 6 of the Framework Agreement.

3.2.7) Expression of Identity

This section maintains that next to the emblem of the Republic of Macedonia, the local authorities will be free to place on front of local public buildings the emblems marking the identity of the community in the majority in the municipality, respecting international rules and usages.

Moreover, according to annex A, Art. 48 shall be amended as follows: “(1)Members of communities have the right to freely express, foster and develop their identity and community attributes, and to use their community symbols. (2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities. (3) Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.”

In order to promote the culture of communities, annex C, item 6 provides that: the parties invite the international community, including the OSCE, to increase its assistance for projects in the area of media in order to further strengthen radio, TV and print media, including Albanian language and multiethnic media. The international community is also invited to increase professional media training programs for members of communities not in the majority in Macedonia.

In addition, according to annex A, Art. 56 should address the protection, promotion and enhancement of the historical and artistic heritage of Macedonia and all communities in Macedonia and the treasures of which it is composed, regardless of their legal status. The law has to regulate the mode and conditions under which specific items of general interests for the Republic can be ceded for use.

With respect to a specific expression of identity, which is the freedom of religion confession, art. 19 will confirm that the freedom of religious confession is

guaranteed and that the right to express one's faith freely and publicly, individually or with others is guaranteed. Art. 19 will also maintain that the Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Islamic religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are separate from the state and equal before the law. Finally, Art. 19 shall provide that the Macedonian Orthodox Church, the Islamic Community in Macedonia, the Catholic Church, and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.

3.2.8) Implementation

This section explains the process of implementation of the Agreement. It establishes that the Constitutional amendments attached at Annex A will be presented to the Assembly immediately and that the parties will take all measures to assure adoption of these amendments within 45 days of signature of this framework Agreement.

The legislative modifications indicated in Annex B shall also be adopted within the same period of time. It should be stressed that Annex B also entails a final clause which imposes to the Assembly to adopt not only the laws expressly mentioned in the annex, but shall also enact all legislative provisions that may be necessary to give full effect to the Framework Agreement and amend or abrogate all provisions incompatible with the Framework Agreement.

This section of the Framework Agreement also emphasizes the need that the international community convenes at the earliest possible time a meeting of international donors that would address in particular macro-financial assistance; support of the financing measures to be undertaken for the purpose of implementing this Framework Agreement, including measures to help the rehabilitation and reconstruction in areas affected by the fighting. In particular annex C section 3 Item 1 provides that the parties invite the international community to facilitate, monitor and assist in the implementation of the provisions of the Framework Agreement and its Annexes, and request such efforts to be coordinated by the EU in cooperation with the Stabilization and Association Council. It also establishes that all parties will work to ensure the return of refugees who are citizens or legal residents of Macedonia and displaced persons to

their homes within the shortest possible timeframe, and invite the international community and in particular UNHCR to assist in these efforts.

Annex C also provides that the Government with the participation of the parties will complete an action plan within 30 days after the signature of the Framework Agreement for rehabilitation of and reconstruction in areas affected by the hostilities. The international community is invited to assist in the formulating and implementation of this plan. Furthermore the European Commission and the World Bank are invited to rapidly convene a meeting of international donors after adoption in the Assembly of the Constitutional amendments in Annex A and the revised Law on Local Self-Government to support the financing of measures to be undertaken for the purpose of implementing the Framework Agreement and its Annexes, including measures to strengthen local self-government and reform the police services, to address macro-financial assistance to the rehabilitation and reconstruction measures.

Finally, annex C, item 6 emphasizes that OSCE is invited to continue its efforts on projects designed to improve inter-ethnic relations.

3.3) Constitutional amendments

The Framework Agreement had established that the process of disarmament and the one of constitutional amendment had to proceed parallel. Nevertheless, while the disarmament process successfully ended by the end of September, the negotiations to reach an agreement for the constitutional amendments continued for other two months.

On 27 September the NATO Operation Essential Harvest was substituted by the Operation Amber Fox (700 men) which task was to assist OSCE and EU monitors.²⁵⁰

However, the security situation was still unstable so that on 31 October in Skopje there was even an explosion of a bomb probably aimed to block the debate on constitutional amendments, and there was the risk that the Albanian rebels took the arms again.

It was not so easy for the international mediators (Solana, Pardew and Robertson) to conciliate the diverging interests of ethnic Albanians and ethnic Macedonians, but they finally succeeded in their objective. On Friday, 16 November the Macedonian Parliament finally ratified the Ohrid Agreement and approved all the 15

²⁵⁰ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 102.

amendments set forth in Annex A, even though with some tricks to make it possible the compromise between the two parties.

Amendment IV: “The citizens of the Republic of Macedonia, the Macedonian people, as well as those citizens who live within the borders of the Republic of Macedonia and are members of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Roma people and other peoples take on themselves the responsibility for the present and the future of their fatherland..”

Amendment V(Art. 7): “(1) The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia. (2) Any other language spoken by at least 20% of the population is also an official language, written using its alphabet, as specified below. (4) Any person living in a unit of local self-government in which at least 20% of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government which shall reply in that language in addition to Macedonian. (5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law. (6) In the units of local self-government where at least 20% of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and its Cyrillic alphabet. With respect to languages spoken by less than 20% of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

Amendment VI (Art. 8): “ (1) The fundamental values of the constitutional order of the Republic of Macedonia are: the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution; equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life;

Amendment VII (Art. 19): “(1) The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical Methodist Church, the Jewish Community and the other Religious communities and

groups are separate from the state and equal before the law. (2) The right to express one's faith freely and publicly, individually or with others is guaranteed. (3) The Macedonian Orthodox Church, as well as the Islamic religious Community in Macedonia, the Catholic Church, Evangelic Methodist Church, Jewish Community and other Religious communities and groups are separate from the state and equal before the law."

Amendment VIII (Art. 48): "(1) Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols. (2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities. (3) Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity. (4) Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied."

Amendment IX (Art. 56.2): "The republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of Macedonia and all communities in Macedonia and the treasures of which it is composed, regardless of their legal status. The law regulates the mode and conditions under which specific items of general interest for the Republic can be ceded for use.

Amendment X (Art. 69.2): "For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the Application of this provision, the Committee on Inter-community Relations shall resolve the dispute."

Amendment XI (Art. 77.1, 2): "(1) The Assembly elects the Public Attorney by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. (2) The Public Attorney protects the constitutional rights of citizens when violated by bodies of state

administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.”

Amendment XII (Art. 78.1, 2) : “(1) The Assembly elects the Public Attorney by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. (2) The Public Attorney protects the constitutional rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.” The Committee for Inter-Ethnic Relations consists of nineteen members of whom seven each are from the ranks of the Macedonians and the Albanians within the Assembly, and a member each from among the Macedonian Turks, Vlachs, Romas, Serbs, and Bosniaks.” (3)The Assembly elects the members of the Committee. (4) The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution. (5) the Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them. (6) In the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies.

Amendment XIII (Art. 84): “The President of the Republic of Macedonia... .proposes the members of the Council for Inter-Ethnic Relations”

Amendment XIV (Art. 86): “ (1)The President of the republic is President of the Security Council of the Republic of Macedonia.

(2) The Security Council of the Republic is composed of the President of the republic, the president of the Assembly, the prime Minister, the Ministers heading the bodies of state administration in the fields of security defence and foreign affairs and three members appoints by the President of the Republic. In appointing the three members, the President shall ensure that the Security Council as a whole equitably reflects the composition of the population of Macedonia.

(3) The Council considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.”

Amendment XV (Art. 104): (1) The Republican Judicial Council is composed of seven members. (2) The Assembly elects the members of the Council. Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia....”

Amendment XVI (Art 109) : “(1) The Constitutional Court of Macedonia is composed of nine judges; (2) The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.”

Amendment XVII (Art. 114): (5) “Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. The laws on local finances, local elections, boundaries of municipalities, and the city of Skopje shall be adopted by a majority of the votes of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia.”

Amendment XVIII (Art. 115) shall also be modified as follows:

(1) “In units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.”

Amendment XIX (Art. 131) shall be amended in this way:

“(1) The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of representatives;
(2) The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate; (3) The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives; (4) A decision to amend the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109, as well as a decision to add any provision relating to the subject matter of such provisions and articles, shall require a two-thirds majority vote of the total number of representatives claiming to belong to the communities not in the majority in the population of Macedonia. (5) The change in the Constitution is declared by the Assembly.”

3.4) Implementation of the Framework Agreement

The Macedonian parliament has at the time passed approximately 70 implementing laws in order to conform the legislative system to the principles set forth in the Ohrid Agreement²⁵¹

3.4.1) Development of Decentralized Government

According to items 1, 2, 3 and 4 of Annex B, and to Art. 114 of the Constitution, amended according to annex A, the Macedonian Parliament promulgated a set of laws which were aimed to enhance the competences of the units of local self-government, to increase the financial autonomy of the units themselves, and to redefine the boundaries of the municipalities.

The *Law on Local Self-Government*²⁵² was adopted on 24, January 2002, late compared to the time framework established in annex C, which had provided the approval of this law within 45 days from the signature of the Agreement itself. The law regulates: competences of the municipality, direct participation of the citizens in the

²⁵¹ *Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union*, Commission of the European Communities, Brussels, 9, November 2005, p. 12.

²⁵² See Official Gazette of the Republic of Macedonia, n. 5/2002.

decision-making, organization and the work of the organs of municipal organs, dismissal of the municipal council, mechanisms of cooperation between municipalities and the Government of the Republic of Macedonia; local self-government, protection of local self-government, determination of official languages of municipalities and other matters of importance to local self-government.

The most meaningful provisions are the ones concerning with the enhancement of the competencies of the municipalities and with the official language within the municipalities. The law explicitly makes reference to the principle of subsidiarity, and states that municipalities, within the legal framework, shall have the right to perform activities of local importance on their territory that are not excluded from their competency or are not under the competency of the organs of the state administration. (Art. 20) It also establishes that the competences allocated to the municipalities by this law or other laws are independent competences and that municipalities are responsible for their performance. The law also stresses that the competences are exclusive and cannot be taken away or annulled, except in cases determined by law. (Art. 21) Art. 22 establishes, according to the Framework Agreement, that the powers of the municipalities would be in the field of: urban planning, local economic development, culture, social welfare, education (establishing and financing administering of primary and secondary schools in cooperation with the central government in accordance with law). It also allocates to the municipalities competences in the field of communal activities, sport and recreation, child protection, supervision over the competence of activities from under municipality competence. Other competences can be allocated to the municipalities by law.

The mentioned competencies shall be performed in accordance with the standards and procedures established by law.

Art. 55 provides the establishment of the Committee for Inter-Community Relations in the municipalities in which more than 20% of the total number of inhabitants of the municipality determined at the last census are members of a certain community. The Committee shall be composed of an equal number of representatives of each community present in the municipality. It shall monitor the relations among communities represented in the municipality and shall give opinions and propose ways for resolving the problems among the different ethnic groups. The municipal council

shall then be obliged to review the opinions and proposals and to make a decision regards them.

Another meaningful section is section IX, which deals with the supervision over the operation of the municipal organs. The supervision over the legality shall be performed by the ministry responsible for the performance of functions related to local self-government; the supervision over the financial operations shall be performed by the State Audit Bureau; and the supervision over the delegated competencies shall be performed by the organ of the state administration whose competencies are delegated to the municipalities. (Art. 70) However the procedure of supervision over the legality shall be started by the Mayor, which shall be obliged, within 10 days from the day of publishing of the municipal regulations to submit them to the mentioned ministry. Moreover, if the Mayor considers the regulation inconsistent with the Constitution and law, he shall adopt a resolution within 45 days from the day of submission in order to withhold the implementation of the regulation, giving explanation for the reasons of his decision. The resolution shall be published in the “Official Gazette of the republic of Macedonia.” However within 30 days from the day of the publication of the resolution (expired that term the regulation enters into force) the Mayor shall be obliged to raise an initiative before the Constitutional Court of the Republic of Macedonia to check the constitutionality and the legality of the withheld regulation.

As to the financial control, Art. 72 establishes that the State Audit Bureau shall perform regular audit of the financial accounts of the municipalities, in accordance with law. The Mayor shall be obliged, within 30 days of the mentioned operations, to submit the reports on execution of the budget and the annual balance sheet of the municipality to the State Audit Bureau.

Another interesting element is the mechanisms of cooperation between the municipalities and the government of the Republic of Macedonia. Art. 78 (1) provides that the municipalities shall be consulted, on time and adequately in the procedure of planning and decision-making on issues, which refer to them. Art. 80 (1) establishes that the Government shall cooperate with the municipalities on the issues that are of their interest such as: the laws that refer to the municipalities; the amount of general subsidy that shall be allocated during a current calendar year, the sources of financing of competencies.

Moreover, Art. 81 (1) establishes that the association of municipalities which more than 2/3 of the municipalities have joined for protection and improvement of their mutual interests, shall have some relevant rights such as, for instance: the right to cooperate with the Government regarding the issues of importance for the municipalities in the Republic of Macedonia; the right to bring initiative to the adoption of the laws that refer to the improvement of the local self-government; the right to participate with its proposals in the procedure of projection of the draft Budget of the republic of Macedonia, in the part referring to the allocation of funds to the municipalities for the performance of their competences.

Another section which deserves to be mentioned is section XIII concerning the protection of local self-government. Art 87 provides that the Council, as well as the mayor, may raise an initiative before the Constitutional Court of the Republic of Macedonia in order to assess the constitutionality and the legality of the general acts of the ministries and the organs of state administration with might have violated the constitutional position and the rights of the municipality determined by the constitution. Furthermore, Art. 88 provides that the municipalities shall be guaranteed judicial protection before competent courts with regard to the acts and activities of the organs of state administration and the Government of the Republic of Macedonia determined by the Constitution and law.

The last relevant section is section XIV which deals with the official languages in the municipality. Article 89 declares that Macedonian language with its Cyrillic alphabet shall be the official language in the municipalities. Article 90 then clarifies that also the language and the alphabet used by at least 20% of the inhabitants of the municipality shall be recognized as an official language in the municipality. On the other hand, if a language is spoken by less than 20% of the inhabitants of the municipality, the council shall decide on the use of the languages and alphabets within the municipality.

The second meaningful Law in the field of local self-government is the *Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia*²⁵³, passed on August 2004. The task of the Law is to: regulate the territorial organization of the local self-government in the Republic of Macedonia; establish the municipalities

²⁵³ See Official Gazette of the Republic of Macedonia, n. 55/04.

and of the City of Skopje as a particular unit of local self-government; determine the names, seats and boundaries of the municipalities, determine the type and names of the populated places; regulate the joining, division and change of boundaries of the municipalities and of the City of Skopje, as well as other issues concerning the territorial organization of the local self-government. This Law reduces the number of the municipalities from 123 to 83. Two municipalities, Gostivar and Struga shall be formed by the merger of five existing municipalities. The two municipalities of Kondovo and Saraj shall be merged and be called “Saraj” under the jurisdiction of Skopje. Kicevo on the other hand will keep its borders and will merge with other municipalities only in February 2008.²⁵⁴

Moreover the Law provides that: “The establishment of a new municipality (joining, division and change of boundaries) and the change of the name and seat of a municipality may be done by changes and amendments of this law, following prior consultation with the citizens of the territory of the municipalities that are concerned with the joining, division or change, in a manner determined by law.” (Art. 2)

The *Law on the City of Skopje*²⁵⁵ defines an appropriate solution for the city of Skopje, establishing that the Skopje city area will have 10 instead of 7 municipalities and clearly defined the relations between the municipalities and the City administration itself.

The other important measure of implementation, concerning the field of local self-government, was adopted in July 2004. The *Law on Financing the Units of Local Self-Government*²⁵⁶ provides the sources of revenues, grants from the Budget of the Republic of Macedonia, from the budgets of the Funds, and borrowing. The government’s plan was to increase the financial capacity of the municipalities by transferring 13 billion denar (that means around 210 million euro) in addition to the revenues they would collect locally (e.g. 100% of income tax collected from craftsmen) and government grants for health care, education and culture. Furthermore, the local governments would also receive 3% of Macedonia’s VAT (value added tax) and will

²⁵⁴ See *Macedonia: Not out of the Woods Yet*, Europe Briefing n. 37, International Crisis Group, Skopje, Brussels, 25, February 2005, p. 2.

²⁵⁵ See Official Gazette of the Republic of Macedonia, n. 55/04.

²⁵⁶ See Official Gazette of the Republic of Macedonia, n. 61/04.

manage to claim and receive short-term and long-term loans from both domestic and foreign banks, under the supervision of the state.²⁵⁷

With respect to the grants, according to Article 15 of the Law, the Government shall establish a Committee to monitor the development of the system of financing the Municipalities which will have the role of: monitoring the implementation of the criteria for distribution of grants; proposing measures for the improvement of the grants system; providing recommendations for overcoming the failures in the distribution of grants; preparing semi-annual and annual reports for the development of the system for financing the municipalities in which it determines proposals for improvement of the system; monitoring the earmarked use of grants.

The Committee will be composed of: one member from the Ministry of Local Self-Government; one member from the Ministry of Finance; one member from the Ministry of Education and Science; one member from the Ministry of Labour and Social Policy; and five members from the Association of the Units of Local Governments. The reports of the Committee shall be then submitted to the Government, which, in its turn, shall inform the public about the contents of the reports.

As regards the distribution of financial resources, the parliament passed other three laws²⁵⁸ which defined the discipline regarding communal fees, administrative fees and property. These laws were also aimed to regulate the revenues for the units of local self-government, in accordance with the conditions set forth in the Framework Agreement in order to ensure that municipalities will have sufficient resources to fulfil their responsibilities.

All the above stated laws established that the provisions would enter into force after the local elections which were held on March 2005.

However, the implementation of the decentralization process at operational level started only in July 2005. The delay was due to the organization of the November 2004 referendum, held on the initiative of the opponents to the decentralization laws, which had been adopted in summer (Law on Territorial Organization of the Local Self-Government and Law on the City of Skopje). However, the referendum confirmed those

²⁵⁷ See *Macedonia, Make or Break*, ICG Europe Briefing n. 33, International Crisis Group, Skopje, Brussels, 3, August 2004, p. 5.

²⁵⁸ See Law on Communal Fees ("Official Gazette of the Republic of Macedonia", n. 61/04); Law Amending the Law on Administrative Fees ("Official Gazette of the Republic of Macedonia", n. 61/04); See Law on Property Taxes ("Official Gazette of the Republic of Macedonia", n. 61/04).

laws, and a plan of transferring powers and resources to municipalities was adopted in April 2005. The Association of Municipalities was invited to participate, together with the Ministry of Local Self-Government, in the preparation of the transferring of powers.²⁵⁹

In order to redefine the boundaries of the municipalities, the census was held in November 2002, according to section 3.2 of the Ohrid Framework Agreement, even though late compared to the term established in Annex C.2.1. The latter provided that the census would be held in October 2001.

Another important law in the field of local self-government is the Law on Amending the *Law on Internal Affairs*²⁶⁰. It embodies the provisions regarding the procedure of electing and removal of a local chief of police²⁶¹ provided for in section 3.3, and in section 4 of annex B of the Framework Agreement and the obligation for the local police head to communicate with and reports to the Municipal Council, as well as the possibility of the Council to adopt a report on the public safety which will be considered by the minister of Interior and by the Ombudsman, according to section 4 of annex B. These provisions entered into force when the local authorities were elected.

Finally, the Reform of the Police provides that the police will be decentralised into eight regional centres: Skopje, Tetovo, Gostivar, Ohrid, Bitola, Stip, Kumanovo and Strumica. Every regional centre will also have a public relation sector. A Citizens' Advisory Group will be established in order to organize regular meetings at the local level with the police, the official representatives and OSCE representatives in that field. 32 community policing officers have been appointed and have received a modular

²⁵⁹ *Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union*, Commission of the European Communities, Brussels, 9, November 2005, pp. 16, 19.

²⁶⁰ See Official Gazette of the republic of Macedonia, n. 38/02.

²⁶¹ Section 3.3 provides that: "In order to ensure that police are aware of and responsive to the needs and interests of the local population, local heads of police will be selected by municipal councils from lists of candidates proposed by the Ministry of Interior, and will communicate regularly with the councils. The Ministry of Interior will retain the authority to remove local heads of police in accordance with the law."

Item 4 of Annex B provides that: "Each local head of police is selected by the council of the municipality concerned from a list of not fewer than three candidates proposed by the Ministry of the Interior, among whom at least one candidate shall belong to the community in the majority in the municipality. In the event the municipal council fails to select any of the candidates proposed within 15 days, the Ministry of the Interior shall propose a second list of not fewer than three new candidates, among whom at least one candidate shall belong to the community in the majority in the municipality. If the municipal council again fails within 15 days, the Minister of the Interior, after consultation with the Government, shall select the local head of police from among the two lists of candidates proposed by the Ministry of the Interior as well as three additional candidates proposed by the municipal council."

period of training not only by the Ministry but also by the OSCE' s Police Development Unit.²⁶²

3.4.2) Non-Discrimination and Equitable Representation

3.4.2. a) The Law on Public Attorney

According to amendment XI and item 9 of Annex B, the Assembly adopted the *Law on the Public Attorney (Ombudsman)*. This law defines the procedure of election, dismissal, competencies of the Ombudsman and the way in which this institution operates. The provisions embody many of the principles entailed in several constitutional amendments.

The law establishes that the Assembly elects the Ombudsman by a majority vote of the total number of representatives, within which there must be a majority of the votes of the total number of representatives claiming to belong to the communities not in the majority in the population of Macedonia.

As regards his/her role, the law also envisages that, in performing tasks within his/her competence, the Ombudsman shall undertake measures and activities for which he/she is authorised according to this Law to protect the constitutional and legal rights of citizens when violated by state administration bodies, bodies of the units of local self-government and public institutions and services and to safeguard the principles of non-discrimination and equitable representation of communities. Furthermore the law provides that in the election of Deputies to the Ombudsman, equitable representation of citizens belonging to all communities shall be ensured, while respecting the conditions prescribed by law.²⁶³

With respect to the use of languages, the law stipulates that in the proceedings before the Ombudsman, in addition to the Macedonian language and its Cyrillic alphabet, an official language is also the language used by at least 20% of the citizens. In the communications of citizens with the Ombudsman the provisions of the Law on General Administrative Procedure shall be appropriately applied, so that they can communicate in one of the official languages and its alphabet, while the Ombudsman

²⁶² See *Macedonia: Not out of the woods yet*, ICG Europe Briefing n. 37, International Crisis Group, Skopje, Brussels, p. 8.

²⁶³ See Answers to the Questionnaire fro the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 96, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf)

shall reply in the Macedonian language and its Cyrillic alphabet and in the language and alphabet used by the applicant.

Moreover, the Law provides the decentralization of the offices of the Ombudsman, and establishes appropriate resources and personnel at the Ombudsman's Office. The budget of the Ombudsman should also be voted separately by the Assembly. The Ombudsman, on the other hand, shall submit an annual report to the assembly and upon request also to the municipal councils.

The role of this organ, as amended by the new legislation, entails investigation over citizens' complaints of bureaucratic abuse and discrimination both by State authorities and by individual public servants. Moreover, the Ombudsman studies the matters relevant to the protection of the constitutional and legal rights brought to his attention from other sources, for instance mass media, and he reports alleged violations by State administration bodies and agencies.²⁶⁴

3.4.2.b) Equitable representation in public bodies

With respect to the principle of equitable representation of citizens belonging to all communities in public bodies set forth in section 4.2 of the Framework Agreement and embodied in Art. 8 of the Constitution, the Parliament passed four laws²⁶⁵, according to item 5 of Annex B, aimed to introduce this principle in employment at state body, at municipal body i.e. municipal bodies of the City of Skopje, public institutions, public enterprises and other legal entities that have public mandate, while respecting the criteria of expertise and competence.

Moreover, as regards the implementation of the principle of equitable representation in state courts, the parliament passed two laws.²⁶⁶ They provide that the appointment of the Public Prosecutor and Deputy Public Prosecutor and judges and lay judges, respectively, shall ensure the equitable representation of citizens belonging to all

²⁶⁴ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, pp. 17, 18.

²⁶⁵ See Law Amending the Law on Civil Servants ("Official Gazette of the Republic of Macedonia", n. 43/02); Law on Amending the Law on Internal Affairs ("Official Gazette of the Republic of Macedonia", n. 38/02); Law amending the Law on Labour relations ("Official Gazette of the Republic of Macedonia", n. 40/03); Law Amending the Law on Public Enterprises ("Official Gazette of the Republic of Macedonia", n. 40/03).

²⁶⁶ See Law on the Public Prosecutor's Office of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia", n. 38/04); Law Amending the Law on Courts ("Official Gazette of the Republic of Macedonia", n. 64/03).

communities in the Republic of Macedonia, while respecting the criteria laid down by law. Moreover these Laws also stipulate that the advertisement for employment shall be published in at least two daily newspaper, one of which should be in the language of the communities that do not constitute the majority of the population.

In addition, in order to give force to the provisions of annex C, concerning the composition of the police forces, the Ministry of Internal Affairs published three public competitions to recruit police officers. In autumn 2001 and in 2002 the first 533 police officers, belonging to the communities not in the majority of the population of Macedonia, got training. They were then deployed and work in police stations in ethnically-mixed regions. Other 500 police officers were trained in 2003.²⁶⁷

Furthermore, the admission process for the training of police officers has been implemented with the assistance of the international community, in particular through the testing, selection and training of candidates at the Skopje Police Academy.²⁶⁸

The *Police Reform Strategy*, adopted in August 2003, is aimed to make the police more efficient and to develop a community-oriented police service. This process is deemed as a medium-term process and, under the commitments of the Action Plan, adopted in December 2004, it should be completed in 2007.²⁶⁹

With respect to the Ministry of Defence, reforms are being implemented under the *National Security and Defence Concept* and under the *Strategic Defence Review of the Republic of Macedonia*, which entail provisions regarding the equitable representation of members of the communities not in the majority of the population of Macedonia, in the Ministry of Defence and in the Army. The objectives of equitable representation were planned to be realized in the period 2004-2007 for the staff having secondary education, and by 2013 for the staff having higher education. Two plans have been already adopted in this field in 2004 and in 2005.

As regards the improvement of the equitable representation in the administration and public enterprises, there were also important reforms. On 3, February 2003 the

²⁶⁷ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, pp. 28, 29.

²⁶⁸ See Answers to the Questionnaire from the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 403, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf

²⁶⁹ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, pp. 16-19.

Government adopted the *Guidelines for the Elaboration of the Program for Improvement of Equitable Representation of Communities in the Public Administration and Public Enterprises* and a *Decision on Setting Up a Committee of Ministers to be chaired by the Deputy Prime Minister in charge of the issue of Adequate and Equitable Representation of Members of Communities*. Members of the Committee are: minister of justice, minister of finances, minister of internal affairs and minister of labour and social policy. The Committee will coordinate the activities concerning the improvement of equitable representation of members of communities in the public administration and public companies.

The *Operational Program* was passed on 14, April 2003.²⁷⁰ This program established additional measures to increase the equitable representation of communities in the public administration and in public enterprises specifically in the fields of: development of translation capacities, opening bilingual posts, analysis of vacancies in the administration, and training program for recruitment in the public administration, as well as development of communication strategy. According to this plan, 600 persons belonging to the communities not in the majority of the population were trained. The first group of candidates was hired in December 2004-January 2005, while the second group was expected to be employed in February 2005.²⁷¹

The plan established that by 1, March, 2005, 100 translators/interpreters belonging to the non-majority communities would be trained to work in the state administration and in the courts. The training of these persons is part of the 2004 CARDS Programme and implies that the selected employees will work in state bodies and courts for a minimum period of two years.

Finally, the implementation of the principle of equitable representation within the judicial system is mentioned as one of the priority in the *Strategy on the Reform of the Judicial System*, approved in November 2004. The plan stresses the need to a further amendment of the law on Courts in order to provide an equal representation of citizens from all communities without distorting the criteria specified by law, and underlines the

²⁷⁰ See Report submitted by “The Former Yugoslav republic of Macedonia” pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 23, September 2003, pp. 74, 75.

²⁷¹ See Answers to the Questionnaire for the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 98, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf)

need for on-going training and education of candidate-judges from the communities and their recruitment and appointment as judges.²⁷²

3.4.2.c) Education

As regards primary and secondary education in communities' languages, Macedonian parliament passed two laws that introduced the rule according to which the pedagogical records could be kept also in the language and alphabet of persons belonging to communities not in the majority of the population, in addition to the Macedonian language and its Cyrillic alphabet.²⁷³

With respect to higher education, the Macedonian Parliament passed a law²⁷⁴ which provides that members of communities shall have the right to instruction in community languages other than Macedonian, at certain study programs and courses, in state higher education establishments in order to express, foster and develop their identity. State funding shall provide for higher education in the languages spoken by at least 20 percent of the population in the Republic of Macedonia.

In addition, the instruction in higher education establishments for teaching staff of pre-school and primary education, and methodology for courses addressed to teachers in secondary education, may be carried out in languages of the communities not in the majority in the Republic of Macedonia. The law also establishes that for the enrolment of students in the first years of studies, universities and higher institutions shall provide adequate and equitable access to citizens belonging to the communities not in the majority of the Republic of Macedonia.²⁷⁵

Parliament also passed the Law on establishing the State University in Tetovo,²⁷⁶ which gives force to the provisions of section 6. 2 of the Framework Agreement and to the provisions of the Law on Higher Education related to the possibility of establishing state funded universities in the languages spoken by at least 20% of the population. The

²⁷² See Strategy Reform of the Judicial System with Annexes Attached, Ministry of Justice, Republic of Macedonia, Skopje, November 2004, pp. 12, 13.

²⁷³ See Law Amending the Law on Primary Education (Official Gazette of the republic of Macedonia, n. 63/04); Law Amending the Law on Secondary Education ("Official Gazette of the republic of Macedonia n. 67/04).

²⁷⁴ See Law on Higher Education (Official Gazette of the Republic of Macedonia, n. 49/2004)

²⁷⁵ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, p. 29.

²⁷⁶ See Official Gazette of the Republic of Macedonia, n 08/2004.

law stresses that the work of the University shall be financed from the budget of the Republic of Macedonia as well as other sources set forth in the Law. It also clarifies that the students from the Tetovo University, established as a citizens' initiative, shall transfer to this University.

3.4.2.d) Use of communities' languages

According to amendment V to the Constitution and items 7 and 8 of Annex B, Macedonian parliament adopted two laws providing the official use of the Albanian language in parliament's session and in the issue of personal documents.

The first one enables members of the Assembly to use the language spoken by at least 20% of the citizens at the plenary sessions and at the meetings of the working bodies of the Assembly, while the second one establishes that laws must be also published in the language and alphabet used by at least 20% of the citizens belonging to a community not in the majority of the population of Macedonia.²⁷⁷

In connection with the court proceedings and communication with local units of ministries, according to item 6.7 and paragraph 4 of amendment V, Parliament passed the following five laws²⁷⁸ which provided that in addition to the Macedonian language and its Cyrillic alphabet, in the proceedings before the courts and state administration bodies and other state bodies, official languages will be the Macedonian language and the language spoken by at least 20% of the citizens, while to parties who do not understand the language of the proceeding the laws guarantee oral and written translations.

²⁷⁷ See Rules of Procedure of the assembly of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" n. 60/02); Laws Amending the Law on Publication of Laws and other regulations and Decrees in the Official Gazette of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" n. 43/02).

²⁷⁸ See Law Amending the Law on Criminal Procedure ("Official Gazette of the republic of Macedonia" n. 44/02); Law Amending the Law of Civil Procedure ("Official Gazette of the Republic of Macedonia 44/02); Law amending the Law on Execution procedure ("Official Gazette of the republic of Macedonia" n. 44/02) Law Amending the Law on Administrative Disputes ("Official Gazette of the Republic of Macedonia" n. 44/02); Law Amending the Law on General Administrative Procedure ("Official Gazette of the Republic of Macedonia" n. 44/02).

Parliament also adopted five laws²⁷⁹ to implement item 8 of Annex B, in the part in which it establishes the discipline for the use of languages of the municipality in official documents. The Law on amending the Law on Personal Identity Card provides that forms for identity cards for citizens speaking an official language other than Macedonian must be printed in that language. They must be also filled in in the official language and alphabet used by that citizen. Moreover, the person can write his/her name in the language and alphabet of the community to which he/she belongs. The same provisions are applied to Personal Identification records and Travel Documents.

According to the Law Amending the Law on Safety Road Traffic, forms for driving licenses, tractor driving licenses and driving certificates for citizens speaking an official language other than Macedonian and its Cyrillic alphabet must be printed and filled in in the official language and alphabet spoken by the citizen, in addition to the Macedonian language and its Cyrillic alphabet. The same discipline shall apply to the printing and filling in of forms for registration licenses and certificates of registration.

Furthermore, the Law Amending the Law on registers of Births, Deaths and Marriages provides that in the local self-government units in which at least 20% of citizens speak an official language other than Macedonian, forms for registers of births, deaths and marriages are also printed and filled in in the official language and alphabet used by the citizen; certificates issued on the basis of the data contained in the registers are issued to these citizens in Macedonian and in the official language and alphabet used by the citizens.

With respect to the provision regarding the personal names of the public officials, according to item 8 of Annex B, the Macedonian parliament did not pass a specific law, but public officials *de facto* have the possibility to write their names in the alphabet of the language used by at least 20% of the citizens.

Furthermore, as regards the official language of the units of local self-government, the provisions entailed in Art. 7 (6) of the Constitution were incorporating in the amended laws concerning the local self-government. Moreover, the Law on Road

²⁷⁹See Law on Amending the Law on Personal Identity Card (“Official Gazette of the Republic of Macedonia”, n. 38/02 and 16/04); Law Amending the Law on Personal Identification Records (“Official Gazette of the republic of Macedonia” n. 38/02); Law Amending the Law on Travel Documents of Citizens of the republic of Macedonia (“Official Gazette of the Republic of Macedonia”, n. 20/03, 46/04)

Law Amending the Law on Road Traffic Safety (“Official Gazette of the Republic of Macedonia”, n. 38/02, 38/04).

Safety provides that traffic signs, in units of local self-government, in which at least 20% of the population speak an official language other than Macedonian, shall be written in that language and alphabet.

Macedonian parliament also passed two laws²⁸⁰ regarding respectively the election of the members of the Assembly and the election of the President of the Republic which established the use of language and alphabet of persons belonging to the communities in the ballots. In addition, the Law Amending the Law on Local Elections²⁸¹ provides the discipline regarding the use of language and alphabet of persons belonging to the communities during the electoral operations. Finally, the law Amending the Law on the Census²⁸² establishes that the census should be developed in the Macedonian language and its Cyrillic alphabet and also in the languages and alphabet of all the ethnic communities not in the majority of the population of Macedonia.

3.4.2.e) Expression of identity

As regards amendment 8, concerning the use of symbols of the communities, the Law on Flags was passed in July 2005. It enables communities to fly their own flags alongside the Macedonian one, when they constitute the majority of the population of the municipality.

According to annex C, item 6.1, the Republic of Macedonia has established some separate bodies aimed to the promotion of the culture and education of persons belonging to communities not in the majority of the population of Macedonia:

- Office for Affirmation and Promotion of the Culture of Persons Belonging to the Communities in the Republic of Macedonia within the Ministry of Culture;
- Office for development and Promotion of the education in the Languages of Persons Belonging to Communities, within the Ministry of Education and Science.

²⁸⁰ Law on Election of Members of the Assembly of the Republic of Macedonia (“Official Gazette of the Republic of Macedonia”, n. 42/02); Law Amending the Law on election of the President of the republic of Macedonia (“Official Gazette of the Republic of Macedonia” n. 35/04).

²⁸¹ Law Amending the Law on Local Elections (“Official Gazette of the Republic of Macedonia” 35/04);

²⁸² Law Amending the Law on the Census of Population, Households and Dwellings 2002 (“Official Gazette of the Republic of Macedonia”, n. 43/02).

- With respect to the media, some progress has been made regarding the National Broadcaster (the Macedonian Radio and Television) which has introduced a channel broadcasting programs in the languages of all non-majority communities in the Republic of Macedonia. Sessions of the Macedonian Assembly are also broadcast with simultaneous translation into the Albanian language.

3.4.2.f) The role of the international community in the implementation of the Framework Agreement and the elections

As I mentioned before, the Macedonian Parliament succeeded in implementing all the parts of the Framework Agreement with specific laws and mid or long-term reforms. The last measure adopted was the Law on Flags, passed in July 2005.

With concern to the situation of internally displaced persons (IDPs), their number has sensibly been reduced from 76.000 in the aftermath of the 2001 conflict to about 1420 in 2005 and a great number of houses has been reconstructed (6.000). However, there are still 2.200 refugees from Kosovo within the territory of FYROM and they have difficulties in exercising their rights.²⁸³

The success of the implementation and reconstruction process was also due to the support of the international community.

In 2001 the EU Commission adopted a Country Strategy Paper for the FYROM which covers the period 2002-2006 and sets the long-term objectives and the priority fields of action. The Commission assistance is focused primarily on institutional reforms and development in order to facilitate the gradual integration of the country into EU structures, and taking at the same time into consideration the needs arising from the implementation of the Ohrid Framework Agreement. Moreover since 2001 the FYROM benefits from the CARDS (Community Assistance for Reconstruction, Development and Stabilization) programme.

The international community also monitored the 2002 Parliamentary Elections, which were held on 15.09.2002, late compared to the term prescribed (27, January 2002). The elections were held under the new Law on Election of Members of the Assembly of the Republic of Macedonia²⁸⁴ adopted according to item 6 of annex B. The latter provided in Art. 2 (1) that in the Parliament of the Republic of Macedonia 120 Members of Parliament shall be elected according to the proportional model, whereby the territory of the Republic of Macedonia shall be divided into 6 election districts determined by law, each of which shall elect 20 Members of Parliament.

The role of the international community is always extremely important in a post-conflict situation, even though the Macedonian Government has mostly showed the will

²⁸³ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, p. 9.

²⁸⁴ See Official Gazette of the Republic of Macedonia, n. 42/02.

to give force to the provisions of the Framework Agreement by solving the main issues which had led to the beginning of the conflict itself.

Chapter four

What kind of state has the Framework Agreement built?

4.1) The preamble

The aim of the Framework Agreement was to transform an *ethnic nation-state*, in which Macedonians identified themselves as the owners of Macedonia, into a *civic-multi-ethnic state*²⁸⁵ in which the concept of *demos nation* should prevail over the concept of *ethnos nation*, and the multi-ethnicity of the society itself had to be considered as an added value. The objective was to de-ethnicize the Macedonian society and to stress the elements of integration among all the different ethnic groups, in order to reach a living together not only a forced coexistence.²⁸⁶

The 1991 Constitution did make some steps forward towards that direction because its preamble recognized to nationalities “full equality as citizens”, but it still provided that Macedonian state was the state of the Macedonian people. This mixed formula, which only granted nationalities a formal equality without providing any mechanisms to ensure that each group could enjoy the same starting position (substantial equality) did not work, and led to many *de facto* discriminations especially against ethnic Albanians.

The Ohrid Agreement, on the other hand, emphasizes the civic nature of the state starting from the basic principles, while at the same time stresses the need to preserve the multi-ethnic character of the state itself, which should be reflected in the Macedonian society. The Framework Agreement actually establishes that the new preamble of the Macedonian constitution would have made reference to “Macedonian citizens” avoiding to take into consideration the ethnic element, while underlining the value of the coexistence. Moreover, the principle of ethnic neutrality had to be reflected throughout all the Constitution by eliminating any reference to the concepts of people and nationality. In Art. 48, for instance, which deals with the freedom of expression of identity, the words ‘members of nationalities’ had to be substituted with the phrase

²⁸⁵ See Jenny Engstrom, *Multi-ethnicity or Bi-nationalism? The Framework Agreement and the Future of the Macedonian State*, ECMI Issue 1/2002, European Centre for Minority Issues, Flensburg, 2002, p. 15.

²⁸⁶ See Joseph Marko, *L’Alto Adige. Un “modello” per la composizione dei conflitti etnici in altre aree d’Europa?*, in *L’Ordinamento speciale della provincia autonoma di Bolzano*, Francesco Palermo, Sergio Ortino, Joseph Marko ed., CEDAM, Padova, 2001, p. 982.

“members of communities”. Where it was necessary to stress the difference of discipline regarding the majority and the minorities, the expression used was: “community not in the majority of the population of Macedonia.”²⁸⁷

Nonetheless, the Framework Agreement did not succeed in providing a complete de-ethnicization of the Macedonian state, instead it paradoxically introduced ethnically defined measures to develop the model of a *civic-ethnic state*. A deeper analysis of the measures introduced shows that they have turned to please Albanians’ long-standing demands instead of providing an equal treatment of all communities. In such a way the Agreement itself has thrown the bases for the creation of a *de facto bi-national state*.²⁸⁸ The compromising nature of the Agreement, which had been concluded to put an end to the ethnic conflict between Albanians and Macedonians, definitely prevailed over the higher objective of building a multi-ethnic society.

The reintroduction of the ethnic element in the final version of the preamble symbolizes the failure of the attempt to create a multi-ethnic society. Ethnicity was still too important in Macedonian society and it was probably too early to leave it out of consideration. The final text of the preamble mentions the citizens of the Republic of Macedonia, but then it specifies that citizens are: the Macedonian *people as well as* citizens living within its borders who are part of the Albanian *people*, the Turk *people*, the Vlach *people*, the Serb *people*, the Roma *people*, the Bosniak *people* and others.

This version, unlike the 1991 one, does not use the term nation and ‘nationalities’ (national minorities) but rather the term people.

At first sight it seems that each people is given the same weight. However, a deeper analysis of the preamble shows that Macedonians still considered themselves the only owners of the Macedonian state. Actually they are not only mentioned before the others peoples, but in the text of the provision they are also symbolically separated from them with the expression *as well as*.

Albanians parties, on the other hand, are definitely satisfied and can show their electors that finally they have been able to elevate the status of Albanians. The fact that Albanians are recognized as a *constituent people* of the Macedonian State symbolically represents an historic achievement for ethnic Albanians who, starting from the birth of

²⁸⁷ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 42.

²⁸⁸ See Jenny Engstrom, *op. cit.*, p. 13.

the Macedonian state, had never accepted to be considered just as a nationality (national minority) instead of a nation.

The other minorities, mentioned in the preamble, are also pleased with the fact that they are no more defined as nationalities. It is important to notice that the process of recognition of the Serbian minority, which had begun in July 1993, was successful. Actually, the Serbs are now mentioned in the preamble. However, the analysis of the whole structure set forth by the Agreement will demonstrate that the communities other than Albanians will receive a treatment worse than the one reserved to Albanians.

Finally, there are also minorities, such as Bulgarians and Croats for instance, which are not mentioned at all! Thus their status turns to be inferior compared to all the other peoples expressly mentioned.²⁸⁹

4.2) Freedom of religious faith

As regards the freedom of religious faith, the Ohrid Agreement has overcome the old provision of the 1991 Constitution which only expressly mentioned the Macedonian Orthodox Church. The Ohrid Agreement actually has provided in Art. 19 that the Macedonian Orthodox Church should have the same status of the Islamic Church and of the Catholic Church. Nonetheless, it did not make any reference to the other religions. In such a way the three religions mentioned were given a privileged status while putting the others into a lower position.

The constitutional amendment partially modified the version provided by the Ohrid Agreement by mentioning also the Evangelical Methodist Church and the Jewish Community, but there were still some religions which were not mentioned at all. Moreover, Macedonians managed to add the phrase “as well as” in order to please the Orthodox believers, which constitute the majority of the population. Also in this case, ethnic Macedonians were successful in recovering a superior place compared to the other ethnic groups.²⁹⁰

²⁸⁹ See Zhidas Dasdalovski, *Language and Identity: The Ohrid Agreement and the Liberal Notions of Citizenship and Nationality in Macedonia*, ECMI issue 1/2002, European Centre of Minority Issues, Flensburg, 2002, pp. 17,18, 24, 25.

²⁹⁰ See Jenny Engstrom, *op. cit.*, p. 25.

4.3) A consociational democracy

A deeper analysis of the entire structure of the Ohrid Framework Agreement shows that the reference model is the model of consociational democracy.

The term consociational democracy was first explained by Arend Lijphart in ‘Consociational Democracy’, published in *World Politics* 1969.²⁹¹ This theory is based on the assumption that, in plural societies divided by ‘segmental cleavages’²⁹² (religious, ideological, regional, cultural, radical or ethnic) the use of the majority principle and of the Westminster model leads to the presence of ‘permanent minorities’, phenomenon which can only be prevented through mechanisms of power sharing (both at the central level with the participation in the central decision making-power creating an ‘horizontal power-sharing’ and between the centre and the segments creating a ‘vertical power-sharing’) among the significant segments making up the society. However, as I will demonstrate, in the Ohrid framework Agreement the four elements which characterize the theory (grand-coalition, mutual veto, proportionality and segmental autonomy) do not address every segment of the society with the same intensity. Albanians turn to be privileged in comparison with the other communities.

4.3.1) Grand Coalition

Grand coalition is a governing post electoral coalition which includes all the political leaders of all “significant segments” of the plural society.²⁹³ The government-versus-opposition system is based on the assumption that minorities will become majorities and that governments and opposition will alternate.²⁹⁴ The point is that, whether in homogenous societies the outcome of an electoral competition is in doubt, in plural societies stakes are too high and minorities will not become majorities even in the long run. In such a society it is very unlikely that a consistent number of floating votes transfers its support from the government party into the opposition party, because ethnic cleavages are reflected on the composition of the political parties.

²⁹¹ See Carmen Kettley, *Power-Sharing and Ethnic Conflict: The Consociational-Integrative Dichotomy and Beyond*, in *European Yearbook of Minority Issues*, vol. 1, 2001/2, Kluwer Law International, The Hague, 2003, p. 25.

²⁹² See Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, New Haven and London Yale University, Binghamton, N. Y., 1977, p. 3.

²⁹³ See Arend Lijphart, *op .cit.*, p. 25.

²⁹⁴ See Arend Lijphart, *op. cit.*, p. 29.

Even a system which provides a shifting governing coalition in which each party, within a period of several years, moves out and into the coalition will not be a solution. In case in which there are two major segmental parties, two stable alliances of parties, or a majority party confronting two or more smaller parties, the only possibility of avoiding the permanent exclusion of the minority from the government is the creation of a grand coalition. Moreover, by governing together, parties which do not trust each other, are obliged to find compromises thus allowing the preservation of the political stability.²⁹⁵

This element has been *de facto* present in Macedonian system since the first independent elections in 1991. Actually, every government, since that time, has been made up of a Macedonian and of an Albanian political party.²⁹⁶

4.3.2.) Minority veto

4.3.2.a) Vital interests

The grand coalition, in which all segments of society are present cannot by itself prevent the outvoting of minorities in parliament when decisions pass with a majority vote. If the decision, passed with the majority rule, affects the vital interests of the minorities, there would be definitely a worsening of the relationships inside the grand coalition itself. That outcome can only be avoided by the introduction of a *minority veto*.²⁹⁷

This element was introduced by Art. 69 (2) of the Constitution, as amended according to the Ohrid Agreement, which provides a system of *double majority* (“a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia”) for laws regarding cultures, use of language, education, personal documentation and use of symbols. The same procedure is established by the revised text of Art. 114 (5) for the adoption of laws on local finances, local elections, boundaries of municipalities, and the city of Skopje.

On the one hand, the fact that each member of the *Sobranie* (Macedonian parliament) can individually choose whether or not he or she is a member of the

²⁹⁵ See Arend Lijphart, *op. cit.*, pp. 29, 30.

²⁹⁶ See Jenny Engstrom, *Multi-ethnicity or Bi-nationalism? The Framework Agreement and the Future of the Macedonian State*, ECMI Issue 1/2002, European Centre for Minority Issues, Flensburg, 2002, p. 15.

²⁹⁷ See Arend Lijphart, *op. cit.*, pp. 36, 37.

majority community is extremely important. It is totally consistent with the international treaties regarding the protection of national minorities which stated that the belonging to an ethnic group is “a matter of personal choice” (see Art. 3 of the Framework Convention for the Protection of National Minorities), and it is the provision which is “more close to the ideal of civic democracy in an ethnically divided society.”²⁹⁸ The possibility of claiming to belong to a community case by case, when the procedure of the double majority applies, does not bind the individual to a particular ethnic group.

However, it is highly unlikely that an Albanian will not claim to belong to his/her community, because the feeling of being a Macedonian citizen is still not so deep-rooted. Moreover the mentioned provisions of the Framework Agreement *de facto* grant Albanians a right to veto which they can exercise even without the support of the other ethnic minorities. Albanian representatives in the Parliament actually overcome the total number of the Representatives of the other ethnic minorities. Thus, the precious instrument of the veto right turns to favour only ethnic Albanians.²⁹⁹

4.3.2.b) Amending power

According to art. 131 of the Constitution as amended consistently with the Ohrid Agreement, in cases in which the Assembly decides to pass, by a two thirds of the total number of Representatives, an amendment which will affect the Preamble, the articles on local self-government, Article 131 (regarding the procedures to amend the Constitution), any provisions relating to the rights of members of communities, as well as a decision to add new provisions relating to these subject matter, shall also require a two-thirds majority vote of the total number of representatives within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

Since Albanians, as I have already mentioned, outvote the members of all the others non-majority communities, they practically have a right to veto over changes of the Constitutional text which will directly or indirectly affect their interests.³⁰⁰

4.3.3.a) Proportionality principle

²⁹⁸ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.* p. 126.

²⁹⁹ See Jenny Engstrom, *op. cit.*, p. 10.

³⁰⁰

The proportionality principle also represents a deviation from the majority rule and it is strictly interconnected with the element of the grand coalition. Actually it is not sufficient that all significant segments of the society are represented, they should also be represented proportionally in the decision-making bodies. The proportional system is the system which better than any other electoral system ensure the political representation of minorities in decision-making bodies, as the European Court of Human Rights maintained in *Lindsay v. UK*.³⁰¹

The Macedonian Parliament, in 2002, passed the Law on Election of Members of Parliament of the Republic of Macedonia, which modified the electoral system from a mixed system (majority and proportional) into a pure proportional system. It was not necessary to provide a system of “guaranteed representation”³⁰² the proportional system without thresholds was sufficient to ensure Albanians political representation.

This method allows to almost every minority to get a certain number of seats in Parliament if their interests are represented by a political party, even though there are also little communities which have difficulty in electing even one member belonging to their ethnic group. Actually, during the November 2005 Mavrovo meeting, organized by the Project on Ethnic Relations (PER), some representatives of the small ethnic parties maintained that the proportional system is not sufficient to guarantee the political representations of all the little communities. Thus, they proposed the introduction of mechanisms to reserve them a certain number of seats, as already provided in Slovenian, Croatian and Kosovo electoral system.³⁰³

A comparison between census data and data of political participation is interesting in order to perceive the weight of the different social segments in Macedonian political life. In 1994, for instance, Macedonian population was composed of: 66.6% Macedonians, 22.7 % Albanians, 4% Turks, 2.2%, Roma, 0.4% Vlachs, 2.1% Serbs, 2% others.³⁰⁴

³⁰¹ See Case n. 11089/84, in www.europa.eu.int/eur-lex/lex

³⁰² For the definitions of guaranteed and ensured representation, see Roberto Toniatti, *L'evoluzione statutaria dell'autonomia speciale nell'Alto Adige*, in *L'Ordinamento speciale della provincia di Bolzano*, Francesco Palermo, Sergio Ortino, Joseph Marko ed., CEDAM, Padova, 2001, pp. 49, 50.

³⁰³ See Report of the Project on Ethnic Relations (PER), p. 16, in www.per-usa.org/Reports/MavrovoVI.pdf.

³⁰⁴ See Advisory Committee on the Framework Convention for Protection of National Minorities, Opinion on “the Former Yugoslav Republic of Macedonia” adopted on 27, May 2004, Strasbourg, 2, February 2005, p. 24.

Out of 1683 candidates for members of the Assembly, 325 (19,3%) were members of the nationalities; out of the 120 elected members of the assembly, 22 (18,3%) were members of the nationalities. In particular: Albanians were 19 (15,9%); Turks 1 (0,8%), Serbs 1 (0,8%) Roma had one representative (0,8%).

In 1998, out 1209 candidates 245 or 20,2% were members of the nationalities. Out of the elected 120 members of the Assembly, 27 or 22,5% were members of the nationalities. In particular: Albanians were 24 (20%), Roma 1 (0,8%), others 2 (1,7%).³⁰⁵

While the political participation of communities is generally ensured, which means that the system creates the conditions to ensure their representation, in non political bodies such as the Constitutional Court and the Judicial Council, their representation is guaranteed by a constitutional provision which provides a specific mechanism for the election of one third of the members of the Constitutional Court and three out of seven members of the Judicial Council³⁰⁶. The procedure provided is the double majority: the majority of the total number of Representatives of the Assembly shall include the majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.³⁰⁷

It should be stressed that the proportional representation does not eliminate the dynamics of majority-minority confrontation within the decision-making bodies, it just reflects the different strength of the segments represented.³⁰⁸ Thus, if, as in the Macedonian case, the two major groups have different numerical strength, the only alternative to put Albanians in an equal position compared with Macedonians, is to introduce mechanisms of over-representation. Actually, the Framework Agreement has established a paritarian representation of Macedonians and Albanians within the

³⁰⁵ See Advisory Committee on the Framework Convention for Protection of National Minorities, Opinion on “the former Yugoslav Republic of Macedonia” adopted on 27, May 2004, Strasbourg, 2, February 2005, p. 25.

³⁰⁶ The Judicial Council, according to Art. 105 of the Constitution of the Republic of Macedonia, has the following prerogatives:

- Proposes to the Assembly the election and discharge of judges and determines proposals for the discharge of a judge’s office in cases laid down in the Constitution;
- Decides on the disciplinary answerability of judges;
- Assesses the competence and ethics of judges in the performance of their office; and
- Proposes two judges to sit on the Constitutional court of the Republic of Macedonia.

³⁰⁷ See Zhidas Dasdalovski, *Language and Identity: the Ohrid Agreement and Liberal Notions of Citizenship and Nationality in Macedonia*, ECMI Issue 1/2002, European Centre For Minority Issues, Flensburg, 2002, p. 24.

³⁰⁸ See Arend Lijphart, *op .cit.*, p. 41.

Committee on Inter-Community Relations.³⁰⁹ This organ, had been provided even by the 1991 Constitution but the discipline concerning its composition has been modified, according to the Framework Agreement.

The proposed amendment to Article 78 stated: “The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Assembly, and five members from among the Turks, Vlachs, Romas and two other communities. The five members shall be from different community; if less than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly.”

According to that version, Albanians obtained a paritarian representation vis-à-vis Macedonians. Nonetheless, Turks, Vlachs and Romas, remained in an underprivileged position. Moreover, the needs of the communities not mentioned in the provision were not at all taken into consideration given that only two places were reserved for them all.

The changes made by the Macedonian parliament to article 78 were aimed to improve the position of the communities not mentioned in the previous version, but were still not sufficient. The final version reads as follows: “The Committee for Inter-Ethnic Relations consists of nineteen members of whom seven each are from the ranks of the Macedonians and the Albanians within the Assembly, and a member each from among the Macedonian Turks, Vlachs, Romas, Serbs, and Bosniaks.”

The situation has not changed so much: Macedonians and Albanians still recover a privileged position and there are still communities not mentioned, such as for instance the Macedonian Croats, and the Bulgarians.³¹⁰

4.3.3.b) Proportional representation in public bodies

The proportionality principle is also applied to the method of allocation of civil service appointments³¹¹ allowing to each significant segment of the society to be represented in public bodies.

³⁰⁹According to Art. 78 (4) and (5): “The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solutions.” “The Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them.”

³¹⁰ See Zhidas Dasdalovski, *op. cit.*, pp. 26, 27.

³¹¹ See Arend Lijphart, *op. cit.*, p. 38.

The Ohrid Agreement however does not make reference to the principle of proportional representation but rather to the principle of equitable representation,³¹² principle which has been embodied in the revised text of Art. 8 of the Constitution. On the one hand, proportional representation ensures that all communities are represented in public bodies according to their proportion in the whole population. On the other hand the notion of equitable representation, which is based on the respect of the principle of competence and integrity, is aimed to build a professional and competent public administration though tending to ensure a proportional representation.³¹³ Thus the measures undertaken can be considered as positive measures.³¹⁴ Their objective is to redress the torts suffered by Albanians during the past years, while ensuring that these measures will not interfere with the necessity to create a more efficient public administration.

As regards the Macedonian situation, the 1991 Constitution did not make any reference to the principle of proportional representation, and the under-representation of Albanians during the nineties, as I described above, was evident in almost all the sectors of public life, except for the educational system. Actually, since 1994, the Macedonian Government had provided positive measures to facilitate the access of communities not in the majority of the population of Macedonia to state universities. The Government provided for a separate quota of government funding for higher education of students belonging to all nationalities depending on their proportional representation in the total number of the population (for instance if the number of students to be enrolled under state funding was 1000, in addition to that quota, 230 Albanians could be enrolled because at the time they constituted 22.6% of the entire population.) Through this mechanism, the number of Albanian students enrolled at state universities definitely grew: from 2.23% in 1992 to 5.7% in 2000. The Law on Higher Education which,

³¹² Section 4.2: “ Laws regulating employment in public administration will include measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration. The authorities will take action to correct present imbalances in the composition of the public administration, in particular through the recruitment of members of under-represented communities.”

³¹³ See Answers to the Questionnaire from the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 428, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf

³¹⁴ The measures are provided for the future, have a justification and are gradual and reasonable, even though they lack an essential element to be defined as affirmative actions: they are not temporary. See M. Ainiš, *Azioni positive e principio d’eguaglianza*, in «Giur. Cost.», 1992, pp. 597 ff.

according to section 6.3 of the Framework Agreement, introduced the legal obligation to adopt measures of positive discrimination towards members of non-majority communities in the enrolment at state universities only reproduced what in practice had been applied since 1994.³¹⁵

One of the principal aims of the Framework Agreement, in order to calm down Albanian claims, was to increase the participation of Albanians in public life rather than ensuring an effective proportional representation of all Macedonian communities. Actually, during the November 2005 Mavrovo meeting, organized by the Project on ethnic Relations (PER), several representatives of the small ethnic parties complained about the *de facto* exclusion of the little communities from the implementation of the principle of the equitable representation.³¹⁶

As regards the implementation of the principle of equitable representation, the adopted laws on the reform of the discipline of employment in State bodies, municipal bodies and state courts explicitly refer to that principle itself.

With respect to the implementation of the principle of equitable representation within the police forces, according to annex C, item 5.2 of the Ohrid Agreement, the Ministry of Internal Affairs published three public competitions to recruit police officers. In autumn 2001 and in 2002 the first 533 police officers belonging to community not in the majority of the population of Macedonia received training. They were then deployed and work in police stations in ethnically-mixed regions. Other 500 police officers were trained in 2003. The number of trained police officers belonging to the different communities actually reflects their percentage within the total number of the population.³¹⁷

The Police Reform and the Strategic Defence Review of the Republic of Macedonia, which among other issues addressed the issue of equitable representation of their employees, were actually able to improve the representation of communities not in the majority of the population.

³¹⁵ See Advisory Committee on the Framework Convention for Protection of National Minorities, Opinion on “the former Yugoslav Republic of Macedonia” adopted on 27, May 2004, Strasbourg, 2, February 2005, p. 14.

³¹⁶ See Report of the Project on Ethnic Relations (PER), p. 16, in www.per-usa.org/Reports/MavrovoVI.pdf.

³¹⁷ See report submitted by “The Former Yugoslav Republic of Macedonia” pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 23, September 2003, pp. 28-29.

According to the November 2002 Census³¹⁸ the Macedonian population turns to be composed as follows³¹⁹: 64.2% Macedonians; 25.2% Albanians; 3.9% Turks; 2.7% Roma; 0.5% Vlachs; 1.8% Serbs; 0.8% Bosniacs; 1.0% Others.

The reforms in progress in the Ministry of Defence and in the Army take into consideration the objectives provided by the Ohrid Agreement concerning the equitable representation of communities.

The total number of Interior Ministry employees in 2004 was 12,462³²⁰: 82.28% Macedonians (while in 2001 they were 91.6 %); 13.31% Albanians (in 2001 Albanians were only 4.5%); 0.59 % Turks (in 2001 they were 0.36%); 1.74 % Serbs (in 2001 they were 1.9%); 0.65% Roma (in 2001 they were 0.36%); 1.5% Others (in 2001 they were 1.48%).

The total number of uniformed police in 2004 was 8,216, of them³²¹: 78.16 % Macedonians (while in 2001 they were 91.6%); 16.91 % Albanians (while in 2001 they were 3.7%); 0.68 % Turks (while in 2001 they were 0.41%); 1.85 % Serbs (while in 2001 they were 2.16%); 0.86 % Roma (while in 2001 they were 0.48 %); 1.6 % Others (while in 2001 they were 1.6 %).

The positive measures introduced in the selection of police officers clearly demonstrate to have improved the representation of Albanians within the police forces. Until 2001 they suffered a situation of substantial under-representation (in 1998 they were even only 3 %), so that one of the major aim of the Ohrid Framework Agreement was right to ensure that the police forces would be ethnic mixed in order to avoid the possibility of future armed conflicts between Albanians and Macedonians. The

³¹⁸ The November 2002 census was carried out according to the 1992 Law on Citizenship which required the 15 years residence in order apply for citizenship on the basis of naturalization. However on 18-02-2002 the European Convention on Citizenship, signed in 1997, was ratified by the Republic of Macedonia, and the Law Amending the Law on Citizenship of the Republic of Macedonia was passed on 22-01-2004 consistently with the criteria set forth in the European Convention itself. Thus the length of stay has been reduced to eight years before applying for Macedonian citizenship. See Answers to the Questionnaire for the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 432, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf

³¹⁹ See Answers to the Questionnaire fro the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 94, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf

³²⁰ See Answers to the Questionnaire fro the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, pp. 403, 404, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf

³²¹ See Answers to the Questionnaire fro the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, pp. 403, 404, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf

decentralization of the police is complementary to the policy of ensuring a better representation of Albanians, and is aimed to ensure a better control of the territory. Nevertheless Albanians still are only 1.7% of the employees in the Department for Criminal Police, and are assigned only 1.1% of the managerial positions in the uniformed police.³²²

The other communities, which did not suffer a serious problem of under-representation before the conflict, did not take particular advantage of the positive measures introduced.

As regards the Army, the total number of officers in 2004 was: 1587 of them³²³: 88.58 % Macedonians (they were 90.72 % in 2001); 4.34 % Albanians (they were 2.32 % in 2001); 0.89 % Turks (they were 0.40 % in 2001); 2.11 % Serbs (they were 2.32 % in 2001); 0.19 % Roma (they were 0.07% in 2001); 0.13% Bosniaks (they were 0.13 % in 2001); 0.70% Vlachs (they were 0.40 % in 2001); 3.06 % Others (they were 3.65 % in 2001).

With respect to professional soldiers, the total number in 2004 was 2760, of them³²⁴: 86.81 % Macedonians (they were 95. 37 % in 2001); 9.96 % Albanians (they were 1.25 % in 2001); 0.40 % Turks (they were 0.45 % in 2001); 1.81 % Serbs (they were 1.34 % in 2001) ; 0.36 % Roma (they were 0.27% in 2001); 0.18 % Bosniaks (they were 0.00 % in 2001); 0.11 % Vlachs (they were 0.36 % in 2001); 0.36 % Others (they were 0.98% in 2001).

The situation of equitable representation of Albanians has clearly improved within the army if compared with the data of 2001, especially as regards the ranks of professional soldiers, even though their percentage is still far from their percentage in the population of Macedonia. On the other hand, also in this case, the other communities have not taken any advantage of the positive measures, and the position of Bosniaks have even got worse, because, in 2004, they did not get any representative of their community in the ranks of the professional soldiers.

³²² See *Macedonia: Not out of the Woods Yet*, ICG Europe Briefing, Skopje, Brussels, 25, February 2005, p. 9.

³²³ See Answers to the Questionnaire for the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, pp. 406, 407, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20%20Political%20Criteria.pdf)

³²⁴ See Answers to the Questionnaire for the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, pp. 406, 407, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20%20Political%20Criteria.pdf)

According to the revised text of Art. 86 of the Constitution, the principle of equitable representation will be also ensured within the Security Council³²⁵ since the President of the Republic, in appointing three members of that organ, shall ensure that the Security Council, as a whole, equitably reflects the composition of the population of Macedonia.

As regards the measures undertaken in the field of the public administration and public enterprises, the adopted laws stress that all communities will be appropriately and equitably represented, while respecting the criteria of professionalism and competence. Furthermore, the “project to realize the program concerning equitable representation”, passed in April 2003, included five relevant steps: hiring Albanian language interpreters for parliament, government, the Supreme Court and other government agencies and creating more bilingual posts. The plan also entails a training program in order to help Albanian candidates to satisfy the requirements of the job vacancies. It should be underlined the importance of the introduction of training and job opportunities for translators and interpreters, which will work in public administration and courts for at least 2 years, in order to give effect to the use of languages of the communities in public bodies.

The result of those positive measures has been evident. Out of the total number of 70,812 employees paid by State budget: 80.31 % Macedonians (while they were 83.27 % in 2002); 14.54 % Albanians (while they were 11.65 % in 2002); 1.31 % Turks (while they were 1.18 % in 2002); 0.53 % Roma (while they were 0.51 % in 2002); 0.47 % Vlachs (while they were 0.46 % in 2002); 1.66 % Serbs (while they were 1.73 % in 2002); 0.25 % Bosniaks (while they were 0.23 % in 2002); 0.93 % Others (while they were 0.97 % in 2002).

Also in this case, it is interesting to notice that there has been an increase of the Albanian presence though not so relevant as in the police and the army, while the percentage of the other communities remained almost the same.

The judiciary system shows the worse situation concerning the issue of equitable representation of communities not in the majority of the population of Macedonia. Actually the situation in Supreme Court of the Republic of Macedonia in 2004, there were 17 Macedonian judges, 5 Albanians, 1 Turk, 1 representing other

³²⁵ The Security Council considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.

communities. In the Appellate Courts there were 72 Macedonian judges, 7 Albanians, 1 Serb, 1 Turk, 1 Vlach and 1 representing the other communities. In the Basic Courts there were 464 Macedonian judges, 33 Albanians, 2 Turks, 8 Serbs, 13 Vlachs, 5 representing the other communities.

With concern to the other employees (civil servants and administrative and technical personnel), 1933 are Macedonians, 71 Albanians, 23 Turks, 21 Serbs, 34 Vlachs, 25 Roma and 5 representing the other communities.

In the Public Prosecutor's Office, 21 Public Prosecutors were Macedonians, 4 Albanians, 1 Vlach. In the office of the Deputy Public Prosecutor 47 were Macedonians, 11 Albanians, 8 representing the other communities.

As regards Civil Servants and other Administrative and Technical Personnel: 165 were Macedonians, 4 Albanians, 5 representing the other communities.

With respect to the Appointed notaries: 103 Macedonians, 12 Albanians, 4 Turks, 1 Bosniak, 4 Vlachs.

These data reflect a worrying under-representation of Albanians if compared with their percentage in the population, and show a lack of representation for many communities. The Strategy on the Reform of the Judicial System, adopted in November 2004 was aimed to improve this situation by foreseeing an amendment to the Law on Courts in order to give force to the principle of equitable representation.³²⁶

However, the situation has improved only in the higher courts, such as the Supreme Court, while in the other levels the degree of representation of Albanians remains very low.³²⁷

4.3.3.b.1) The role of the Ombudsman

The Ombudsman was first introduced in Macedonian system in 1997. The modification introduced by the Ohrid Framework Agreement and embodied in the Constitution and in the new Law on Ombudsman could be very relevant regarding the protection of the principle of equitable representation.

³²⁶ See Answers to the Questionnaire for the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 128, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf)

³²⁷ See interview with Emil Atanasovski, program manager, NDI (National Democratic Institute for International Affairs), 09-02-2006.

Actually, on the one hand the Ombudsman shall be elected according to the method of the double majority (a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia), thus allowing communities to veto the election of an Ombudsman which they do not deem able to represent their interests. On the other hand, one of the principal task of the Ombudsman is of safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life. (Art. 77. par. 2 of the Constitution) However, while the Framework Agreement (Annex B, item 9) established the right for the Ombudsman to contest the inconsistency between a law and the Constitution before the Constitutional Court, the new Law on Ombudsman does not grant to the Ombudsman that right.

That possibility would have been extremely important because, through the Ombudsman, which is elected with the consent of the communities, communities themselves could have had the chance to challenge the constitutionality of laws, which had violated their interests. It is true that each individual has the possibility to go before the Court under the special proceeding based on the principles of priority and urgency, however, there are two conditions to be respected. On the one hand, the legal protection had to be exhausted before ordinary Courts, on the other hand the established term when submitting the request for protection had to be respected.

The attribution to the Ombudsman of the right to go before the Constitutional Court would have represented the possibility to give voice to the community as such, for the violation of a collective right.

Nonetheless, the enhancement of his role in investigating about bureaucratic abuses and discrimination from the side of the State authorities and individual public servants, alongside the establishment of a separate budget and six decentralized offices is also very important for the protection of the rights of the non-majority communities' members.³²⁸ Furthermore, in the election of the Deputies to the Ombudsman, which

³²⁸ In 2004 the Ombudsman received 1,933 complaints and initiated 26 investigations. Out of 3,202 complaints, 569 violations were identified and 720 are ongoing. 73% of the violations were solved thanks to the Ombudsman's recommendations, however cooperation with State bodies is still not sufficient so that only 40% of the reports filed to them were taken into consideration. Cooperation with the Ministry of Interior is also scarce.

represent the Ombudsman in the decentralized offices, equitable representation of citizens belonging to all communities shall be ensured, while respecting the conditions prescribed by law.³²⁹

4.3.4) Segmental autonomy

Segmental autonomy is the last fundamental characteristic of the system set forth by Lijphart. Segmental autonomy is simply the expression of minority rule, that is the possibility given to the minority to rule its own affairs with no interference from the side of the majority group. In other words, for areas of common interests decisions are taken together through the proportional rule, so that every significant segment has a certain degree of influence in the decision-making process, while in all the other areas decisions can be taken separately by each segment.

A special kind of segmental autonomy is *federalism*. Federalism grants autonomy to the constituent parts of the State and allows the overrepresentation of the constituent parts themselves into the “federal chamber.” Federalism can be used as a consociational method only when society is “federal”, which means that each segment of the society is concentrated in a certain territory and separated from the others. In this case federalism is based on the territorial principle because “segmental cleavages coincide with regional cleavages”. However federalism can also be based on the personality principle, when minorities are dispersed within the territory of the State. This system, elaborated by Otto Bauer and Karl Renner, is based on the possibility given to each individual to declare the nationality to which he belongs; then each nationality will become a cultural autonomous community.³³⁰ Lijphart sees this method as an instrument to face the cultural dimension of the ethnic conflict, which concerns such matters as education, language and religion.

The personality principle allows to a particular ethnic group enjoying autonomy rights which can be exercised by its members, leaving out of consideration the territory of the state they live in.³³¹ Generally this model implies the recognition by the state of the

³²⁹ See Answers to the Questionnaire from the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 96, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20%20Political%20Criteria.pdf)

³³⁰ See Arend Lijphart, *op. cit.*, p. 43.

³³¹ See Stefan Wolff, Marc Weller, *Self-determination and autonomy*, in *Autonomy Self-Governance and Conflict Resolution, Innovative approaches to institutional design in divided societies*, Marc Weller and Stefan Wolff ed., Routledge, London and New York, 2005, p. 15.

reason of the difference of a minority group compared with the majority group, and the recognition to the group of the status of public corporation, which allows the group itself the effective participation in the decision-making processes, regarding minority interests, both at local and at national level.

The awareness that the external self-determination of a people can only lead to new violence because of the impossibility, especially in the Balkans, to create pure state without passing through an ethnic cleansing, increased the use of the forms of autonomy as a mean of internal self-determination in order to please minorities' demands and at the same time keeping the unity of the state. The attempt is clearly to avoid secession and the outbreak of violent conflicts.

Local self-government seems to be the preferred strategy during the recent years, after the failure of the complicated structure of territorial autonomy set forth in Bosnia and Herzegovina.³³²

Local self-government is the lowest degree of autonomy from the central government but it is still sufficient to enable local communities to administer everyday life and needs, while at the same time respecting the guidelines of the central government.³³³ The competences are allocated according to the principle of subsidiarity, set forth in the Treaty of Maastricht and embodied in the European Charter of Local Self Government,³³⁴ aimed to distribute competences at the level of government in which they can be developed more efficiently and to make institutions closer to the citizens.

The notion of territorial autonomy has more ethnical implications than the one of local self-government. Actually, in deeply divided societies, the former provides a range of constitutional guaranteed powers to non-majority communities concentrated in a certain area of the country, in such a way allowing them to run their own affairs.

The content of the autonomy can vary. On the one hand, there can be mere administrative autonomy, that means an executive independence within the framework of central legislation, in which the autonomous territory does not have its own

³³² See Florian Bieber, *The challenge of institutionalizing ethnicity in the western Balkans: managing change in deeply divided societies*, in *European Yearbook of Minority Issues*, vol. 3, 2003/4, Martinus Nijhoff Publishers, Leiden, 2005, p. 94.

³³³ See Camille A. Monteux, *Decentralization: The New Delusion of Ethnic Conflict Regulation?*, in *TH5 Ethnic Conflict Resolution*, ASN 10th Annual Convention, p. 8.

³³⁴ The Republic of Macedonia ratified the ECLSG on 6, June 1997, and it entered into force on 1, October 1997.

legislature or judicial system. On the other hand full self-government implies the right for its population to elect its own legislature, and allows the autonomous territory to have all the administrative functions which generally are carried on by the state, except for areas of foreign and defence policy, and for the general framework of economic and monetary policy. The autonomous territory enjoys, in this case, also relevant judicial powers.³³⁵

As regards the Macedonian state, neither personal autonomy nor territorial autonomy can apparently be found. On the one hand, there are no cultural autonomous communities recognized by the State. On the other hand, the Ohrid Framework Agreement has totally denied the possibility of using territorial solutions to ethnic conflicts, thus pleasing Macedonians' demands to avoid the possibility of secessionist claims. Hence, unlike the Dayton Agreement, the Ohrid Agreement does not provide for a territorial division along ethnic lines.

However, the Framework Agreement also emphasizes the necessity of keeping the multi-ethnic structure of the State and stresses the needs to develop the system of local self-government. Actually, one of the basic principle declares: "The development of local self-government is essential for encouraging the participation of citizens in democratic life, and promoting respect for the identity of communities."

The need for a reform of the 1995 Law on Local Self-Government had been perceived in the Macedonian state even before the outbreak of the conflict. Actually a proposal to reform the Law on Local Self Government had been presented in 1997. In that period even the Ministry on Local Self Government was established. That proposal had some positive aspects, but failed in allocating to the municipalities important competences such as health care and education.³³⁶

4.3.4.a) The Law on Local Self-Government

It is interesting to notice that the Agreement itself contained some provisions which symbolize a move from local self-government to territorial autonomy. Actually, while

³³⁵ See Stefan Wolff, Marc Weller, *Self-determination and autonomy*, in *Autonomy, in Self-governance and Conflict Resolution, Innovative approaches to institutional design in divided societies*, Marc Weller and Stefan Wolff ed., Routledge, London and New York, 2005, pp. 13, 14.

³³⁶ See Ilija Todorovski, *Local Government in Macedonia*, in *Local Government in Central and Eastern Europe*, charter 6, p. 277 in www.lgi.osi.hu/publications/2001/81/Stab-Macedonia.pdf

the main text of the Agreement (section 3.1) referred to “enhanced competencies”, annex B refers to “additional independent competencies.”

The list of competences set forth in the Framework Agreement (public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, health care) was not exclusive, since the Law on Local Self-Government establishes the possibility of delegating by law other competencies to the municipalities.

Furthermore, annex B item 1, contained another hidden clause, since it establishes that the Law on Local Self-Government shall provide that the state can pass laws concerning areas in which municipalities have independent competencies only if the competence cannot be effectively exercised at the local level. In such cases, however the law shall promote the future exercise of the competence by the municipalities, increasing *de facto* the local administrative competence in that field compared with the parallel legislative competence of the state.³³⁷

Comparing the revised *Law on Local Self-Government*³³⁸ with the 1995 one, many improvements have been made in order to overcome the centralistic approach to local self-government which characterized the implementation of that law.

That law established that the units of local self-government could perform with bylaws, within the framework of the Constitution and the law, the activities of local relevance which were not under the jurisdiction of the State (Art. 16), and that they could also perform other activities determined by law (art. 117). However, both the independent competences and the shared competences had to respect limits imposed by other laws, which had not been adopted by a two thirds majority. That practice was unconstitutional, because the limits had to be only the ones set forth in the law on self-government, which had been passed by a two-thirds majority.

On the other hand, the revised text of the Constitution now provides that laws regarding local self-government shall be passed with the mechanism of the double majority which practically grants communities a right of veto.

Moreover, the state *de facto* kept most of the competences assigned to them, so that they could have independent competences only in the fields of primary and

³³⁷ See Marc Weller, *Enforced autonomy and self-governance*, in *Autonomy, Self-governance and Conflict Resolution, Innovative approaches to institutional design in divided societies*, Marc Weller and Stefan Wolff ed., Routledge, London and New York, 2005, pp. 61, 62.

³³⁸ See Official Gazette of the Republic of Macedonia, n. 5/02.

secondary instruction. As regards the shared competencies, the municipalities only had financial responsibility for the facilities that supported their functions, but the State still maintained the operational responsibility. In addition, the central government has been reluctant to delegate to municipalities other specific competences by law.

The new Law, on the contrary, provides a list of independent competencies which hopefully will be respected by the state, even though the mechanisms of judicial adjudication are not adequate. Art. 87 provides that the Council, as well as the mayor, may raise an initiative before the Constitutional Court of the Republic of Macedonia in order to assess the constitutionality and the legality of the general acts of the ministries and the organs of state administration, which might have violated the constitutional position and the rights of the municipality, determined by the constitution.

Art. 88 just maintains that the municipalities shall be guaranteed judicial protection before competent courts with regard to the acts and activities of the organs of state administration and the Government of the Republic of Macedonia determined by the Constitution and law. Actually, there are no administrative courts and/or administrative levels entitled to interpret the distribution of powers between the local and the national level.³³⁹

The new law still provides the possibility of delegating competences to the municipalities.

As regards the supervision of the legality of the acts, under the 1995 law the procedure was initiated by the state, while under the new Law the supervision is initiated by the mayor.

Other important differences lay in the forms of cooperation between state level and municipal level, and the co-ordination between the different municipalities among them, which will be possible because of the reduction of the number of the municipalities.

With respect to the use of language within the municipalities, the new law embodies the provisions of Art. 7 (6) of the revised text of the Constitution and establishes that the language spoken by a community which makes up at least 20% of the population of the municipality will be used as an official language in addition to Macedonian. On the other hand, if a language is spoken by less than 20 percent of the

³³⁹ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, p. 19.

population of the municipality, the local authorities will decide “democratically on their use on public bodies”.³⁴⁰

It should be noticed that the provisions are not so different from the ones provided for in the 1995 Law, even though that law established that when the minority made up the majority or a considerable number (more than 20%) the language was in use at the sessions of the Council and other organs of the municipality, without specifying that it would become the official language within the municipality itself. Since the 1995 law did not provide that a language of a nationality which made up the majority or a considerable number of the population of the municipality had to be declared official language alongside the Macedonian one, the law itself had to specify the sectors in which that language could be used. Thus, that law specified that the by-laws, the decisions and other general acts passed by the Council and other organs of the municipality should be written and published in the Macedonian language and its Cyrillic alphabet, as well as in the language and alphabet of the nationality that is either a majority or a considerable number. In public services, public institutions and public enterprises established by the units of local self-government, in which a majority of members of a nationality live, besides the Macedonian language and its Cyrillic alphabet, the language of the nationality that is a majority should be in official use. Moreover the 1995 Law also specified that: “(1) In the units of local self-government in which a majority of members of a nationality live, the names of populated places, the signs of public services and institutions, the signs of enterprises and other public enterprises established by the unit of local self-government shall be written in the Macedonian language and its Cyrillic alphabet, as well as in the language and the alphabet of the nationality that is majority. (2) In the units of local self-government in which a considerable number of members of a nationality live, the names of populated

³⁴⁰ The previous discipline set forth in Art. 7 of the 1991 Constitution established on the other hand that: “In the units of local self-government where the majority of the inhabitants belongs to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions determined by law. In the units of local self-government where there were a considerable number of inhabitants belonging to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions and in a manner determined by law.” The 1995 Law on Self-Government specified that in the units of local self-government in which the number of the members of a nationality exceeds 50% of the total number of inhabitants determined by the last census of population shall be considered as units of local self-government in which a majority of the population live. (Art. 88, par.1) On the other hand the units of local self-government in which the number of the members of a nationality exceeds 20% of the total number of inhabitants determined by the last census of population shall be considered as units of local self-government in which a considerable number of members of the nationality live. (Art. 88, par.2)

place, the signs of public services and institutions, the signs of enterprises and other public signs shall be written in Macedonian language and its Cyrillic alphabet, and in the language and the alphabet of the nationality that is in a considerable number, if so decided by the Council of the unit of local self-government. (3) The signs of cultural and educational institutions solely serving to the development and promotion of cultural and educational goals of the nationalities, shall be written in the Macedonian language and its Cyrillic alphabet, and in the language and the alphabet of the nationality regardless of the number of members of the nationality who live in that unit of local self-government.”

The new Law preserves an element which has been already present in the 1995 law, namely the Committee on Inter-Community Relations to be set up in the municipalities in which 20% of the inhabitants are members of a certain community, according to the census.

Nonetheless, the most important change regards the allocation of financial resources which under the previous legislation was scarce even because the competences exercised by the municipalities were practically very few. The new *Law on Financing the Units of Local self-Government*³⁴¹ provides that municipalities will receive 3% of the VAT (added value tax), which is one of the surest kinds of entrances of the states. The point is how to divide money among the municipalities in order to avoid big disparities of economic resources. Negotiations shall take into account the size of the municipalities, so that Skopje will definitely get more money in comparison with the other municipalities.³⁴² However, the Commission of the European Union notes that no financial controls have been established in order to check the real financial autonomy of the municipalities.³⁴³

Actually, it is really very hard the transition from a very high centralized country into a decentralized country. From 1974 till 1991 countries of the ex Yugoslavia knew a form of decentralization of power, from 1991 till 2001 most of the money moved to Skopje and municipalities were practically spoiled of their powers. The 2002 revised

³⁴¹ See Official Gazette of the Republic of Macedonia, n. 61/04, and 96/04.

³⁴² See Risto Karajkov, *Macedonia: decentralizzazione in corso*, p. 3, 29/07/2005, in www.osservatoriobalciani.org/article/articlereview/4557/1/51/

³⁴³ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, p. 19.

Law on Local Self-Government assigned to municipalities many important competences, however mayors are in serious difficulties in carrying out their own responsibilities especially in the field of primary and secondary education, due to the lack of adequate economic resources coming from Skopje. They do have their own sources of revenues but the biggest part of their budget is based on transfers of money from the central level of government.

3% of VAT can seem a considerable amount of money to distribute among the municipalities. However, it should be kept in mind that many state employees were transferred to work to the municipalities, so that at the end the sum of money that the municipalities turn getting is not so different from the one they received in the nineties, while their competences have definitely been increased. The city of Skopje, which includes ten municipalities, with different levels of economic development, administers a budget of around 20/30 million euros, which is nothing if compared with the real needs of that unit of local self-government.³⁴⁴

With respect to the redrawing of the municipalities' boundaries, the *Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia*³⁴⁵, passed in August 2004, provides that the number of the municipalities would be reduced from 123 to 84. The redrawing has been made by taking into account of the results of the census, held in late 2002. In some municipalities, such as Struga, for instance, after the redrawing of the municipality, Albanians became the majority.³⁴⁶ Moreover, the *Law on the city of Skopje*³⁴⁷ provides for the incorporation of three Albanian municipalities, in addition to the seven already present, within the boundaries of the Skopje unit of local self-government. In such a way the number of Albanians will increase from 15.3% to more than 20% of the population.³⁴⁸ Both these laws were challenged by ethnic Macedonians, and especially by the World Macedonian Congress and VMRO-DPMNE, which organized a referendum aimed to abolish them. Actually, these laws symbolize a violation of the Ohrid Agreement which prohibited the territorial solution to ethnic issues. These laws actually allow to increase the number of the

³⁴⁴ See interview with Emil Atanasovski, program manager, NDI (National Democratic Institute), 09-02-2006.

³⁴⁵ See Official Gazette of the Republic of Macedonia, n. 55/04.

³⁴⁶ See Risto Karajkov, *Referendum in Macedonia: le lancette della crisi*, p. 3, 3-11-2004, in www.osservatoriobalciani.org/article/articlereview/3584/1/46/

³⁴⁷ See Official Gazette of the Republic of Macedonia, n. 55/04.

³⁴⁸ See Tamara Causidis, translation by Barbara Sartori, *I Macedoni minacciano una rivolta contro il decentramento*, p. 3, 06-08-2004, in www.osservatoriobalciani.org/article/articlereview/3295/1/46/

municipalities where Albanians make up the majority of the population of the municipality and they can run their own affairs, thanks to the independent administrative competences allocated to them by the revised text of the Law on Local self-Government. These laws also enhance the number of municipalities where Albanians make up 20% of the population of the municipality and they can enjoy rights on a territorial basis. However, the referendum failed because the percentage of voters did not reach the necessary *quorum*.

4.3.4.b) Language rights enjoyable on a territorial basis

The redrawing of the electoral districts was really very important, since the Ohrid Agreement provides rights that can be enjoyed by a community on a territorial basis under the condition that the community itself reaches a certain percentage of the population of the municipality.

As regards language rights, for instance, Art. 7 (6) of the Constitution, amended according section 6.6 of the Ohrid Agreement, provides that “in municipalities where a community comprises at least 20 percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian.” On the other hand, if a language is spoken by less than 20 percent of the population of the municipality, the local authorities will decide “democratically on their use on public bodies”.³⁴⁹

As a consequence, the Albanian language has been recognized as official language in 34 municipalities, while the Turkish language in 5 municipalities and the Roma language in one municipality only. Moreover, Skopje, the capital, became a bi-lingual (Macedonian and Albanian) unit of local self-government.³⁵⁰ The new

³⁴⁹ The previous discipline set forth in Art. 7 of the 1991 Constitution established on the other hand that: “In the units of local self-government where the majority of the inhabitants belongs to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions determined by law. In the units of local self-government where there were a considerable number of inhabitants belonging to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions and in a manner determined by law.” The 1995 Law on Self-Government specified that in the units of local self-government in which the number of the members of a nationality exceeds 50% of the total number of inhabitants determined by the last census of population shall be considered as units of local self-government in which a majority of the population live. (Art. 88, par.1) On the other hand the units of local self-government in which the number of the members of a nationality exceeds 20% of the total number of inhabitants determined by the last census of population shall be considered as units of local self-government in which a considerable number of members of the nationality live. (Art. 88, par.2)

³⁵⁰ See opinion on “The Former Yugoslav Republic of Macedonia” adopted on 27, May 2004, Advisory Committee on the Framework Committee for the Protection of National Minorities, Strasbourg, 2,

boundaries clearly advantage the Albanian community, while the little communities, which do not reach the 20% of the population of the municipalities, will have little chances to use their own language in public bodies, given that the decision has to be taken by the municipal council within which they clearly have little influence.

Other important provisions regarding the use of communities' languages in the municipalities are the ones concerning the traffic signs. Actually, the Law Amending the Law on Road Safety³⁵¹ provides that traffic signs, in units of local self-government, in which at least 20% of the population speak an official language other than Macedonian, shall be written in that language and alphabet.³⁵² However, during the November 2005 Mavrovo Meeting, organized by the Project on Ethnic Relations (PER), the leaders of the Albanian opposition parties complained about the fact that the law has not yet been enforced.³⁵³

The discipline of the official language to communicate with regional and main offices of the central government also turns to be connected with the territory in which the members of a community live.

Actually, on the one hand the first paragraph of Art. 7 of the Constitution, which reflects the content of section 6.4 of the Framework Agreement, states that: "The Macedonian language, written using its Cyrillic alphabet, is *the* official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia." The subsequent section 7 (2), which reflects the content of section 6.5 of the Ohrid Agreement, specifies that: "any other language spoken by at least 20 percent of the population is also an official language..." Such other official language will be used according to what is specified below.

Art. 7 (4) (1) establishes that: "Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian."

February 2005, Source: Ministry of Local Self-Government. p.12.

³⁵¹ See Official Gazette of the Republic of Macedonia, n. 38/02, n. 38/04.

³⁵² The 1995 Law on Local Government did not provide the discipline for the use of language in traffic signs, but provided specific rules in other fields. Art. 90 talked about the discipline of the signs and name of the places.

³⁵³ See Report of the Project on Ethnic Relations, p. 18, in www.per-usa.org/Reports/MavrovoVI.pdf.

The point is that Art. 7 (4) (2) foresees that: “Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.” This paragraph could be interpreted according to par. 5 of Art. 7 which maintains: “In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law”, so the result would be that everyone could use the language of a community which is spoken by at least 20% of the population, in any community of Macedonia from anywhere in Macedonia. However, this interpretation would be incompatible with Art. 7 par. 1, according to which Macedonian language is *the* (only) official language throughout Macedonia. Thus, the most likely construction is that only persons living in municipalities in which a language is spoken by at least 20% of the population can address main offices of the central government in an official language other than Macedonian. After the November 2002 census, according to which Albanians turned to be 25.2%³⁵⁴, Albanian became an official language alongside Macedonian, even though not throughout the country. That is why the redrawing of the municipalities’ borders would become such an important question for Albanians.³⁵⁵

However, so far there is no practice regarding the use a community language with a regional or with a main office of the central government. Within the governing coalition, Albanians want to pass a comprehensive law aimed to absorb all the provisions regarding the use of languages of the communities, including the issue of the language necessary to communicate with the offices of the government. Macedonian parties on the other hand do not feel obliged to pass a similar law since it would be beyond the commitments undertaken in the Ohrid Agreement. It is very unlikely that before the political elections the grand coalition will be able to find a compromise regarding that issue.³⁵⁶

Another right which can be enjoyed by the communities, in the territory they live in, is the right to fly their flag, alongside the Macedonian one, in municipalities in which they make up the majority of the population. The provision of the Ohrid

³⁵⁴ See Answers to the Questionnaire from the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 94, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political%20Criteria.pdf)

³⁵⁵ See Joseph Marko, *The Referendum on Decentralization in Macedonia in 2004: A Litmus Test for Macedonia’s Interethnic Relations*, not published yet, pp. 13-16.

³⁵⁶ See interview with Emil Atanasovski, program manager, NDI (National Democratic Institute), 09-02-2006.

Framework Agreement³⁵⁷ was obviously aimed to put an end to the disputes over the use of Albanian flag which led to the violent conflicts in Gostivar and Tetovo in 1997. However, this issue led to heated discussions in Parliament since Macedonians did not openly declared that they consider the Macedonian flag as the state flag instead of considering it as the flag of the Macedonian nation, while Albanians seemed willing to recognize the Macedonian flag as the state flag.³⁵⁸ An agreement was found only in July 2005. The Law on the use of Flags was actually the last law passed to implement the Ohrid Framework Agreement. It should be mentioned that recently, on the occasion of the celebration of the Albanian national flag, in Skopje, Albanians flied a big Albanian flag without a Macedonian flag next to it.³⁵⁹ That act symbolizes that Albanians still need to emphasize their ethnic identity vis-à-vis Macedonians.

4.3.4.c) Decentralization of the police and appointment of local head of police

Another element which should be taken into consideration in order to demonstrate that territorial autonomy has been *de facto* realized is the ongoing decentralization of the police forces as well as the implementation of the principle of equitable representation within the police and the army, elements which are extremely important to make the members of the non-majority communities trust the police and to ensure a better control of the territory.

In addition, the appointment of the heads of police is a local task, so that, as section 3.3 of the Framework Agreement declares, police will be aware of and responsive to the needs and interests of the local population and there will be regularly communications between the heads of police and the councils of the municipalities. The Law pertaining to Police Located in the Municipalities embodied the procedure for the election of local head of police set forth in Annex B item 4. The procedure provides that the local head of police is selected by the council of the municipality, which shall choose from a list of not less than three candidates proposed by the Ministry of the Interior, among whom at least one candidate shall belong to the community in the

³⁵⁷ Section 7.1 of the Framework Agreement reads as follows: “With respect to emblems, next to the emblem of the Republic of Macedonia, local authorities will be free to place on front of local public buildings emblems marking the identity of the community in the majority in the municipality, respecting international rules and usages.”

³⁵⁸ See *Macedonia: Not out of the Woods Yet*, ICG Europe Briefing n. 37, International Crisis Group, Skopje, Brussels, 25, February 2005, p.10.

³⁵⁹ See Report of the Project on Ethnic Relations, p. 18, in www.per-usa.org/Reports/MavrovoVI.pdf.

majority in the municipality, so that the representation of the non-majority community which makes up the majority at the local level is guaranteed. In the event the municipal council fails to select any candidates proposed within 15 days, the Ministry of the Interior shall propose a second list of not less than three candidates, and also in this case the list shall entail at least one candidate belonging to the community in the majority in the municipality.

Only if the municipal council fails again within other 15 days, the Minister of the Interior can directly intervene in the election and select, after consultation with the Government, the local head of police from among the two lists of candidates already proposed by the Ministry of the Interior, as well as three additional candidates proposed by the municipal council. The fact that even the highest level of government is called upon to give an advice on the appointment of the local head of police is a provision that cannot be found in any other modern democracy and symbolizes the importance of that figure to keep the public security.³⁶⁰

4.3.4.d) Rights recognized on a personal basis

Certain relevant language and education rights, however, have been recognized on a personal basis, leaving out of consideration the link of the community with the municipality, privileging communities that reach a predetermined percentage (20%) of the entire population of Macedonia (that means Albanians). This does not imply however the recognition of a personal autonomy.

With respect to primary education, for instance, Art. 48 grants communities the right to instruction in their language in primary and secondary education, with the obligation to study the Macedonian language. This possibility was also provided under the 1991 Constitution.

With regard to the matter of higher education, parliament passed a law³⁶¹, according to the revised text of Art. 48 (1) of the Constitution³⁶², which provides that members of communities shall have the right to instruction in community languages other than Macedonian, at certain study programs and courses, in state higher education

³⁶⁰ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 44.

³⁶¹ See Law on Higher Education (Official Gazette of the Republic of Macedonia, n. 49/2004)

³⁶² “Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.”

establishments in order to express, foster and develop their identity.³⁶³ Art 48 of the 1991 Constitution had a very similar content, but the Law on Higher Education had not been passed until July 2000, when Parliament decided to accept the Van Der Stoel's proposal to establish a trilingual (Albanian, Macedonian, English) "university".

As regards the new discipline of the use of languages of the communities in state bodies, in courts and in the issue of personal documents, the rights have also been recognized on a personal basis.

According to Art. 7 (5) of the Constitution, which embodies a provision entailed in section 6.5 of the Framework Agreement, in the organs of the republic of Macedonia, any official language other than Macedonian may be used in accordance with the law. The laws which parliament passed to implement Item 8 of Annex B specify that the working language of the parliament would be the Macedonian language and the language spoken by at least 20 % of the population (Albanian) and that laws would be issued both in Macedonian language and in Albanian language, while before 2001 the only working language was Macedonian and laws were issued only in Macedonian. However, Macedonian has remained the only official language in government sessions.³⁶⁴ The leaders of the Albanian opposition parties also complain about the fact that the Albanian language is a working language in Parliament sessions, but it is used only orally while the records have still been written only in the Macedonian language.³⁶⁵

Other laws passed under Art. 7(5) of the Constitution, establish that in state bodies official languages would be the Macedonian language and the language spoken by at least 20% of the population of Macedonia, that means Albanian language, while, until 2001, the only official language had been the Macedonian one.

The laws which reformed criminal, civil and administrative procedure establish that in state courts processes would be held in Macedonian language or in the language spoken by at least 20% of the population (Albanian language), while parties who do not understand Albanian language would be entitled to have oral and written translations of the proceedings and documents of the process itself.

³⁶³ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 2005, p. 29.

³⁶⁴ See *Macedonia: war on hold*, ICG Balkans Briefing, International Crisis Group, Skopje, Brussels, 15, August 2001, p. 4.

³⁶⁵ See Report of the Project on Ethnic Relations, p. 18, in www.per-usa.org/reports/MavrovoVI.pdf.

On the other hand, according to section 6.7 of the Framework Agreement, embodied in the laws which reformed criminal, civil and administrative procedures, the accused person or parties who speak a language other than Albanian or Macedonian are only entitled to the translation at State expense of all proceedings as well as documents in accordance with relevant Council of Europe documents. They are advised of the possibility of enjoying this right and they will not enjoy this right only if they declare to understand the language in which the process is carried on. This right has already been part of the Macedonian system because it is embodied in the European Convention of Human Rights. Actually, the Republic of Macedonia had become a member of the Council of Europe in 1995 and ratified the Framework Convention for the Protection of National Minorities in 1997. In 1997 Parliament had passed a law which embodied those rights with respect to the criminal procedure. Until 2001, also Albanians could enjoy only those rights, and had not been entitled to have a process in their own language.

The Advisory Committee on the Framework Convention notes that in practice there are difficulties concerning the use of languages other than Macedonian in court proceedings due to the scarcity of qualified interpreters.³⁶⁶ However proceedings special selection procedures and trainings for translators belonging to communities not in the majority of the population of Macedonia are being developed as measures of the broader plan to improve the equitable representation of minorities in public bodies.³⁶⁷

As regards the issue of Personal Identification Documents, the adopted laws provided that personal documents of Albanians would be issued in Macedonian and Albanian. Members of the communities who do not speak an other official language can only write their names in their language and alphabet. Until 2001 Albanians had been only entitled, as well as the other nationalities, to have their names written in their language and alphabet in the identity card.

Another important right which the Ohrid Agreement recognizes to Albanians is the right to have a parallel university education in their own language. Actually section 6.2 of the Ohrid Framework Agreement maintains that “State funding will be provided

³⁶⁶ See Advisory Committee on the Framework Convention for Protection of National Minorities, Opinion on “the former Yugoslav Republic of Macedonia” adopted on 27, May 2004, Strasbourg, 2, February 2005, p. 13.

³⁶⁷ See Answers to the Questionnaire fro the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 103, in www.sei.gov.mk/download/Questionnaire/1-01%20-%20%20Political %20Criteria.pdf

for university level education in languages spoken by at least 20 percent of the population of Macedonia, on the basis of specific agreements.”

The private Tetovo University has never been explicitly recognized by the Macedonian authorities, even though it has practically kept working. On 25, July 2000, parliament passed a law which established the University of Southeast Europe, a privately financed university supported by the international community which offers education in three languages, namely: Albanian, Macedonian and English. Hence Albanians did have a university to study in their own language. The point is that, they did not want to renounce to the Tetovo University, which continued to function alongside the new “university”. Only in 2004 political parties were able to find an agreement concerning the future of the Tetovo University, and parliament finally passed a law aimed at legalizing that institution.

After the establishment of the Tetovo state Funded University, the total number of Albanian students has increased: from 10.4% in the academic year 2003/2004 to 15.5% in the academic year 2004/2005. According to the 2002 census Albanians represent 25.17% of the population. Thus, the percentage of Albanian students at university level is now closer to their percentage in Albanian population.

As regards the other ethnic communities which constitute less than 20% of the population of Macedonia, they do not have universities in which the instruction is totally carried on in their own language. However Turks, for instance can exercise their right to education in mother tongue at the state universities of Bitola and Skopje, which have Departments for Albanian, but also for Turkish language and literature. The Pedagogical Faculties in Skopje and Stip, which train teachers for primary and secondary education, also offer studies in Albanian and Turkish language.

The Ministry of Education also adopted a decision aimed to include the Vlach language and literature in the curricula of the Pedagogical Faculty in Stip to favourite the participation in higher instructions of communities which make up than 20% of the Macedonian population. There is also a project to include the Roma language in the curricula of one of the Faculties of Philology in Macedonia.³⁶⁸

³⁶⁸ See Answers to the Questionnaire for the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union, part I Political Criteria, p. 409, in [www.sei.gov.mk/download/Questionnaire/1-01%20-%20Political %20Criteria.pdf](http://www.sei.gov.mk/download/Questionnaire/1-01%20-%20Political%20Criteria.pdf)

4.4) Bi-national / promotional state

From the analysis of the whole structure of the Ohrid Framework Agreement and of the implementing laws adopted by the Macedonian Parliament it is possible to give a definition of the approach of the Macedonian state towards minorities.

On the one hand, there are provisions which perfectly reflect the model of a multi-national state according to which there is no more a majority group besides minority groups, since each collectivity receives the same treatment independently from the numeric strength. This model offers an answer to the dilemma of the difference: “when does treating people differently emphasize their differences and stigmatize and hinder them? And when does treating people the same become insensitive towards their difference and likely to stigmatize and hinder them on that basis?”³⁶⁹ Actually equality in this context is an “institutionalized equality” a notion which overcomes the distinction between formal equality and of substantial equality and that does not exist in reality, because it leaves out of consideration the numerical strength of the components themselves.³⁷⁰ Formal equality does not permit to everybody to have the same starting point, on the other hand substantial equality makes minorities feel that equality is something granted by the majority. Institutional equality is aimed to put the different collectivities in an equal position from the beginning without making them feel different.³⁷¹

However, only Albanians enjoy this kind of equality. It can be found in the presence of the grand coalition which always involves an Albanian party alongside a Macedonian party in the governing coalition. The institutional equality is also ensured to Albanians through the paritarian composition of the Committee on Inter-Community Relations, which entails an equal number of Macedonians and Albanians while reserving only one seat each to the recognized minorities: Turks, Vlachs, Romas, Serbs, and Bosniaks. Moreover, as I showed, the double majority procedure set forth to protect minority interests turns to give Albanians a right of veto on certain issues of vital interests identified by the Constitution. This instrument put Albanians in an equal

³⁶⁹ Martha Minow, *Making all the Difference, Inclusion, Exclusion and American Law*, Cornell University Press, Ithaca, London, 1991, p. 20.

³⁷⁰ See Carlo Casonato, *Minoranze etniche e rappresentanza politica: I modelli statunitense e canadese*, Università degli Studi di Trento, Dipartimento di Scienze Giuridiche, Trento, 1998, pp. 35-38.

³⁷¹ See Joseph Marko, *L'Alto Adige. Un "modello" per la composizione dei conflitti etnici in altre aree d'Europa?*, in *L'Ordinamento Speciale della Provincia di Bolzano*, Francesco Palermo, Sergio Ortino, Joseph Marko ed., CEDAM, Padova, 2001, p. 975.

position vis-à-vis Macedonians because, through that procedure, their vote counts as the vote of the Macedonian Representatives.

Another element that is essential in the definition of a state as a *bi-national* (or multi-national) state is the procedure to amend the Constitution, which should allow a paritarian participation of the minority group. Actually the Macedonian Constitution, amended according to the Ohrid Agreement, provides the use of the double majority procedure also for the approval of the constitutional amendments which directly or indirectly could affect minority interests. Also in this case, since Albanians outvote all the other communities, they do not need their support to veto a constitutional amendment, so that their vote *de facto* has the same weight of the one of the Macedonian majority.

Even the recognition of the Albanian language as an official language, alongside the Macedonian one, in Parliament, in the issue of the laws and personal documents, in state bodies, in state courts reflects an equal position of Albanians, even though Albanian is not an official language throughout the Macedonian state, as I explained above.

Finally, the fact of having granted Albanians their own university, instead of providing only positive measures to encourage their participation in state universities, is a clear sign that Albanians were given a paritarian position in comparison with Macedonians.

However, the Macedonian State still keeps some aspects of the so called *promotional state*. This model recognizes the presence of minority groups alongside a majority group and seeks to realize the principle of substantial equality, in which individuals are not treated as «equally» (formal equality), «but equally».³⁷²

The positive measures introduced, however, were principally aimed to redress torts suffered by the Albanian community in the first ten years of independence of the Macedonian State rather than pursuing a substantial equality of all the communities.

The provisions regarding the use of the double majority vote to elect three out of nine members of the Constitutional Court and three out of seven members of the judicial Council are clearly directed to guarantee Albanians to be represented in those bodies.

³⁷² See Ronald Dworkin, *I diritti presi sul serio* (1977) ed. by G. Rebuffa, Bologna, 1982, p. 297.

The introduction of the proportional electoral system is certainly aimed to ensure that the composition of the Assembly reflects the composition of the society, even though the first objective is to avoid that Albanians are under-represented.

The same is for the implementation of the principle of equitable representation in the public administration, within the police forces, the army etc, even though ensuring the respect of the principles of competence and integrity.

Another element which characterizes the promotional state is the territorial autonomy, in which diversity is recognized and protected. A community which is a non-majority community at national level becomes a majority community at local level and is granted a certain number of competences to run its own affairs, as well as a number of cultural and linguistic rights which can be exercised only at local level. As I have already demonstrated, Albanians *de facto* enjoy a territorial autonomy even though formally the latter had been prohibited by the Framework Agreement and is not explicitly provided in the Constitution.

4.5) Does the model of consociational democracy work in Macedonia?

As I have showed, the consociational model failed in realizing the ideal of civic-multi-ethnic state which the Ohrid Framework Agreement had intended to realize in Macedonia.

The consociative approach to power sharing both as participation in the central decision making power and as distribution of power between the central level and the local level reveals the privileged position of Albanians compared to the other non-majority communities.

According to the Horowitz's integrative approach to power sharing, the only way to facilitate the de-ethnicization of the society and the full integration of all minorities into political life would be the formation of multi-ethnic parties instead of multi-ethnic coalitions, so that a political party would not represent only the interests of one ethnic group. However its theory is mainly majoritarian, because it does not include the institute of the minority veto or the proportional system. He assumes that the West Minister system is not the real problem and can be used even in post-conflict situations, if not coupled with ethnically based parties.³⁷³

³⁷³ See Karmen Kettley, *op. cit.*, p. 262.

This solution will very unlikely apply to the Macedonian system because traditionally parties are ethnically based parties, and without mechanisms established in order to ensure political representation of minorities and to veto decisions related to their vital interests, minorities will remain permanent minorities or will be always outvoted in Parliament.

Nonetheless, the fact that the consociational democracy emphasizes the differences as the only way to overcome a post-conflict situation can be dangerous and create fragmentation rather than integration. According to Lijphart “societies will be more tolerant to difference if difference is preserved, and replicated in the political system.”³⁷⁴ Thus, the model itself is definitely useful in the first stage of a post-conflict situation, but could be dangerous in the long run because it risks to obstacle a real integration among the different ethnic groups by stressing the differences instead of smoothing them and creating a climate of mutual understanding.

Even though the consociational model *per se* is not clearly aimed at deepening ethnic cleavages, if there is not a co-operative attitude and if the compromise is not accepted by the society, the system itself will fail and will lead to the possibility of re-explosion of ethnic conflicts. In Bosnia and Herzegovina, for instance, an excessive use of the power-sharing institutes both at the state level and at the entity level, alongside a territorial division along ethnic lines and of the working of the entities themselves as quasi-states, leaving very few competences to the state level, led to the failure of the structure created by the Dayton Agreement.

However, the elements of consociational power sharing set forth by the Ohrid Framework Agreement did work generally well in the Macedonian system, notwithstanding the many problematic aspects which characterize those elements themselves. Thus, the implementation of the Agreement itself could proceed without particular delay.

The grand coalition allows the representation of all segments of the society, but the compromising solutions that are reached do not permit the government to be accountable to the electorate of the different parties. Moreover, the grand coalition is just an elite co-operation and masses can also challenge the compromising attitude of

³⁷⁴ See Brian Di Sarro, *The Theory of Democracy and Permanent Minorities in South-Eastern Europe*, University of Iowa, p. 6, in www.politicsandgovernment.ilstu.edu/conference/confinalupl/2005finals/Desario2005.doc.

their elites and even revolt against them. In Macedonia the institute of the grand coalition has been a consolidated practice since the first democratic elections, so that the necessity to find agreements with the other ethnic parties has become connatural in the decision-making process and has been accepted by the population.

Minority veto can be used to obstruct the approval of a decision which they consider detrimental to their own ethnic interests and, to some extent, the abuse of this instrument can potentially lead to the block of the decision-making process. However, on the one hand during the implementation of the Ohrid Agreement, Albanians have not abused of that instrument, on the other hand the provisions of the Ohrid Agreement have been designed to avoid the absolute *empasse*.

It is true that, in Macedonia, the institute of the minority veto reflects the model of the so called “hard veto” because it implies the struck down of the legislation after the use of the “veto power” (in the Macedonian case, double majority). However, there is a fixed list of vital interests, and if there is a dispute among members of the Assembly regarding the application of the special voting procedure to be used to adopt laws which can potentially affect minority vital interests, the Committee on Inter-Community Relations shall decide by majority vote whether the procedure applies.

Moreover, some scholars have pointed out an organ which could act as mediator when communities have manifested the intention to adverse the adoption of a law which they consider detrimental to their own vital interests. This organ might be the Committee on Inter-Community Relations in its role of considering issues of inter-community relations and making appraisals and proposals for their resolution (Art. 77.4 of the Constitution). Actually par. 5 of Art. 77 specifies that the Assembly is obliged to take into considerations the appraisals and proposals of the Committee and to make decisions regarding them.

The Committee does not reflect exactly the proportion of the ethnic groups present within the Macedonian society and only advantages ethnic Macedonians and ethnic Albanians. However, since the Framework Agreement empowers the Albanian community to exercise the veto right even without the support of the other communities, the Committee could be seen as a neutral actor because Albanians and Macedonians have the same number of representatives within the Committee itself.³⁷⁵

³⁷⁵See Shane Kelleher, *Minority Veto rights in power Sharing Systems: Lessons from Macedonia, Northern Ireland and Belgium*, in Adalah' s Newsletter, vol. 13, May 2005, p. 6.

The principle of the proportional representation in public bodies could have been a source of re-emerging of ethnic conflicts. However, the Framework Agreement has provided the principle of equitable representation which has a different content compared to the proportionality principle since it does not establish strict quotas for the different ethnic groups, even though the trend shall be to ensure them, and especially to Albanians, a representation which reflects their percentage in the population.

This principle is not something new in Macedonian system, since, as I have explained, in the field of education positive measures have been established by the Government since 1994. The introduction of that principle in the Macedonian Constitution is however extremely important because it represents the institutionalization of the principle itself, in this way legitimizing the adoption of ordinary laws which make reference to that principle.

The difficult economic situation of the country could have led to a resentment of Macedonians against Albanians. On the one hand, the International Monetary Fund obliged the country to reduce the state employment by four percent, which means 4,000 workers, in order to make more efficient the public administration and obtain economic aids from the IMF itself ³⁷⁶, while on the other hand it has been necessary to ensure an enhanced representation of non-majority communities, especially Albanians.

Furthermore, the principle of equitable representation applies right in the over-employed public institutions where the budget is overstressed and most of Macedonians work, rather than in the private sector.

Nonetheless, the Macedonian Government found some tricks not to respect the impositions of the IMF. It introduced, for instance, the so called “contract for services” which lasts six months so that it is not necessary to register the employees hired under that kind of contract. In addition, it found many other ways not to register the employees. The Government also provided the possibility of early retirement for Macedonians which have almost reached the retirement age.

Furthermore, the low level of education of Albanians, more than Macedonian obstructionism seems to be the main problem. Actually, if the job requires a degree, Albanians are not hired only because they are Albanians and the number of Macedonian

³⁷⁶ See *Macedonia: no room for complacency*, ICG Europe Report, n. 149, International Crisis Group, Skopje, Brussels, 23, October 2003, p. 12.

people who have graduated is definitely higher compared with the one of Albanians. This is especially true as regards the judiciary system, because until 1989 they went to the Law Faculty in Skopje, while the illegal university of Tetovo was founded only in 1994 and provided a very low level of education. The degree certificates conferred by the illegal university of Tetovo were not recognized by the Macedonian authorities so that it was extremely difficult for Albanians who studied in that university to find a job in the public sector, especially where, as for instance in the judiciary, high qualifications were required.

Nonetheless, if the job does not require specialized knowledge, the trend is to favour Albanians, and it can also occur that Albanians are hired even though they do not have all the requirements prescribed for that particular job.³⁷⁷ It will take very long time, at least a generation to fill the gap in the field of education and training.³⁷⁸ The April 2003 government plan provided for, among other programmes, a training program in order to help Albanians to satisfy the requirements to get a job in the public sector employment.³⁷⁹

It is however in the education field that the Ohrid Framework Agreement mostly failed in providing integration between Albanians and Macedonians, even though politicians tend to put the issue “under the carpet”.³⁸⁰

In the Republic of Macedonia the ethnic conflict did not fortunately reach the horrors of the Bosnian conflict because of the earlier intervention of the international community as a mediator between the parties. ‘Only’ about 200 people, counting both sides, died in the Macedonian conflict if compared with the about 200,000 victims perished in the Bosnian one.³⁸¹

Nonetheless, it should be stressed that, while in Bosnia and Herzegovina the level of living together of the three major ethnic groups was raised before the war and there was a consistent number of mixed marriages, in Macedonia Albanians and Macedonians have always lived as communities apart and the number of mixed marriages has almost been inexistent.

³⁷⁷ Interview to Emil Atanasovski, program manager, NDI (National Democratic Institute), 09-02-2006.

³⁷⁸ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 44.

³⁷⁹ See *Macedonia: no room for complacency*, ICG Europe Report, n. 149, International Crisis Group, Skopje, Brussels, 23, October 2003, p. 13.

³⁸⁰ See interview with Emil Atanasovski, program manager, NDI (National Democratic Institute), 09-02-2006.

³⁸¹ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 83.

It is right from children that it is necessary to start to create the conditions to develop peaceful relationships between the ethnic groups, and to try overcoming the climate of reciprocal mistrust which always characterizes a post-conflict situation.

Unfortunately, Macedonian and Albanian children are *de facto* totally segregated both in primary and secondary education. Generally they have different schedules so that Macedonian children go to school in the morning, and Albanian ones in the afternoon for instance. Even in kindergarten Macedonian children and Albanian children have little interaction.

The only possibility of interaction is when Macedonian and Albanian children are neighbours in the same street, so they are free to play together without worrying about the ethnic background of their friends.

When Albanians and Macedonians grow up, they might have the possibility to go to the university together at the Macedonian state schools, where the number of Albanians enrolled increases every year, due to the positive measures introduced to encourage their equitable representation. The two groups have also the possibility of attending together the South East European University which represents the attempt of the international community to create integration, since the languages of instruction are Albanian, Macedonian and English, and at the same time to elevate the level of education of Albanians, which since 1994 had begun to attend the illegal Tetovo University. The South East European University is still financed by US and EU so it has a huge budget, and to some extent, for instance as regards technologies and the organization of work, the quality is even better than in Macedonian state universities of Skopje and Bitola. As regards other aspects, such as the procedure of examination, on the contrary, the political will to increase the number of graduated students of Albanian origin, leads to lower the level of preparation necessary for passing the exams.

It is true that since 2004 Albanians have also had the possibility to attend the state funded University of Tetovo, but the number of Albanian students who go to this university is lower than those who go to the South East European University. This is also due to the fact that not all the faculties of the illegal university of Tetovo have been transferred to the legal state funded university. Moreover, the latter has a very limited budget coming from the central government and it is still not clear whether the main building is public property or private property. There are no Macedonians attending this

university, certainly because of historical reasons, but mainly because of the low level of education provided, since the scarce economic resources do not allow a proper development of an higher quality of instruction.

The other way of interaction is working in public sector where Albanians become more numerous from year to year, thanks to the positive measures, which, as I have explained before, have been introduced to increase their equitable representation.³⁸²

Another element which will likely increase the segregation between the two ethnic groups is the reform of local self-government.

According to Lijphart, in a post-conflict situation it is better to keep separate the different segments of society in order to avoid the re-emerging of the violence. However, the critics of the theory see federalism to be the anti-camera of secession.³⁸³ Federalism had not actually been provided by the Ohrid Framework Agreement because of the Macedonians' fears towards possible Albanians' secessionist demands. However, the reform of the local self-government gives Albanians a *de facto* territorial autonomy and it is right in this field that the process of implementation of the Ohrid Framework Agreement had a halt.

Since the proposal of the draft for the new law on local self-government, in late 2001, it was clear that the issue of decentralization had ethnic implications. Actually, given that the draft entailed a provision which allowed to municipalities to merge and to create common administration, Macedonians challenged the approval of the law, fearing that it would lead to the creation of an autonomous Albanian region in the north-western side of the country. Macedonian parties rejected the draft agreement, even though this clearly led to a delay of the international donors conference, which had to be developed after the passing of the constitutional amendments and of the revised Law on Local Self-Government. Albanian parties on the other hand began to boycott parliamentary sessions in order to force Macedonians to withdraw their amendments to the draft law.

³⁸² See interview with Emil Atanasovski, program manager, NDI (National Democratic Institute), 09-02-2006.

³⁸³ See Karmen Kettley, *Power-Sharing and Ethnic Conflict: The Consociational-Integrative Dichotomy and Beyond*, in *European Yearbook of Minority Issues*, vol. 1, 2001/2, Kluwer Law International, The Hague, 2002, pp. 254-262.

It was only thanks to international mediation, especially to Javier Solana, that the law was finally passed almost with the unanimity of the votes.³⁸⁴

The other crucial moment for the implementation of the Framework Agreement, was the organization of the referendum in order to abrogate the *Law on Territorial Organization of the Local Self-Government in the Republic of Macedonia*, and the *Law on the city of Skopje*. The VMRO-DPMNE declared that it would support the initiative of the World Macedonian Congress in order to gather 150,000 signatures necessary to organize a binding national referendum on municipality boundaries.

According to Georgievski, the leader of the VMRO-DPMNE, who summarized the feelings of many ethnic Macedonians, “the agreement on territorial boundaries is a new form of ethnically cleansing the Macedonians from Western Macedonia.” The organizers thought that the government’s proposal about the redrawing of the municipalities’ boundaries would apply the territorial principle to solve ethnic issues, thus violating the provisions of the Framework Agreement and would be the antechamber of a federal state.

The gathering of the signatures was preceded by daily protests, which were held in Skopje and in several other municipalities, most notably in Struga, which according to the draft law would become a municipality with Albanian majority.³⁸⁵ Leaving aside the results, the significance of the organization of the referendum *per se*, for the Macedonian-Albanian relationships, deserves to be analysed. Actually, it symbolizes the dissatisfaction of ethnic Macedonians not only with the creation of a *de facto* territorial autonomy, but also with the fact that Macedonian state has turned to be a *de facto* bi-national state. Macedonians were clearly unwilling to accept the new status of ethnic Albanians and all the rights granted them.

The referendum would have got the result of the organizers and stop the decentralization process if the majority of the electors had answered positively to the answer: “Do you want to keep the territorial organization of the 1996 local self-government?” The concourse of electors was on the contrary much below the

³⁸⁴ It was the first time that a law was passed under the new voting procedures. Eight of the representatives claiming to belong to communities not in the majority of the population of Macedonia did not support the law. See Ulf Brunnbauer, *The Implementation of The Ohrid Agreement: Ethnic Macedonian Resentments*, ECMI issues 1/2002, European Centre for Minority Issues, Flensburg, 2002, pp. 17, 18.

³⁸⁵ See *Macedonia: make or break*, ICG Europe briefing, International Crisis Group, Skopje, Brussels, 3, August 2004, p. 6.

expectations, around 30%. Thus, even though the majority of the voters voted in favour of the maintenance of the previous boundaries, the referendum failed.

The result was also due to the continuous pressing of the international community, especially the USA and the EU, which were concerned about the process of approaching NATO and the European Union.³⁸⁶

The English Minister for Foreign Relations of the EU during an official visit to Macedonia explicitly said that the success of the referendum would have represented a step backward in the Macedonian path towards the European Union,³⁸⁷ to which Macedonia had submitted the application for membership on 22 March 2004³⁸⁸.

The US did not limit themselves to make recommendations to the Macedonian Government in order to convince people not to vote, but made a move which could not be more striking. They decided to recognize Macedonia with its constitutional name. The decision was announced in Macedonia few hours before the campaign blackout period, in this way making Macedonians feel to some extent victorious, and obscuring the relevance which the referendum could have assumed in Macedonian internal and external political life.³⁸⁹ Notwithstanding the resentment towards the redrawing of the boundaries of the municipalities, and in general towards the entire structure of the Ohrid Agreement, Macedonians demonstrated their maturity and did not go to vote. It should be noticed, however, that their choice has mostly been determined by an external factor. Actually, the recognition from the US made them feel more secure regarding the preservation of the integrity of the state which they still perceive as their own state.

That attitude turned to be extremely important for the future of the Macedonian state even because it allowed to continue the path towards the EU. The perspective to become a EU member, even if in the long run, will definitely fade the ethnic issue, which, at the end, is always directly connected with the poor conditions of a country and with the lack of positive expectations for the future.

4.6) Macedonia towards European Union

³⁸⁶ See Risto Karajkov, *Fallito il referendum macedone*, 09-11-2004, pp. 2, 3, in www.osservatoriobalceni.org/article/articlereview/3605/1/46/

³⁸⁷ See Risto Karajkov, *Referendum in Macedonia: le lancette della crisi*, 03-11-2004, p. 1, in www.osservatoriobalceni.org/article/articlereview/3584/1/46

³⁸⁸ See Relations between the EU and the former Yugoslav republic of Macedonia, in [www.http://europa.eu.int/comm/enlargement/fyrom/eu_relations.htm](http://europa.eu.int/comm/enlargement/fyrom/eu_relations.htm)

³⁸⁹ See *Macedonia: Not out of the woods yet*, ICG Europe briefing n. 37, International Crisis Group, Skopje, Brussels, 25, February 2005, pp. 4, 5.

As regards the political situation in the country, since the 2002 political elections the coalition government has been composed of the SDSM, and the DUI (the Albanian party which gathers several members of the dissolved NLA). Elections were held without particular tensions or irregularities. The percentage of voters was about 70%, and 60% with respect to the Albanian community.³⁹⁰

The most difficult period that the country went through was definitely the first months of 2004. On 9, February there was the referendum regarding the laws which established a new redrawing of the municipalities' boundaries, which fortunately failed. Furthermore, on February 26, the President Boris Trajkovski, who had largely contributed to the stabilization of the country and who was considered by foreign countries as the most trustworthy Macedonian politician, died in a plane crash. Right that day Macedonian Prime Minister was supposed to present the formal application for EU membership to the Irish presidency. On April 15, Macedonians elected their new president, Crvenkovski, the leader of the SDSM. The second turn of elections was deemed generally fair by the head of the OSCE mission Bauer, even though irregularities have been found in some parts of the country.³⁹¹

In addition, there was a deep concern about a possible spill over of the violent conflict which had broken out in Kosovo after the riots occurred on 17-19 March. Nonetheless, that episode was obscured by the recent loss of the President Trajkovski and did not receive much attention in the Macedonian media. Moreover, all the political parties strongly condemned the Kosovo events. The country gave to the international community one more proof of its political maturity and overcame that difficult period without serious threats to public security. The issue related to the Macedonian-Kosovo border, which was decided in 2001 without consulting Macedonian authorities was about to be resolved. Furthermore, the prospect of application for EU membership contributed to undermine the potential risk of re-explosion of ethnic tensions in Macedonia.³⁹²

³⁹⁰ See *Elezioni in Macedonia: positive oltre ogni aspettativa*, p. 3, 16-09-2002, in www.osservatoriobalcani.org/article/articlereview/1268/1/46

³⁹¹ See *Macedonia: Branko Crvenkovski è il nuovo presidente*, p. 2, 16-06-2004, in www.equilibri.net/europa/macedonia204.htm

³⁹² See *Macedonia: make or break*, ICG Europe Briefing, International Crisis Group, Skopje, Brussels, 3, August 2004, pp. 3, 4.

The ceremony of the presentation of the application for EU membership,³⁹³ which was postponed till 22 March, received the appreciation of the High Representative for the Common Foreign and Security Policy Javier Solana.

On 17 May 2004, the EU Council of Ministers asked the European Commission to prepare an opinion about the Macedonian application. The opinion would also take into consideration the comprehensive questionnaire including about 4,000 questions regarding political system, economy, legislation, administration and social affairs handed in on 23 February 2005.³⁹⁴

However, the path towards the beginning of the talks was still very long and Macedonia failed the first important test: the 13 March 2005 local elections, which were very strongly criticized by the ODIHR preliminary report both in the first turn and in the second turn of elections.³⁹⁵ The list of irregularities, mostly occurred in municipalities with Albanian majority, was really very long: taking away of electoral ballots, group votes, threat of electors, false signatures in the electoral lists and even coercion through arms.

These elections were the first administrative elections after the reform of the Law on Local Self-Government, which had greatly enhanced the competences of the local authorities, and which was, as I mentioned above, one of the key points of the Ohrid Agreement. Thus, Macedonians should have showed the maturity of the country in holding fair and democratic elections.³⁹⁶

The perspective of the granting of the status of official candidate to membership for Macedonia seemed to fade during the year, due to a deep crisis which involved the European Union. The French and Dutch referendums that rejected the European Constitution, in the first part of 2005, and the lack of agreement regarding the approval

³⁹³ Art. 49 of the Treaty on the European Union states that: “Any European State which respects the principles set out in Article 6 (1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.” Art. 6 (1) states “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

³⁹⁴ See *Macedonia: make or break*, ICG Europe Briefing, International Crisis Group, Skopje, Brussels, 3, August 2004, p. 10.

³⁹⁵ While the members of the municipalities’ councils are elected with the proportional system in only one turn of elections, mayors are elected with the majority system with the possibility of holding a second turn of elections. See Risto Karajkov, *Administrative in Macedonia, test per l’ UE*, p. 2, in www.osservatoriobalcani.org/article/articlereview/3954/1/46/

³⁹⁶ See Risto Karajkov, *Elezioni in Macedonia: controverso secondo turno*, p. 2, 31-03-2005, www.osservatoriobalcani.org/article/articlereview/4036/1/46/

of the EU budget for the period 2007-2013 seemed to leave little space to the possibility of new enlargements.³⁹⁷

In November 2005, the European Commission issued the final opinion on the application from the former Yugoslav republic of Macedonia for membership of the European Union, by analysing, according to the guidelines set forth in the 2003 “Thessaloniki Agenda for the Western Balkans”, the reforms done to meet the 1993 Copenhagen criteria and the conditionalities of the Stabilization and Association Process (co-operation with the International Criminal Tribunal for the Former Yugoslavia, and regional co-operation).

The 1993 European Council of Copenhagen decided that the membership requirements would be the realization of political criteria, economic criteria and the ability to approach the so called “*acquis communautaire*”. Political criteria include the respect for democracy, the rule of law, human rights, and respect for and protection of minorities. Economic criteria imply the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union. The last criterion implies the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

The Republic of Macedonia signed the SAA (Stabilization and Association Agreement) on 9, April 2001, and it entered into force on 1, April 2004. That Agreement obliged the parties to further work on political, economic and institutional stabilization of the country, as well as to institution building, public administration reforms, enhanced trade and economic cooperation. Moreover it stressed the need to bring Macedonian legislation nearer to the Community *acquis* and strengthen co-operation on justice and home affairs.³⁹⁸ The annual reports of the Commission regarding the implementation of the SAA positively stressed the commitment of the Macedonian Government in implementing the provisions of the Ohrid Agreement, even though they also underlined the necessity of further steps in the field of economic reforms and in making the Macedonian legislation consistent with the EU standards.

The 9 November 2005 positive opinion of the Commission regarding the beginning of the accession negotiations was mainly based on the existing capacity of the

³⁹⁷ See Rosita Zilli, *Fumata bianca per la Macedonia*, 19-12-2005, p. 2, in www.osservatoriobalcani.org/article/articlereview/5066/1/51/

³⁹⁸ See *EU-FYROM: Stabilization and Association Agreement enters into force*, Brussels, 1, April 2004, in www.europa.eu.int/externalrelations/macedonia

Republic of Macedonia in meeting the political criteria through the implementation of the SAA, of the Ohrid Framework Agreement and of the Framework Convention for the Protection of National Minorities.³⁹⁹

During the 15-16 December 2005 European Council the climate was really very tense. On the one hand, France menaced to veto the granting to Macedonia of the status of candidate member. Its position was conditioned by the significance of the result of the referendum, which was also fruit of the difficulties faced by the European Union after the previous maxi-enlargement. On the other hand, the Great Britain proposed a list of cuts for the EU budget 2007-2013 which would have likely led to the impossibility of providing the necessary assistance pre-adhesion to all western Balkans in the next seven years.

That scenario did not promise anything good for Macedonia. However the talks finally led to find a compromise on the budget issue and Macedonia could obtain the coveted status of official candidate to the EU membership.⁴⁰⁰

Nonetheless, the initial date of the talks has not been defined yet, and Macedonia is still a country with many problems, especially economic problems, since unemployment rate is around 38.6 %, that means 320,000 people jobless⁴⁰¹ (even though it should be kept in mind that unofficially the datum is around 20% because of the presence of grey economy⁴⁰²). Moreover, almost 30% of the citizens live under the poverty line. The average salary is around 150 euros per month and mostly only one of the spouses works. The most anxious fact is that 65-70% of young people is jobless and many of them stay in that condition for a long period of time, thus losing the knowledge acquired at school. They certainly would have better chance in emigrating to another country.⁴⁰³

³⁹⁹ See Communication from the Commission, Commission Opinion on the Application from the former Yugoslav Republic of Macedonia for membership of the European Union, Commission of the European Communities, Brussels, 9, November 200, pp. 1-3.

⁴⁰⁰ See Rosita Zilli, *Fumata bianca per la Macedonia*, 19-12-2005, pp. 1-4, in www.osservatoriobalciani.org/article/articlereview/5066/1/51/

⁴⁰¹ See Risto Karajkov, *Macedonia, povertà in aumento*, 20-09-2005, p. 2, in www.osservatoriobalciani.org/article/articlereview/4709/1/46/

⁴⁰² See interview with Emil Atanosovski, program manager, NDI (National Democratic Institute), 09-02-2006.

⁴⁰³ See Risto Karajkov, *Macedonia, povertà in aumento*, p. 2, 20-09-2005, in www.osservatoriobalciani.org/article/articlereview/4709/1/46/

Chapter five

Concluding Remarks

Comparing the legal status of the Albanian nationality (national minority) during the nineties with their legal status now, in the aftermath of the Ohrid Framework Agreement and the consequent constitutional amendments, the most significant change is definitely the fact that they are no more considered as a minority but as a people.

Since the origins of the Macedonian state, Albanians have never considered themselves a minority and that is why the title of my thesis refers to Albanians as a minority between quotations. Actually their nation building process had begun in the ninetieth century and had led to the construction of the Albanian state in 1912, while Macedonians started to construct their own identity only when Tito decided to give them their own Republic, within the Yugoslav federation. Moreover, Albanians' birth rate was definitely higher than that of Macedonians, and they even claimed to constitute 40% of the whole population. They openly challenged the official census data which underestimated the real number of Albanians living in Macedonia, since the census took into account only Macedonian citizens and the criteria to get the citizenship were totally discriminatory towards Albanians.

The change of status implied the recognition of many rights for Albanians, rights that they could not enjoy during the nineties, since Macedonia had *de facto* remained an ethnic nation-state, notwithstanding the declaration of the formal equality of all Macedonian citizens stated in the 1991 constitutional preamble. Hence, Albanians suffered persecutions and discriminations in most fields of public life.

Even though the freedom of religious faith was allowed to everybody, only the Macedonian Orthodox Church was explicitly mentioned in the Constitution. In reality the Islamic Religion was not put in the same position compared to the Macedonian Orthodox Church.

The introduction of the mixed electoral system (majority-proportional) increased the Albanian representation in Parliament but Albanians still remained underrepresented.

The inclusion of an Albanian party within the governing coalition was extremely important in order to ensure the political stability of the country, because the most important decisions were negotiated right within the governing coalition and just ratified by the parliament. However, Albanians did not have the right to veto laws which could affect their own interests and they could always be outvoted by Macedonians. They did not even have the right to veto constitutional amendments which could affect their own interests.

Furthermore, they were clearly underrepresented in the police forces, in the army, and in public bodies. The only sector in which Government intervened through positive measures, to increase the Albanian representation, was the sector of the higher education.

In addition, Albanians were not even granted enough powers at the local level in order to administer their own affairs. The implementation of the 1995 Law on Local Self-Government showed a centralistic approach to decentralization. On the one hand, most of the competences allocated to municipalities were *de facto* carried out by Skopje, on the other hand, municipalities were not granted enough economic resources to exercise their powers.

As regards the rights that they could enjoy within the municipalities, it should be noticed that Albanian language was in use if Albanians made up the majority or a considerable number (more than 20%) of the population, and the discipline regarding the signs and the name of the places changed if Albanians made up the majority or a considerable number of the population of the municipality. However, they were not entitled to fly the Albanian flag, even though in 1997 they repeatedly violated the prohibition, causing the violent reaction of the Macedonian authorities.

With respect to the use of language, Albanians could use their own language in private life, and to some extent in municipalities where they constituted the majority or a consistent number, but Macedonian language remained the only official language of the Macedonian state.

In the field of education, Albanians were entitled to receive primary and secondary education in their own language, but they were not entitled neither to have a state funded Albanian university, nor to set up a private Albanian university. However Albanians in 1994-1995 founded the Tetovo University which provided Albanians

higher education. Macedonian authorities forcibly tried to close that university without obtaining any result, but refused to recognize the validity of the diplomas conferred to Albanian students.

At the end of the nineties there were still many unsolved matters and the after-effects of the Kosovo crisis, alongside many other external factors, contributed to the outbreak of the armed conflict between the Albanian rebels and the Macedonian army in early 2001. The conflict, however, was not as bloody as the previous Balkan conflicts, thanks to the timely intervention of the international community at the first stage of the conflict itself.

The Ohrid Framework Agreement signed by Albanians and Macedonians in about six months after the beginning of the conflict was aimed to create a civic multiethnic Macedonian state, even though the provisions of the Agreement itself neither de-ethnicize Macedonian system nor put each community (minority) in the same position. The reintroduction of the ethnic element in the text of the preamble by the Macedonian parliament just confirms the impression that the result is more a bi-national state rather than a multi-ethnic one, even though there are still some elements of the so called promotional state. The positive measures turn to favour mainly Albanians instead of pursuing a substantial equality of all the non majority communities vis-à-vis Macedonians.

As regards Albanians achievements concerning a very important aspect of the free expression of identity, such as religion, the Islamic Religion was recognized to have an equal status compared to the Macedonian Orthodox Church.

Furthermore, the model of consociational democracy, aimed to avoid the presence of permanent minorities in societies, was introduced by the Ohrid Framework Agreement mainly to allow Albanians on the one hand to participate in the central decision-making power, and on the other hand to enjoy *de facto* a territorial autonomy and a great number of rights on a territorial basis, as well as many rights on a personal basis.

Actually, the element of the grand coalition, made up of a Macedonian party and of an Albanian party has been *de facto* present in Macedonian political life since the 1991 first democratic elections and will likely continue to be an indispensable element in order to maintain the political stability in the country.

The instrument of the minority veto, through the technique of the double majority (majority of the total number of the representatives within which there must be the majority of the votes of the representatives claiming to belong to a non-majority community) allows Albanians not to be outvoted for decisions regarding their own vital interests, such as culture, use of language, education, personal documentation and use of symbols. The same special procedure is provided for the adoption of laws on local finances, local elections, boundaries of municipalities, and the city of Skopje.

Albanians are also granted a right of veto, through the technique of the double majority, also with respect to the adoption of constitutional amendments that can directly or indirectly affect their own vital interests.

The electoral system has been modified from a mixed system (majority and proportional) into a pure proportional system, which is definitely the best system to ensure the political representation of minorities, thus granting Albanians a major number of seats and avoiding their under-representation in Parliament.

Furthermore, the representation of Albanians is constitutionally guaranteed in non political organs such as the Constitutional Court and the Judicial Council, in which part of the members must be elected through the technique of the double majority.

Albanians have also obtained a paritarian representation within the Committee on Inter-Community Relations, which makes appraisals and proposals for the solutions of inter-community relations that should be taken into consideration by the Parliament in the decisions regarding those issues.

The principle of equitable representation in public bodies has been already applied since 1994 by the Macedonian government in the field of the higher education by establishing positive measures to increase the representation of minorities in state universities. However the Ohrid Framework Agreement has the merit of having institutionalized that principle providing its introduction in the revised text of the Macedonian constitution. While the reforms made to increase the equitable representation of non-majority communities within the army and the police forces were successful in increasing Albanian representation compared to their percentage in the Macedonian population, many steps are still to be undertaken to increase the Albanian representation within the public administration, and especially within the judiciary system.

Furthermore, notwithstanding the words of the Ohrid Agreement, which had formally prohibited the adoption of territorial solutions of ethnic conflicts with the intent to avoid the mistakes made by the Dayton Agreement in Bosnia and Herzegovina, Albanians have been *de facto* granted a territorial autonomy.

Formally, municipalities just have a local self-government in which competences are allocated at the local level according to the subsidiarity principle and can be exercised by the single units only following the guidelines of the central government. However, the administrative competences that the Agreement allocates to the municipalities are independent competences and the state can intervene with a law only if a competence is not efficiently carried out by the municipalities themselves. In such a case the law shall promote the exercise of the competence at the local level.

In addition, the redrawing of the boundaries of the municipalities increased the number of municipalities where Albanians make up the majority of the population and can administer their own territory. The laws which provided for the redefinition of the boundaries were actually challenged by the Macedonian opposition party (VMRO-DPMNE) and by the World Macedonian Congress, which organized a referendum to abolish those laws. However the referendum failed, mostly due to the pressures from the side of the international community and to the recognition of Macedonia with its constitutional name from the side of the USA.

The Ohrid Framework Agreement grants Albanians many rights enjoyable on a territorial basis if they make up at least 20% of the population of the municipalities: the declaration of the Albanian language as the second official language of the municipality, the possibility of communicating with a regional or main office of the central government in Albanian, the right to have traffic signs written both in Macedonian and in Albanian (even though the law which provides for this right has not been enforced yet). Finally, they have been also recognized the right to fly their own flag alongside the Macedonian one in the municipalities where they make up the majority of the population. The possibility of enjoying those rights was definitely increased by the enlarging of the borders of the municipalities.

As regards the rights enjoyable on a personal basis, Albanians have obtained a fundamental achievement: Macedonian language is no more the only official language of the State. Actually Albanian has become the second official language in state

administration bodies in state bodies and in Parliament's sessions (even though the records of Parliament's sessions are still written in the Macedonian language only). They can also have the process in Albanian language before criminal, civil and administrative courts leaving to Macedonians the right to have oral and written translation of all the proceedings. Furthermore, laws and Personal Identification Documents are issued both in Macedonian language and in Albanian language.

However, Macedonian language has remained the official language in government's sessions and Albanians can communicate with a regional or a main office of the central government in their own language only if they live in a municipality in which they make up more than 20% of the population. The result is that Macedonian language has remained the only official language throughout the country, even though this aspect is still not clearly defined by a specific law and parties of the grand coalition are having heated discussions on this topic.

As regards education, Albanians have been finally granted the right to have a state funded university in Tetovo in which the language of teaching would be only Albanian. In such a way the long-standing issue of the illegal private university of Tetovo, founded in 1994 and never officially recognized by Macedonian authorities, has been brought to an end.

The result of the reforms was the creation of a *de facto* bi-national state, accepted by Macedonians with reluctance. The resentment that they have expressed through the organization of the referendum regarding the redrawing of the borders of municipalities has ancient roots, which still nowadays produce after-effects. Actually Greece has not yet recognized Macedonia with its constitutional name and has criticized the unilateral recognition made by the USA in the eve of the February referendum. Greece was also concerned about the declarations made by the Albanian President, which seemed ready to recognize Macedonia with its constitutional name few weeks after the US recognition. The prospective of ruining the relationships with Greece, however, pushed Albanian government to change its position. Nonetheless, in bilateral relations Albania keeps using the constitutional name of Macedonia.⁴⁰⁴

The European Union has always endorsed the Greek position, being Greece a member of the European Union, and has officially condemned the unilateral decision of

⁴⁰⁴ See Indrit Maraku, *Tirana pronta a riconoscere la "Macedonia"*, *Atene in paranoia*, p. 2 in www.osservatoriobalcani.org/article/articlereview/3666/1/41/

the USA. However there are also signs that the position of the European Union is being reconsidered. For instance, the Ohrid Framework Agreement, which was negotiated also by Solana, referred to the constitutional name of Macedonia instead of referring to the international acronym FYROM.⁴⁰⁵

Furthermore, ambiguous declarations regarding this theme were made on the occasion of the delivery of the questionnaire. The president of the Commission Baroso, kept talking about Macedonia using the prefix “Former Yugoslav Republic of” and stated that Greece is a member of the European Union and that the enlargement issues are decided by unanimity, sending a clear message to Macedonia to resolve the long-standing dispute. The same day, Javier Solana, openly challenged the declarations of Baroso, referring to Macedonia with its constitutional name.⁴⁰⁶

The time frame within which Macedonia is supposed to get the full membership is not foreseeable at the moment. Bulgaria and Romania are planned to enter by 2007, and entry talks are taking place with Croatia. The Commission of the European Union has just defined a medium-term period of accession which could be of about five years.⁴⁰⁷ Hopefully Macedonia and Greece will in the meanwhile solve their problems.

The other open question is the definition of the status of Kosovo that is still an international protectorate. The recent death of Rugova, the historical leader of the LDK (League for Democratic Kosovo) threw the country into a situation of political uncertainty, especially because by the end of 2006 the final talks about the definition of the status of Kosovo are planned to begin. Rugova had already found in September 2005 a team of experts with the task to carry on the negotiates. Now the problem is to find a leader that can substitute Rugova in this difficult situation.⁴⁰⁸

Even though the definitive solution turned to be the independence of Kosovo, it is highly unlikely that Macedonian Albanians would again think to the possibility of joining Kosovo in order to reconstruct the “Big Albania”. Actually, they succeeded in obtaining most of the rights they had asked. The right to voice generally substitutes the

⁴⁰⁵ See Kristina Balalovska, Alessandro Silj, Mario Zucconi, *op. cit.*, p. 127.

⁴⁰⁶ See Risto Karajkov, *Macedonia e UE: un passo avanti*, pp. 3, 4, in www.osservatoriobalciani.org/article/articlereview/3934/1/46/

⁴⁰⁷ See Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic for membership of the European Union, 9, November, 2005, p. 3.

⁴⁰⁸ See *Il Kosovo dopo Rugova*, Pristina, 27, January, 2006, p. 2, in www.osservatoriobalciani.org/article/articlereview/5209/1/45/

desire to exit from the State⁴⁰⁹, even though the radical Albanian political parties would likely exploit the independence of Kosovo.

Will the equilibrium created by the implementation of the Ohrid Agreement be enduring and allow to Macedonians and Albanians to conduct their own country towards the European Union? It is really hard to say now, even though the country has so far demonstrated to be successful in overcoming the crisis, many reforms are still necessary in order to make the internal legislation consistent with the European standards, especially in the field of police system, efficiency of the judiciary system, measures against corruption and against the organized crime.⁴¹⁰ Political elections will be held this year under special control of the international community after the negative opinion of the ODIHR observers regarding the 2005 local elections. The coming elections shall be carried out regularly even because, according to the calendar, they will be held just before the next European Commission Report on the Macedonian progress.⁴¹¹

One of the main concerns of the US participants in the November 2005 Mavrovo meeting, is that at least one opposition party will play the nationalistic card against both the European Union and the NATO, in such a way damaging the image of the country abroad. However, notwithstanding the fact that during the electoral campaign and the day of the elections itself some Albanians and Macedonian parties had showed in the past radical position, they have always demonstrated to be reliable once they have become part of the governing coalition. Thus, it is likely that even this time, after the elections, Macedonians and Albanians will be able to find a compromise to govern the country together.⁴¹² If the new grand coalition wants to appear serious in front of the international community and especially in front of the EU, it shall definitely address the issue of a greater decentralization of economic resources in order to enable municipalities to fulfil their tasks.⁴¹³

⁴⁰⁹ See Francesco Palermo, Jens Woelk, *No representation without recognition: the right to political participation of (national) minorities*, in *European Integration*, 2003, vol. 25(3), September, p. 241.

⁴¹⁰ See Risto Karajkov, *L'UE promuove la Macedonia*, 15-11-2005, p. 2, in www.osservatoriolbalcani.org/article/articlereview/4927/1/46/

⁴¹¹ See Report of the Project on Ethnic Relations (PER), p. 15, in www.per-usa.org/Reports/MavrovoVI.pdf.

⁴¹² See Report of the Project on Ethnic relations (PER), p. 20, in www.per-usa.org/Reports/MavrovoVI.pdf.

⁴¹³ See interview with Emil Atanasovski, program manager, NDI (National Democratic Institute), 09- 02- 2006.

It is a big challenge for this country. Macedonians and Albanians cannot fail: they shall definitely overcome the ethnic issues and roll up their sleeves if they want to continue the path towards the big European family.

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Interviews

Interview with Emil Atanasovski, program manager, NDI (National Democratic Institute for International Affairs), 09- 02- 2006.

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