

CONSTITUTIONAL CHANGES IN THE REPUBLIC OF NORTH MACEDONIA AND THEIR FUNCTION IN PROMOTING STABILITY, PEACE AND INTEGRATION

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Abstract

The rule of law is a durable system of laws, institutions, norms, and community commitment to some segments of our lives, including but not limited to: foundation for communities of justice, opportunity, and peace-underpinning development, accountable government, and respect for fundamental rights. Some research showed that rule of law and legal stability correlates to higher economic growth, greater peace, less inequality, improved health outcomes, and more education. At the level of Southeast Europe, the development of civil society has included many changes, some evolutionary, some even revolutionary. This, however, is in the spirit of the argument that today those systems that combine procedural stability with substantive flexibility are rightly considered more successful. This paper focuses on the changes to the Constitution of the Republic of North Macedonia that have aimed to propel the country toward a free and functioning democracy from the time it was a federal unit within the former Socialist Federal Republic of Yugoslavia to now, when it is facing many challenges regarding the application of rule of law, democracy in general and integration into the European Union. Together with its amendments, the Constitution now provides a robust legal framework for the guarantees of a free and fair civil society in North Macedonia. However, as we demonstrate below, the country faces challenges in implementing, applying, and practicing the principles of rule of law and the constitutional guarantees provided in the Constitution.

Keywords: *rule of law, Constitution, changes, amendments, Republic of North Macedonia.*

The importance of the Constitution for a Legal System

With precedents such as the Swedish Constitution of 1782 and the American Constitution of 1789, the Constitution of the Republic of North Macedonia is a written document, codified with and approved by a special body (Parliament) in a procedure more complicated than the procedure of adopting laws.⁴ The constitution is not only a legal basis for the functioning and structure of state bodies, but also a source of their authorization, *i.e.*, a basis for the functioning of the country's political system.⁵ In addition, the Constitution explicitly defines the competencies of the basic governmental institutions. Equally important, the Constitution provides for the fundamental

⁴ Светомир Шкарик, Гордана Силјановска-Давкова, *Уставно Право*, Skopje, "Ss. Cyril and Methodius" University, Faculty of Law "Justinian I", 2007, p. 157.

⁵ Kurtesh Saliu, *E Drejta Kushtetuese*, book I, (fourth edition), Prishtina 2004, p. 45.

freedoms and rights of the citizens, by defining the mechanisms for their protection. As the highest and most basic law of the state, the Constitution is the basis for the realization and provision of justice and for the harmonization of various acts in that state.⁵ All legal acts which are approved by the highest legislative body, the Parliament, should be in harmony with the Constitution as the highest law of the land.

In general, a written constitution is a legal act which contains general legal norms.⁶ These legal norms regulate all the social relations of the state, but these relations are regulated only on a principled basis, because it is the laws of the state that regulate in detail the social relations within a respective country. Thus, the state needs both a constitution to lay out government framework and organization, fundamental rights and freedoms to be safeguarded, and prescriptive laws that provide for the implementation and enforcement of principles identified and described in the constitution.

Structure and Amendments to the Constitution of the Republic of North Macedonia

The development of the Constitution of the Republic of North Macedonia went through several stages from 1946 to 1991: the first on December 31, 1946, when a constitution was first adopted. The original Constitution was in force until the adoption of the second Constitution on April 12, 1963, with changes made in 1972. The third Constitution was adopted on February 5, 1974 and was in force until November 17, 1991.

The Constitution of 1991, which is still in force, has a preamble and 134 articles. As a point of departure, the preamble, as amended, describes the citizens of the republic, including the Macedonian people, the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others taking responsibility for the present and future of the country, “equal in rights and obligations toward the common good.” The preamble describes the republic as “an independent, sovereign state, with the intention of establishing and consolidating the rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community. . .”⁷

The provisions that follow the preamble describe the basic provisions and fundamental values of the constitutional order (Articles 1-8); the basic freedoms and rights of the individual and citizen (Articles 9-60); the organization of state authority (Articles 60-107); the constitutional court (Articles 108-113); local self-government (Articles 114-117); international relations (Articles 118-121); the defense of the republic and states of war and emergency (Articles 122-128); changes in the constitution (Articles 129-131); transitional and final clauses (Articles 132-134); and the amendments, discussed in more depth below.

⁶ Osman Ismaili, *Fillet e së drejtës*, Prishtina, University of Prishtina, Faculty of Law, 2004, p. 181.

⁷ Amendment IV to the Constitution of the Republic of North Macedonia.

Fundamental values, rights and freedoms

The Constitution has two individual articles, and then a lengthy set of articles, that provide the basis for a free and fair democracy and for fundamental values, and individual rights and freedoms in North Macedonia.

Article 2 provides the basis for democracy:

In the Republic of North Macedonia, sovereignty comes from the citizens and belongs to the citizens. The citizens of the Republic of Macedonia exercise power through democratically elected representatives, through referendums and other forms of direct declaration.

As with most modern democracies, Article 2 provides for a representative democracy, but importantly, it provides that sovereignty-the power of the body politic-derives from and belongs to the citizens.

Article 8 of the Constitution provides a list of what are called the core values of the constitution order:

- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
- the free expression of national identity;
- the rule of law;
- the division of state powers into legislative, executive and judicial;
- political pluralism and free, direct and democratic elections;
- the legal protection of property;
- the freedom of the market and entrepreneurship;
- humanism, social justice and solidarity
- local self-government;
- proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and
- respect for the generally accepted norms of international law.

These values are not defined further in the Constitution but are somewhat expanded upon by Section 2 of the Constitution, “Basic Rights and Freedoms of the Individual and Citizen.” Section 2 comprises Articles 9-60, and the list is long. A summary of these rights and freedoms is set forth in Appendix I.

While the guarantees of rights, freedoms and protections in the Constitution and the amendments are explicit, thorough, and indeed laudable, they seem a bridge too far. For example, Articles 34 and 35 provide for the: “right to social security and social insurance” and “for the social protection and social security of citizens in accordance with the principle of social justice. The Republic guarantees the right of assistance to citizens who are infirm or unfit for work. The Republic provides particular protection for invalid persons, as well as conditions for their involvement in the life of the society.” Experience from western democracies teaches that expansive social welfare protections and security and the right to assistance such as those guaranteed in Articles 34 and 35 require vast expenditures of public funds and a bureaucracy to

administer them. Are these constitutional guarantees being implemented and actually afforded to citizens in North Macedonia, particularly minorities such as the Roma?⁸

Similarly, Articles 43 and 56 provide that:

Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.

And All the natural resources . . . the flora and fauna, are amenities of common interest for the Republic and enjoy particular protection. And yet, Skopje has the dubious distinction of being labeled the most polluted capital in Europe.⁹ Clearly, the environmental protections and guarantees expressed in the Constitution are not being implemented or enforced in any meaningful way.

Constitutional Amendments

The Constitution of the Republic of North Macedonia has been amended and supplemented with 32 amendments with Amendments I and II passing on January 6, 1992, and Amendment III on July 1, 1998. Amendments IV-XVIII were announced by the Macedonian Assembly on November 16, 2001. Like the American Bill of Rights, the first ten amendments to the U.S. Constitution, these amendments provided further guarantees of equality and fundamental freedoms for all Macedonians, regardless of ethnicity, religion, gender, or political views. Arising out of the Ohrid Agreement of 2001, which stopped ethnic fighting in North Macedonia, these amendments form the basis for ensuring the democratization of the country, enable the development and advancement of healthy relations between North Macedonia and the European Community, and promote peace and the development of civil society by respecting the ethnic identity and interests of all citizens. Especially important was the pledge to preserve the multi-ethnic character of the state.

The Ohrid Amendments focus on the protection and promotions of equal rights of all ethnic communities and recognizes the value of ethnic diversity in North Macedonia. Amendment IV replaces the preamble of the Constitution by specifically recognizing the value and rights of citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, and the Bosniak people.

Of special importance, Amendment V, which should serve as a model for other democracies with ethnically diverse populations, regulates the issue of the use of languages. In addition to Macedonian as an official language, the language spoken by 20 percent of citizens (Albanian) is also recognized as an official language, and individuals may use that language to

⁸ See the discussion on Roma inclusion in the 2020 European Commission Progress Report on North Macedonia p. 35, *Commission Staff Working Document, North Macedonia 2020 Report* (October 2020) found at https://www.ecoi.net/en/file/local/2040148/north_macedonia_report_2020.pdf.

⁹ UN Environment Programme, 28 November 2018, found at <https://www.unep.org/news-and-stories/story/most-polluted-capital-europe-you-didnt-even-know-about>.

communicate with government offices and officials.¹⁰ Other amendments provide for equitable representation of persons belonging to all communities in public bodies (Amendment VI); separation of religion and state and religious equality (Amendment VII); the right of ethnic, cultural, linguistic and religious communities to freely express and develop their identities and community symbols (Amendment VIII); and the guarantee of protection of historic and artistic heritage of all Macedonia communities (Amendment IX); The Assembly must also elect an ombudsman by a majority vote of the deputies from the total number of deputies, which must have a majority vote of the deputies who belong to the communities that are not a majority in the Republic of North Macedonia (Amendment XI).¹¹ The foundation of the committee for relations between ethnicities and other changes is also defined in order to advance the position of the communities in the country as well as changes in the legislation which stem from these numerous constitutional changes (Amendment XII).¹²

Reflections on Constitutional changes in the function of Stability, Peace and Integration

Contemporary political theory defines the following basic elements of a free and functioning democracy: popular sovereignty; rule of law; separation and restriction of state power; free, direct and pluralistic elections; provision and guarantee of rights of citizens; political and economic pluralism; political responsibility; democratic decision-making procedure, culture and political tolerance.¹³ Their implementation is necessarily a strong basis for maintaining stability, cultivating peace and the integration process in order to harmonize legal, economic and other social values.

The Constitution of the Republic of North Macedonia now possesses the generally recognized core concepts and principles that are necessary for a free and fair democratic society to function.¹⁴ However, identifying and describing these core principles and values does not necessarily translate into application and implementation. In 2018, the Center for Research and Study in Skopje published a report entitled *The Rule of Law in Macedonia*,¹⁵ which provided an assessment based on the Rule of Law Checklists developed by the Council of Europe (The Venice

¹⁰ With the passage of the Law on the Use of Languages in 2019, a new Macedonian state agency, the Language Implementation Agency, was founded for the purpose of promoting, protecting and applying the Albanian language, as the second official language of North Macedonia. The agency is in charge of fulfilling the obligations of the law, translating and proofreading all acts published in the Official Gazette of the Republic of North Macedonia, promoting and undertaking measures to promote the Albanian language, and providing guidance and analytical materials related to the promotion of the Albanian language.

¹¹ The Priebe Report, which is discussed below, provides a detailed accounting of the office of the Ombudsman and deems it lacking. See, *The Priebe Report*, p. 13-14, European Commission, 2015, found at https://ec.europa.eu/neighbourhood-enlargement/system/files/2016_12/20150619_recommendations_of_the_senior_experts_group.pdf.

¹² The Assembly adopted Amendment XIX on December 26, 2003, and Amendments XX to XXX on December 7, 2005. These changes mainly refer to the position of the judiciary in the country.

¹³ Arsim Bajrami, *Demokracia Parlamentare (Aspekte krahasuese)*, "Flaka", Skopje, Prishtina, 2005, p. 23.

¹⁴ Work program of the Government of the Republic of North Macedonia in the period 2020-2024, p. 30.

¹⁵ *The Rule of Law in Macedonia: Assessment based on the Rule of Law Checklists developed by the Council of Europe (The Venice Commission)*, November 2018, found at <http://www.crpm.org.mk/wp-content/uploads/2018/12/The-Rule-of-Law-in-Macedonia.pdf>.

Commission). The aim of the research was to assess the current state of affairs regarding the rule of law in Macedonia, for the purpose of identifying the issues and challenges in this area and to contribute towards shaping the agenda for tackling the priorities in the reform process. *The Rule of Law in Macedonia* study provided analysis, commentary and a ranked score on each of the five categories of the rule of law, as defined and developed in the Venice Commission's Rule of Law Checklist.

The political system of the Republic of North Macedonia established by the Constitution is a parliamentary democracy consisting of three branches of government: legislative (Parliament), the executive (President and Government) and judiciary. "However, the system of checks and balances of government has often been out of balance as usually the executive branch, especially the government led by the prime minister, dominates over the Parliament and the Judiciary."¹⁶ *The Rule of Law in Macedonia* report observed that political and party polarization have characterized the political system since independence,¹⁷ and that North Macedonia experienced a political and institutional crisis when it was discovered that the government had wiretapped conversations of dozens of individuals, including the then opposition leader, Zoran Zaev.¹⁸ Beyond the corruption that clearly involved high officials in government, the wiretapping scandal revealed judicial submissiveness to political and party influence, nepotism and other corrupt practices that undermine public trust in the judicial system.¹⁹

The wiretapping scandal led to an investigation and the publication of a European Commission sponsored report in 2015 by a group of senior experts, led by former EC director Reinhard Priebe (the Priebe Report), giving recommendations for tackling the problematic areas in the society. Despite their campaign promises, the Social Democrats under Prime Minister Zaev have made limited progress implementing and applying the recommendations made in the Priebe Report and in changing public opinion of widespread corruption and abuse of power. Three examples-involved abuse of power, failure to enforce the law, and lack of judicial independence-illustrate this point.

Misuse of power

The first involves the signing of the so-called Prespa Agreement in which the "Republic of Macedonia" became the renamed "Republic of *North* Macedonia" settling its name dispute with Greece. The Prespa Agreement was a politically controversial, yet important step in European integration. In exchange for Macedonia changing its name to the "Republic of North Macedonia," the Greek government agreed to withdraw its objection to North Macedonian membership in NATO and to beginning the accession process into the European Union. After the Prespa

¹⁶ *Id.* at 6.

¹⁷ We cannot help but note that if political and party polarization are bellwethers of democracy, democracy is currently being severely tested in the United States and in many European Union member states.

¹⁸ *The Rule of Law in Macedonia*, p 6.

¹⁹ *The Priepe Report*, p. 9-13, European Commission (2015), found at https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/20150619_recommendations_of_the_senior_experts_group.pdf.

Agreement was signed and ratified by both countries in 2019, North Macedonia became a NATO member in the spring of 2020.

However, the Zaev government has been criticized for failing to follow constitutional mandates in signing and ratifying the Prespa Agreement. Under Article 119 of the Constitution, international agreements are to be concluded by the President of the Republic, yet the agreement was signed by Nikola Dimitrov, the Macedonian Foreign Minister.²⁰ Was Prime Minister Zaev concerned that Macedonian President Gjorge Ivanov would not sign the agreement? Whatever the answer, the signing expediency gave critics a valid basis for accusations that the Zaev government was ignoring Constitutional requirements that it had vowed to uphold. If the Zaev government has ignored constitutional niceties in such an open and notorious case, the public might rightly wonder about the government's commitment to following the rule of law in North Macedonia.

Lack of cooperation between state offices and failure to enforce the law

As aptly put in *The Rule of Law in Macedonia* report: the “legal framework that regulates [abuse of power and arbitrariness in government] is largely in place, however, its implementation is to [a] large extent dubious.”²¹ The report observes that relevant institutions “responsible for implementation of legal provisions generally lack resources, or in many cases have failed to establish any cooperation between themselves in order to effectively tackle the issues related to abuse of power.”²² For example, many reports and analyses have shown that the cooperation between the two leading institutions in this area, the State Commission for Prevention of Corruption and State Prosecutor Office is low, which results in low numbers of prosecutions of public officials, despite the public's perception of widespread corruption and abuse of power.

Lack of judicial independence

Article 98 of the Constitution of North Macedonia, as amended in Amendment 25, provides for judicial autonomy and independence, and Article 100 (amended in Amendment XXVII) provides for at least limited judicial immunity²³ and bans judges from party membership or political activity. The procedure for the selection of judges and magistrates is specified in Articles 41-50 in the North Macedonia Law on Courts.²⁴ Even though both the Constitution and the Law on Courts explicitly guarantee the independence of the judiciary, “in practice the judiciary independence has been undermined by political and party influence, which is evident in the politically and party coated court decisions, which has been established as a practice since the

²⁰ The second sentence of Article 119 allows the Government (in this case the Foreign Minister) to conclude an international agreement but only when specifically prescribed by law, which was not the case in this matter.

²¹ *The Rule of Law in Macedonia*, p. 18-19.

²² *Id.*

²³ While the first sentence of Article 100 provides for judicial immunity, the second sentence ominously seems to take it back: “The Assembly decides on the immunity of judges.”

²⁴ North Macedonia Law on Courts (May 17, 2019). English translation found at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)016-e).

independence of the country.”²⁵ EU progress reports have commented on the selective justice of the judiciary in North Macedonia, although the latest report notes that:

The judicial system of North Macedonia has some level of preparation/is moderately prepared. Some progress was achieved regarding the implementation of the judicial reform strategy, thereby further addressing the recommendations of the Venice Commission and the Senior Experts’ Group on systemic Rule of Law issues.²⁶

But the public perception that the judiciary is largely controlled by the party in control of government is still prevalent and has led to a low level of public trust.²⁷

Even though North Macedonia has the proper legal framework largely in place, the challenge will be the application of these constitutional principles as North Macedonia begins the journey toward integration with the European Union. While the North Macedonian government has focusing mainly on laudable projects such as efficiency of government, modernization of border crossings through digital installation of license plates, better border surveillance, advancement of policies that will encourage the police to deal with more complex security and crime issues, core constitutional values such as the function of the rule of law, the independence of the judiciary, and the promotion of the justice system that protects freedoms and rights and a common system of values face challenges that have not yet been met.

Conclusion

As observed in the 2015 Priebe Report: “The existing legal framework does not raise particular problems and relevant services are generally competent and professional. There is however a lack of proper, objective, and unbiased implementation. The considerable gap between legislation and practice has to be urgently addressed and overcome.”²⁸ The gap between legislation and practice remains today in 2021. The Constitution of the Republic of North Macedonia has evolved through its amendments to become a robust set of principles that provides for the structure and organization of a government with democratic values and safeguards; core values, freedoms and rights for the individual; pluralism and local self-governance; and protection and respect for minorities and ethnic communities. Laudably, the concepts and principles set forth in the modern North Macedonian Constitution are consistent with those found in written constitutions in modern western democracies and should require little if no amendment to meet the written requirements

²⁵ *The Rule of Law in Macedonia*, p. 21; see also, *The Priebe Report Two Years After: new government and new opportunities for resolving old problems*, European Policy Institute (2017), English version found at https://www.epi.org.mk/docs/1_The_Priebe_report_two_years_later_ENG.pdf.

²⁶ The latest European Commission progress report on North Macedonia was published on 19 October 2021 and can be found at https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en; see also, 2020 European Commission Progress Report on North Macedonia, *Commission Staff Working Document, North Macedonia 2020 Report* (October 2020) found at https://www.ecoi.net/en/file/local/2040148/north_macedonia_report_2020.pdf.

²⁷ *Rule of Law in Macedonia*, p. 21.

²⁸ *The Priebe Report*, p. 2, European Commission, 2015, found at https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-12/20150619_recommendations_of_the_senior_experts_group.pdf

for integration in the European Union. However, having a written constitution that is consistent with European values and freedoms does not mean that North Macedonia has met the accession criteria for admission to the European Union. Perhaps beginning the accession process will provide incentive for further real and substantial progress in applying and enforcing the principles and values laid down in the Constitution.

APPENDIX I

A summary of Rights and Freedoms found in Articles 9-60 of the Constitution of the Republic of North Macedonia

Equality before the law (Article 9); right to life (death penalty abolished) (Article 10); torture, inhuman treatment or punishment prohibited (Article 11); right to personal freedom (detention before trial limited to 90 days) (Article 12); presumption of innocence (Article 13); retroactive law/double jeopardy prohibited (Article 14); right to appeal (Article 15); freedom of thought, speech, access to information, right to reply via mass media, right to protection of a source of information (Article 16); freedom of communication (Article 17); freedom of security and personal information (Article 18); freedom of religion (Article 19); freedom of association (Article 20); right of assembly (Article 21); right to vote (Article 22); right to run for public office (Article 23); right to petition the government (Article 24); right to privacy (Article 25); right to inviolability of the home (Article 26); freedom of movement (Article 27); right/duty of defense of country (Article 28); freedom and rights guaranteed to foreign subjects (Article 29); right of property ownership (Article 30); right of property ownership of foreign subjects (Article 31); right to work (Article 32); obligation to pay taxes and right to share in public benefits (Article 33); right to social security and social benefits (Article 34); right to social protection/right to public assistance and protection (Article 35); right of veterans to social security (Article 36); right of trade unions (Article 37); right to strike (Article 38); right of health care (Article 39); protection of family (Article 40); right to procreation (Article 41); rights of mothers, minors (Article 42); right of a healthy environment (Article 43); right to education (Article 44); right to establish private schools (Article 45); autonomy of universities (Article 46); freedom of scholarly, artistic or creative work (Article 47); rights of minorities and protection of ethnic, cultural, linguistic and religious identities (Article 48); expression of care for Macedonian expatriates (Article 49); right to invoke protections in court (Article 50); obligation to respect the constitution and laws (Article 51); publication of laws before they come into force (Article 52); autonomy and independence of attorneys (Article 53); limited restriction on freedoms and rights of the individual (Article 54); freedom of the marketplace (Article 55); protection of natural resources, historic and artistic heritage (Article 56); priority for economic developed in underdeveloped regions (Article 57); right of labor to participation in management/decision-making in public institutions (Article 58); protection of foreign investors (Article 59); and autonomy of the National Bank of North Macedonia (Article 60).

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