

PROTECTION OF MINORITY RIGHTS – A PILLAR OF A DEMOCRATIC SOCIETY

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Abstract

The purpose of this paper is to contribute towards heightened awareness about international and comparative systems for protection of minority rights, as a necessary element of integration in a democratic society, and towards avoidance of its shadow - a social fragmentation. Sublimated best practices are offered not as legal transplants, but as a resource for possible solutions. The methodology encompasses legal analysis of hard and soft law applicable to minority rights, comparative analyses of best practices for integration of minorities from several states (e.g., Croatia, Denmark, France, Montenegro, the Netherlands, Serbia, Slovenia and the UK) as well as analyses of responses to questionnaires by state and non-state actors. The results are scrutinized via multi-disciplinary and human rights approaches; with an emphasis on the civil society's role as a cross-cutting issue. The results of the research show that the concept of a multi-ethnic integrated society needs to be constantly clarified and promoted by the Government institutions, which should underscore it as a strategic priority among majority and minority communities in the Republic of Macedonia; and that a cautious approach needs to be applied to avoid social fragmentation on ethnic and cultural bases. The results will be disseminated and explained at the September International Conference of the Law Faculty in Stip. Communication of the results includes use of scientific repositories and use of social media.

Key terms: minority rights, international standards, integration

1. General overview

In a contemporary world, the population diversity in terms of ethnicity, religion, language, culture is perceived as an advantage; it stimulates a cross-fertilization of ideas and better utilization of the inter and intra-state resources. Globalization, wars, the world economy, migration enable distant cultures and civilizations to meet, and thus rules and norms for peaceful cohabitation of different groups of people are required. To strike a necessary balance for a prosperous society and social cohesion, the states must protect the constitutional order, human rights and the rights of the minorities.

Segregation of smaller communities in fragmented states can create instability and conflict. Therefore, protection and fulfilment of the rights of minorities is considered a key question for the states not only from the human rights perspective, but also from the public and national security perspective at regional and international level. It is considered a vital component of social integration.

According to the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities *Capotorti* a minority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members, being nationals of the State, possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and shows, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language. The Constitution of the Republic of Macedonia uses the term “communities”, which is used in the text to refer to the non-majority communities in the country.

The Republic of Macedonia accepts the challenge of building a multi-cultural society.¹ The 2001 Ohrid Framework Agreement that ended the armed conflict with ethnic Albanian rebels prompted constitutional amendments IV - XVIII that strengthened the guarantees for non-discrimination, equal treatment and equitable representation in the government and administration; improved access to public funds and education in communities language(s); enhanced the use of the communities' languages in the state and local bodies; and stimulated development and protection of the culture, artistic expression and social values of the communities. A fragmented structure of state and local bodies and institutions was set-up to implement, monitor and report on the

¹See the 2002 census at <http://www.stat.gov.mk/PrikaziPoslednaPublikacija.aspx?id=54> accessed 2 March 2018.

protection of the communities in the Republic of Macedonia.² Enhancing the status and the rights of the second largest community in the Republic of Macedonia – ethnic Albanians has been placed high on the state political and security agenda even before Macedonia gained its independence from the former Yugoslavia. The Republic of Macedonia also has other non-majority communities that must enjoy equal treatment and protection of their rights in accordance with the international and European standards.

The Constitutional guarantee of equal treatment and equality before the law is spelt out in the Law on Prevention and Protection from Discrimination³, which protects from direct or indirect discrimination based, *inter alia*, on ethnicity, affiliation with a marginalized group, race, language or religion. The Law on Ombudsperson⁴ provides further protection from discrimination by setting out clear institutional competences in this regard. There is a special Agency that monitors and supervises the implementation of the laws, which stipulate the rights for the communities, not exceeding 20% of the population.⁵ An interplay of various laws and policies regulating audio and audio-visual media services, primary and secondary education, the use of languages of non-majority communities, protection of their cultural heritage and religious rights provide the content of the guarantees that aim to protect ethnic, cultural and religious identities of the non-majority communities, while contributing towards greater social integration in the Republic of Macedonia.

a. Purpose, scope and methodology

The research attempts to provide answers to the following questions:

- Does the Republic of Macedonia need to change its current system for social integration? If so, which European best practices in compliance with international standards for protection of minorities will contribute towards enhancing social integration in the Republic of Macedonia and avoid social fragmentation?

²The competencies are mainly divided between the Secretariat for the Framework Agreement, Ombudsperson, the Commission against discrimination, the directorates for enhancing education in the communities' languages and their culture and the Agency for realization of the rights of the communities not exceeding 20%.

³Official Gazette 50/10, 44/14, 150/15, 31/16, 21/18.

⁴Official Gazette 60/03, 114/09, 181/16, 189/16, 35/2018.

⁵Law on Enhancement and Protection of the Rights of Members of Communities that are fewer than 20% of the Population in the Republic of Macedonia Official Gazette 92/08, 42/14.

The purpose of this article is to contribute towards heightened awareness about the international/regional standards and comparative systems for protection of minority rights, in view of the fact that protection of the minorities is one of the pillars of a democratic society that reduces the risk of social fragmentation. The scope of the research is limited to the examination of the institutional set-up in charge with execution of policies and legislation for protection of the minority rights in compliance with the relevant international and regional standards.

The methodology and approach are based mainly on a qualitative research conducted by the methods of legal and comparative analyses. States (Croatia, Denmark, Estonia, France, Lithuania, Montenegro, the Netherlands, Serbia, Slovenia, Sweden and the UK) for the comparative analysis were selected in accordance with the following parameters: geographical location, a diversity of models for social integration, a diversity of the population, a level of the institutional development and the EU integration perspective for the Republic of Macedonia. The teleological and human rights approaches were used to interpret international instruments and legislation. The limitations of the comparative analysis, such as a difference in the percentages of the minority groups and the variety of legislative and institutional traditions have been taken into account in the formulation of the recommendations and conclusions.

Primary and secondary data are collected from the knowledge databases and websites of the Office of High Commission for Human Rights (OHCHR), respective bodies of the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE). State reports and replies to questionnaires submitted by the selected states and submissions by non-state actors in compliance with the requirements of the Framework Convention for the Protection of National Minorities (FCNM) provided a basis for the comparative analysis of the systems for protection of minorities in the selected states. Data were also collected by way of conducting semi-structured interviews with the representatives from the Macedonian Ministry of Justice and the Agency for the realization of the rights of the communities not exceeding 20% in the Republic of Macedonia.

The article informs about the challenges and advantages of building a multi-cultural society in the Republic of Macedonia; highlights the applicable international and European standards in the area of the minorities' protection; details out the states' best practices for protection of the minority rights seen from the institutional perspective; and proposes solutions to enhance social integration, while avoiding fragmentation.

2. International and regional standards for protection of minorities

A number of international instruments address the question of protection of the rights of minorities either as collective or individual rights, such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, International Covenant on Political and Civil Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁶, the FCNM, the European Charter for Regional or Minority Languages, the European Convention on Human Rights (ECHR)⁷ and OSCE political commitments⁸ and guidelines.⁹ They envisage, *inter alia*, the following:

1. The minorities are guaranteed active participation in all areas of public life, participation in a political decision-making and access to public office under equal conditions.
2. The minorities have the right to protect, develop and nurture their culture and establish cultural associations for this purpose.
3. In the educational sphere, the minorities have the right to learn their mother tongue, their national history, culture and other characteristics important to nurture their identity.
4. The minorities have the right to use their language in the court and administrative procedures before the state and local bodies.
5. They have also the right to maintain contacts with their community, with other communities and with the state to which they feel connected because of their mother tongue, ethnic origin or religion.
6. The enjoyment of their religious rights in a community or alone is guaranteed.
7. Freedom of expression encompasses the right to use the state and private media to nurture the minorities' language, culture, art, to learn news about the state where they live and about the state to which they feel connected.

⁶At UN Treaty Office, official web site, <https://treaties.un.org> accessed 1 March 2018.

⁷At CoE Treaty Office, official web site, <https://www.coe.int/en/web/conventions/full-list> accessed 5 March 2018.

⁸OSCE, *OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, 2012, p. 149-239.

⁹OSCE, *The Ljubljana Guidelines on Integration of Diverse Societies*, 2012.

The enjoyment of the minority rights is balanced with the protection of sovereignty and territorial integrity of the states, as one of the principles of the international law.¹⁰

It is thought of equal treatment and prohibition of discrimination on the grounds of the race, ethnicity, religion, gender, health and social status as a mantra endowed with a magical power to afford effective protection of the minority rights, and thus contribute towards social integration. The right not to be discriminated against is non-derogable during war or natural disasters.

Few concrete examples of the application of the principle of non-discrimination and equal treatment to minorities are illustrated below. The ICPCR was breached when the state funded the Roman Catholic schools, but not the schools of other religious communities¹¹, and when soldiers with a different citizenship than that of the state providing pensions, received a smaller pension in comparison to the soldiers with the citizenship of the state providing the pensions.¹² The CERD was violated when the state bodies failed to carry out an investigation for the complaints filed by Roma who alleged that they had been denied an entrance in a discotheque only because of their ethnic origin.¹³

The ECHR was breached in *Sampanis v. Greece* when Roma children were prohibited from attending regular schooling due to their ethnic origin.¹⁴ There was a breach of the ECHR in the case of Cyprus against Turkey when it was established that the Greeks in Cyprus were living under humiliating conditions only because of their ethnic origin, religion and race.¹⁵ Discrimination was established in *Timishev v Russia* when the applicant was not allowed to enter a certain territory due to his Chechen origin.¹⁶ Discrimination in breach of the ECHR was also found in the case *Remli v. France*, when a French jury member declared himself a racist, while the accused was from Algeria.¹⁷ In *Sejdik and Finci v. Bosnia and Herzegovina* the rejection of two electoral candidates to stand for election to the House of Peoples who were not affiliated with a “nationality of the constitutive people of the country” required by the Constitution, was examined by

¹⁰Kaczorowska, *Public International Law*, 2010, pp. 188, 260, 261.

¹¹Communication no 694/1996 against Canada.

¹²Communication no. 196/1985 against France.

¹³Communication no. 29/2003 against Serbia.

¹⁴Application no. 32526/05, Judgment of 5 June 2008.

¹⁵European Court for Human Rights, *Factsheet on racial discrimination*, 2013.

¹⁶Applications nos. 55762/00 and 55974/00, Judgment of 13 December 2005.

¹⁷Application no. 16839/90, Judgment of 23 April 1996.

European Court of Human Rights (ECtHR).¹⁸ ECtHR established a violation of the prohibition of discrimination, as the applicants were treated differently from the nationals of the “constitutive people of the country” in the enjoyment of their passive election right on the ground of their race/ethnicity, without an objective and reasonable justification.

The principles of non-discrimination, equal treatment and social integration are interlinked. Article 6 of the FCNM highlights the need to nurture the spirit of tolerance and inter-cultural dialogue in order to achieve and maintain social cohesion. It notes that the right to be a part of the society belongs to all persons who are in the state territory, regardless of their differences. According to FCNM, states must invest efforts into building social integration in all areas of public sphere. It is, in particular, one of their tasks to provide effective protection from discrimination, hate speech and hate crimes for all persons with protected characteristics (e.g., ethnicity, religion, colour of the skin, race, language).

The OSCE Ljubljana Guidelines on Integration of Diverse Societies emphasise the need to include the minorities in decision-making processes in order to avoid their marginalization and the fragmentation of the society. State and public administration, educational, health and social institutions must reflect the diversity of the society. The above Guidelines advise against excessive isolation/separation of minority communities, which is detrimental to social integration.

3. Comparative systems for protection of minorities and social integration

On one side of the spectrum there is the “Dutch model” where it is considered that the social fabric is consisted of several different threads, i.e., of different social groups that are distinguished in terms of culture, religion, political orientation, whose representatives are conducting a dialogue and negotiations in order to fulfil the group and general social interests. The “French model” is on the other side of the spectrum, based on individual rights enjoyed by the individuals who are equals¹⁹. Other models of social integration based on the protection of the rights of the minorities are positioned in-between.

¹⁸Applications nos. 2766/06 and 34386/06, Judgment of 22 December 2009.

¹⁹Michalowski, *What is the Dutch Integration Model and Has it Failed?*, Focus Migration, Policy Brief no. 1, 2005, p. 1-2.

Some of the minority communities in the Western European states settled down and started growing in size due to economic immigration, or due to historic reasons, e.g., imperialism and colonialism. In the Balkans, the history and changes of the borders naturally resulted in larger or smaller minority communities in each and every Balkan state. The history and the reasons behind a demographic variety in the states under examination has not been considered a limiting factor for the purpose of this analysis, because its main focus are the systems that develop and nurture minority rights with the aim to achieve social integration. The analysis of good practices shows the following:

1. Enhancement of social integration is an on-going process for all examined countries, in view of demographic changes and the spirit of the age that brings a respect for the multi-culturalism and minority rights. They all give attention to social integration of minorities and afford protection of the minority rights, as required by the international and European standards.
2. All examined countries have in common at least one body in charge with developing minority rights, with monitoring of the realization of the minority rights and with coordination. The bodies are either positioned at the level of the executive power (coordination, provision of technical assistance and project grants), or represent advisory bodies composed from the minorities' representatives (provide input to relevant strategies, action plans and legislation), or are research institutes (collect and process data, conduct analysis and provide advice and recommendations important for drafting laws and policies).
3. All examined countries recognise the key role played by the non-governmental actors in enhancing social integration and protecting minority rights, as the NGOs promote inter-ethnic tolerance, raise awareness about minority rights and social integration, and provide input at strategic level.
4. Denmark, Estonia and UK have set-up specialized bodies with a goal to contribute towards an integrated and functional society. Judging by their example, integrated society does not only need measures to be taken in respect of education, the use of languages or an equitable representation, but also in respect of housing, economic and labour integration in the private sector.
5. Montenegro, UK and Estonia have set-up funds or foundations to fund projects that aim at enhancing social integration and cohesion. The project funds are received from the state, local self-government and private donations. The highlight is the Croatian Fund for Promotion of Diversity and Pluralism in the Electronic Media, where private media apply for funding for programmes addressed to minorities.

6. Denmark, Lithuania and the Netherlands have set-up special institutes or consultative bodies to examine causalities between the measures employed for greater social integration and their consequences, to monitor and report on the minority right, to draft analyses and conduct trainings on minority protection and social integration. The highlight is the Danish national barometer for social integration that is used as a scale for the measurement of the success of social integration.²⁰ The data which are collected and analysed for the barometer focus on unemployment of persons from different ethnic origins (e.g., no. of unemployed persons from minorities, the length of unemployment of minorities in comparison with ethnic Danes), on the success in school of children of different ethnic origins, on the number of persons of different ethnic origin setting the exams for civil service compared with the number of successful candidates who passed the exam.
7. The Netherlands has an inter-ministerial consultative committee for human rights, which represents a platform for consultation and coordination of various ministries with aim to integrate human rights in the policies and legislation and ensure adequate reporting to the international organisations about the human rights' situation.
8. Lithuania offers free courses of Lithuanian language to minorities, in order to facilitate social integration of the minority communities in the mainstream.
9. Sweden gives special awards to the municipalities that are contributing towards the advancement of social integration in order to make the culture of the non-majority communities more accessible.

4. Orientation for the Republic of Macedonia

Multi-culturalism has a prominent place in the Constitution of the Republic of Macedonia, which makes social integration a, *sine qua non*, condition for a functional and peaceful society. The country attempts to enhance social integration of the communities with a support of the international community in various areas, such as participation in public affairs, education, the use of minority languages, media, and culture. These attempts are scrutinized by the European monitoring mechanisms, such as the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFCNM) and the European Commission against Racism and Intolerance (ECRI). In its Fourth Opinion, the ACFCNM recommends to the Macedonian authorities to “take all necessary measures

²⁰<http://integrationsbarometer.dk/>, <https://ec.europa.eu/migrant-integration/country/denmark>
accessed 4 May 2018.

towards building an integrated society that is firmly based on the rule of law, the protection of human rights, including minority rights, and respect for diversity, and disengage from mutually exclusive ethno-nationalist politics that further the formation of parallel societies”.²¹ Necessary measures, according to the ACFCNM, should have as an objective an integrated and multilingual education system; promotion of tolerance, intercultural dialogue and increased interaction across ethnic and linguistic lines; equal rights for the smaller communities; inclusive cultural policy in co-operation with national minority representatives; support for media in minority languages; genuine implementation of equitable representation principle.

ECRI, in its Fifth Report²² notes that the country “does not have an overall integration policy”, and that “ethnic divisions are still perpetuated by the education system because schools are often divided along linguistic and ethnic lines”. It further calls upon the authorities to take “additional measures for the integration of historical ethnic minorities, in particular in the field of public representation”.

From the above recommendations it is apparent that the Republic of Macedonia must invest additional efforts, have a clear strategy and undertake effective measures to achieve and deepen social integration. The political elites of the majority and non-majority communities in the Republic of Macedonia must publicly express their political will to build an integrated Macedonian society. Building a stronger social integration should be included in the programmes of the political parties. The political elites should show to the public that instability, conflicts and discrimination are buried in the past, and that they have been replaced by the spirit of cooperation, shared values and hard work for achieving common goals.

Turning to the institutional framework that is necessary to effectively implement the measures of social integration, it transpires that the Republic of Macedonia has much to learn from the positive examples highlighted in the comparative overview and from elaborated international and European standards, as follows:

1. Sound institutional framework is needed to strike a balance between protection of the rights of the minorities exercised in a community on one hand, and to avoid minorities’ excessive isolation and separation on the other hand, which increases the risk of social fragmentation. The risks for social fragmentation, such as geographic isolation or a

²¹ACFC/OP/IV(2016)001.

²²CRI(2016)21.

lack of language skills should be thoroughly examined and effective measures should be taken to reduce them. The Republic of Macedonia may establish a central body specialized for social integration (e.g., coordinative council or a working group under the Prime Minister) that will include members of all non-majority communities, including those not exceeding 20%, and experts. The main tasks would be to improve coordination, mainstream the principles of social integration into policies and activities, monitor, collect accurate data from all relevant institutions, report on the advancement of social integration, and maintain updated database of all projects aimed at enhancing social integration. Projects to advance social integration may target a specific cross-ethnicity group, such as rural women of all ethnic backgrounds.

2. In the Republic of Macedonia meagre resources are devoted to the collection of accurate data of importance for social integration, scientific research and preparation of policy briefs and legislative proposals. While nobody denies the need these processes to be performed by the Government and/or political parties' bodies, the examples of other countries demonstrate that there is a strong need for contributions coming from scientific and neutral institutions, e.g., academia, a think tank or an NGO. They can also help raise awareness about the need for social integration, clarify the social integration concept and its practical consequences to the general public.
3. Children are an important target group for social integration measures. They can build bridges in a fragmented and self-interest centred communities. The Republic of Macedonia must develop appropriate educational policies and take measures to develop respect of the children towards their own cultural identity and language, as well as towards other. It should also put efforts into explaining to children that identities may be multicultural, multilayer and dynamic, while building tolerance and appreciation for the shared values in a common state.
4. While language rights of the non-majority communities must be respected, the state should offer free language courses in majority and non-majority languages for adults and children.
5. Media in non-majority languages must be accessible also to persons living in rural and distant areas. Appropriate funding should be provided to private media that broadcast programmes for the non-majority communities, including the news in the Republic of Macedonia, as well as the news in the states they feel connected to.
6. All the outcomes regarding social integration in different fields must be based on a sustainability requirement and the feeling of local

ownership for all communities. This would require a regular follow-up and measuring of the effects of the social integration policies and measures by a central coordinative body in cooperation with neutral institutions e.g., the academia, think tanks, NGOs.

7. There should be more funding available for NGOs and their platforms working towards tolerance, non-discrimination and social integration, as they can act not only as watchdogs, but can raise awareness of the target groups about social integration and various rights and possibilities that it entails (e.g., access to public offices, equitable representation in all levels, funding of projects, media and private sector) and are instrumental in applying measures favourable for social integration.

5. Conclusion

The findings show that the concept of a multi-ethnic integrated democratic society needs to be constantly clarified and publicly promoted, not only by the authorities, but also by the political parties, academia and NGOs, so that it could be grasped by the population. Social integration must be underscored as a strategic priority among the majority and non-majority communities in the country. Caution needs to be displayed to avoid a risk of social fragmentation on ethnic, language or cultural basis in the country.

The Republic of Macedonia should replace its partial approach towards multiculturalism and non-majority communities' protection with a comprehensive approach guided by a clear vision for social integration that will take into consideration also the needs of the individuals. The relevant international standards and recommendations from the monitoring bodies provide a road map for achieving social integration as a tenet for social progress. The Republic of Macedonia should choose a strategic model for social integration with realistic objectives that matches its particular needs. With this purpose in mind, the above mentioned salient examples from the examined countries can be applied to the Macedonian reality, not as legal/institutional transplants, but to guide and orient the country in its endeavour for social integration.

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