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Law and Social Values

Зборник радова
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MACEDONIAN EURO-EXPERIMENT: WILL IT EVER END?

Abstract: *Macedonia is a country that is open to experimenting with policies of the international community, especially the United Nations (UN) and the European Union (EU) policies. No other country in Europe has faced problems that are largely incomprehensible to the majority and so hard to resolve. There is no country that has had such a difficult process of international recognition: the country that was given a provisional name, the country that signed an interim agreement on a bilateral dispute, the country that signed a Stabilization and Association Agreement during the 2001 conflict, the country that has been a candidate for EU membership since 2004, the country that was vetoed to join the NATO membership by Greece in 2008, the country that changed its name in 2017 to finally start EU negotiations, the country that was denied the right to self-determination, the country whose language, history and culture has been disputed, etc. When we thought that it was over and that it would finally be possible to set on the path to European integration, North Macedonia encountered new unrealistic demands of another neighbouring state. Another possibile setback in EU integration may be attributed to Bulgaria, which is pursuing a policy of denying the Macedonian language, history and culture. Bulgaria posed a request to include the Bulgarian minority in the Macedonian constitution, but without offering a reciprocal provision in the Bulgarian constitution for the Macedonian minority living in Bulgaria. based on the prior experience and awareness of the decision-making processes in the EU institutions regarding the EU enlargement, Macedonia is likely to be pressured to give up its state foundations for the sake of reaching the ultimate goal – EU membership. The paper aims to present the legal issues related to these events, bearing in mind that most of them are resolved by the power of politics rather than in compliance with the law, which may have serious consequences and lead to additional demands that cannot be fulfilled.*

Keywords**:** *North Macedonia, EU membership, law, politics, dispute.*

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1. Experiment 1: Strange Recognition

In December 1991, the Republic of Macedonia called for international recognition, submitting an application to the Arbitration Commission of the European Community (EC). At the meeting in Brussels, on 16 December 1991, the EC adopted a Declaration on Yugoslavia, including a common position regarding the recognition of the former SFRY republics (European Community, 1991).[2] In a statement on the recognition of the former republics of 10 January 1992, the presidency of the EC recognized Slovenia and Croatia. Regarding the other two states (the Republic of Macedonia, and the Republic of Bosnia and Herzegovina), the EC emphasized that there are still open issues to be resolved, without giving any explanation on these issues (EC Presidency, 1992).[3] On 11 January 1992, the Arbitration Commission submitted its report stating that only Slovenia and Macedonia met the conditions for international recognition, and that the use of the name "Macedonia" does not imply territorial claims (Arbitration Commission, 1991).[4] Contrary to the Arbitration Commission report, the EC member states recognized Croatia and Slovenia, thereby postponing the recognition of the former Republic of Macedonia. The postponement of the process of international recognition and the subsequent change of the Constitution (in relation to territorial claims and interference in the internal affairs) are to be attributed to Greece. Referring to the goals and principles of the UN Charter[5], Greece presented the recognition of the former R Macedonia as a possible threat to peace, thus raising a bilateral dispute to the level of a procedural obstacle for admission to the UN.

2. Experiment 2: Strange Admission

The admission of the Republic of Macedonia to the UN represents a precedent in international law and a violation of the UN Charter. In the Resolution 817 of the Security Council (SC)[6] regarding the admission of the Republic of Macedonia to the UN, it is clearly stated that all the conditions stipulated in Article 4 of the UN Charter have been met. Yet, further in the Resolution, the SC refers to the differences that arose over the name of the state, the differences that

[2] European Community (1991). Declaration on Yugoslavia, *1991,* Brussels

[3] European Community (1992). Declaration by the EC Presidency on the Recognition of Yugoslav Republics, P.32/92,. Brussels, 1- March 1992.

[4] Arbitration Commission (1991). Opinion no.10 of the Arbitration Commission, 92 I.L.R. 206, EC Conference on Yugoslavia, 4 July 1992

[5] United Nations/ UN (1945)*:* Charter of the United Nations, 26 June 1945, San Francisco,

[6] United Nations (1993). Security Council Resolution 817, S/RES/817, 3196th SC Meeting,

should be overcome in the interest of maintaining good neighbourly relations (UN SC, 1993). From a legal point of view, such a wording is contradictory.

We can also analyse the legality of the SC Resolution 817 in terms of the Advisory Opinion of the International Court of Justice (ICJ) regarding the admission of new states. In the opinion of the ICJ, the conditions provided for in Article 4 of the UN Charter are precise and sufficient, at the same time confirming that the political character of the UN institutions that are involved in the procedure for the admission of a state are not exempted from the obligation to respect the UN Charter (ICJ Reports, 1948)[7]. If this opinion of the ICJ is correlated with the admission requirements for the Republic of Macedonia, it can be easily noticed that there are additional conditions (discussions about the name and admission under the provisional reference "the former Yugoslav Republic of Macedonia") that are not provided for in Article 4 of the UN Charter, thus confirming conditional membership or the adoption of an ultra vires act.

Another aspect contributing to this claim is international customary law, according to which each state has the right to choose its own name. The UN Charter is the only legal act that contains international standards related to the choice of name (in the section on the right to self-determination). If the right to choose a name is an exclusively internal matter, then imposing additional membership conditions is a violation of Article 2 (§1 and §7) of the UN Charter (sovereign equality of all member states, and non-interference in matters essentially within domestic competence). In the case of the Republic of Macedonia, it has a greater meaning because the name "Macedonia" had been in use for a long time before independence. The concept of *uti possidetis juris* aimed to avoid unnecessary conflicts after independence has been acquired through the right of self-determination (ICJ Reports, 1968).[8]

3. Experiment 3: "Temporary" Reference ("only" 25 years)

The Interim agreement (IA) was signed on 13 September 1995 between the Republic of Macedonia and the Republic of Greece.[9] With this agreement, Greece recognized the independence and sovereignty of the Republic of Macedonia, but under the provisional name "the former Yugoslav Republic of Macedonia". The very name of this agreement indicates that it was to be a temporary agreement, but it was in force for 22 years until was finally

[7] ICJ (1948). Admission of a State in the United Nations, Advisory Opinion, ICJ Reports.

[8] ICJ (1968). *Burkina Faso vs. Republic of Mali*, Judgment, ICJ Reports.

[9] The Interim agreement (IA) between the Republic of Macedonia and the Republic of Greece of 13 September 1995, *Official Gazette of the Republic of Macedonia, N*o. 48/1995.

changed in 2019. In international law, there is no other such case where an agreement is concluded between two "equal" states that agree to discuss changing the constitutional name of a state, contrary to *jus cogens* norms and the UN Charter.

4. Experiment 4: The Introduction of a Veto

After the signing of the 1995 Interim Agreement (IA), the Republic of Macedonia began to call for recognition under its constitutional name, even when other countries and organizations referred to it under the provisional name. According to the IA, the negotiations with Greece were approached on the basis that the use of the name "Republic of Macedonia" was not subject to negotiations, but the Republic of Macedonia was prepared to negotiate a (temporary) name which would be used only in bilateral relations with the Republic of Greece. This position, known as the "dual formula" [10], was perceived as an unfair strategy in Greece and the negotiations were frozen. However, the recognition of Macedonia under its constitutional name continued, as well as the admission in international organizations.

As a result of such events, Greece strengthened its position and made it clear that it would put pressure on the Republic of Macedonia by opposing its admission to the NATO, Greece exercised its veto right at the Summit in Bucharest in 2008. Ultimately, due to its consensus-based decision-making process, the NATO unanimously decided not to accept the membership invitation until the name dispute is resolved. This interpretation is not contrary to the NATO membership provisions,[11] but according the claims of the Republic of Macedonia, it is contrary to Article 11 of the IA. This interpretation was the beginning of legal proceedings for breach of the IA; Macedonia brought the case to the ICJ in November 2008.

5. Experiment 5: The "death" of *jus cogens*

In its judgment[12], the ICJ found a violation of Article 11 of the IA during the admission of the Republic of Macedonia to the NATO. The Court referred

[10] The "dual formula" refers to using the temporary name only in relations between the Republic of Macedonia and the Republic of Greece, while using the constitutional name in relations with all other countries.

[11] Article 10 of the North Atlantic Treaty: "The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty ..." (NATO, Washington DC, 4 April 1949); https://www.nato.int/cps/en/natolive/official_texts_17120.htm

[12] ICJ (2011). ICJ Judgment in the case concerning Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), the Hague, 5 December 2011.

to Greece's behavior during the period of adoption of the NATO decision, but not to the decision itself. In the explanation of its judgment, the Court came to a conclusion on confirming the violation of Article 11, paragraph 1 of the IA by Greece and thereby opposing the membership of the Republic of Macedonia in the NATO. However, the Court did not impose an obligation on Greece, as requested by the Republic of Macedonia, to refrain from such behavior in the future. Ultimately, as the judgment confirmed a violation of the *jus cogens* (the *pacta sunt servanda* rule), a way was sought to make the judgment effective in the legislation of the states to which it refers. However, the Court's stipulation that the ruling is not intended to prevent Greece from taking future action that would cause a breach of the IA makes the ruling more difficult to implement. In short, the non-compliance with the judgment of the ICJ by a state that has violated an international agreement may be designated as the death of *jus cogens.*

6. Experiment 6: The New Name

The official title of the Prespa Agreement (PA)[13] does not contain any reference to the real reason for the Greek-Macedonian dispute (i.e. the "name" issue). The PA does not describe the "differences", but only focuses on settling the difference concerning the name and related issues. The agreement goes beyond Resolution 845 because the differences concerning the name were transformed into differences and negotiations about history, identity, language, culture, education, political and administrative system, freedoms and rights, and the Constitution. Although the PA notes the termination of the IA, not a single article mentions the ICJ judgment of 2011 for the violation of IA by the Republic of Greece.

The PA is asymmetrical because the First Party (Greece) has the rights and the status of a superior entity, and the Second Party (Macedonia) has obligations and the status of a subordinate entity, whereas both states (as recognized international entities) should be equal parties. The First Party obligations relate only to the ratification of the agreement and the condition not to object to applications for/or membership of the Second Party. Almost the same wording was provided in Article 11 of the IA, which was violated by Greece but there were no legal and political consequences although the ICJ confirmed the violation.

The PA has a Preamble, three parts: (1) the issue of the name and good neighborly relations; (2) strategic partnership; (3) resolution of disputes; and Final Provisions. Although there is a semblance of a "win-win" solution, it is a "win-lose" agreement; first, it affected the relations between the First and

the Second Party, and second, it was signed by the Minister of Foreign Affairs instead of the President of the Republic of Macedonia, which was clearly a violation of Article 119, paragraph 1 of the Constitution of the Republic of Macedonia.

Inequality arises from the Preamble, where the parties are stipulated as follows: the "First Party" is the Hellenic Republic (as a "constitutional expression" of all ancient history and continuity to the modern Greek state since 1830), and the "Second Party" is nameless (it is designated as a party "which was admitted to the UN in accordance with the UN general Assembly Resolution 47/225 of 8 April 1993"). Further, the Preamble enumerates a long list of principles, objectives and relevant international documents and the non-interference in internal affairs. They were neither respected during the admission of the Republic of Macedonia to the UN, nor were the solutions from the PA based on them because Greece constantly interfered in the internal affairs of the "Second Party", including the constitution, history, culture, nation, and language. Such enumeration in a bilateral agreement is an unknown phenomenon, and referring to them is outside international law and jus cogens.

Article 1 (§ 3) of the PA refers to the official name and language of the Second Party. Thus, Article 1 § 3(a) envisages that the official name of the "Second Party" shall be "the Republic of North Macedonia", as its constitutional name which shall be used *erga omnes*, while the abbreviated name will be "North Macedonia". It is forgotten that the name of the state is its essential right, and *stricto sensu* its internal competence, and not the right of another state or multilateral organization (Damrosch, Henkin, Pugh, Schachter, Smit, 1993: 253). Article 1 § 3(c) envisages that the official language of the Second Party shall be the "Macedonian language", but the parties agreed that the terms "Macedonia" and "Macedonian" shall be understood within the meaning provided in Article 7 of the PA, which provides quite an "original" explanation: the Macedonial language is a South-Slavic language whose attributes are not related to the ancient Hellenic civilization, history, culture and heritage of the northern region of the "First Party". This is ridiculous because it is science (not the signatory's statement) which classified the Macedonian language into this language group.

Although the geographical designation (North Macedonia) is supported by the need to distinguish this territory from the three administrative regions in Greece (Eastern Macedonia, Central Macedonia, and Western Macedonia), it would be logical to distinguish a region from a region, rather than a state from a region. If there is a Republic of North Macedonia, and there is no Republic of South Macedonia, what is the purpose of such designation and

differentiatiation? The qualifier "republic" in front of Macedonia, which determines the state governance, is a *differentia specifica* in relation to Macedonia as a historical and geographical category. Instead of the current nationality (Macedonian), Article 1 § 3(b) stipulates that the nationality of the citizen of the Second Party shall be Macedonian/citizen of the Republic of North Macedonia. A citizen is an individual with rights and obligations, acquired on the basis of birth (*jus soli*), blood relationship (*jus sanquinis*) or through naturalization. Citizen's personal documents are not interpretive dictionaries so that there should be an explanation in "singular"/citizen of the Republic of Macedonia. Official documents always use the shortest possible solution.

The provision that the terms "Macedonia" and "Macedonian" will be understood within the meaning of Article 7 of the PA is another interference in the sovereign rights of the Republic of Macedonia because identity issues cannot be the subject of a bilateral and/or international agreement. National identity is a social and political construction, and the Macedonian state is a notorious (inevitable) fact. The "First Party" did not recognize the people and the nation, but only the individual right of every citizen to self-determination. In addition, bearing in mind the non-recognition and/or rejection of the Macedonian minority in the Republic of Greece, the following question arises: if Greece negates the presence of the Macedonian minority in Greece, does it also negate the presence of the Macedonian people (individual citizens) in the Republic of North Macedonia?

Article 1 § 3(f) specifies that the adjective pertaining to state, its official institutions and public entities shall be in line with the official new name "Republic of North Macedonia" or its abbreviated name "North Macedonia". When it comes to private entities, which are not related to the state and public entities, are not established by law and do not enjoy state financial support, this adjective can be used only in line with Article 7 (§ 3 and § 4) of the PA (denoting a territory, historical context and cultural heritage different from those of the First Party). Article 7 is an *ultra vires* provision and a gross interference in internal affairs. Linking the use of the adjective to the funding of institutions is a highly contestable criterion. Thus, national institutions which are not designated with the adjective "Macedonian" may be denominated and denationalized, which is unprecedented in international and bilateral relations. The state is not the creator of science, art and culture; it is the nation (i.e the people) as a set of individuals. If the three administrative regions in Greece are able to use the adjective "Macedonian", there is no logic to ban the use of this adjective to the state of North Macedonia.

Article 1 § 3(g) of the PA envisages that the Second Party shall adopt its new

official name "Republic of North Macedonia" in the course of an internal mandatory and irrevocable procedure of amending the Constitution, as if the Greek signatory was an authorized proposer of constitutional changes. Moreover, the PA imposes an "eternity clause" with regard to constitutional changes, which is contrary to *jus cogens* and Article 53 of the Vienna Convention (United Nations, 1969).[14] It is highly unusual to tie the hands of future constitution-makers with a bilateral agreement. The Constitutional Court of North Macedonia could initiate a procedure for violation of Article 8 (§ 1, point 11) of the Constitution[15], which envisages that "respect for the generally accepted norms of international law" is one of the fundamental value of the constitutional order.

Article 1 § 5 of the PA also envisages that, after the entry into force of the PA, the Parties shall use the new official name (North Macedonia) in all international, multilateral and regional organizations, as well as in their bilateral relations with UN Members States. Although this article refers to both parties, the obligation actually refers only to the Second Party. Furthermore, Article 1 § 7 of the PA stipulates that the use of terms "Macedonia" and "Republic of Macedonia", in the original or translated form, in any official context shall cease to be used in addressing the Second Party. The three Greek administrative regions in the northern part of Greece (established in 1987) can be called Macedonia only, but not the state of Macedonia. Under Article 2 § 1 of the PA, Greece agreed not to object to the application or membership of the Second Party (under the new name and terms of Article 1§ 3 of the PA) in international, multilateral and regional organizations and institutions of which the First Party is a member state. The same provision was contained in Article 11 of the IA but Greece violated it, as confirmed in the ICJ ruling in 2011. On the other hand, Article 2 § 2 of the PA states that the Second Party shall seek admission to international, multilateral and regional organizations under the name and terms of Article 1§ 3 of the PA. It seems that the PA imposes an obligation on North Macedonia to (re)apply for (re)admission to international, multilateral and regional organizations in which it has already been accepted.

Under Article 4 § 3 of the PA, each Party undertakes that no provision of its Constitution will be the basis for any interference in the internal affairs of the

[14] United Nations (1969). Vienna Convention on the Law of Treaties; Article 53 of the VC: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." (Vienna, 23 May 1969, *United Nations, Treaty Series,* vol. 1155);

[15] The Constitution of the Republic of North Macedonia; https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx

other Party, including for the purpose of protecting the status and rights of persons who are not its citizens. The wording of this provision is euphemistic and refers only to the Macedonian minority. Although all Balkan countries, including Greece, are homogeneous, multi-ethnic and multi-confessional, only the Republic of Macedonia qualifies as multicultural. In effect, Greece is interfering in our internal affairs, while asking Macedonia to guarantee non-interference, even though it is guaranteed at the constitutional level.

Article 7 has unusual and even impossible goal of distinguishing the meaning and understanding of the terms "Macedonia" and "Macedonian" as referring to a different historical context and cultural heritage (Article 7 § 1 of the PA). It is an undeniable fact that the Republic of Greece and the Republic of Macedonia have common historical moments and common cultural heritage. In the history of international law, no states have never made a political (bilateral) agreement to determine the meaning of terms pertaining to history, culture, identity and language. Every nation is the creator of its history and culture, and has the right to perceive and interpret them in its own way. The names of countries, regions, cities, rivers and the adjectives related to its national identity are an inherent element of the legal subjectivity of the states as equal international entities; they are historical creations, they are resistant to change and they cannot be subject to agreement or negotiation. The Republic of Greece and the Republic of Macedonia have the right to interpret the terms "Macedonia/Macedonian" as they wish, within their historical and cultural context, but neither state has the right to tell the other state what to call its own regions, or what is meant by "Macedonia/Macedonian".

Article 7 (§ 2) of the PA states that, when reference is made to the First Party, the terms "Macedonia" and "Macedonian" denote not only the area and the people in the northern region of the First Party but also their characteristics as well as the Hellenic civilization, history, culture and heritage of that region from antiquity to the present day. This is an incorrect perception because antiquity and Ancient Macedonia are not an exclusive cultural heritage of the Greeks but a common civilizational heritage. Under Article 7 (§ 3) of the PA, when reference is made to the Second Party, the terms "Macedonia" and "Macedonian" denote its territory, language, people and their characteristics, with its own history, culture and heritage which are different from those of the First Party. This is another incorrect perception because ancient cities and artifacts in Macedonia are part of our history and culture. Macedonian identity is not a matter of choice, but a historical fact.

Article 8 (§5) of the PA envisages the establishment of a Joint Interdisciplinary Committee of Experts on historical, archaeological and educational matters, which will consider the scientific interpretation of historical events, based on authentic, scientific historical sources and archaeological findings. The

Committee may revise textbooks and teaching materials in order to eliminate and/or remove irredentist and/or revisionist allegations. The Ministries of Foreign Affairs of both Parties shall supervise the work of the Committee, which shall meet at least twice a year and submit recommendations. This kind of supervision does not exist within the competences of the ministries of foreign affairs because expert bodies have no place in state institutions, due to the possibility of their politicization and instrumentalization.

Finally, Article 19 (§ 3) of the PA provides that, in the event of a dispute over interpretation and implementation, proceedings may be initiated before the International Court of Justice (ICJ); if the Parties do not resolve the dispute on their own within six months (or longer), the dispute may be submitted to the ICJ by either Party individually. Notably, Greece lost the dispute before the ICJ in 2011 but did not implement the ICJ ruling, and now Greece again agrees to the ICJ jurisdiction in the event of a dispute.

7. Experiment 7: The (Un)Friendly Agreement

The Friendship Agreement (FA) between the Republic of Bulgaria and the Republic of Macedonia[16] was signed on 1 August 2017 at the level of prime ministers, without any expert or public debate. In the title of the agreement, the two parties are equal and named according to their constitutional names. In terms of content, the FA comprises only 14 articles. Drafted in rather vague terms, the FA is a document which comprises a list of good wishes of the signatory parties for cooperation in various fields. All commitments are envisaged within the common frame of reference for two sovereign and responsible member states of the UN, OSCE, Council of Europe (CoE), etc. Many provisions include reflect redundancies and pleonasms, which may be illustrated by Article 11 § 3 of the FA, which reads: "The two Contracting Parties do not have and will not make any territorial claims against each other." It seems bizarre that two European states should confirm in a bilateral agreement that they have no mutual territorial aspirations. Anyway, hardly anyone believes that this FA was concluded over any other issue than the national identity issues related to the Macedonian party.

The Preamble of the FA includes a reference to "common history that bonds the two states and their peoples", which may be observed as hidden danger. The concept of common history is hardly elaborated in theory, but things become more complex when it comes to language; although the two languages are quite close, the English term "shared history", which can also mean "common history", was differently translated in the two languages.

Articles 4 to 7 of the FA envisage a wide range of cooperation activities in

several fields (politics, economics, tourism, transport and communications, infrastructure, customs, investments, etc.). The essence and the real reason for concluding the FA may be found in two articles: Article 8 (§ 2 and §3) and Article 11 (§ 5), which refer to the most sensitive identity issues in quite a bizarre manner. In order to give an impression that it is a symmetrical agreement between two equal states, the ideas were skillfully concealled behind the rhetoric of friendship and the unnecessary repetition of international norms.

The position of power and dominance of Bulgaria in this relationship is evident in several articles, especially in Article 11 (§ 5), which states that "the Republic of Macedonia confirms that nothing in its Constitution shall be interpreted as constituting a basis for interfering in the internal affairs of the Republic of Bulgaria, with the purpose of protecting the status and rights of persons who are not citizens of the Republic of Macedonia." Although neither Article 11 nor any article of the FA explicitly mention minorities or minority rights, the provision on non-interference in the internal affairs implicitly refers to Bulgarian citizens of Macedonian ethnic identity. In this regard, Article 11 is contrary to the Preamble of the FA which refers to the democratic principles of international law envisaged in the UN Charter, OSCD documents and the CoE instruments. Thus, the FA insists on denying the inalienable rights of persons belonging to minorities, the constitutionally and internationally guaranteed rights which constitute one of the fundamental values of the EU. The key problem is not the position or conduct of Bulgaria but the fact that it has an obligation to protect the rights of minorities in its country. In the acts and reports of the CoE, there are recurrent examples of non-recognition of the Macedonian minority in Bulgaria, as well as non-compliance with the ECtHR judgments regarding "recognition of the Macedonian minority in Bulgaria".

Another essential provision is contained in Article 8 of the FA, which refers to the Contracting Parties commitments: to promote active and unhindered cooperation in the fields of culture, education, health, social policy and sports (Art. 8 § 1); to establish a Joint Multidisciplinary Expert Commission on historical and educational issues, with the aim of objective assessment of authentic and evidence-based historical sources and scientific interpretation of historical events (Art. 8 § 2); to organize joint celebrations of (common/shared) historical events and personalities (Art. 8 § 3). Although Article 8 § 1 refers to "unhindered" cooperation, it remains an enigma who is hindering free cooperation between sovereign states. Article 8 § 2 and § 3 refer only to historical and educational issues.

It is evident that the Joint Multidisciplinary Expert Commission on historical and educational matters is conceived as a body established and sponsored by

the states, composed of experts appointed by the state, who are accountable to their respective governments and obliged to submit reports on their work to their governments. As they are required to apply an objective and scientific methodology, the primary goal of the Commission members is to give "scientific" legitimacy to political acts, such as commemorations of shared/common historical events and persons. Thus, the key concept is shared/common history, which remains subject to dubious and different interpretations. Considering the name given to the Commission, it can be concluded that it was established for more than a single purpose, including educational goals in the field of history. The ultimate result is an unequivocal violation of human rights, which become collateral damage at the expense of regional peace and stability, as well as North Macedonia's aspiration to European integration.

It may be interesting to briefly compare the Friendship Agreement (FA) and the Prespa Agreement (PA). The first paradox is that the FA insists on a shared/common history, while the PA insists on the demarcation of history. The primary goal of the FA to "prove the sameness" of the historical foundations and origins of the two peoples, while the PA focuses on obtaining "confirmation" of its own historical continuity from antiquity to the present. The politicization of Macedonian historiography and research is quite obvious.

Both the FA and the PA equally reflect the imbalance of powers and different positions of the contracting parties, albeit in subtle ways. In the FA, the only "obligation" undertaken by Bulgaria is the one envisaged in Article 2 (§ 2) of the FA, which refers to developing cooperation in the field of Euro-Atlantic integration, sharing experience and supporting the Republic of Macedonia to fulfill the necessary criteria for EU membership, and receiving an invitation to the NATO membership. A careful reading of this provision shows that Bulgaria has only undertaken to support the Republic of Macedonia in obtaining an invitation to the NATO membership. As for the EU integration, this provision only states that Bulgaria will help by sharing its experiences in bilateral meetings on the necessary membership criteria. Bearing in mind all problems that Bulgaria has had in relation to these criteria, it is a declarative commitment. In light of the Bulgarian veto (2020) on Macedonia's EU accession, this resembles an ironic twist of fate and creates a sense of *déjà vu* from the time when Macedonia was blocked by Greece despite the Interim Agreement (IA).

It may be assumed that Bulgaria played tactically and waited for the Macedonia's name issue to be resolved. When North Macedonia was officially promulgated, Bulgaria reopened the FA and pressed harder. The implementation of the PA faces setbacks and obstacles, but mainly rests on

internal repression and pressures. As for the implementation of the FA, the pressures come not only from Sofia but also from Brussels. The interpretation of agreement provisions is a common occurrence and a delicate part of their implementation. This phase is particularly sensitive in case of (quasi) legal and *de facto* diplomatic texts that are deliberately written in a vague and flexible terms, leaving room for different interpretations; in effect, it is the only way to reach an alleged "consensus" or "compromise".

8. The Current State of Affairs: Where are we now?

Now, we are in the phase of amending the Constitution, not by the will of the North Macedonian people but under the external pressure. The absurdity that arose from the FA is the result of the so-called "French proposal" and the adoption of the negotiation framework for starting negotiations for North Macedonia's membership in the EU. The condition that the Bulgarian minority in North Macedonia should be recognized in the NM Constitution was accepted (by the government) in 2022 in order to start EU membership negotiations, but the opposition and the civil society opposed it seeking reciprocity (recognition of the Macedonian minority in the Bulgarian Constitution). Thus, there is no guarantee that the acceptance will remain in place, particularly given the fact that EU is a closed club, where the interests of the member states are pursued. Second, the new EU accession methodology only has considerably slowed down the process (almost to a standstill) because every EU member state has the opportunity to oppose enlargement, which has been done lately by France, Denmark and the Netherlands as proverbial opponents. This has *de facto* ensured a greater influence of each member state in the decision-making process as well as in the process of evaluating the progress of EU candidate countries, given that the process may be stopped or reversed in case of "serious or prolonged stagnation or even a setback in the implementation of reforms" (Ćemalović, 2020: 186). Third, in the case of North Macedonia, it seems that other conditions for EU membership are more important than the Copenhagen criteria, which are constantly being met by North Macedonia, as evidenced in the annual EU accession progress reports.

As for the condition pertaining to constitutional amendments, Bulgaria requires North Macedonia to include the Bulgarian minority in the NM Constitution and to guarantee their human rights; on the other hand, Bulgaria does not recognize the Macedonian minority and does not register their associations in Bulgaria despite the ECtHR judgments on the violation of the internationally guaranteed minority rights. This demonstrates an asymmetry of power between two sovereign states and Bulgaria's abuse of the position of power as an EU member state. The process of amending the Constitution

of North Macedonia will be a long and complex endeavour, but the changes are essential for the purpose of improving democratic governance. Since the declaration of independence (1991), the Constitution of Macedonia has been revised and amended eight times, including a total of 36 amendment interventions (NetPress, 2023).[17] However, this last (requested) amendment is neither essential nor necessary, nor is it part of the Copenhagen EU accession criteria, especially considering that the principle of reciprocity (envisaged in Article 8 of the Treaty on the EU) has not been observed by the Republic of Bulgaria.

In the context of long-standing historical disputes between the two states, Sofia has been picking up the pace by demanding full recognition by North Macedonia that the Macedonian identity and language have Bulgarian foundations, thus denying the existence of a separate Macedonian nation and language. Such hard-line tactics are confusing for other EU member states but there is little evidence that they are ready to stand up against Bulgaria (Atlantic Council, 2020: 11).[18] The problem is that the EU is as impotent as ever when it comes to resolving disputes in its own backyard. Enlargement is not a priority for the EU, and the Macedonian side seems to have replaced one dead-end with another, which is more serious and threatening than the one involving Greece.

While the Prespa Agreement aimed to close the final piece of the NATO membership puzzle, the EU negotiation process is highly unlikely to be a serious possibility in near future. The changed EU accession methodology *de facto* created a "Greek (veto) factor" that will be applied not only to North Macedonia but also more widely. From now on, any EU member state will be able to assume the role of "Greece or Bulgaria" and use its position to condition a potential candidate member state for reasons that go beyond the Copenhagen criteria. On the other hand, the new methodology is a meaningless game that gives the major powers a good alibi for not implementing the enlargement policy. Now, the smaller and identity-sensitive members will do the job of blocking the enlargement (Proeva, 2020).[19]

[17] NetPress (2023).Macedonian Constitution has been amended 8 times so far with 36 amendment interventions, 18 August 18, 2023; https://en.netpress.com.mk/2023/08/18/macedonian-constitution-amended-eight-times-far-36-amendment-interventions/

[18] Atlantic Council (2020). A Tough Neighborhood, North Macedonia at the Threshold of Europe, Report by Dimitar Bechev and Damir Marusic, Atlantic Council, 2020; https://www.jstor.org/stable/pdf/resrep30753.7.pdf

[19] Проева, Н. (2020). Бугарскиот џандар за историски прашања – со свој камен по своја глава (The Bulgarian gendarme for historical issues…), *Нова Македонија,* 22.12.2020.

9. Conclusion

The EU is caught in a dilemma: how to keep reheating North Macedonia's hopes for EU membership as leaving Macedonia in oblivion can lead to the deterioration of democracy. Macedonia has been a candidate for EU membership since 2005, while the Commission has continuously recommended accession negotiations with Macedonia since 2009 (EC, 2023).[20] Yet, it is the EU that has allowed to be in a permanent blockade due to arbitrariness of some member states. If the EU had not gone against its fundamental principles, North Macedonia would certainly be an EU member state today. On the other hand, Macedonia has contributed to this situation itself by allowing for a too extensive use of the rule of politics at the expense of the rule of law. Macedonia can be a case study where many external, internal, constitutional and legal issues are resolved in line with political decisions that derogate from the established law, instead of being driven by the need to reform the society.

So far, the fault lies with the EU, which has failed to valorize Macedonia's progress in terms of its EU integration (since 2010) and failed to address the blatant obstinacy of its member states. The EU does not have an answer to the issue how to integrate Macedonia beyond political conditioning. One may invoke the arguments that it is up to North Macedonia to institute reforms and pursue the integration process, and that we are making this country for ourselves not for Brussels but, still, the prevailing fact is that the EU has no answer for our EU integration. We are certainly aware that the EU decision-making process is a political reality, but it is clear that this type of decision-making threatens to paralyze the EU integration process through (mis)use of the veto. In this sense, there is an inevitable need for a compromise with the neighbors, but it should not go beyond the limits of *jus cogens*.

The Prespa Agreement (PA) with Greece, the Friendship Agreement (FA) with Bulgaria, and another change of the NM Constitution are not only against the applicable statutory law but also against the common (international) law. It is an unknown contemporary legal and political phenomenon that a neighboring state and/or an international organization demand from a sovereign state to change its historical and constitutional name and/or amend the Constitution under pressure, making it the key condition for joining the NATO or starting negotiations with the EU, while constantly emphasizing that the rule of law is their *modus vivendi* and *modus operandi*. Democracy is learned faster in a democratic setting, not in front of the "open" gates of the NATO and the EU. One does not go towards the EU by violating the rule of law but by keeping

[20] European Commission/EC (2023). North Macedonia, European Neighbourhood Policy and Enlargement Negotiations (DG NEAR),https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/north-macedonia_en

politics within the limits of the law and ensuring a normal, functional and sustainable democracy. Regarding the recognition and protection of the rights of minorities, the principle of reciprocity should apply; as Bulgaria seeks the recognition of the Bulgarian minority in Macedonia, Bulgaria should also recognize the Macedonian minority in Bulgaria, which is also in line with the ECtHR judgments.

We are well-aware of our political handicap due to the veto power of Greece, Bulgaria or any other EU memberstate. But, does that mean that we should be willing to accept any terms and ultimatums? No, not a chance.

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МАКЕДОНСКИ ЕВРО-ЕКСПЕРИМЕНТ: ИМА ЛИ КРАЈА?

Резиме

Македонија је држава која је отворена за експериментисање са политикама међународне заједнице, посебно Уједињених нација и Европске уније, о чему јасно сведоче искуства из претходног периода. Ниједна држава на европском континенту није се суочила са проблемима који су већини прилично неразумљиви, а камо ли решиви. Македонија је управо такав случај. Не постоји земља која је имала тако тежак процес међународног признавања, земља која је у неком периоду носила привремено име, земља која је потписала привремени споразум о билатералном спору, земља која је потписала Споразум о стабилизацији и асоцијацији током сукоба 2001. године, земља која је од 2004. године кандидат за чланство у ЕУ (осим Турске), земља која је 2008. године добила „вето" на чланство у НАТО, држава која је променила име 2017. године да би коначно започела ЕУ преговоре, земља којој је ускраћено право на самоопредељење, земља којој се негира језик, историја и култура, итд. У тренутку када се мислило да је све завршено, да ће Северна Македонија коначно кренути путем евроинтеграција, појавила се друга суседна држава са новим захтевима који немају реално упориште. Могућност назадовања или сагнације у ЕУ интеграцијама је заслуга Бугарске која води политику негирања македонског језика, македонске историје, македонске културе, и која је недавно истакла захтев да се бугарска мањина унесе у македонски устав. На основу досадашњих искустава, као и познавања процеса доношења одлука у институцијама ЕУ у вези са процесом проширења, постоји озбиљна могућност да ће Македонија бити изложена притисцима да одустане од својих државних темеља, ради постизања крајњег циља – чланства у ЕУ. Рад има за циљ да представи правна питања у вези са овим догађајима, имајући у виду да се већина њих решава снагом политике, и понуди решења која ће омогућити да се будућност државе вреднује по праву и заслугама, а не према политици и захтевима који се не могу испунити и могу произвести озбиљне последице.

Кључне речи: *Македонија, чланство, Европска унија, право, политика, спор.*