

Justice in transition countries – Justice for Albanian in the Republic of Macedonia

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Study “Justice in transition countries – Some constitutions rights of Albanian in the Republic of Macedonia in transition period”, is a study which include study and analysis of some constitution provision which treat the statute of Albanian in Republic of Macedonia, since Macedonia, become independent sovereign state.

Republic of Macedonia as a transition state, had essential changes. In the year 1991 it's separate from ex Federal Republic of Yugoslavia where it became independent sovereign state. In the year 2001 launch arm conflict between Albanian and Macedonian, conflict which was stopped with the Ohrids agreement in August 13th 2001. In the last two decade are done essential changes in legislation of Macedonia, especially in the constitution of the year 1991, which was basic for the position of Albanian discriminate rights.

Ohrids agreement change and advance Albanian juridical position but didn't untie in general. Some of Albanian rights didn't fulfillment in a foreseen term time with the agreement. A part of them, in contain decade they realize with a slow step; some other rights were interpretation and modification in Albanian detriment by laws and acts in law; for some rights which is foreseen they will be unite by law. It's still didn't became law for them are still fictive rights.

In this study are use most of juridical methods because this two decade are full of changes.

Intentional of the study is Albanian aim for constitution equal with Macedonian which one of the principle base of the constitution have to be right of every population for self- determine include the right for separation rely on in a free expression will as a democratic right.

Basic words: constitution, Macedonia, Ohrids agreement; some Albanian right;

JUSTICE IN TRANSITION COUNTRIES – JUSTICE FOR ALBANIAN IN REPUBLIC OF MACEDONIA

ENTRY

When we talk about justice in transitive countries as regards is concerning Republic of Macedonia, I'm going to elaborate on my way the position of Juridical – constitution of Albanian which are leaving their. For coming until the study of two last decade, where Macedonia is in transition, it is necessary short ways historical from ex Yugoslav Federal Republic, to mirror clearly, to understand today political gait in Macedonia, for having wide vision and considering that seeing circumstance of at this moment of development of international politics, is necessity study the conflict between Albanian with the Macedonian government in multiethnic constitution aspects.¹

Development and regulation constitution of Republic of Macedonia and its creation

The state of Yugoslavia create with the decision Antifascist council of national Liberation of the Yugoslavia (KAÇKJ) holding of meeting in 29 – 30 November 1943 in Jajce.

While in August the second 1944, in monastery Prohor Pcinski hold the first meeting of the council Antifascist National Liberation of Macedonia, (KAÇKM). In that meeting, they exploited self determination, They made the constitution of the Macedonian state, as equal member of ex Federal Republic of Macedonia.

With the decision of Council Antifascist National Liberation of Macedonia it's Macedonia as a state of only Macedonians. As regards other nationalities, in quite big number, in this occasion they sideways pass democratic tradition of Republic of Krushevo and they proclaimed national minority, “to whom the furnish free national life.”

Development and regulation constitution of Republic of Macedonia, develop in frame work of ex Federal Republic of Yugoslavia from 1946-1991.

Periodic of development constitution in Republic level, develop in the meantime with the accordance of Federative. It means together extraction of Federative constitution and constitution law in Federative level, in accordance with them, follow to extraction and constitution in Republic level, while after the year in 1963, also in regional.

Regulation constitution in ex Yugoslavia, with it and Republic of Macedonia pass in those period:

I.First period 1946-1963;

¹ Mersim Maksut, 2005, *Aspekti juridiko-kushtetues dhe politik i statusit shtetformues të popullit shqiptar në Maqedoni*, Shkup, Logos A, fq.121

II. Second period 1963-1974;

III. Third period 1974-1991;

Albanian juridical – constitution position in ex Federal Republic of Yugoslavia in period 1946-1991

The constitution of the year 1946 Albanian define as national minority;

The constitution law of the year 1953 like the constitution of the year 1963 it didn't take any big changes; The changes become in Amendments 72, 73, 74, 75, (preparation advance who they will win with the constitution of the year 1974 – from the item 177 – 183).

Constitution of the SFRJ of the year 1974 principle equalize nations and nationalities (item 2, 4, 5)²; Constitution of the Socialist Republic of Macedonia recognize Albanian rights as the constitution element in Macedonia;

When we talk about the rights of national minorities, they now, respective with constitution in meaning of the year 1974 define as nationalities. But not just this. In the Republic of Macedonia Albanian and Turkish win constitutive element of the state – which was a very important step for development and defend of their rights of nationalities in Republic, in one side also building global ethnic relation in the other side.³

Although constitution of the year 1974 foresee in defined Albanians rights, their alienate from near didn't realize;

Abolish rights of the state formation of Albanians

Provision constitution which advancing Albanian rights, after they change; Change first item, quite by Macedonian as “fundamental” item in which Macedonia is define as common state of Albanian and Macedonian. Replacing of this item made by Amendment LVI of the year 1989, where become to the other new define of the state of Macedonia, as a state only for the Macedonian population and that the Albanians rights rang as rights as citizens position.⁴

Ex Yugoslavia, existed as state of common Federative from 1943 until 1991. Yugoslav federative consist from 6 unit Federative Republics (Slovenia, Croatia, Serbia, Monte Negro, Bosnia , Macedonia) and two Provinces (Kosovo, Voivodina).

It's undo in XIV congress of the year 1990 as result of the inside disunion, who forsake from Slovenian and Croatian delegate.

²Constitution of the year 1974 of Socialist Republic of Macedonia

³ Osman Kadriu, 2006, *Rregullimi kushtetues i Maqedonisë*, Shkup, FocusPrint, fq.64

⁴ Mersim Maksuti, 2010, *E drejta kushtetuese e Republikës së Maqedonisë*, fq.35, Tetovë, Arbëria Design, Tetovë

REGULATION AND DEVELOPMENT OF THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA AS AN INDEPENDENT SOVEREIGN STATE

CONSTITUTION OF THE REPUBLIC OF MACEDONIA OF THE YEAR 1991

With the dissolution of the SFRJ juridical – state, destruction included also the ex Yugoslav Republic of Macedonia. The elements that constituted the ex Yugoslavia, now as its own independent state, created its individual state. In a meaning of juridical regulation, it was done by bringing of its constitution, which waited as elementary juridical item, from which result and other legislative regulate.⁵

In January twenty fifth 1991, Constitution of R.M. approved: Macedonian Declaration as sovereign independent state;

But in September the eighth 1991 hold referendum, in which Macedonia population declaration for RM constitution as sovereign and independence state; Albanian population who lives in Macedonia boycott this referendum.

In November seventeenth 1991, approved Constitution of the Republic of Macedonia, (only for Macedonian). With it define separate R..Macedonia from SFRJ;

Constitution approved with the most qualification deputy in Assembly of the RM. Albanian deputy didn't vote the constitute of the RM of the year of 1991, with the recession and argumentation relevant and rights.⁶

In January eleventh-twelfth 1992 hold referendum organized by Albanian, for political territorial autonomy, referendum which violence by government while decision approved disowned from the juridical and political subject.

But approved of Constitution of 1991 of the R.M interact constitution until then in F.R of Yugoslavia and this represent curve in development of constitution in RM;

(item 1) of the Constitution foresee: “Republic of Macedonia is sovereign independent state, social and democratic.”⁷

This provision foresee that Constitution shows the high juridical-political act of the sovereign and independent state, isn't federal unit like in the Constitution of 1946, 1963, 1974.

⁵ Fatmire Lumani, 2003, *Pozita juridiko-kushtetuese e shqiptarëve në IRJ të maqedonisë, periudha 1945-2002*, punim I magjistraturës, Tiranë

⁶ Osman Kadriu, 2006, *Rregullimi kushtetuese I Maqedonisë*, Shkup, FocusPrint, fq.55

⁷ Kushtetuta e Republikës së Maqedonisë e v.1991

After it's separate from ex Yugoslavia, the situation became complicated, because it didn't regard multiethnic composition, respectable Albanians exempted from the decisive negotiation that what juridical formation response R.M.

Constitution amendments for Constitution of 1991 of RM

Constitution of the year 1991 of the RM, is satisfied with two amendments in 1992, with abolition of doubt that Macedonia doesn't have territorial pretention till neighbors (first amendment) how like care for Macedonian position into the neighborhood. RM isn't going to mingle in sovereign right of those state and their inside task (second amendment). This Constitution became changes with the amendment of Ohrids frame agreement in 2001, and also in 2005 with amendment in juridical power.

OHRIDS FRAME AGREEMENT (OFA) OF THE YEAR 2001

Albanian constitution rights

Didn't chose Albanian juridical-constitution statute in the RM, with political means, was one of the reasons which bring until the conflict of 2001, conflict between Albanians and Macedonians organized by Free National Military. Sixth month war crown with frame Ohrids Agreement, attainment between Albanians, Macedonians and foreign international factor.

Ohrids Frame agreement attainment in the town of Ohrid while signified in Skopje, in August the thirteenth 2001;

As underwriter of it were: Political leader (Lubco Georgievski – VMRO-DPMNE; Branko Crvenkovski – LSDM; Imer Imeri – PPD; Arber Xhaferi – PDSH; Leader of the state Boris Trajkovski; and international representative Fransoa Leotar – EU; and James Perdue – USA);

With Ohrids Frame Agreements, foresee change in constitution of 1991. Its compose in three annex: Annex A; Annex B; Annex C;

While Ohrids Frame Agreement foresee change the constitution of 1991, it doesn't complete Albanian request for having the status of state former equal with Macedonian. With this Agreement, Albanians in their detriment, they keep unitary character of Macedonian dominate in their favor. With the OFA Albanians rang as a second hand citizen, as in language aspects, identity, laboring...as the functions aspects with the can't be attainment for them, for example president of parliament, Ministry of the interior, Ministry of the exterior, ext.

OFA from the view juridical-constitution present a compromise unavoidable tied with Albanian constitution rights, looking into constitution circumstance that develop this process.⁸

⁸Mersim Maksuti, 2010, *E drejta kushtetuese*, ArberiaDesign, Tetovë, fq.253 Tetovë

Annex A⁹ foresee approbation of the amendments of the Constitution of the RM. Foresee changes in Constitution; change in preamble and 15 items: (7, 8, 19, 48, 56, 69, 77, 78, 84, 86, 104, 114, 115, 131)

The constitutions changes include:

- Constitution of preamble of 1991;
- Using official language of RM;
- Cause of high education;
- Using national symbols;
- Including adequate of community in RM;
- Procedure extraction to pass acts which intrusion directly the ethnics rights;
- Choosing and competence of people Advocate;
- Board transformation international relations in committee for relation between community;
- Appointment of member of security board;
- Appointment of some member of Juridical Board and juridical Constitution;
- Changed the name and local power competence; etc;

Annex B, foresee change in legislative and in:

- Act for local self government;
- Act for self-financial;
- Act for territorial border- district;
- Act for dedicate police which are situated in district;
- Act for state Clark and public Administration;
- Act for unit election;
- Regulation for Parliament;
- Juridical dedicate using language;

⁹ Vladimir Milčin, 2001, *Perspektivite na Ramkovniot dogovor*, za izdavaçot: Soros Skopje.

-Law for advocate populate;

Annex C, foresee implementation and building standards for trust, as:

-International protection;

-Registration and election;

-Return the refuge, revitalization and rebuilding;

-Power decentralization development;

-Nondiscrimination and right representation;

-Culture education and using language;

OFA, foresee advance of the juridical constitution position, into comparative with position pretty well discriminate and transparent who have it in constitution of 1991, while represent a step back in comparative with the constitution of the year 1974.10

For understanding juridical-constitution of Albanian position retirement an example which mirror no equally juridical-constitution of Albanian with constitution of the year 1991 also with change OFA;

Preamble of Constitution of 1991:

In preamble of Constitution of 1991, apply concept of national state (mono national). Intention to civil state, didn't enfeeble that determination, only brings confusion. This attribute, in multiethnic state are unacceptable.

I didn't define as national state, it will understand we have two do with a civil state in which carrier of sovereignty every state – person of state, of the all citizens apart citizens from whom national belong.

But this untying didn't condemn.

OFA, Annex A, foresee that “in this preamble to be substitute base to the concept of the individual rights and civil society”.

Agreement foresee that in preamble figurate only citizen as constituent in RM. But this didn't define in base of citizen characters , when this change by approbation by changes Assembly Constitution of RM in Skopje, with the fourth amendment. With this changes combine the concept of sovereign of person (which implication people sovereign) and that national state (of Macedonians), which doesn't show rights for Albanians because discriminate ranges a second hand citizen.

In actually preamble, we have separate of Macedonian people and treatment of other member population, only in individual aspects.

“Citizen of Republic of Macedonia, Macedonian people also citizen who leave inside the border of Macedonia, who are part of Albanian people, Turkish people, Serbian people, Romanian people, Rom people, Bosnia people, etc...”

This is a new approach not to the end consequent, to the constitutions to the Macedonia state.

With OFE, advanced Albanian constitute position comparative with Constitution of 1991, but we don't have equal position with Macedonians; but it present step back in comparative with the Constitution of 1974 of the S.F.R.Jugoslavia.

According OFA, preamble, doesn't foresee equality of Albanian with Macedonian, but it rang with other minority position as Serb minority, Romanian minority, Turkish minority, and Bosnia minority.

As from own terminology which is used, Macedonian people and part of Albanian people it seems that we don't have to do with the equal citizen, regard that Albanian aren't population state – formed equally with Macedonian as juridical and political subject. They are in position to be, cold part of Albanian people, and they aren't cold directly, Albanian people.

Conclusion and recommendation

-The juridical-constitution position of Albanian from OFA, face advance constitute , but isn't choose completely;

-OFA doesn't satisfy a request of Albanian population for a equal state-form with Macedonians;

-Still have taboo theme which hold pledge undo define position of Albanian in RM and Albanian as own nation;

-Unitary character of RM favors Macedonian population dominate towards Albanian, which doesn't response facts state inner in the RM; This unitary character favors and dominate Macedonian population with a majority and dominate as populate - state;

-OFA need to take as democratic step, tie bridge that in a nearly future to came in agreement the equal position with Macedonian, incorporate also rights of self determination to every population for self – determinate; to include and right for separation;

-The right of self determine of every nation isn't exploit from Albanian. It isn't prescript and like it have to be exploited fro Albanian, with the democratic means to choice and forever the Albanian position;

-Needs that in front in international factors to certificate guarantee free and right of self – determine also to Albanian nation with the right for self prescript for national union.

-A separate nation in states isn't define choose. Define choose of Albanian position and justice for them, is Albanian union nation;

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