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Contemporary Macedonian and Polish Constitutional Experiences and Challenges – Differences and Similarities

Keywords: Constitution, political system, state, democracy, rule of the law, European standards

Summary. Republic of Macedonia and the Republic of Poland are two friendly countries which, despite the differences with regard to the territory they occupy, the population, their histories and political developments, function together as two independent and sovereign countries who fully respect each other's national, cultural and political specifics and differences. The socialist past on one hand, and the new democratic reality in both countries on the other, bring to the surface the numerous constitutional and legal elements which can be identified as similarities, but they also bring some specific differences which the two countries have with regard to their legal and political systems.

The socialist past of the two countries has certainly left a memory of the several categories specific for that system, such as the one-party system, the party and political monism, the unity of the government and the socialist ideology. On the other hand, the transformation of the two legal and political systems in democracies brought the new democratic categories together with their challenges. The dominant protection of the human rights and freedoms by the democratic systems in both countries, the respect for the rule of the law and for the democracy, brought many positive aspects in the functioning of the systems, but they also opened many problematic areas and rose number of questions for which the experts and the politicians are still searching for proper answers.

The paper will try to highlight the most important questions related with the constitutional and legal development in both countries by putting the emphasis on the period of democracy which started in Poland by the end of 1988, while in Macedonia it saw its birth in the beginning of 1990. Although Poland has much broader experience when it comes to the constitutional and the legal development of the country, which is not the case with Macedonia, this paper will still try to identify the similarities and the differences in the functioning of the two constitutional and political systems through a comparative observation, by noting the weaknesses in their work, as well as by noting the possibilities for incorporating of certain solutions as good democratic practices.

Współczesne doświadczenia i wyzwania konstytucyjne macedońskie i polskie – różnice i podobieństwa

Słowa kluczowe: konstytucja, ustrój polityczny, państwo, demokracja, rządy prawa, normy europejskie

Streszczenie. Republika Macedonii i Rzeczpospolita Polska to dwa przyjazne kraje, które pomimo różnic co do zajmowanego terytorium, ludności, historii i rozwoju politycznego, funkcjonują razem jako dwa niezależne i suwerenne państwa, które w pełni szanują wzajemną narodowość, kulturę, pomimo politycznych różnic. Socjalistyczna przeszłość z jednej strony, a nowa demokratyczna rzeczywistość w obu krajach z drugiej, wydobywają na powierzchnię liczne elementy konstytucyjne i prawne, które można zidentyfikować jako podobieństwa, ale przynoszą też pewne specyficzne różnice, które oba kraje mają w odniesieniu do ich systemów prawnych i politycznych.

Socjalistyczna przeszłość obu krajów z pewnością pozostawiła w pamięci kilka specyficznych dla tego systemu kategorii, takich jak system jednopartyjny, monizm partyjny i polityczny, jedność władzy i ideologia socjalistyczna. Z drugiej strony transformacja dwóch systemów prawnych i politycznych w demokracjach połączyła nowe kategorie demokratyczne z ich wyzwaniami. Dominująca ochrona praw i wolności człowieka przez systemy demokratyczne w obu krajach, poszanowanie rządów prawa i demokracji, przyniosła wiele pozytywnych aspektów w funkcjonowaniu systemów, ale powstało też wiele obszarów problematycznych, na które eksperci i politycy wciąż szukają właściwych rozwiązań.

W artykule uwypuklono najważniejsze kwestie związane z rozwojem konstytucyjno-prawnym w obu krajach, kładąc nacisk na okres demokracji, który rozpoczął się w Polsce pod koniec 1988 roku, podczas gdy w Macedonii narodził się na początku 1990. Choć Polska ma znacznie szersze doświadczenia w zakresie konstytucyjno-prawnego rozwoju kraju, co nie ma miejsca w przypadku Macedonii, w niniejszym opracowaniu wskazano podobieństwa i różnice w funkcjonowaniu obu systemów politycznych poprzez obserwację porównawczą, dostrzeganie słabości ich pracy, a także dostrzeganie możliwości włączenia pewnych rozwiązań jako dobrych praktyk demokratycznych.

1. Introduction

When late British Prime Minister Winston Churchill said back in his days that "Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed **it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time**…", no one among the theoreticians and the politicians of that time understood this sentence as seriously as the time and the political practice confirmed it.

The contemporary practice confirmed yet another conclusion, and that is that the political and the constitutional-legal theory have failed in finding an alternative and better model of ruling than the democracy.

What a paradox! And the question that inevitably follows: is there no alternative for the democracy? And, does this absence of alternative collide with the very meaning of the democracy, with the political and overall plurality?

Quite often and quite frequently we hear opinions that, if there is no alternative for the democracy, then the citizens ought to doubt in whether the democracy actually exists in its original and qualitative form.

If we know that the entire purpose and philosophy of the democracy is in the alternative, in the diversity, in the plurality, then it is quite logical to ask whether we can speak about democracy if that democracy does not incorporate the so much needed diversity and alternatives?

This question becomes especially popular in a situation when the crucial topic is what the democratic political institutions look like and how are they organized, what form of democratic relations are developed among them, what type of systems of organization of power are best, with supreme quality etc. And, another question that comes as a follow up – do the democratic political institutions and their rela-

tions really have no alternative and are left to function based on a predetermined, unified and unchangeable schemes and rules? The answer is, of course, no.

Namely, the approach to detailed and thorough analysis of the modern democratic systems of organization of power in the theory and in the practice is getting more and more on weight. The analysis and the criticism addressed to the democratically elected parliament on daily basis are being put on public insight, while the parliament, instead of a true house of representatives of the people and official creator and holder of the legislative government, becomes more and more a government's voting machine to pass bills and government's policies.

On the other hand, the positions of the governments and of the heads of states in the legislative power are becoming stronger and stronger. These executive bodies, besides their authorisations in the executive power, are getting a more and more important position within the legislative power, which creates a serious shift from the basic meaning of the principle for distribution of power as defined in the classic theory by Montesquieu and the followers of this doctrine.

The new time has brought to surface many new arguments which explain the deviations and modifications to the principle for distribution of power. In this sense, the constitutions of the democratic countries are becoming less and less able to explain these deviations in the relations among the state institutions. Very often, the Constitution says one thing, but something completely different is taking place in the practice. It is because of this fact that there is an increasing number of considerations which suggest that the political systems should never again be classified simply according to their position with regard to the constitution and the law, but also based on the core values of the political processes which are modified on daily basis as a result of certain political interests and needs.

The fact that in two countries there are similar or identical constitutional solutions for the relations between the political institutions is no longer sufficient for one to conclude that in both countries there is a same type of a political system. The analysis of the systematic structure must always also have in mind those circumstances which are related with the overall political processes that are ongoing in the system. Because of this the analysts must pay greater concern and attention not only to the constitutional and to the legal norms and solutions in the countries, but also to what pulses and happens in the political and legal practice. One must make a difference between the legal form as written in the legal acts on one hand, and the political reality on the other. One must make a difference between the description of the institutions in the legal acts, and the practice, the political life, the real "life" of these institutions within the system.

It is because of these reasons the analysis of the political systems should not be focused only on the constitutional and legal solutions that exist in the countries,

but also on the different approaches in the organizational "arrangements" that the governments choose in the process of decision making and in the execution of the power as a valuable tool in the process of political analysis. The political life and the political system do not constitute of only what is written in the legal acts, but also of the permanent discovery of political solutions for the problems that exist in the system.

That is why we say that the studying of specific political systems will remain one-sided if only the elements that comprise the formal legal structure of the system are analyzed. The political processes that take place on daily basis among the institutions in the system, as well as their inter-dependability combined with certain external factors and influences, ought to complete the study about the content of the political systems.

How dynamic is the matter that we study within the contemporary political systems one can see from the fact that there are just a few countries in the world whose constitutional systems are older than one century. The constitutions of most of the countries in the world have been written in the 20th or the 21st century. Many powerful countries belong to this group, such as the countries that were defeated in the WW2 (Germany, Italy, Japan), the countries that went through civil wars and revolutions in the last century, the countries that emerged after the collapse of the USSR, as well as Spain, China etc. Even the UK and the U.S. saw dramatic changes in their ruling systems in the 20th century.

In the U.S. for example, the relations between the legislative and the executive government at federal level and on the level of federal units saw significant changes as a result of the growing bureaucratic tendencies, but also due to the strengthened budget power of the executive government.

In the UK, significant changes took place in the relations between the prime minister on one, and the parliament on the other hand, as well as in regard to the role of the parliament in the control over the work of the executive government. In both countries, strengthening of the concept of welfare state, the influence of the modern technology on the economy, as well as the international and other crises have resulted in a significant shift in the way how the institutions of the government function and interact.

In practically all political systems, even without any changes in the constitutions, there is a continued process of adjustment of their institutional relations in order to reflect the changes in the social systems and the balance among the political forces.

It became clear in the 21st century that the democratic political system led not to humanization, but to monopolization of practically all spheres of the social life by the powerful super-states, as a result of the growing geopolitical interests of the world order. It was these interests that have created deformed institutions which

instead of taking care of the interests of the people and their true representation in the state institutions, put the focus of their interest on the political elites and their elitist interests in the countries worldwide. The monopolization of the political systems by the super powerful states comes as a consequence of their military and financial superiority over the rest of the world. In this context, we cannot ignore the fact that social conflicts are deliberately produced in order to initiate military activities and growth in the influence of the military super powers in the world order.

Historically speaking, there was no political system that was able to implement "global peace". History, and life in general, have shown that the authoritarian and the totalitarian systems have left a mark in the collective memory of the mankind as systems in which the power was misused by those who rule, innocent people were being punished and imprisoned for not accepting the regime etc. This is the reason why the presence of absolute power in the different political systems and forms of ruling (monarchy, republic, democracy, totalitarian system etc.) has generated conditions for civil riots and divisions, social inequalities that created misuse of, and among the citizens.

This reality points to the need that in every country, regardless the type of political system that exists in it, there must be conditions for maximum autonomy of the citizens and greater freedom of everyone from the systematic strings and bans. The higher the sense of personal freedom of every citizen, the stronger and more advance the country is. But, on the other hand, personal freedom is in conjunction with the economic status of the citizens. The richer the citizens in the country and within the system are, more independently they will be able to enjoy their guaranteed rights and freedoms.

The economic foundations of the democracy are in a state of private property also in the market economy. There is an interesting saying that goes: "the wealth divides the people, the power differentiates the animals." The allegory is that the humans, after they gain great wealth, are transformed in hostages of their economic profit. Therefore, we may conclude that the political systems are largely dependent and ought to be analyzed not only through the political processes that are taking place within them, but also through the economic performances of the countries, and/or the economic dependence of the countries from the super-powers that run the world.

And it is not said by chance that the behavior of the political elites is quite contradictory when it comes to their own countries and the countries in the rest of the world. While in their own countries they tend to strengthen the state and to maintain the democracy at least at the basic level, in the other countries under their influence, most often through the flocks of non-governmental organizations controlled by them, they install parallel political organizations and processes, fully

controlled and guided from abroad, most often fully contrary to the interests of the citizens in that country.

The modern world and civilization are put in a very unfavourable position which shows indicators that the democracy is put under question mark, both from inside, by the national political systems, and from outside, by the international organizations and orders. Certain aggressive and possessive forces that dominate in the globalization process deny the democracy in its root, particularly its fundamental values. It is unlikely that the new world order will find an adequate formula for a democratic order that will fit the old-new democratic being. In this situation, we often have cases where the domestic democratic institutions in the sovereign and national states are often annulled, same as the democratic forms of the political systems they are connected with, which leads to initiating a new era of marginalization of certain insufficiently developed countries, under the curtain of the globalization.

The crisis of the democracy started with the strengthening of the globalization process.

Therefore, the crisis of the constitutional democracy is growing parallel with the process of constitutional globalization. Poland and Macedonia are not exempted from these negative influences and destructive processes.

2. Brief review of the constitutional and legal development in Poland (1989-1992)

It is generally accepted that Poland is a forerunner of European constitutionalism. The Polish constitutionalism has started its development in 1791 when the Parliament of the Republic of Poland and Lithuania passed the first constitution in the Old World, called the 3rd of May Constitution. On the other side, the democratic processes in Poland were among the first to start in the so-called post-socialist countries form the Eastern and South-eastern Europe. They started with the difficult three-year long negotiations completed with the signing of the joint Round Table Agreement of 4th of April, 1989 which moved Poland decisively away from a Soviet-style unitary hierarchy. The Round Table Agreement[1] created a tripartite structure of the political system with clear separation of power among the executive, legislative, and judicial branches. The Round Table Agreement implied the unique understanding of the Constitution-a shift to a parliamentary system of governance with the state party remaining in power and the introduction of two

[1] In 1989 round table talks between the opposition and the communist government spawned a flurry of legislation and constitutional amendments that merged democratic reforms with institutions and laws inherited from four decades of communist rule.

new institutions-the president's office and the Senate (Senat) as a second chamber of parliament.

The presidency replaced the State Council, but was to secure the continuity of the old system. Initially, the president was not directly elected. The extent of his competencies implied a semi-presidential system that created a strong legacy for future constitutional politics. The president was given veto powers in law-making that the Sejm could only override by a two-thirds majority and a decisive role in government formation. Furthermore, he could dissolve parliament under certain conditions. The list of competencies was impressive and the borders with parliament and government were not clearly formulated. **The presidency established by the Round Table Agreement had to replace the communist-era Council of State as the primary executive organ of government.** According to the Agreement, the president was to be elected by the National Assembly to a term of six years[2].

After one year of signing the Agreement, in the spring 1990, a constitutional amendment was adopted by the Sejm providing direct popular election of the president to a five-year term with a limit of one re-election. It was introduced that any Polish citizen with at least thirty five (35) years of age was eligible to appear on the ballot after obtaining 100,000 nominating signatures[3].

The Round Table Agreement did not stop the debate and active working on the new Polish constitution. In 1992, the Sejm introduced a new so-called "Little/Small Constitution" with 78 articles which entailed a revision of the setting of political institutions. This new Constitution has also annulled large parts of the socialist constitution. About two thirds of the old constitution, however, remained valid in a non-incorporated addendum of another 61 articles. They included the Bill of Rights, regulations on central state institutions such as the Constitutional Tribunal (Trybunał Konstytucyjny) or the judiciary, the constitutional symbols and the amendment rules.

In the period from 1992 until 1997, the new Polish constitutional order was based on three documents: (1) the Constitutional law of April 23, 1992 regarding the procedure of preparing and passing a new constitution (in force since September 22, 1992); (2) the Constitutional law of October 17, 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland

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[2] F. Millard, *The anatomy of the new Poland: Post-communist politics in its first phase*, Edward Elgar, Aldershot 1994.

[3] According to the Constitution, if accused of violating the Constitution and Polish law, the President could be indicted before the State Tribunal if two-thirds of the National Assembly so voted. Upon indictment, the president would be relieved temporarily of the duties of office. A guilty verdict from the State Tribunal would bring expulsion from office. The presidency also could be vacated because of physical unfitness to hold the office, as determined by the National Assembly. In such circumstances, the Sejm speaker would temporarily assume the duties of the presidency until a new president could be sworn in.

and on local self-government (i.e. the Small Constitution); and (3) the Articles of the 1952 constitution.

The new constitutional arrangement from this period has preserved the semi-presidential character and some overlapping competencies between president, government and parliament. On the other side, the "Small Constitution" has clarified some rules. It introduced a more precise mode of selecting the government, slightly strengthened the government by making a vote of non-confidence more difficult, reduced the oversight function of the Senate towards the Sejm, since the latter could now overrule a former's veto with an absolute majority, and enabled the government to use fast-track legislation in law-making in order to speed up decision-making in parliament.[4]

In essence and similarly to the outcome of the Round Table talks, the Small Constitution was not a compromise between normative constitutional concepts, but rather an outcome of existing power relations between the defenders and opponents of a strong presidency. **The 1992 Constitution is also known as a transitional constitution with which Poland returned to constitutional rule and formed the foundation of the government between 1992 and 1997**. In this period the country has been faced with many challenges. The single party system was transformed into a multi-party system with increased role of political and societal pluralism. Also the free market economy was installed. The crucial duty of the president was naming the head of government, the prime minister. The "Little Constitution" amended the procedure prescribed for this function. Originally, the president nominated the prime minister, but the Sejm had to approve both that nomination and the prime minister's cabinet choices that followed. The "Little Constitution" specified that the president designate the prime minister and appoint the cabinet upon consultation with the prime minister.

Within two weeks, however, the new government must receive the Sejm's confirmation (by a simple majority of the deputies present voting in favor). If the government is not confirmed, the Sejm then has the responsibility to nominate and confirm its own candidate, again by a majority vote. If the Sejm fails in this attempt, the president has another chance, this time with the lesser requirement that more votes be cast for approval than for non-approval. Finally, if the president's choice again fails, the Sejm would attempt to confirm its own candidate by the lesser vote. If no candidate can be confirmed, the president has the option of dissolving parliament or appointing a six-month interim government. During the interim period, if the Sejm does not confirm the government, or one of its own choosing, parliament automatically would be dissolved.

[4] C.-Y. Matthes, *Poland*, www.springer.com/cda/content/document/cda.../9783658137618-c2.pdf?SGWID [access: 12.08.2021].

The Constitution grants the president certain legislative prerogatives, including the right to propose legislation, to veto acts of the National Assembly (the Sejm could overrule such a veto with a two-thirds majority), to ask the Constitutional Tribunal to judge the constitutionality of legislation; and to issue decrees and instructions on the implementation of laws. The president ratifies or terminates international agreements but needs prior approval from the Sejm to ratify agreements involving sizable financial liability on the state or changes in legislation.

If national security were threatened, the president could declare martial law and announce a partial or full mobilization. The president could also introduce a state of emergency for a period of up to three months in case of a threat to domestic tranquility or natural disaster. A one-time extension of a state of emergency, not to exceed three months, could be declared with the approval of both houses of the National Assembly.

The lower house of the bicameral National Assembly, the Sejm, is the more powerful of the two chambers. The Sejm has the constitutional responsibility of initiating and enacting laws that "set the basic direction of the state's activity" and of overseeing "other organs of power and state administration". The constitution specifies election of the 460 Sejm deputies to a term of four years.

3. The 1997 Constitution of Poland

Like the Small Constitution, 1997 Constitution of Poland declares the Republic of Poland to be "a democratic state governed by law and implementing the principles of social justice". Article 7 provides that all state bodies must "operate on the basis of and within the limits of the law".

The new Constitution bases Poland's political system on "the division and balance of power" among four branches of government: the legislative branch, comprised of the Sejm and Senate, the executive branch under the Prime Minister, the office of the President, who is primarily responsible for foreign affairs, and a truly independent judiciary.

It envisaged Republic of Poland as a country with a republican political system in which the power is concentrated in the Polish nation-citizens' hands. Poland is a parliamentary democracy which means that all citizens can participate in ruling the state and have a constitutionally guaranteed influence on its fate. They also enjoy equal rights.

The Polish constitutional and political system consists of state institutions which are bearers of the legislative, executive and judicial power and of political parties.

Poland is governed by a parliamentary and cabinet system. Power is divided between the legislative body (held by the Sejm, the Senate and, to a certain extent,

the Constitutional Tribunal), the executive authority (the President, the Prime Minister, and the Council of Ministers), and the judicial authority (an independent judicial system, with general, administrative, and military courts).

All these elements of the Polish political system are coordinated with each other. During general parliamentary elections the citizens of Poland elect their representatives, who belong to various political parties. These parties then take seats in the Sejm and Senate depending on the number of votes they receive during an election.

According to the 1997 Constitution the executive power in the political system is in the hands of the president and the Prime Minister. The President is the head of the state and the Prime Minister is the head of the government. The legislature consists of two chambers, the Senate (upper house) with 100 members and the Sejm (lower house) with 460 members. The judicial branch is headed by a Supreme Court and by a Constitutional Tribunal.

The President is the supreme representative of Poland. He is elected for a five-year term and only may be re-elected once. The president represents the country in foreign affairs, ratifies and renounces international agreements, appoints, recalls, and receives diplomatic representatives and cooperates with the government on foreign policy. As the supreme commander of the armed forces, the President has the power to grant citizenship and pardons, confer orders and decorations. Moreover, the President may convene the cabinet concerning some matters and may issue regulations, executive orders and other “Official Acts”. In case of an infringement of the Constitution or statue or the commission of an offense, the President can be held accountable before the Tribunal of State.

The government consists of a Council of Ministers led by a Prime Minister, who is nominated by the President and normally a member of the majority coalition in the Sejm. The Prime Minister appoints members of Council of Ministers, organizes its work and develops an overall government agenda. The Council of Ministers coordinates the activities of the ministries and their subordinate entities, compiles and presents the annual state budget and guides foreign policy and controls the field of national defense.

The legislative power is vested in the Sejm and the Senate. When deciding on an issue in joint session, they act as the National Assembly. Candidates to both chambers are either nominated by political parties or voters, following procedures specified by statue. The 100 Senators and the 460 deputies of the Sejm are elected by the people every four years. Among the prominent changes in the 1997 constitution were the elimination of a national list regarding the election of deputies and the introduction of an electoral threshold, stipulating that only parties obtaining 5% of the votes enter parliament, with some guaranteed seats for small ethnic parties.

Members of the two houses form the National Assembly when having a joint session. The National Assembly is formed on three main occasions: when the new president is taking the oath of office, when declaring the president permanently incapacitated to discharge their duties, and when bringing an indictment against the head of state to the Tribunal of State. Since 1999, the joint session has only been held during the swearing-in of the new president.

It is the duty of the Sejm to control the Council of Ministers. Bills may be proposed by deputies and senators, the President, the cabinet, and 100,000 citizens entitled to vote. After a bill has been passed by the Sejm and approved by the Senate, the proposed bill has to be signed by the President. Concerning constitutional amendments, the proposed amendment has to be adopted by the Sejm by a majority of at least two thirds and requires the presence of at least a half of the deputies. In specific areas, constitutional amendments must fulfill additional requirements.

Regarding judiciary power, the 1997 Constitution is stipulated that the judiciary is made up of the Supreme Court, the Supreme Administrative Court, the Constitutional Tribunal, and the State Tribunal. The president appoints the First President of the Supreme Court and the President of the Constitutional Tribunal with the Sejm approving such appointments.

The President nominates the judges for an indefinite period on the basis of the proposal of the National Council of the Judiciary. The main task of the Supreme Court is to supervise the judgments of the common and military courts.

The Constitutional Tribunal, composed of fifteen judges who are chosen by the Sejm, is endowed with the adjudication of the constitutionality of laws passed by the other branches and individual actions concerning the infringement of constitutional rights. The Tribunal of the State has jurisdiction to try senior government officials for statutory of constitutional violations committed in the performance of their official functions. An Ombudsman shall look after the protection of citizens' rights.

The Constitution of 1997 established the Constitutional Court as a constitutional organ, yet the Constitutional Court had already been established, with limited competences, in 1985. Then, decisions on the incompatibility of statutes with the Constitution were subject to review by the Sejm, which could overrule the Tribunal's decisions with resolutions adopted with a two-thirds majority vote. Such an arrangement was an attempt at a compromise between establishing a constitutional judiciary and maintaining the principle of the unity of state authority. Nevertheless, since the pronouncement of its first decision on 28 May 1986, the Polish Constitutional Court was successful in securing a relatively independent position within the framework of the state.

4. Successful Amendments of the 1997 Polish Constitution

The current Constitution of the Republic of Poland was passed in 1997. Soon after it entered into force, proposals were put forward to amend it. Some of them were formalized and took the form of Bills amending the Constitution, but the majority of them were projects announced publicly in the form of new texts of the basic law, although they have never been finalized[5].

The **first amendment to the 1997** Constitution provided insights on the different attitudes towards national sovereignty and European integration in Poland. Article 55 had to be amended in order to bring the constitution in line with the conditions of the European Arrest Warrant (EAW).

The amendment allowed other EU member states or courts to ask for Polish citizens suspected of having committed a crime in their country to be transferred back to their territory, under the condition that this is also a crime according to Polish penal law.

This amendment became necessary after the Polish Constitutional Tribunal had ruled in April 2005 that the introduction of such a clause into the Penal Code, as made in March 2004, was against Art. 55, Sec. 1 of the Constitution which explicitly preempted any extradition of a Polish citizen. Therefore, the Parliament was asked to pass an amendment on that issue in order to comply with EU law[6].

Another constitutional amendment was adopted three years later, when to Art. 99, a new Sec. 3 was added, according to which a person loses his or her passive electoral right to the Sejm and the Senate in case of a conviction for an 'intentional indictable offense', i.e. a criminal offense liable to public prosecution.

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[5] https://www.lazarski.pl/fileadmin/user_upload/dokumenty/czasopisma/iusnovum/2015/Ius_Novum_2_15_kruk.pdf [access: 12.08.2021].

[6] Two proposals were introduced-one by President Lech Kaczyński, and one by the oppositional PO. The latter's draft was rejected by the Sejm's majority, although legal experts considered it as being more in line with the ruling of the court than the president's bill. Accordingly, the debate in the Sejm repeated the Constitutional Tribunal's considerations regarding the definitions of "extradition" versus "surrender". Finally, the Sejm accepted the president's draft by a 344-to-48 majority with 29 abstentions on May 15, 2006; the Senate had no objections.

By introducing two new paragraphs to Art. 55, the EAW declared a particular form of extradition acceptable within the EU. However, several government deputies and senators feared a loss of national sovereignty. The concerns they brought forward show that they rather felt the need to protect Polish citizens against EU law or the law of other member states than to protect citizens of other member states from criminal Poles. This discussion is also an example of the claim that the idea of national sovereignty is still an issue for many Polish politicians-not only from the political right wing-resulting from the historical experience of frequent losses of statehood. See more details in M. Bainczyk, *Die Öffnung der Verfassung der Republik Polen für den Europäischen Haftbefehl*, Europarecht 2008, 43(2), p. 257-270.

This proposal was closely related to the attempts to modify the parliamentary immunity provisions, which had already been discussed several times.

On November 12, 2010, the newly elected President Bronisław Komorowski (PO) submitted a draft for amending the constitution regarding EU matters (Art. 27), which he had already prepared during his time as Sejm Marshall. The bill addressed in particular the institutional preparation of Poland for the introduction of the Euro. This step resulted in the abolishment of the National Council for Monetary Policy and a transfer of responsibilities from the Polish National Bank to the European Central Bank. The bill also included provisions to harmonize the constitution with the Lisbon Treaty facilitating the Sejm's involvement in the process of European law-making and to allow Polish citizens to vote for the European Parliament from abroad[7].

5. Brief overview of the constitutional development in the Republic of Macedonia

The contemporary constitutional development in the Republic of Macedonia is viewed from two aspects; the first, which follows the constitutional development of the country as part of the former SFR Yugoslavia, and the second, which puts the emphasis on the period after the country gained independence from the Yugoslav federation, i.e. when the Republic of Macedonia became an independent and sovereign country.

Undoubtedly, the events related with the creation of the first republic in the Balkans, the Krusevo Republic of 2nd of August 1903[8], had serious impact on the overall constitutional development within the Republic of Macedonia, as did the period after the WW2, when the Macedonian state reaffirmed its existence in the documents adopted at the ASNOM (the Anti-Fascist Assembly of the People's Liberation of Macedonia)[9].

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[7] More details in: K. Ziemer, *Das politische System Polens*, Springer VS, Eine Einführung, Wiesbaden 2013.

Many constitutionalists and politicians received this amendment with scepticism as useless or even in conflict with the principle of free elections as banning persons convicted of a crime pursued by a public prosecutor from standing for election (Article 99, *item* 3).

[8] The Krusevo Republic lasted for only 10 days. It was a product of the Ilinden Uprising in which the Macedonian people rose their voice against the Ottoman Empire. Although it was ruthlessly devastated on its 10th day, the Krusevo Republic remained a key event in the Macedonian struggle for its own independent state.

[9] The first session of ASNOM took place at the St. Prohor Pcinski monastery on 2 August 1944, which saw the adoption of four key acts with constitutional and legal reference to the constitutional development and moreover the development of the Macedonian state within the Yugoslav federation: 1. the decision for ASNOM to be declared supreme legislative and executive people's representation body and highest body of authority within democratic Macedonia; 2. The ASNOM declaration

As part of the former SFR Yugoslavia, the constitutional development of Macedonia is viewed in close correlation with the constitutional development of the Yugoslav Federation, i.e. the federal and republican constitutions of the Federation: the Constitution of the FNRY (Federative People's Republic of Yugoslavia) of 1946[10], the 1953[11] Constitutional Law, the 1963[12] Constitution of the SFR Yugoslavia, i.e. of SR Macedonia, and the 1974[13] Constitution of SFR Yugoslavia. The independence of Macedonia, slowly but surely, was emerging to surface with the major changes in the social, economic and political system that took place with the constitutional changes in September of 1990. These constitutional amendments explicitly proclaimed the right of the Macedonian people for self-determination, including the right to secession from the former Yugoslavia, based on the decision adopted by the Assembly with 2/3 majority of votes from the total number of MPs. This decision became valid after it was adopted at a referendum with majority of votes from the citizens with the right to vote.

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for the fundamental rights of the citizens of Macedonia; 3. The ASNOM decision to introduce the Macedonian language as an official language in the Macedonian state, and 4. The ASNOM decision to declare Ilinden, 2nd of August, a national and state holiday of the Macedonian state that serves as an expression for the continuity of the struggle of the Macedonian people for their national liberation and creation of their own state. Besides these four acts, the first session of ASNOM also adopted decisions to create two commissions: Commission to examine the war crimes committed by the occupiers and their collaborators, and Commission to process the legal regulations of the Maceodnian federative state. ASNOM delegates also elected 40 Macedonian representatives to represent Macdonia at AVNOJ (Anti-Fascist Assembly of the People's Liberation of Yugoslavia) and at its presidium. See: *Republic of Macedonia – From a Member State of the Yugoslav Federation to a Sovereign and Independent State, Council for Research into South-Eastern Europe of the Macedonian Academy of Sciences and Arts Skopje*, Macedonia 1993, http://www.historyofmacedonia.org/IndependentMacedonia/RepublicofMacedonia.html [access: 13.08.2021].

[10] The first constitution of the People's Republic of Macedonia of 1946 is particularly important for the Macedonian people having in mind the country's statehoodness and its unification with the other people of Yugoslavia as part of the new federal union, the FNRY.

[11] Constitutional law for the social and political establishment and for the governing bodies of the People's Republic of Macedonia, predicated by the adoption of the Fundamental Law for Management with the State Companies and the higher commercial associations by the work collectives, also known as the Law on Workers' Self-Management of 1950.

[12] Most important aspect of this Constitution is that it introduces the principle of assembly system, whereas the Assembly of the SR Macedonia was composed of five boards. For the first time, the Constitutional Court of Macedonia is introduced as an institution to protect the constitutionality and the legality. At this period, SR Macedonia saw several amendments: the 1965 amendment cancelled the counties in Macedonia, the 1967 amendments introduced changes in several functional relations that also reflected on the work of the Assembly, the 1969 amendments changed the structure of the Assembly and the scope of its boards and the 1972 amendments changed the position of the Republic as a result of the altered relations within the Federation and the organization of common labor.

[13] This constitution falls in the group of real-programme constitutions. The next period brings some new amendments to the constitution, the first amendments fall in 1981 and the remaining changes come in 1989-1990 aimed to create constitutional basis for the deep reforms that followed two years later.

According to the new election law, as well as the new law for political organization of the citizens, the first democratic parliamentary elections took place on 11 November 1990, parallel with the first elections for the municipal councils, with participation of numerous political parties. The new parliamentary composition is the one who, in fact, started the contemporary constitutional development of the independent and sovereign Republic of Macedonia.

It initiated the adoption of the Declaration for independent and sovereign state of Macedonia[14] by the Assembly of the Republic of Macedonia on 25 January 191. The Macedonian people directly expressed their will for independent state at the referendum for independence held on 8 September 1991. On this day, over 95.5% of the citizens voted for independence of the Republic Macedonia. The people's will for an independent state was confirmed with the Declaration of the referendum on September 18, 1991 at the Macedonian Parliament. Finally on 25th September, 1991 the Declaration was adopted at the first multi-party Macedonian Parliament[15].

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[14] The Declaration states that: "the citizens of the Republic of Macedonia wrote, in a democratic fashion, a new page in the Macedonian century-long history to reach independence and sovereignty of Macedonia as a state. In the Declaration on the Sovereignty of the Republic, by which, among other things, the Republic of Macedonia was defined as a sovereign state, which, in conformity with its own interests, would decide independently about its future relations with the states of the other peoples of Yugoslavia. In the referendum held on September 8, 1991, the vast majority of the citizens voted in favor of a sovereign and independent state of Macedonia. On the basis of the results of the referendum, the Assembly of the Republic of Macedonia, at its session of September 17, 1991, adopted a Declaration, confirming the will of the citizens expressed in the referendum. The Declaration states that the Republic of Macedonia as a sovereign and independent state will strive for consistent observance of the generally accepted principles of international relations contained in the Charter and other documents of the United Nations Organization, the CSCE Final Act from Helsinki and the CSCE Paris Charter, and that it will base its activity in international relations on the observance of international standards and, in particular, on the principles of respect for territorial integrity and sovereignty, non-interference in internal affairs, strengthening of mutual respect and confidence and comprehensive cooperation with all countries and peoples (Article 2). The Declaration states that the Republic of Macedonia has opted for a comprehensive development of good-neighborly relations and cooperation with all its neighbors, and also for development and cooperation with all European and other countries, international organizations and groups (Article 3). The Declaration particularly emphasizes the determination of the Republic of Macedonia to strictly observe the principle of non-violability of borders and confirms that it has no territorial claims against any neighboring country. Expressing the determination of the Republic of Macedonia to oppose any kind of disrespect for its territorial integrity and sovereignty, the Declaration confirms the Republic's determination to adhere strictly to the principle that all problems in mutual relations should be solved in a peaceful manner by way of negotiations and mutual respect (Article 4). Finally, the Declaration states that the Republic of Macedonia will continue to conduct a policy based on international standards and whose main objective and essential characteristics are the recognition of and respect for basic human rights and freedoms, and, within this framework, the rights and freedoms of Macedonians who live as national minorities in neighboring countries, adding that these questions could be resolved solely by peaceful and democratic means and in the spirit of European and civilized standards (Article 5). See http://www.historyofmacedonia.org/IndependentMacedonia/RepublicofMacedonia.html [access: 13.08.2021].

[15] See http://www.123independenceday.com/macedonian [access: 13.08.2021].

On 17 November 1991, the Assembly of the Republic of Macedonia adopted the first Constitution of the independent and sovereign Republic of Macedonia. Although the 1991 Constitution falls in the group of rigid constitutions, bearing in mind the complexity for its amending, the 32 adopted amendments in the past 23 years of independence point to different conclusion. The reasons for the frequent changes in the 1991 constitution can be divided on external and internal. The following analysis explains in more details all the specific circumstances and facts related with the constitutional and legal development of the independent Republic of Macedonia, as well as the need of "Europeisation" of the Macedonian constitution so that the country can reach its main goal – integration in the European Union. The analysis ends with final observations and objective forecasts by the authors of the constitutional and legal development of the country in the future.

6. The constitutional development of the independent and sovereign Republic of Macedonia

6.1. Structure and contents of the 1991 Constitution of the Republic of Macedonia

The 1991 Constitution of the Republic of Macedonia falls in the group of liberal-democratic constitutions. The main goal of the 1991 Constitution was to mark the beginning of the contemporary development of the Macedonian state as an independent and sovereign state which completely broke from the ties with the previous socialist constitutionality and went through complete democratic reorganization and transfer of the society and the country from a system with deeply enrooted socialist character to a new, democratic system.

The 1991 Constitution abandons the numerous ideological determinations and values that the then current ruling ideology had as basis, such as, socialist self-governing democracy, rule of the working class, undisputed rule of one party, the concept of socio-political communities, the delegate and assembly systems, etc. The Constitution affirms in their place the commitment to ownership, political pluralism, and a market economy. It proclaims the principle of division of power, Macedonia as a state with a republican form of rule based on the sovereignty that "derives from the citizens and belongs to the citizens". The Republic of Macedonia is a democratic state based on the sovereignty that belongs to all citizens of the Republic regardless of their national, religious, or other affiliations, who are equal and have the same rights and freedoms.

The 1991 Constitution introduced the principle of division of power as well. According to this principle, the Assembly of the Republic of Macedonia, as a constitutional and legislative institution, should affirm and develop in its work all

positive aspects of the parliamentary tradition with an independent and responsible Government and with a President of the Republic that expresses state unity in the Republic and the competence determined by the Constitution. The Constitution also establishes an independent judiciary with a Supreme Court of the Republic of Macedonia as the highest court. The Constitution foresees also a Constitutional Court as responsible for the protection of the constitutionality, but also of the legality in accordance with the Constitution[16].

The structure of the 1991 Constitution is consisted of preamble, normative text, and 32 amendments[17].

The Preamble, according to its content, has a declarative, as well as elements of a manifest character. It calls to mind the most important moments of the Macedonian historical, cultural, spiritual, and state heritage.

The normative text of the Constitution consists of nine sections marked with Roman numerals. Most of them are one unit, and only two have been separated into independent separate units marked with Arabic numerals. The first section of the Constitution contains basic provisions explained in eight articles that determine the character of the state, the barrier of sovereignty, the indivisibility and non-inalienability of the territory, and inviolability and change of the current borders of the Republic of Macedonia. This section regulates other issues of statehood character like: citizenship, state symbols (coat of arms, flag, anthem), the capital, and the official language of the Republic. The first section ends with the enumeration of

[16] See more details: S. Klimovski, *Politics and Institutions*, Linking Publishing Company Co., Ltd, Taiwan 2000, p.105-109.

[17] So far, the Constitution underwent seven changes which resulted in 32 constitutional amendments. Also, in 2014 the Assembly has opened another procedure for additional eight draft-constitutional amendments which were unsuccessful due to the opposition boycott of the work of Assembly. Amendment 33 defines the marriage as a life-long union between only one man and only one woman. The legal relations in the marriage, the family and the out-of-marriage unity are regulated with a law that will be adopted with two-third majority of votes from the total number of MPs.

Amendment 34 reads that: 1. In the Republic of Macedonia, international financial zones can be established in accordance with the law. 2. The organization and work of these zones is regulated with a law. Amendment 35 reads that: 1. The Bank of the republic of Macedonia is Central Bank of the Republic of Macedonia. 2. Main goal of the Bank of the Republic of Macedonia is to achieve and maintain stability of the prices. 3. The Bank of the Republic of Macedonia is independent in the achieving of its set goals. 4. The Bank of the Republic of Macedonia is a legal entity with functional, institutional, personal and financial independence whose organization and work is regulated with a separate law. Amendment 35 defines the status and the position of the Bank of the Republic of Macedonia as a Central Bank of the Republic of Macedonia. Amendment 37 defines the deficit of the Budget of the Republic of Macedonia which cannot surpass the level of 3% of the GDP, as well as the height of the public debt of the country which cannot surpass the level of 60% of the GDP. Amendment 38 defines the changes in the Judicial Council of the Republic of Macedonia, while amendment 39 regulates the constitutional complaint as a separate legal mechanism for protection of the rights and freedoms of the citizens of the Republic of Macedonia. Amendment 40 specifies that the work and procedure before the Constitutional Court is regulated with a law that is adopted with two-third majority of votes form the total number of MPs.

the fundamental values of the Macedonian constitutional order. These principles, noted in Article 8 of the Constitution are fundamental constitutional norms and are an expression of the political philosophy of the state. These fundamental values change the character of the Constitution and make it a political act.

The second section of the Constitution is the most extensive one, dedicated to basic human and citizens rights and freedoms. It has been divided into four units: 1. Civil and political rights and freedoms; 2. Economic, social, and cultural rights; 3. Guarantees of the basic freedoms and rights; and 4. Bases of the economic relations.

The third Constitutional section covers the provisions related to the organization of the state power. The institutions of the Republic and their competences are determined in this section: 1. Assembly of the Republic of Macedonia; 2. President of the Republic of Macedonia; 3. Government of the Republic of Macedonia; 4. Judiciary; and 5. Public prosecution.

The fourth section regulates matters dedicated to the Constitutional Court of the Republic of Macedonia, the fifth section contains the basic principles for local self-government, the sixth section relates to matters regulating relations in the domain of international relations, the seventh section refers to defense of the Republic and military and emergency situations, the eighth section is dedicated to the procedure for changes to the Constitution, and the ninth section contains provisions of a transitory and final character. This part determines also the manner in which any transition will be made from the former to the new constitutional system.

6.2. Constitutional amendments (1991-2011)

The amendments to the Constitution of the Republic of Macedonia were adopted through seven procedures for constitutional amendments, as follows:

- 1992 (Amendments 1 and 2 from 10 January 192).
- 1998 (Amendment 3 from 2 July 1998);
- 2001 (Amendments 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 from 20 November 2001);
- 2003 (Amendment 19 from 30 December 2003);
- 2005 (Amendments 20 to 30 from 9 December 2005), and
- 2009 (Amendment 31 from 9 January 2009), and
- 2001 (Amendment 32 from 12 April 2011).

The first two amendments in 1992 were passed under direct pressure from Greece, which tried to influence on the highest legal act of the country with an extremely contradictory demand for the Republic of Macedonia to guarantee it does not have territorial pretensions toward the neighboring countries and that

the border of the Republic of Macedonia can be changed only with the constitution and based on the principle of free will and in accordance with the commonly accepted international norms[18].

Here we are talking about a unique exception both in the international law and in the international politics where one country was directly blackmailed by another country to change its highest legal act without any direct cause or a direct act. The Republic of Macedonia as an independent and democratic country, by adopting the 1991 constitution, obliged itself, with the 11th fundamental value of the constitution, that it will "respect the commonly accepted norms of the international law".

The 1998 constitutional amendment regulated the duration of the detention, i.e. detention period prior to the conviction based on a court decision, which can last maximum up to 180 days. After the launching of a conviction act, the relevant court decides or extends the detention based on a procedure determined with the law.

The next, quite controversial change to the 1991 constitution took place in 2001 as a result of the signed Ohrid Framework Agreement which put an end to the "ethnic conflict" in the country. These 15 amendments are even today subject of numerous disputes within the Macedonian public, as well as among the wider public.

A solution to the 2001 conflict arrived in the form of the joint EU-US sponsored Ohrid Framework Agreement (OFA). What is clear is that within the background of the EU-US negotiations for finding peace the OFA was evidently established as an unavoidable resolution to the conflict, with chief US negotiator James Pardew later arguing that the OFA "gave Macedonia a chance in 2001 to avoid destructive divisions and to develop as a democracy"[19].

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[18] Under direct pressure from the Republic of Greece, the Republic of Macedonia obliged itself that it will only be able to change its border in accordance with the commonly accepted international norms, which is actually a humiliation from the democratic character of the Constitution of the Republic of Macedonia, as well as of the Assembly which passed it. The same applies to the second amendment adopted in 1992 which reads that "The Republic cares for the rights and the position of the Macedonian people living in the neighbouring countries and in the Diaspora, helps their cultural development and advances the ties with them. By doing this, the Republic shall not interfere in the sovereign rights of other countries when it comes to their internal matters". This constitutional amendment, adopted under direct pressure from Greece, devaluates the democratic capacity of the Constitution, as well as of the institutions of the system.

[19] See W.J. Pardew, (2011), "The Diplomatic History of the Ohrid Framework Agreement", in "The Ohrid Framework Agreement: Ten Years Later". *Ten years from the Ohrid Framework Agreement: Is Macedonia Functioning as a multi-ethnic state?",* South Eastern European University. Tetovo, Republic of Macedonia, p.21-23, http://www.seeu.edu.mk/files/research/projects/OFA_EN_Final.pdf [access: 13.08.2021]. Other authors have different views for the 2001 conflict in Macedonia. "The conflict in Macedonia in 2001 could be seen as a further manifestation of the will to greater autonomy, self-rule and even independence by the ethnic Albanian community. What was unique about that particular moment in time was the confluence of forces that encouraged militant armed struggle. The conflict of 2001 can be seen as an extension of the process of violent break up of Yugoslavia that began with the brief conflict between the Slovenian National Guard and the Yugoslav Army in 1990. The fighting that eventually broke out in Croatia, Bosnia and Kosovo in the ten years that followed finally spilled

Essentially, the OFA changed Macedonia's political, legislative, institutional and social landscape, bringing forward tectonic changes to the constitutional system. Its establishment, and further glorification by domestic and international actors, made Republic of Macedonia a testing ground, where members of ethnic communities began to realize a great portion of their rights on the basis of statistical variables, thus making Macedonia a rare example in constitutional theory where collective rights began to be realized on the grounds of a statistical rather than civil basis.

The process of the creation of "Framework" Macedonia and the elevation of the status of the OFA, interestingly, goes hand in hand with Macedonia's European integration. During the 2001 crisis Macedonia suddenly received very serious attention within the context of the EU Foreign Policy Agenda. The end to the conflict came hand in hand with Macedonia officially beginning its European agenda through the further implementation of the Stabilization and Association Agreement with the EU[20]. The EU viewed Macedonia as a multicultural and multi-ethnic society whose members had overcome their prior religious and ethnic divisions, so that they could cooperate and work together for a common good.

It is very likely that the EU used the US experience with the Dayton Peace Agreement signed in 1995 to end the war in Bosnia, and learning from their mistakes decided to take another approach with the Ohrid Framework Agreement[21]. Today, the OFA Agreement is fully implemented in the articles of the Constitution of the Republic of Macedonia. It is composed of a basic part that identifies the main problems, and changes, for the Republic of Macedonia, and three Annexes: Constitutional Amendments, Legislative Modifications and Implementation and Confidence-Building Measures. The contents of the OFA are based on five principles[22]:

1. The use of violence in pursuit of political aims is rejected completely and unconditionally. It is established that only peaceful political solutions can assure a stable and democratic future for Macedonia.

over in to Macedonia in 2001. The exact moment of the outbreak of violent armed conflict depended upon a number of factors.\". See more details: http://jsis.washington.edu/ellison//file/REECAS%20NW%202012/Seraphinoff_REECASNW.pdf.

[20] See: *EU Enlargement: The Former Yugoslav Republic of Macedonia*, http://ec.europa.eu/enlargement/candidatecountries/the_former_yugoslav_republic_of_macedonia/relation/index_en.htm [Accessed July 12, 2012].

[21] See T. Karakamisheva-Jovanovska and Z. Mucinski, *"Framework" Macedonia Within Rule of Law Europe: An Ongoing Transition or a Unique "Founding" Model of Democracy*, Paper presented at the ASN World Convention Columbia University 2014, 24-26 April 2014, https://www.academia.edu/8372852/_Framework_Macedonia_Within_Rule_of_Law_Europe_An_Ongoing_Transition_or_a_Unique_Founding_Model_of_Democracy [access: 13.08.2021].

[22] See http://www.ucdp.uu.se/gpdatabase/peace/Mac%2020010813.pdf.

2. Macedonia's sovereignty and territorial integrity, and the unitary character of the State are inviolable and must be preserved. There are no territorial solutions to ethnic issues.
3. The multi-ethnic character of Macedonia's society must be preserved and reflected in public life.
4. A modern democratic state in its natural course of development and maturation must continually ensure that its Constitution fully meets the needs of all its citizens and comports with the highest international standards, which themselves continue to evolve.
5. The development of local self-government is essential for encouraging the participation of citizens in democratic life, and for promoting respect for the identity of communities.

The OFA also prescribes the need for development of decentralized government as well as the principle of non-discrimination and equitable representation of all citizens under the law. This principle is applied with respect to employment in public administration and public enterprises, and access to public financing for business development. Laws regulating employment in public administration included measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration. Parallel to this process the OFA also establishes special Parliamentary procedures and Constitutional amendments. Examples of this are as follows:[23]

The Constitutional Preamble was amended as such:

"The citizens of the Republic of Macedonia, the Macedonian people, as well as the citizens, leaving within its borders who are part at the, Albanian people, the Turk people, the Vlach people, the Serb people, the Roma people, the Bosnians people and others..."

Article 8 of the Constitution stipulated that "equal representation of persons belonging to all communities in public bodies at all levels and in other areas of public life".

Article 19 of the Constitution stipulated that "the freedom of religious confession is guaranteed and that the Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelic-Methodist Church, Jewish Community and other Religious communities and groups are separate from the state and equal before the law. Religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law".

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[23] See http://eudo-citizenship.eu/NationalDB/docs/MACConstAmendmentsIV-XVIII28English.pdf [access: 13.08.2021].

Article 48 of the Constitution was changed as follows: "Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols. Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied".

Article 78 of the Constitution was changed as follows: "The Assembly shall establish a Committee for Inter-Community Relations. The Committee consists of seven members each from the Macedonians and Albanians parliamentarians within the Assembly, and five members from among the Turks, Vlach, Roma and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly. The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution".

Article 86 stipulates that the President of the Republic is President of the Security Council of the Republic of Macedonia. "In appointing the three members, the President shall ensure that the Security Council equitably reflects the composition of the population of Macedonia".

Article 104 stipulated that the Judicial Council is composed of seven members. "Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia".

Article 109 stipulates that the Constitutional Court of Macedonia is composed of nine judges. "The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia".

The official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language. "Any other language spoken by at least 20 percent of the population is also an official language, as set forth herein. In the organs of the Republic of Macedonia, any official language other than Macedo-

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

To this point the Assembly of the Republic of Macedonia has enacted all the necessary legislative provisions that were necessary to bring the OFA into full effect and amended or abrogated all provisions incompatible with the Agreement. Also, the international community has been invited to facilitate, monitor and assist in the implementation of the provisions of the Framework Agreement and its Annexes. The realization of the OFA is monitored within the context of Macedonia's EU Accession process (as noted yearly within the Progress Report issued by the Commission), as well as by NATO within the context of each Membership Action Plan (MAP) cycle.

The main controversy of the OFA is the model of power-sharing it brought along. There is no similar model in any other institutional designs for multi-ethnic states, allowing for different and contradictory interpretations of its provisions. The current Macedonian system is a form of a consociational power-sharing although it does not fit all the elements of Lijphart's famous model for consociational democracy. In order for this model to be successful it must meet four criteria[24].

[24] Four criteria are: Small territory, a multi-party system, cross cutting cleavages and more than three segments. http://wikisum.com/w/Lijphart:_Democracy_in_plural_societies#Chapter_2:_Four_Main_Characteristics_of_Consociational_Democracy. Critics have noted several possible disadvantages to Lijphart's ideas, most of which complain that consociationalismis not fully democratic. For example, there is a small, weak opposition, so it is hard to vote against the government without voting against the system. Lijphart counters by pointing out that (in Horowitz's later terms) winning the election in a deeply divided society is more like just winning a census. So if there were a strong opposition, it would have no real chance of alternating in power, because its size would be limited by the size of its ethnic group. So it is better to include the opposition in a Grand Coalition since, otherwise, power would not alternate and the strong opposition would simply be alienated. Also, critics complain that Lijphart's solution can't bring stability, only deadlock and immobilism. He concedes that policies may take longer to pass, but that policies are also less likely to be repealed in four years. Modern liberal democracies are based on two competing visions of the democratic ideal. The majoritarian principle emphasizes that democracy is majority rule and is based on a concentration of power. Majoritarian democracy can create sharp divisions between those who hold power and those who do not, and it does not allow the opposition much influence over government policy. The consensus principle, on the other hand, promotes the idea that democracy should represent as many citizens as possible and that a simple majority should not govern in an unfettered fashion. Consensus democracy disperses power so that there are multiple poles of decision making and multiple checks and balances, thus limiting the power of the central government while providing for the representation of a broader array of interests. Lijphart's distinction between consensus and majoritarian democracy is the single most influential typology of modern democracies. Until his path-breaking work on the

The Macedonian model does not meet at least two of those criteria. Furthermore, the multiparty system is highly fragmented and ideologically amorphous, while the ratio between the two main segments (ethnic Macedonian and ethnic Albanian) is extremely divergent with 65 percent of the population identifying itself as Macedonian versus ethnic Albanians with only 25 percent). There is a growing criticism that the OFA did not provide an adequate response to the 2001 conflict and that it only increased the tensions. The OFA, some believe, have even worsened the inter-ethnic relations. This criticism mainly comes from the majority, as the perception of ethnification, thanks to the new aspects of power-sharing and quota distribution system.[25]

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related theme of consociational democracy appeared in the 1960s and 1970s, political science was dominated by a majoritarian bias. For over three decades, Lijphart has persuasively argued that democracy need not follow the majoritarian model. In *Patterns of Democracy* he repeats this familiar yet important theme: "In the most deeply divided societies... majority rule spells majority dictatorship and civil strife rather than democracy. What such societies need is a democratic regime that emphasizes consensus instead of opposition, that includes rather than excludes". During his distinguished career, Lijphart has consistently underscored the virtues of consensus (or consociational) democracy. Lijphart very often analyzes the consequences of the differences between majoritarian and consensus democracy. He concludes that consensus democracies have an equal or slightly better record than majoritarian democracies in economic management and in the control of violence. Moreover, they perform better at promoting women's representation, reducing inequalities, encouraging electoral participation, promoting citizen satisfaction with democracy, protecting the environment, providing social welfare, avoiding high crime rates, and encouraging generosity in foreign aid.Although Lijphart makes a persuasive case for the virtues of consensus democracy, his ex-ante prediction for it skews parts of the analysis. For example, when he measures the quality of democracy, he selects some issues on which consensus democracy has a clear advantage but not one that favors majoritarian democracy. Lijphart's bivariate comparisons show that consensus democracy is correlated with better governmental performance, but these correlations do not show that consensus democracy was responsible for the enhanced performance. Often it is not clear why consensus democracy would be better at attaining some results. Quantitative social scientists will yearn for more statistical details that control for other possible sources of causation. See more details on http://muse.jhu.edu/journals/journal_of_democracy/summary/v012/12.3mainwaring.html [access: 13.08.2021].

[25] Today there is almost nothing left of the idea of the "civic approach" articulated in the document. Multi-ethnicity has been sacrificed and replaced by bi-nationality, while the power sharing arrangement makes democracy look like a pipedream (Vankovska 2006:2). Up to now all polls show that the Albanian community is much more in favor of OFA than any other community in Macedonia. This is partly a result of an "albanianised" process that initially was meant to be in favor of all citizens of Macedonia. Here below, are some main critics that one could find in research papers, articles in media and blogs, and are related to the implementation of Ohrid framework agreement:

– The implementation of OFA has damaged the other ethnic minorities, meaning the minorities that are below the "magic number" of 20 % (Principle of double majority voting suggested and accepted at the Ohrid Framework Agreement OFA. It is in fact a right to veto, or else known as the *Badinter principle*, basically meaning: Laws with a significant impact on ethnic minority communities may not be adopted by a simple majority but require a 'double' majority, including a majority among political representatives of the minority)

– The implementation of OFA has is exclusively an Albanian oriented process;

– The implementation of OFA is quantity and not quality oriented process;

It is still unclear whether the OFA transformed the country into a bi-national state, and not into a multi-ethnical society. In conclusion, the OFA has been a success story in ending an escalating conflict and banning the fear of a renewed conflict. And, it did resolve some old issues, like, for example, the higher education in Albanian language. Still, the OFA failed in some other aspects, i.e. it was unable to fundamentally transform the interethnic relations in Macedonia. The changes the OFA made in the country are quite asymmetric and many Macedonians consider the agreement as a "loss" for the Macedonian side. Nevertheless, the Agreement is widely perceived as a zero-sum game, where the gain for one community inevitably must signify the loss for another. In essence, the Ohrid Framework Agreement is widely perceived by many Macedonians as a ceiling for the accommodation of Albanians in the state (often times referring to an unseen level of "positive discrimination)", whereas many Albanians consider the agreement as the foundation for building future relations.

The 2005 constitutional amendments were focused on the reforms in the judicial and in the prosecution system of the Republic of Macedonia. They introduced two new key bodies in the system – the Judicial Council of the Republic of Macedonia and the Council of Prosecutors of the Republic of Macedonia, with specific authorities whose goal was to elevate the independence of the judicial and prosecutor's function.

The constitutional amendments of 2009 reduced the census for election of the President of the Republic in the second round from the previous 50% to 40% of the voters, so now the constitutional formulation reads: "president-elect is the candidate who won majority of votes from the voters who voted, if more than 40% of the voters *"have voted"*.

In 2011, the Constitution suffered another amendment which influenced the Paragraph 2 of the Article 4, according to which "the citizenship of a citizen of the Republic of Macedonia cannot be revoked, nor can he be extradited to another

– The implementation of OFA is mostly focused on ensuring equitable representation of Albanians, by that the Secretariat for Implementation of the Framework Agreement (SIOFA) has turned in to Agency for Employment of Albanians,

– The implementation of OFA has forgotten its main concept of civic approach and multiculturalism, and they are replaced by the concept of bi-nationality;

– The OFA turned out to be all about numbers and percentages.

See more details on N. Maliqi MA, A. Hani MA candidate, *NGO Training Centre for Management of Conflicts*, *"Ohrid framework agreement, challenge or opportunity"*, Presented at the Conference of Center for Research and Policy Making, titled *"20 years Macedonian independence – economic, political and policy developments"*, 2011, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.tcmc.org.mk%2FResearch%2520paper%2520OFA_challenge%2520or%2520opportunity.docx&ei=eVlGU9i_LcXUtQbtrYCgAQ&usg=AFQjCNHVgPXbKYr0281xv_UaCYHhd7K7ug&sig2=jqrmomrWJGutxZLZYJwe_Q&bvm=bv.64507335,d.Yms [access: 15.08.2021].

country, except in cases based on a ratified international treaty and with a court order". This amendment largely eased up the process for adoption of the Framework Decision of the European Council for EAW (Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, OJ No. L, 190/1 of 18-07-2002).

The importance of this framework decision was additionally enhanced with its recent verification by the EU Court of Justice. It reads that "the member-countries of the EU are obliged to extradite the citizens of another member-country of that country has issued a European arrest warrant."

6.3. Which body and in what kind of procedure adopts and amends the Constitution of the Republic of Macedonia?

The 1991 Constitution of the Republic of Macedonia falls in the group of rigid constitutions which are adopted and amended through a complex procedure. The Parliament of the Republic of Macedonia is the only institution authorized to adopt a new Constitution, or to make changes to the Constitution through amendments. In this context, section 8 of the Constitution of the Republic of Macedonia outlines the process for amending and supplementing the Constitution of the Republic of Macedonia through constitutional amendments and reads that proposal for changes to the Constitution of the Republic of Macedonia can be launched by the President of the Republic, the Government, at least 30 MPs or 150,000 citizens.

In accordance with the changes that took place after the OFA implementation, the decision for changes in the preamble, the articles concerning the local self-government, the articles concerning the culture, the use of the language, education, personal identity documents and the use of the symbols, besides the 2/3 majority of the total number of MPs, the amendments require majority of the total number of MPs who belong to the communities who are not majority in the Republic of Macedonia.

This double majority in the Macedonian constitutional practice is also known as a Badinter majority and is a necessary mechanism for these changes to take place. The procedure for a new constitution or changes to the constitution is elaborated in details in the Rulebook of the Parliament of the Republic of Macedonia.

Namely, after the Commission for Constitutional Affairs decides positively on the proposal for changes to the Constitution, the parliament adopts this decision with two-third majority of votes form the total number of MPs. After the decision for amending the constitution is passed, the Assembly passes a conclusion and determines a deadline until which the submitter of the proposal prepares a draft-text of the constitutional amendments. The submitter submits the draft-amendments to the President of the Assembly, who then submits it to the MPs and to the Prime

Minister, if they are not the actual submitters of the amendments, not later than 30 days before the Assembly session is scheduled.

The debate in the Commission for Constitutional Affairs and in the Legislative-Legal Commission can last maximum of three working days on the text of each draft-amendment. Then, the Assembly puts the draft-amendments on a public debate. The Assembly defines the timeframe in which the public debate should take place, the manner of announcing the draft amendments and defines a timeframe in which the submitter of the draft amendments as a head of the public debate will present a report from this debate to the assembly and a text of the draft constitutional amendments. The submitter submits the text of the draft amendments and the results from the public debate to the President of the Assembly who, in a period of 30 days prior to the assembly session, submits it to the MPs and to the Prime Minister.

Each MP, each working body and the government, in cases when they are not submitters of the draft amendments, can submit amendments to the text of the raft amendments within eight days before the assembly session at which the constitutional amendments will be voted. There is a general debate on the text of each amendment in duration of maximum of three working days. The Assembly decides separately on the text of each amendment with majority of votes from the total number of MPs. The assembly determines the proposal for each amendment separately with majority of votes from the total number of MPs. The amendments to the constitution are adopted with two-third majority of votes from the total number of MPs, and with the same majority the Assembly passes a decision to declare the amendments to the constitution.

This, in brief, is the constitutional and legal procedure for voting on the constitutional amendments. One can note that the procedure is quite complex and demands a wide political consensus, i.e. support from at least 82 from the total of 123 MPs, as well as *Badinter majority* for the constitutional amendments that require double majority. It seems that the procedure for amending the constitution leaves enough space for all concerned parties to speak their mind. The timeframe of 30 days for a public debate leaves enough time for all relevant factors to speak (university professors, Academy of Science and Arts, institutions, state bodies, etc.) Unlike some constitutions in the world that require a referendum (compulsory[26]

[26] As in the case of Switzerland, Ireland, France, Spain, Japan, Russian Federation etc. we should also mention that there are different forms of compulsory referendum: 1. Compulsory referendum for passing a new constitution; this kind of referendum is foreseen in the constitutions of the US states, the Swiss cantons, the 1947 constitution of Japan etc. 2. Compulsory referendum for amending constitutional provisions. This type of referendum exists in Austria in its 1920 Constitution, the 1959 Cuban constitution etc. and 3. Compulsory constitutional referendum when the assembly cannot adopt the proposed constitutional amendments, like in the case of Senegal in its 1959 Constitution.

and optional[27]) for passing a new constitution or for amending the existing one, the Constitution of the Republic of Macedonia does not foresee obligatory referendum, although there is a possibility for organizing a compulsory referendum if supported by 150,000 citizens. In this case, the decision passed by the citizens at a referendum is compulsory.

Although the 1991 Constitution of the Republic of Macedonia does not use the term "direct democracy", it does stipulate the forms through which the citizens exercise the authority in the country. Article 2 of the Constitution stipulates that "in the Republic of Macedonia the sovereignty comes from the citizens and belongs to the citizens. The citizens of the Republic of Macedonia exercise their power through democratically elected representatives, by a referendum and by other forms of direct expression".

Further on, Article 68, paragraph 1, item 10 says that: "the Assembly of the Republic of Macedonia schedules a referendum", and Article 73 says: "the Assembly decides on scheduling a referendum on certain issues of its competence with majority of votes from the total number of MPs. The decision at the referendum is adopted if it is supported by the majority of voters who voted, if more than one-half of the total number of voters registered in the Single Voters' List voted at the referendum. The Assembly is obliged to schedule a referendum when the proposal for referendum comes from at least 150,000 voters. The decision passed at a referendum is obligatory".

7. Conclusion

The Republic of Poland and the Republic of Macedonia have many similarities, but at the same time they have many differences in the organization and functioning of their constitutional and legal system.

The differences are evident in the constitutional and legal history which in the case of Poland contains many constitutional documents some dating back to the 18th century, which is not the case with the Republic of Macedonia.

From this paper, we can underline **the following similarities in the constitutional and legal systems of the two countries**:

1. After the fall of the socialism, the legal, political, economic and social systems in both countries underwent overall transformation and democratization in accordance with the principles and values of the democracy, opposite to the previous values of one-party system, monopolism of the state and the socialist doctrine of unity of the government. And while Poland in the first three years of the Transition saw extreme party pluralism (over 111 parties were registered

[27] The case with the Constitutions of Austria, Italy, Slovenia, etc.

in the period between 1988 and 1990), Macedonia experienced a similar pluralistic wave with many political parties, which came as a result of the liberalised possibility for civil associations and the possibility for new parties to start operating within the multi-party systems (in Macedonia, between 1990 and 1993 over 40 parties were registered which is a huge number having in mind the population of the country).

2. In the existing constitutional documents of both countries, adopted after the transformation of the systems (in Macedonia in 1991, in Poland in 1997), the state is defined as a parliamentary democracy which fully observes the principle of division of power and balance in the government, as well as the principle of sovereignty of the citizens (in Poland, in accordance with the 1997 Constitution, the sovereignty originates from the nation, i.e. the citizens of Poland, in Macedonia the sovereignty comes from and belongs to the citizens of the Republic of Macedonia).
3. With regard to the state power, similarities can be identified with regard to the holders of the legislative power (in Macedonia that is the one-house assembly, in Poland it is the two-house parliament.) The mandate of the MPs in both Macedonia and in Poland is four years. With regard to the holders of the executive government, there are similarities when it comes to the dual character (in both countries, the executive government is divided between the President of the country and the prime minister. In Poland, the government is referred to as Council of Ministers.) the independent and autonomous courts are considered holders of the judicial power, organized in both countries according to a similar hierarchy; both countries have constitutional courts, the Constitutional Court in Macedonia and the Constitutional Tribunal in Poland, as authorized bodies to assess the legality of the acts and the work of the government bodies, as well as to protect the human rights and freedoms.
4. The relations between the bodies of the legislative, executive and the judicial power are also similar. We can identify the following similarities when it comes to the relations among the holders of the legislative and the executive power: the presidents of both republics are elected on general, direct and secret elections with identical mandate of five years and with the right to re-election. The presidents of both countries represent the country in the international and in the domestic affairs, they sign international agreements on behalf of the state and have the right to appoint and to dismiss country's diplomatic representatives abroad. Both presidents are also supreme commanders of the armed forces. Both presidents are held eligible in cases of violation of the constitutions of the two countries. The responsibility is initiated by the parliament (in Poland, that is the Tribunal of the State, while in Macedonia that is

the Assembly and the Constitutional Court.) There are also similarities with regard to the appointment of the Head of the Government. The President of the Republic in both countries has the authority to determine the holder of the mandate who has the support from the current majority in the parliament.

5. The governments in both countries are held accountable for their work in front of the parliaments. The instruments for voting trust to the government, for interpellation for political responsibility of certain ministers and other holders of public office, as well as the questions from the MPs are quite similarly regulated in both countries.
6. Also in the field of the judicial power there are number of similarities. The similarities are evident with regard to the types of courts that exist in the two countries, such as the supreme court, the administrative court, the constitutional court (constitutional tribunal).

There are also certain differences between the constitutional and legal systems of the two countries:

1. The first important difference is that Poland has much bigger relevance in the European, as well as in the global constitutional and legal theory and practice than the Republic of Macedonia, since Poland is a much older country and is designated as a country that was among the first in Europe to develop the constitutionality.
2. Regarding the process of democratization of the legal and political systems, Macedonia learned from the experiences of the "fierce" Poland.
3. Regarding the organization of the power, the differences are most evident regarding the legislative body, which in Poland is composed of two houses (the Sejm as a lower house with 460 members and the Senate as an upper house with 100 members), while in Macedonia the Assembly has one house. The Polish parliament has the right to schedule joint sessions of the two houses when it is renamed in a National Assembly. The joint session is scheduled in three cases: 1. when the new President of the country is taking over his duty after the elections; 2. when the President of the Republic is permanently disabled or is unable to perform his duties and 3. When the President of the Republic is sentenced by the State Tribunal for violating the constitution or for other criminal act. Since 1999, the two houses had joint sessions three times, when the president was being sworn in.
4. There are also differences in the competences of the two presidents. Namely, unlike the Macedonian President who does not have the authority to make executive decisions, the Polish President has that authority. The President of Poland proposes the President of the Supreme Court and the President of the Constitutional Tribunal, and the Sejm confirms or rejects his proposals. The

President of Poland, at the proposal of the National Judicial Council, appoints the judges with unlimited mandate. The main role of the Supreme Court of Poland is to supervise the decisions of the general (basic) courts and of the military courts.

5. Regarding the government, in Macedonia there is a President of the Government and ministers, while in Poland there is a Council of Ministers and a Prime Minister. The Polish constitution says that Poland has a parliamentary and a cabinet system.
6. In Poland there is a Tribunal of State with authority to lead procedures against government officials (state officials), in cases when there are elements of constitutional and legal violations, i.e. while they performed their official duties. In Macedonia there is no such body.

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