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PROTECTION OF MINORITY RIGHTS – A PILLAR OF A DEMOCRATIC SOCIETY

Abstract

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

Key terms: minority rights, international standards, integration

1. General overview

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

the states must protect the constitutional order, human rights and the rights of the minorities.

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

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

The Republic of Macedonia accepts the challenge of building a multi-cultural society.¹ The 2001 Ohrid Framework Agreement that ended the armed conflict with ethnic Albanian rebels prompted constitutional amendments IV - XVIII that strengthened the guarantees for non-discrimination, equal treatment and equitable representation in the government and administration; improved access to public funds and education in communities language(s); enhanced the use of the communities’ languages in the state and local bodies; and stimulated development and protection of the culture, artistic expression and social values of the communities. A fragmented structure of state and local bodies and institutions was set-up to implement, monitor and report on the protection of the communities in the Republic of Macedonia.² Enhancing the status and the rights of the second largest community in the Republic of Macedonia – ethnic Albanians has been placed high on the state political and security agenda even before Macedonia gained its independence from the former Yugoslavia. The Republic of Macedonia also has other non-majority communities that must enjoy equal treatment and protection of their rights in accordance with the international and European standards.

1.1. Purpose, scope and methodology

The research attempts to provide answers to the following questions:

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

² The competencies are mainly divided between the Secretariat for the Framework Agreement, Ombudsperson, the Commission against discrimination, the directorates for enhancing education in the communities’ languages and their culture and the Agency for realization of the rights of the communities.

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

The purpose is to contribute towards heightened awareness about the international/regional standards and comparative systems for protection of minority rights as a pillar of a democratic society that reduces the risks of social fragmentation. The scope of the research is limited to the examination of the institutional set-up that is tasked with execution of policies and legislation for protection of the minority rights in compliance with the relevant international and regional standards.

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

Primary and secondary data are collected from the knowledge databases and websites of the Office of High Commission for Human Rights (OHCHR), respective bodies of the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE). State reports and replies to questionnaires submitted by the selected states and submissions by non-state actors in compliance with the requirements of the Framework Convention for the Protection of National Minorities provided a basis for the comparative analysis of the systems for protection of minorities in the selected states.

Information was further collected by way of conducting semi-structured interviews with the representatives from the Macedonian Ministry of Justice and the Agency for the realization of the rights of the communities in the Republic of Macedonia.

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

2. International and regional standards for protection of minorities

A number of international instruments address the question of protection of the rights of minorities either as collective or individual rights, such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic

Minorities, International Covenant on Political and Civil Rights (ICPCR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD)³, the CoE Framework Convention for the Protection of National Minorities (the Framework Convention), the European Charter for Regional or Minority Languages, the European Convention on Human Rights (ECHR)⁴ and OSCE political commitments⁵ and guidelines.⁶ They envisage, *inter alia*, the following:

Minorities are guaranteed active participation in all areas of public life, participation in a political decision-making and access to public office under equal conditions. They have the right to protect, develop and nurture their culture and establish cultural associations for this purpose. In the educational sphere, the minorities have the right to learn their mother tongue, their national history, culture and other characteristics important to nurture their identity.

The minorities have the right to use their language in the court and administrative procedures before the state and local bodies. They have also the right to maintain contacts with their community, with other communities and with the state to which they feel connected because of the mother tongue, ethnic origin or religion. Freedom of expression also encompasses the right to use the state and private media to nurture the minorities' language, culture, art, to learn news about the state where they live and about the state to which they feel connected. Enjoyment of their religious rights in a community or alone is also guaranteed.

The fulfilment of the above rights is balanced with the protection of a sovereignty and territorial integrity as the principles of the international law. Prohibition of discrimination and equal treatment regardless of the race, ethnicity, the colour of the skin, religion, gender, social status is the mantra considered to have magical powers that affords effective protection of the minority rights and contributes towards social integration. The right not to be discriminated against is non-derogable during war or natural disasters.

Few concrete examples of the application of the principle of non-discrimination and equal treatment to minorities are illustrated below. ICPCR was breached when the state funded the Catholic schools, but not the schools of other religious communities, and when soldiers with a different citizenship than of the state providing pensions, received a smaller pension in comparison to the soldiers with the citizenship of that state. The CERD was violated when the state bodies failed to carry out an investigation for the complaints filed by Roma alleging that they were not allowed to enter a discotheque

³ At UN Treaty Office, official web site, <https://treaties.un.org> accessed 1 March 2018.

⁴ At CoE Treaty Office, official web site, <https://www.coe.int/en/web/conventions/full-list> accessed 5 March 2018.

⁵ OSCE, *OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, 2012, p. 149-239.

⁶ OSCE, *The Ljubljana Guidelines on Integration of Diverse Societies*, 2012.

only because of their ethnic origin.⁷ There was a breach of the ECHR in *Sampanis v. Greece* (2008) where Roma children were prohibited from attending regular schooling due to their ethnic origin. There was a breach of the ECHR in the case of Cyprus against Turkey (2001) when it was established that the Greeks in Cyprus were living under humiliating conditions only because of their ethnic origin, religion and race.⁸ Discrimination was established in *Timishev v Russia* (2005) when the applicant was not allowed to enter a certain territory due to his ethnic Chechen origin. Discrimination in breach of the ECHR was also found in the case *Remli v. France* (1996) when a jury member declared himself a racist, while the accused was from Algeria.

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

The OSCE Ljubljana Guidelines on Integration of Diverse Societies emphasize the need to include the minorities in a decision-making in order to avoid their marginalization and fragmentation of the society. State and public administration, educational, health and social institutions must reflect the diversity of the society. Excessive isolation/separation of minority communities must be avoided as it may be detrimental for social integration.

3. Comparative systems for protection of minorities and social integration

On one side of the spectrum there is the “Dutch model” where it is considered that the social fabric is consisted of several different threads, i.e., from different social groups that are distinguished in terms of culture, religion, political orientation, whose representatives are conducting a dialogue and negotiations in order to fulfil the group and general social interests. The “French model” is on the other side of the spectrum, based on individual rights enjoyed by the individuals who are equals⁹. Other models of social integration based on the protection of the rights of the minorities are positioned in-between.

Some of the minority communities in the Western European states settled down and started growing in size due to economic immigration, or due to historic reasons, e.g.,

⁷ Communication no. 29/2003 against Serbia.

⁸ European Court for Human Rights, *Factsheet on racial discrimination*, 2013.

⁹ Michalowski, *What is the Dutch Integration Model and Has it Failed?*, Focus Migration, Policy Brief no. 1, 2005, p. 1-2.

imperialism and colonialism. In the Balkans, the history and changes of the borders naturally resulted in larger or smaller minority communities in each and every Balkan state. The history and the manner how and why there is a demographic variety in the states under examination has not been considered a limiting factor for the purpose of this analysis, because its main focus are the systems that develop and nurture minority rights with the aim to achieve social integration. The analysis of good practices from Croatia, Denmark, France, Montenegro, the Netherlands, Serbia, Slovenia and the UK show the following results:

1. All examined countries devote attention to the social integration of minorities, and have their own ways to afford protection of the minority rights in compliance with international and European standards.
2. The examined countries have at least one body that is in charge with a development of the minority rights, monitoring of their implementation and coordination. They are either positioned at the level of executive power (coordination, provision of technical assistance and project grants), or are advisory bodies (composed from the representatives of the minorities), or belong to academia (gathering information, performing analysis and drafting publications for policy and law-making relevant for social integration).
3. Some of the bodies from the analyzed countries (e.g., Denmark, Estonia, UK) were set-up with a goal to contribute towards integrated and functional society. Integrated society does not only need measures to be taken in respect of education, the use of languages or equitable representation, but also in respect of housing, economic and labour integration in the private sector.
4. Few of the countries under examination have set-up funds or foundations (e.g., Montenegro, UK and Estonia) to fund projects that aim to enhance social integration and cohesion. The funds come from the state, local self-government and private donations. Interesting example is the Croatian Fund for Promotion of Diversity and Pluralism in the Electronic Media, where private media can apply for funding for programmes addressed to minorities.
5. The states have set-up special institutes or consultative bodies (e.g., Denmark, Lithuania, the Netherlands) to examine causalities between the measures employed and their consequences, to monitor and report on the minority right, to draft analyses and conduct trainings on minority protection and social integration. Denmark implements national barometer for social integration to measure the success of the social integration by applying a set of specific indicators.¹⁰ The data which are collected and analyzed focus on unemployment of persons from different ethnic origins (e.g., no. of unemployed persons, the length of unemployment in comparison with ethnic Danes), on the success in school of children of different

¹⁰ <http://integrationsbarometer.dk/>, <https://ec.europa.eu/migrant-integration/country/denmark>.

- ethnic origins, on the number of persons of different ethnic origin setting the exams for civil service compared with the number of successful candidates.
6. Countries are also actively involved in the capacity building activities regarding the sensitive question of integration of minority communities. For example, Lithuania offers free courses of the Lithuanian language to minorities.
 7. The Netherlands has an inter-ministerial consultative committee for human rights, which represents a platform for consultation and coordination of various ministries in order to integrate human rights in the politics and legislation and to ensure adequate reporting to the international organizations about the human rights' situation.
 8. Special awards for the municipalities that are contributing towards the advancement of social integration have been established, *inter alia*, by making the culture of the non-majority communities more accessible (e.g., Sweden).
 9. The examined countries recognize the vital role of non-governmental actors in enhancing social integration and minority rights protection. They engage with the NGOs with mission to improve minority rights and inter-ethnic tolerance, provide funding and trainings and take into consideration the input of non-governmental actors when drafting and improving laws and policies (e.g., Croatia).

3.1. Orientation for the Republic of Macedonia

The Republic of Macedonia makes attempts to enhance social integration of majority and non-majority communities with the support of the international community in various areas including, but not limited to participation in public affairs, education, use of languages, media. This is an on-going process for the Republic of Macedonia as well as for other examined countries that must take into consideration the demographic changes and the spirit of the time, which brings respect for the multi-culturalism and for the minority rights.

Multi-culturalism has a prominent place in the Constitution of the Republic of Macedonia, which means that social integration is, *sine qua non*, condition for a functional and peaceful society. Public expression of the political will towards building stronger integration and cohesion of the Macedonian society by high representatives of majority and non-majority in the Republic of Macedonia and their political programmes is necessary. Public needs to understand that the spirit of cooperation, shared values and working together to achieve joint goals are replacing instability, conflicts and discrimination, which have to remain in the past.

Turning to the institutional framework that is necessary to implement the goal of social integration, it transpires that the Republic of Macedonia has much to learn from the

positive examples highlighted in the comparative overview and from the application of international and European standards. In particular:

1. Sound institutional framework is needed to strike a balance between protection of the rights of the minorities exercised in a community and to avoid their excessive isolation and separation, which increases the risk of social fragmentation. The risks for social fragmentation, such as geographic isolation or a lack of language skills should be thoroughly examined and effective measures should be taken to reduce them. The Republic of Macedonia may establish a central body specialized for social integration (e.g., coordinative council or a working group under the Prime Minister) that will include members of non-majority communities and experts. The main tasks would be to improve coordination, mainstream the principles of social integration into policies and activities, conduct monitoring, collect accurate data of all relevant institutions, report on the advancement of social integration, and maintain updated database of all projects aimed at enhancing social integration. It can also decide to advance social integration by targeting specific groups, such as rural women of all ethnic backgrounds.
2. In the Republic of Macedonia meagre resources are devoted to the collection of accurate data of importance for social integration, to scientific research and to drafting policy briefs and policy proposals. While nobody denies the need these processes to be performed by the Government and/or political parties' bodies, the examples of other countries demonstrate that there is a strong need for contributions coming from scientific and neutral institutions, e.g., academia, a think tank or an NGO. The latter can also help raise awareness about the need for social integration and clarify its concept and practical consequences to the public.
3. Children are an important target group for social integration measures. They can build bridges in a fragmented and self-interest centred communities. The Republic of Macedonia must develop appropriate educational policies and take measures to develop respect of the children towards their own cultural identity and language, as well as towards other, as well as increase understanding that identities may be multicultural multilayer and dynamic, while building tolerance and appreciation for the shared values in a common state.
4. While language rights of the non-majority communities must be respected, the state should offer free language courses in majority and non-majority languages for adults and children.
5. Media in non-majority languages must be accessible also to persons living in rural and distant areas. Appropriate funding should be provided to private media that broadcast programmes for the non-majority communities and brings news about the state where they live, as well as about states to which they feel connected.
6. All the outcomes regarding social integration in different fields must be based on a sustainability requirement and the feeling of local ownership for all

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

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

Conclusion

The results of the research show that the concept of a multi-ethnic integrated democratic society needs to be constantly clarified and publicly promoted, not only by the Government institutions, but also by the political parties, academia and NGOs. Social integration must be underscored as a strategic priority among the majority and non-majority communities in the Republic of Macedonia. Some of the above mentioned salient examples from the examined countries can be applied to Macedonian reality, not as legal/institutional transplants, but as an orientation for the Republic of Macedonia to achieve and enhance social integration. A cautious approach needs to be applied while working on social integration in order to avoid a risk of social fragmentation on ethnic, language or cultural bases.

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